

# Professional soldiers and the right to conscientious objection in the European Union

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## Preface

There is no doubt about it, but the military forces in the European Union are professionalising. More and more countries are abolishing or suspending conscription – in the next year Poland, followed by Sweden. The number of countries within the European Union which maintain conscription will then be reduced to eight (nine if we include the candidate countries). Of those countries which maintain conscription more and more reduce military service, and are increasing the amount of professional soldiers: in Austria, Finland and Greece they represent almost 50%, in Estonia 60%, and in Germany more than 75% of the Armed Forces. De facto in most conscript armies within the EU professional soldiers play the major military role.

This goes hand in hand with the fact that military interventions are carried out more and more frequently, within a framework of NATO, the EU, the United Nations, or of ad-hoc coalitions. Almost all military forces of the member states and candidate countries of the EU are militarily engaged abroad: Bulgaria, the Czech Republic, Denmark, Estonia, Latvia, Lithuania, Macedonia, Poland, Romania, and the United Kingdom have troops in Iraq, all EU countries with the exception of Malta and Cyprus take part in the NATO operation in Afghanistan, and Belgium, Croatia, Cyprus, France, Macedonia, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, Poland, Portugal, Slovenia, Spain and Turkey take part in the UN mission UNIFIL in Lebanon. This list is far from complete.

With these increased military engagements the right to conscientious objection – which has been achieved in all EU countries, at least for conscripts, as a result of decades of struggle by CO movements – is even more important. Even though the European Union officially adheres to the right to conscientious objection, the practice is quite different.

The end of conscription also means the end of the right to conscientious objection, because most countries recognised and recognise this right only incompletely and just for conscripts. Only Germany, the Netherlands and the United Kingdom recognise that professional soldiers can turn into conscientious objectors, but there are a range of problems in practice.

This publication gives a detailed overview of the right to conscientious objection in the countries of the European Union (including candidate countries), and as far as possible of practices regarding this right.

It has become obvious that the situation regarding the right to conscientious objection within the European Union is not good. Most countries of the EU are far from conforming with the existing international standards: of the United Nations, the Council of Europe, or the European Parliament.

The Parliamentary Assembly of the Council of Europe demanded from member states on 24 March 2006 in a

## Vorwort

Die Militärs der Europäischen Union professionalisieren sich, daran gibt es keinen Zweifel. Mehr und mehr Länder schaffen die Wehrpflicht ab oder setzen diese aus – im nächsten Jahr Polen, und danach Schweden. Damit reduziert sich die Anzahl der Länder in der EU, die an der Wehrpflicht festhalten, auf acht (neun, wenn die Kandidatenländer mitgezählt werden). Und auch die Länder, die an der Wehrpflicht festhalten, reduzieren mehr und mehr den Militärdienst, und erhöhen den Anteil der Berufssoldat/innen: in Österreich, Finnland und Griechenland sind es fast 50%, in Estland 60%, und in Deutschland mehr als 75%. De facto spielen damit in den meisten Wehrpflichtarmeen der EU die Zeit- oder Berufssoldaten die militärisch wichtige Rolle.

Damit einher geht dass mehr und mehr militärisch interveniert wird, im Rahmen der NATO, der EU, der Vereinten Nationen oder Ad-hoc-Koalitionen. So gut wie alle Armeen der Mitglieds- und Kandidatenländer der EU sind militärisch im Ausland engagiert: Bulgarien, Dänemark, Estland, Großbritannien, Lettland, Litauen, Mazedonien, Polen, Rumänien und die Tschechische Republik haben Truppen im Irak, alle EU-Länder mit Ausnahme von Malta und Zypern beteiligen sich am NATO-Einsatz in Afghanistan, und Belgien, Kroatien, Zypern, Frankreich, Mazedonien, Deutschland, Griechenland, Ungarn, Irland, Italien, Luxemburg, Polen, Portugal, Slowenien, Spanien und die Türkei beteiligen sich am UNO-Einsatz UNIFIL im Libanon. Diese Liste ist bei weitem nicht vollständig. Mit zunehmenden militärischem Engagement ist das Recht auf Kriegsdienstverweigerung – erkämpft in allen EU-Ländern zumindest für Wehrpflichtige in einem jahrzehntelangen Kampf der KDV-Bewegungen – umso wichtiger. Auch wenn sich die Europäische Union offiziell zum Recht auf Kriegsdienstverweigerung bekennt, so sieht die Praxis doch anders aus.

Das Ende der Wehrpflicht bedeutete in vielen Fällen auch das Ende des Rechts auf Kriegsdienstverweigerung, denn die meisten Länder erkannten und erkennen dieses Recht nur unvollständig und nur für Wehrpflichtige an. Lediglich Deutschland, die Niederlande und Großbritannien erkennen an, dass sich Berufssoldat/innen zu Kriegsdienstverweigerer/innen wandeln können. Doch auch in diesen Ländern gibt es in der Praxis zahlreiche Probleme.

Diese Broschüre gibt einen detaillierten Überblick über das Recht auf Kriegsdienstverweigerung in den Ländern der Europäischen Union (einschließlich der EU-Kandidatenländer), und soweit wie möglich auch über die Praxis.

Es zeigt sich, dass es heutzutage mit diesem Recht in der Europäischen Union nicht mehr weit her ist. Die meisten Länder der EU sind weit davon entfernt, die bestehenden internationalen Standards – der Vereinten Nationen, der Europarates, oder des Europaparlamentes – zu erfüllen. Die parlamentarische Versammlung des Europarates forderte in einer Entschließung zu "*Menschenrechten in den Streitkräften*" vom 24. März 2006, dass Mitgliedstaaten: "in

decision on human rights in the Armed Forces to “introduce into their legislation the right to be registered as a conscientious objector at any time, namely before, during or after implementation of military service, as well as the right of career servicemen to obtain the status of conscientious objector”. Already the Council of Europe recommendation 1581 of 2001 suggested to member states to recognise the right to conscientious objection for professional soldiers. This right can be a potential obstacle to the increasingly wild military adventures of the European Union. It is therefore necessary that after the abolishing or suspension of conscription the peace and anti-war movements, and especially the CO movements, focus their work more on the right to conscientious objection for professional soldiers, and develop an active counter-recruitment work, and work with soldiers. This publication offers background information for this work.

Tobias Pflüger, MEP

ihre Gesetzgebung das Recht einzuführen, sich zu jeder Zeit als Kriegsdienstverweigerer registrieren zu lassen, vor, während und nach der Ableistung des Wehrdienstes, sowie das Recht von Berufssoldaten, die Anerkennung als Kriegsdienstverweigerer zu erhalten". Bereits die Empfehlung 1581 von 2001 empfahl den Mitgliedern des Europarates das Recht auf KDV auch für Berufssoldat/innen anzuerkennen. Dieses Recht kann potentiell ein Hindernis bei den immer wilderen militärischen Abenteuern der Europäischen Union bilden. Es ist daher notwendig, dass die Friedens- und Antikriegsbewegungen, und insbesondere die KDV-Bewegungen, sich nach der Abschaffung oder Aussetzung der Wehrpflicht verstärkt für das Recht auf Kriegsdienstverweigerung für Zeit- und Berufssoldat/innen einsetzen, und eine aktive Antirekrutierungs- und Soldat/inn/en-Arbeit betreiben. Dafür bietet diese Broschüre Hintergrundinformationen.

Tobias Pflüger, MdEP



.4. Action in support of total objectors in Germany.

Photo: Andreas Kiefer

## Summary

This publication provides an overview of the present state of the right to conscientious objection in the European Union, including the candidate countries Croatia, Turkey, and FYROM (Macedonia). This publication was produced in close co-operation with War Resisters' International (WRI). It builds on the global survey on the situation of conscientious objectors by *War Resisters' International* from 1998 [1] and their update by *Quaker Council for European Affairs* (QCEA) from 2005 [2]. For this publication the survey has undergone a major update; it has been reworked and brought up to date, as the situation in many countries changed a lot since 2005.

For the first time this publication attempts to systematically also provide information on the right to conscientious objection for contract and professional soldiers. It became clear that on this issue there is a lack of information. Only five countries (Austria, Denmark, Ireland, Hungary, and Turkey) replied to a questionnaire sent by *War Resisters' International* to all embassies of the relevant countries in November 2007, and even those replies often were not satisfactory in relation to the information given, and did not contribute much to understanding the situation.

It can already now be said that there still exists a considerable need for more research on this issue. That presently the situation is changing in quite a few countries (Poland, Sweden) does not make it easier, and it is presently difficult to obtain concrete information on these countries.

### The right to conscientious objection in international law

The right to conscientious objection is derived from Article 18 of the International Covenant on Civil and Political Rights [3] (ICCPR) and from Article 9 of the European Convention of Human Rights [4], which deal with freedom of religion, thought and conscience. Although Article 10 of the planned European Charter of Fundamental Rights does recognise the right to conscientious objection, it does so only within the limits of national laws [5]. Article 10 itself does not include any standards for the right to conscientious objection. To use this article to develop an argument in favour of the Lisbon treaty, which rightfully has been rejected in Ireland, therefore does not have any political logic. The Lisbon treaty is and remains an EU treaty of neoliberal and military orientation.

On the global level, both, the (former) Commission on Human Rights of the United Nations, the then highest UN forum in relation to human rights made up of government representatives, and the Human Rights Committee, the expert body of the United Nations in charge of interpreting the International Covenant, dealt with the question of conscientious objection several times. Since 1989, resolutions of the Commission on Human Rights (adopted without a vote), recognised "*the right of everyone to have conscientious objections to military service as a legitimate exercise of the right to freedom of thought, conscience and religion*" [6].

The Human Rights Committee identifies conscientious

## Zusammenfassung

Diese Broschüre gibt einen Überblick über den Stand des Rechtes auf Kriegsdienstverweigerung in der Europäischen Union, einschließlich der Kandidatenländer Kroatien, Türkei und FYROM (Mazedonien). Die Broschüre wurde in enger Zusammenarbeit mit der *War Resisters' International* (WRI) erstellt, und baut auf auf der weltweiten Übersicht über die Situation der Kriegsdienstverweigerer, die von der *War Resisters' International* von 1998 [1] erstellt wurde und der Aktualisierung vorgenommen vom *Quaker Council for European Affairs* (QCEA) 2005 [2]. Für diese Broschüre wurde die Übersicht grundlegend aktualisiert, überarbeitet und auf den aktuellen Stand gebracht, da sich seit 2005 die Situation in vielen Ländern beträchtlich verändert hat.

Erstmalig wird mit dieser Broschüre der Versuch unternommen, systematisch auch Informationen zum Recht auf Kriegsdienstverweigerung für Zeit- und BerufssoldatInnen bereitzustellen, wobei deutlich wird, dass es zu dieser Frage erhebliche Wissenslücken gibt. Auf einen Fragebogen an die Botschaften aller relevanten Länder, der von der *War Resisters' International* im November 2007 verschickt wurde, gab es lediglich fünf Rückmeldungen (Dänemark, Irland, Österreich, Türkei und Ungarn), und auch diese waren in ihrem Informationsgehalt oft unbefriedigend, und trugen wenig zur Erhellung der Situation bei.

Es lässt sich also schon jetzt feststellen, dass es zu diesem Thema auch weiterhin einen Recherchebedarf gibt. Erschwerend kommt hinzu, dass in einigen Ländern die Situation derzeit im Fluss ist (Polen, Schweden), und es daher sehr schwierig ist, handfeste Informationen zu bekommen.

### Das Recht auf Kriegsdienstverweigerung im internationalen Recht

Das Recht auf Kriegsdienstverweigerung ist aus Artikel 18 des Internationalen Paktes zu bürgerlichen und politischen Rechten [3] (Internationaler Zivilpakt) sowie Artikel 9 der Europäischen Menschenrechtskonvention [4] abgeleitet, die sich mit der Glaubens- und Gewissensfreiheit befassen.

Auch wenn Artikel 10 der geplanten Europäischen Grundrechtecharta das Recht auf Kriegsdienstverweigerung anerkennt, so geschieht dies nur nach Massgabe von Ländergesetzen [5]. Artikel 10 selbst formuliert keine Standards zum Recht auf KDV. Aus diesem Artikel ein Argument für den in Irland berechtigterweise abgelehnten Lissabonner Vertrag abzuleisten ist deshalb politisch nicht logisch. Der Lissabonner Vertrag ist und bleibt ein EU-Vertrag neoliberaler und militärischer Ausrichtung.

Auf globaler Ebene haben sowohl die (ehemalige) Menschenrechtskommission der Vereinten Nationen, das damals höchste UN-Forum zum Thema Menschenrechte bestehend aus RegierungsvertreterInnen, als auch das Menschenrechtskomitee, das ExpertInnenkomitee der Vereinten Nationen, das den Internationalen Zivilpakt interpretiert, sich mehrfach mit der Frage der Kriegsdienstverweigerung beschäftigt. Seit 1989 haben Resolutionen der Menschenrechtskommission (verabschiedet ohne Abstimmung) das Recht "*im Rahmen der legitimen Ausübung des Rechts auf Gedanken-, Gewissens-*

objection to military service as a protected form of manifestation of (religious) belief within Article 18(1) of the Covenant. In its most recent and definitive case [7] on the subject (Mr. Yeo-Bum Yoon and Mr. Myung-Jin Choi v Republic of Korea), it held that the Republic of Korea had violated Article 18 by not recognising the right to conscientious objection to military service.

In its resolution from 1998, the Commission on Human Rights also recognised that “*persons performing military service may develop conscientious objections*” [8]. Consequently, an application for conscientious objection has to be possible at any time – before, during and after military service, and also for professional soldiers. The European Parliament phrased it similarly when it demanded in its resolution from 1989 that “*all conscripts must be entitled to refuse military service [...] on grounds of conscience*” [9].

Consequently the Parliamentary Assembly of the Council of Europe demanded from member states on 24 March 2006 in a decision on human rights in the Armed Forces to “*introduce into their legislation the right to be registered as a conscientious objector at any time, namely before, during or after implementation of military service, as well as the right of career servicemen to obtain the status of conscientious objector*” [10]. Already Council of Europe recommendation 1581 of 2001 [11] suggested to member states to recognise the right to conscientious objection also for professional soldiers.

### The practice in the European Union

The practice in the countries of the European Union and the candidate countries differs hugely from the standards established in international law. The gravest violations are:

- the candidate country Turkey does not recognise the right to conscientious objection, neither for conscripts, nor for contract and professional soldiers. Conscientious objectors are imprisoned and sentenced repeatedly.
- Greece and Finland require a substitute service that in practice is almost twice the length of military service. In addition Greece does rarely recognise non-religious conscientious objectors.
- In many countries of the European Union total objectors, who also refuse a substitute service for reasons of conscience, are imprisoned. At present especially the situations in Finland and Germany are problematic.
- The great majority of the countries that maintain conscription limit the possibility to apply for conscientious objection to the time before the call-up, and therefore do not provide serving conscripts or reservists with the right to conscientious objection.
- With the exception of three countries – Germany, the Netherlands and the United Kingdom – none of the countries considered in the publication does recognise the right to conscientious objection for contract and professional soldiers.
- While in the United Kingdom professional soldiers have the right to conscientious objection, official and public information on this right does hardly exist.

This shows that also within the European Union there is a need to act, in order to bring the law of the member and candidate countries of the European Union into compliance

und Religionsfreiheit aus Gewissensgründen den Militärdienst zu verweigern” [6] anerkannt.

Das Menschenrechtskomitee betrachtet Kriegsdienstverweigerung als eine geschützte Form des Ausdrucks (religiöser) Überzeugung im Rahmen des Artikel 18 Abschnitt 1 des Zivilpaktes. In seiner jüngsten und eindeutigsten Entscheidung zu diesem Thema (Mr. Yeo-Bum Yoon and Mr. Myung-Jin Choi v Republic of Korea) [7] entschied das Komitee, dass die Republik Korea Artikel 18 verletzt hat, indem sie in den zur Frage stehenden Fällen das Recht auf Kriegsdienstverweigerung nicht anerkannt hat.

Die Menschenrechtskommission erkannte in ihrer Resolution von 1998 auch an, „*dass im Militärdienst stehende Personen dazu gelangen können, diesen Dienst aus Gewissensgründen zu verweigern*“ [8]. Folglich muss ein Antrag auf Kriegsdienstverweigerung zu jeder Zeit – vor, während und nach der Ableistung des Militärdienstes, und auch für BerufssoldatInnen – möglich sein. Ähnlich formulierte es das Europaparlament in einer Resolution von 1989, wenn es „*das Recht aller Wehrpflichtigen, zu jeder Zeit den Kriegsdienst aus Gewissensgründen zu verweigern*“ forderte [9].

Konsequenterweise forderte die parlamentarische Versammlung des Europarates in einer EntschlieÙung zu Menschenrechten in den Streitkräften vom 24. März 2006, dass Mitgliedstaaten: “*in ihre Gesetzgebung das Recht einzuführen, sich zu jeder Zeit als Kriegsdienstverweigerer registrieren zu lassen, vor, während und nach der Ableistung des Wehrdienstes, sowie das Recht von BerufssoldatInnen, die Anerkennung als Kriegsdienstverweigerer zu erhalten*” [10]. Bereits die Empfehlung 1518 von 2001 [11] empfahl den Mitgliedern des Europarates das Recht auf KDV auch für BerufssoldatInnen anzuerkennen.

### Die Praxis in der Europäischen Union

Die Praxis in den Ländern der Europäischen Union und den Kandidatenländern weicht jedoch erheblich vom Stand des internationalen Rechtes ab. Die größten Verstöße sind:

- das Kandidatenland Türkei erkennt das Recht auf Kriegsdienstverweigerung weder für Wehrpflichtige, noch für Zeit- und BerufssoldatInnen an. Kriegsdienstverweigerer werden mehrfach inhaftiert und verurteilt.
- Griechenland und Finnland haben einen zivilen Ersatzdienst, der in der Praxis fast doppelt so lang ist wie der Militärdienst. In Griechenland kommt hinzu, dass nicht-religiöse Verweigerer selten anerkannt werden.
- In zahlreichen Ländern der Europäischen Union werden totale Kriegsdienstverweigerer, die auch einen zivilen Ersatzdienst aus Gewissensgründen ablehnen, inhaftiert. Derzeit ist die Situation insbesondere in Deutschland und Finnland problematisch.
- Die große Mehrheit der Länder, die die Wehrpflicht beibehalten, begrenzen die Möglichkeit eines Antrages auf Kriegsdienstverweigerung auf die Zeit vor der Einberufung, erlauben also dienenden Wehrpflichtigen sowie ReservistInnen kein Recht auf Kriegsdienstverweigerung.
- Bis auf drei Länder – Deutschland, die Niederlande und Großbritannien – erkennt keines der untersuchten Länder das Recht auf Kriegsdienstverweigerung auch für Zeit- und BerufssoldatInnen an.
- In Großbritannien haben BerufssoldatInnen zwar ein

with international law. This is especially true regarding the right to conscientious objection for professional soldiers, an issue that is becoming increasingly important due to the trend to abolish or suspend conscription.

## Conclusions

With the trend towards the professionalisation of the military in Europe, another development occurs mainly unnoticed: the right to conscientious objection, which has been widely recognised in the European Union, is being weakened. Generally, it is not available to professional soldiers. Also the implementation of the right to conscientious objection for conscripts in the different members and candidate countries does often not comply with international standards.

With the increased use of a professionalised military within the framework of NATO, the EU or the United Nations (or within ad-hoc coalitions), the right to conscientious objection is more important than ever for those soldiers who need it.

## Notes

- [1] Bart Horeman, Marc Stolwijk: Refusing to bear arms: a world survey of conscription and conscientious objection to military service. War Resisters' International, 1998, <http://wri-irg.org/co/rtba/index.html>, accessed on 8 October 2008
- [2] Quaker Council for European Affairs: The Right to Conscientious Objection in Europe: A Review of the Current Situation, April 2005, <http://www.quaker.org/qcea/coreport/index.html>, accessed on 8 October 2008
- [3] [http://www.unhchr.ch/html/menu3/b/a\\_ccpr.htm](http://www.unhchr.ch/html/menu3/b/a_ccpr.htm), accessed on 8 October 2008
- [4] <http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/EnglishAnglais.pdf>, accessed on 8 October 2008
- [5] Paragraph (2) reads: "*The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.*", [http://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf), accessed on 8 October 2008
- [6] UN Commission on Human Rights Resolution 1998/77, 'Conscientious Objection to Military Service', which has been reaffirmed in all subsequent UN Commission resolutions on this subject, <http://www.unhchr.ch/Huridocda/Huridocda.nsf/0/5bc5759a53f36ab380256671004b643a?Opendocument>, accessed 8 October 2008
- [7] Communications Nos. 1321/2004 and 1322/2004 : Republic of Korea. 23/01/2007. CCPR/C/88/D/1321-1322/2004. [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/26a8e9722d0cdadac1257279004c1b4e?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/26a8e9722d0cdadac1257279004c1b4e?Opendocument), accessed 8 October 2008
- [8] UN Commission on Human Rights Resolution 1998/77, 'Conscientious Objection to Military Service', <http://www.unhchr.ch/Huridocda/Huridocda.nsf/0/5bc5759a53f36ab380256671004b643a?Opendocument>, accessed 8 October 2008
- [9] European Parliament: Resolution of 13 October 1989 on conscientious objection and alternative civilian service, <http://ebco-beoc.org/page/1uside/document/doc2eu.htm#Schmidbauer>, accessed on 8 October 2008
- [10] Parliamentary Assembly of the Council of Europe: Human rights of members of the armed forces, Doc. 10861, 24 March 2006, <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc06/EDOC10861.htm>, accessed 8 October 2008
- [11] Recommendation 1518 (2001), Exercise of the right of conscientious objection to military service in Council of Europe member states, Text adopted by the Standing Committee, acting on behalf of the Assembly, on 23 May 2001, <http://assembly.coe.int/Documents/AdoptedText/ta01/EREC1518.HTM>, accessed 8 October 2008

Recht auf Kriegsdienstverweigerung, amtliche und öffentliche Informationen dazu gibt es jedoch quasi nicht. Dies zeigt, dass es auch innerhalb der Europäischen Union einen erheblichen Handlungsbedarf gibt, um das Recht in den Mitglieds- und Kandidatenländern in Einklang mit internationalen Standards zu bringen. Dies gilt insbesondere für die Frage der Kriegsdienstverweigerung für BerufssoldatInnen, ein Thema, das mit dem Trend zur Abschaffung oder Aussetzung der Wehrpflicht zunehmend wichtiger wird.

## Schlussfolgerungen

Im wesentlichen unbemerkt geht mit dem Trend zur Professionalisierung der europäischen Armeen eine andere Entwicklung einher: das in der Europäischen Union weit verankerte Recht auf Kriegsdienstverweigerung für Wehrpflichtige wird ausgehöhlt. Es steht für BerufssoldatInnen in der Regel nicht zur Verfügung. Auch die Ausgestaltung des KDV-Rechtes für Wehrpflichtige in den einzelnen Mitglieds- und Kandidatenländern entspricht oft nicht den internationalen Standards.

Mit dem zunehmenden Einsatz professionalisierten Militärs im Rahmen der NATO, der EU oder der Vereinten Nationen (oder auch von ad-hoc-Koalitionen) ist jedoch das Recht auf Kriegsdienstverweigerung für die betroffenen SoldatInnen wichtiger als je zuvor.

## Anmerkungen:

- [1] Bart Horeman, Marc Stolwijk: Refusing to bear arms: a world survey of conscription and conscientious objection to military service. War Resisters' International, 1998, <http://wri-irg.org/co/rtba/index.html>, Zugriff am 8. Oktober 2008
- [2] Quaker Council for European Affairs: The Right to Conscientious Objection in Europe: A Review of the Current Situation, April 2005, <http://www.quaker.org/qcea/coreport/index.html>, Zugriff am 8. Oktober 2008
- [3] <http://www.auswaertiges-amt.de/diplo/de/Aussenpolitik/Themen/Menschenrechte/Download/IntZivilpakt.pdf>, Zugriff am 8. Oktober 2008
- [4] <http://www.uni-potsdam.de/u/mrz/coe/emrk/emrk-de.htm>, Zugriff am 8. Oktober 2008
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Table: Conscription and conscientious objection in the European Union

Country	Conscription	CO for conscripts		CO for professional soldiers
		before military service	during/after military service	
<b>Austria</b>	<b>Yes</b>	<b>Yes</b>	<b>No (1)</b>	<b>No</b>
<b>Belgium</b>	<b>Suspended</b>	<b>Yes (2)</b>	<b>No</b>	<b>No</b>
<b>Bulgaria</b>	<b>Suspended</b>	<b>Yes (2)</b>	<b>No</b>	<b>No</b>
<b>Cyprus</b>	<b>Yes</b>	<b>Yes (3)</b>	<b>No</b>	<b>No</b>
<b>Czech Republic</b>	<b>Suspended</b>	<b>Yes (2)</b>	<b>No</b>	<b>No</b>
<b>Denmark</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>No</b>
<b>Estonia</b>	<b>Yes</b>	<b>Yes</b>	<b>No</b>	<b>No</b>
<b>Finland</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>No</b>
<b>France</b>	<b>Suspended</b>	<b>Yes (2)</b>		<b>No</b>
<b>Germany</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
<b>Greece</b>	<b>Yes</b>	<b>Yes</b>	<b>No</b>	<b>No</b>
<b>Hungary</b>	<b>Suspended</b>	<b>Yes (2)</b>	<b>No (4)</b>	<b>No</b>
<b>Ireland</b>	<b>No</b>	<b>n.a.</b>	<b>n.a.</b>	<b>No</b>
<b>Italy</b>	<b>Suspended</b>	<b>Yes (2)</b>		<b>No</b>
<b>Latvia</b>	<b>Suspended</b>	<b>Yes (2)</b>		<b>No</b>
<b>Lithuania</b>	<b>Yes</b>	<b>Yes (5)</b>	<b>No</b>	<b>No</b>
<b>Luxembourg</b>	<b>No</b>	<b>n.a.</b>	<b>n.a.</b>	<b>No</b>
<b>Malta</b>	<b>No</b>	<b>n.a.</b>	<b>n.a.</b>	<b>No</b>
<b>Netherlands</b>	<b>Suspended</b>	<b>Yes (2)</b>	<b>Yes (2)</b>	<b>Yes</b>
<b>Poland</b>	<b>Yes (6)</b>	<b>Yes</b>	<b>No</b>	<b>No</b>
<b>Portugal</b>	<b>No (7)</b>			<b>No</b>
<b>Romania</b>	<b>No</b>	<b>n.a.</b>	<b>n.a.</b>	<b>No</b>
<b>Slovakia</b>	<b>Suspended</b>	<b>Yes (2)</b>	<b>No</b>	<b>No</b>
<b>Slovenia</b>	<b>No</b>	<b>n.a.</b>	<b>n.a.</b>	<b>No</b>
<b>Spain</b>	<b>Suspended</b>	<b>Yes (2)</b>		<b>No</b>
<b>Sweden</b>	<b>Yes (8)</b>	<b>Yes</b>	<b>Yes</b>	<b>No</b>
<b>United Kingdom</b>	<b>No</b>	<b>n.a.</b>	<b>n.a.</b>	<b>Yes</b>
<b>Candidate countries</b>				
<b>Croatia</b>	<b>Suspended</b>	<b>Yes (2)</b>	<b>Yes (2)</b>	<b>No</b>
<b>Macedonia</b>	<b>No</b>	<b>n.a.</b>	<b>n.a.</b>	<b>No</b>
<b>Turkey</b>	<b>Yes</b>	<b>No</b>	<b>No</b>	<b>No</b>
<b>Notes:</b>				
(1) Applications of reservists are possible, but only three years after the beginning of their military service				
(2) Conscription is only suspended. Conscientious objection will be available should it be reintroduced				
(3) Northern Cyprus does not recognise the right to CO				
(4) In case conscription will be reintroduced, CO is only possible before a conscript takes the oath				
(5) Although conscientious objection is recognised, a genuinely civilian substitute service is not available				
(6) Conscription is likely to be phased out in 2010				
(7) It is not clear whether conscription is suspended or abolished				
(8) Conscription might soon be abolished. Substitute service for conscientious objectors will be abolished by the end of 2008.				



# Country reports

## Terminology

In the reports certain particular terms rather than others have been used, sometimes for the sake of consistency; sometimes for ideological reasons.

### army and armed forces

In English the word 'army' has a limited meaning, embracing only territorial armed forces, whereas in some languages the equivalent term of 'army' is applied to the entire military: army, navy and air force. Consequently this report consistently employs the term 'armed forces' if the entire military forces are meant.

### conscientious objection and COs

The term conscientious objection is actually incomplete; it should be 'conscientious objection to military service'. However in this document it is obvious what the term 'conscientious objection' means. Conscientious objection is often shortened to CO, but this report uses the abbreviation only for conscientious objectors (COs). When a conscientious objector is referred to this does not necessarily mean the individual is an officially acknowledged conscientious objector. For us, any person objecting to perform any military service for ethical reasons may be called a CO.

### conscript and conscription

'Conscription' is the term used for compulsory military service. When people are 'conscripted' this means that the law lays down that they are liable for military service. The term 'conscripts' is applied to individuals (mainly young men) who are conscripted by law. This does not automatically mean they must actually serve, since in most countries there are many regulations distinguishing between those who are obliged actually to serve and those who are not.

### professional soldiers

While 'conscript' refers to individuals who are conscripted by law, 'professional soldiers' applies to all soldiers who join the armed forces on a voluntary contract, with a view to a military career. These contracts can be short or long term, or without time limit.

While joining the armed forces might be voluntary, this does not imply that the work contract is in any way comparable to a civilian employment contract, and that a professional soldier can terminate his or her contract when he or she so wishes.

### draft and draft evasion

The term 'draft' may be misunderstood. In most countries people initially register for military service, then are medically examined, then finally are called up. In some documents the term 'draft' is used for the registration, thus the American term 'draftee' is used for someone who may possibly be called up. In this report the term 'draft' only applies to actual call-up for military service and is used

mainly in the term 'draft evasion', meaning the act of avoiding military service and not responding to call-up.

### enlistment and recruitment

Enlistment in the armed forces is clearly an act of an individual. He or she may decide to enlist, which is a voluntary decision. Recruitment is evidently an act of the armed forces or the national state: individuals are recruited. The term 'recruitment' may be used both in the case of recruiting volunteers (which should respect the individual saying 'no'), and in the case of recruiting conscripts (which has a legal framework of conscription to force individuals into the armed forces).

### substitute service

The term 'substitute service' is consistently used for the service that a conscientious objector must perform instead of military service. Other sources may, unlike this report, use the misleading terms 'alternative service', 'civilian service' or even 'civil service'. The term 'alternative service' would suggest that conscripts were free to choose between military and alternative service and would completely disguise the compulsory nature of military service. Substitute service is not really an alternative: at best it is a service an individual can be transferred to after making a formal request; at worst it is a terrible job imposed on a CO who has done his utmost to stay out of the armed forces.

The term 'civilian service' would be unsatisfactory too, as it would hide the compulsory nature of the service and it would lose the connection with compulsory military service. There are hardly any countries with compulsory civilian service; nearly everywhere civilian service has been instituted because it has been deemed essential that those conscientiously objecting to military service should not just be exempt, but should be required to perform substitute service.

The term 'civil service' would be very misleading, as in Britain someone in the 'civil service' is someone working for the government.

So in this report the term 'substitute service' is used. In some cases 'civilian substitute service' is used to indicate that the substitute service is a non-military service performed outside the armed forces.

### total objectors and total objection

These terms are used for COs who refuse to perform either military service or any form of substitute service. In countries where substitute service has not been instituted, certain COs may consider themselves total objectors, as they would refuse to perform any substitute service required of them. This report uses the term 'total objector' only if an objector has actually refused to perform substitute service.

# Austria

## Issues

- The right to conscientious objection is only recognised for conscripts, prior to call-up, or more than three years after the end of military service.
- Those who joined the military as volunteers (professional soldiers) do not have a right to conscientious objection.

## Military recruitment

Austria maintains conscription, although professional soldiers make up almost 50% of the Austrian armed forces. According to estimates of the Austrian Bundesheer, the armed forces comprise of 16 000 professional soldiers and about 17 000 conscripts – in total 35 000 soldiers [1].

## Conscription

Conscription is enshrined in art. 9(a) para 3 of the constitution (amended in 2002), according to which all male citizens are liable for military service [2]. The present legal basis of conscription is the 2001 Defence Law (Wehrgesetz) [3].

Under the current arrangements all resident male Austrian citizens are obliged to register for military service during the calendar year of their 18th birthday. The only absolute exceptions are for priests, members of holy orders, theological students training for a career in the ministry, or those who following such studies are engaged in pastoral work or spiritual teaching – provided in all cases that they are members of “*recognised religions*” [4].

The length of military service is presently six months.

## Professional soldiers

The service of professional soldiers (from non-commissioned officers up) is based on the public servants service law (Beamten-Dienstrechtsgesetz) of 1979, and the contract service law (Vertragsbedienstetengesetz) of 1948. Both laws do not specifically regulate military service, but apply to professional soldiers, either as public servants (Beamte) or contracted soldiers [5].

The military also offers conscripts who finished their original military service the option to extend their service for six months according to Article 23 of the Wehrgesetz of 2001.

Women and conscripts who report voluntarily can also do a so-called “*training service*” of 12 months, extendible by a maximum of six months, according to Article 37 of the Wehrgesetz. It is possible to give notice to leave this service at any time; this notice comes into force at the end of the month in which it is given (Article 37 paragraph 3). However, those eligible for conscription will need to serve at least six months, or will be transferred to basic military service to serve the full time of conscript service if they give notice to leave “*training service*” before the end of six months (Article 38b).

- .10. Arbeitsgemeinschaft Wehrdienstverweigerung, the



Austrian military has liaison officers with each secondary school and university, and maintains a presence at the last school year through so-called “*information events*”. However, the military faces problems in recruiting sufficient numbers of well educated professional soldiers [6].

## Conscientious objection

### Conscientious objection for conscripts

The right to conscientious objection has been legally recognised since 1974. It is included in Article 9(a) of the Constitution, which states that citizens who refuse to perform military service for reasons of conscience must perform a substitute service. Its further legal basis is laid down in the 1986 Law on Civilian Service (Zivildienstgesetz). [7]

Both religious and non-religious grounds for conscientious objection are legally recognized. According to Article 2 of the Law on Civilian Service, the right to conscientious objection applies to “*those who cannot perform military service because they – except in cases of personal emergency – denounce for reasons of conscience to use armed violence against people and performing military service may get them into conflict with their conscience*”.

However, persons serving in the Austrian Bundesheer (armed forces) – either as conscripts or as volunteers – do not have the right to apply for conscientious objection. There are several time limits for submitting CO applications (Law on Civilian Service, Article 2.2). Applications must be made within six months of receiving the notification of fitness for military service, but at least two days before receiving call-up papers for military service.

Applications cannot be made by serving conscripts. Applications can be made after completion of military service, but in this case an application can only be made more than three years after the first day of military service.

Applications must be made to the Ministry of Interior. The Ministry has produced a standard form, which basically states that the applicant agrees with the wording of Article 2 of the Law on Civilian Service. This form can be downloaded from the website of the civilian service administration [8].

Since 1991, no personal interviews take place. Consequently, applications are almost automatically granted, provided they are submitted within the time limits. An application may be rejected if the applicant has been convicted for a criminal offence, if the applicant is employed by the state police, if the applicant has a gun licence, or if the applicant's objections to the use of

violence are considered to be conditional and politically motivated (Law on Civilian Service, Article 5(a)). If the application is rejected, there is a right of appeal to a civil court.

### Substitute service

The length of substitute service is 9 months (from 1 January 2006 on). This is one and a half times the length of military service.

Substitute service is administered by the Ministry of Interior. Substitute service may be performed in several institutions in the public sector, such as hospitals, social work and emergency relief. It may also be performed with non-governmental organisations, such as the Austrian Red Cross.

COs may also perform a 12 month voluntary service abroad. COs who have completed such service, which usually consists of peace work or social work, are exempt from substitute service.

After completion of substitute service, COs have reservist duties up to the age of 50. During time of war or emergency, COs may be called up for "*extraordinary civilian service*", which consists of several unarmed duties such as emergency aid (Law on Civilian Service, Article 21). So far, COs have never been called up for reservist duties in practice.

In 2000, the government greatly reduced the payment of COs. Before 2000, COs were paid by the government and received approximately the same payment as conscripts in the armed forces. Now, the salaries of COs have to be partially paid for by the employing organisations themselves. The government has set guidelines on appropriate payment, but as these are very low this effectively means that CO salaries have been cut by half. Austrian CO groups have lodged several complaints with the Constitutional Court, which has in fact ruled that the new payment regulations are a violation of the constitutional right of free choice between military and civilian service. As the Constitutional Court did not rule which body is to be responsible for increasing CO salaries, the issue has still not been settled. Consequently, in practice the payment of COs remains far below the payment of conscripts in the armed forces [9].

### Conscientious objection for professional soldiers

There are no legal provisions for the right to conscientious objection for professional soldiers [10]. The Law on Civilian Service only applies to conscripts and does not contain provisions for professional soldiers.

The Public Servants Service Law and the Contract Service Law define the conditions under which a public employee – and therefore also professional soldiers – can terminate a contract prematurely. According to Article 21 of the Public Servants Service Law (which applies to permanent members of the armed forces, which are so-called "Beamte"), it is possible to leave the service within a month. However, if a soldier is part of an operation for which she/he receives additional payments according to the Operations Supplement Law (Einsatzzulagengesetz) of

1992, then his/her notice only takes effect on the end of the month following the end of this operation. This does not guarantee a right to leave prematurely for reasons of conscience, and makes leaving the armed forces more difficult in situation where reasons of conscience are more likely to arise.

Contracted soldiers according to the Contract Service Law (Vertragsbedienstetengesetz) can give notice when they want to prematurely end their contract. How much notice has to be given depends on the time of service that has already passed (Article 33). However, this might involve that training expenses have to be repaid (Article 30 paragraph 5).

### Background

During the 1990s there were several cases of COs whose applications had been rejected because they were not submitted within the time limit. They continued to refuse military service and were consequently sentenced to up to one year's imprisonment under the Military Penal Code for "*failure to comply with call-up orders*". Around 1997 this attracted considerable international attention and some of the COs concerned were in fact adopted as prisoners of conscience by Amnesty International. In 1997, Schwechat District Court acquitted a CO of these charges and ruled that he could not be reproached for not knowing about the time limits, especially because the authorities had made no particular efforts to inform the public about the introduction of the time limits.

Since 1998, there have been no known cases of COs being imprisoned after not submitting their CO applications within the time limit [11].

### Draft evasion and desertion

#### Penalties

Draft evasion and desertion are punishable under the Military Penal Code [12].

Not responding to a call-up within 30 days is punishable by three months' imprisonment or a fine (section 7 (1)).

After 30 days the sentence can be as heavy as a year's imprisonment (section 7 (2)).

Persistent disobeying of military orders is punishable by up to 2 years' imprisonment (section 12 (1) 2).

#### Practice

Total objectors get sentenced to 2 to 6 months' imprisonment. There are no known cases of total objectors in recent years [13].

#### Notes

- [1] Österreichisches Bundesheer, [http://www.bmlv.gv.at/truppendienst/milint/td\\_milint-laenderinfo.php?id\\_c=96&table\\_id=2](http://www.bmlv.gv.at/truppendienst/milint/td_milint-laenderinfo.php?id_c=96&table_id=2) accessed 12 February 2008
- [2] English version: <http://www.legislationline.org/upload/legislations/7d/0e/9533b7bfafda8e640a82346ab246.pdf>, accessed 12 February 2008
- [3] [http://www.heer.at/pdf\\_pool/gesetze/wg2001.pdf](http://www.heer.at/pdf_pool/gesetze/wg2001.pdf), accessed 12 February 2008
- [4] See paras 290 - 320 of the State Report (CCPR/C/AUT/4) and the list at <http://www.help.gv.at/Content.Node/82/Seite.820100.html>,

accessed 05 March 2008

- [5] Response of the Bundesministerium für Landesverteidigung to a WRI questionnaire, GZ S91099/3-GrpRechtLeg/2008, 19 February 2008, see also Article 1 paragraph 2 of the Wehrgesetz 2001
- [6] Arbeitsgemeinschaft Wehrdienstverweigerung, Response to email from War Resisters' International, 18 February 2008.
- [7] Zivildienstgesetz, BGBl. Nr. 679 idF BGBl. I Nr. 40/2006, [http://www.zivildienstverwaltung.at/material/ZDG\\_40\\_2006.pdf](http://www.zivildienstverwaltung.at/material/ZDG_40_2006.pdf)
- [8] <http://www.zivildienstverwaltung.at/material/Zivildiensterklaerung.pdf>.
- [9] [www.zivildienst.at](http://www.zivildienst.at) (Austrian Union of Conscientious Objectors).
- [10] Exercise of the right of conscientious objection to military service in Council of Europe member states, Report Committee on Legal Affairs and Human Rights, Doc. 8809 (Revised), 4 May 2001.
- [11] Amnesty International: Conscientious objection to military service: A summary of current concerns (EUR 13/001/1997).
- [12] Amnesty International 1997.
- [13] Silvestri, A. 1993. Conscientious objection to military service: a regional human right? Institut Universitaire de Hautes Etudes Internationales, Geneva; War Resisters' International 1990. Country report Austria. WRI, London.



.12. International Conscientious Objectors' Day, 15 May 2003 in Salzburg, Austria

Photo: ARGE WDV

# Belgium

## Issues

- The end of conscription in Belgium also meant the end of conscientious objection.
- Belgium does not recognise the right to conscientious objection for professional soldiers.

## Military recruitment

### Conscription

Conscription was suspended on 31 December 1992 by amending the 1962 Law on Conscription, which became applicable only to conscripts drafted in 1993 and earlier [1]. In practice this meant that the law no longer applied to those born in 1975 and later. Since 1 March 1995 the Belgian armed forces consist of professional volunteers only [2].

### Professional soldiers

The main form of advertising for a career in the Belgian Armed Forces is via advertisements in public spaces, such as buses and railway stations, and in magazines and newspapers. In addition, the Armed Forces organise a range of so-called “*open days*” to attract interest from especially young people.

The Armed Forces maintain ‘*Defensiehuizen*’ (recruitment offices) in several Belgian cities, who mainly target people who already have some professional training for non-commissioned officer and officer positions.

According to the Belgian Ministry of Defence, the recruitment target for 2008 was set at 1 700, while the target in previous years has been around 1 500. Generally, the military did not meet these targets in the last years. Additionally, the military aims to recruit young people on a contract basis for 5–10 years [3].

## Conscientious objection

### Conscientious objection for conscripts

Although nobody is presently being called up for military service, conscripts still have the right to conscientious objection [4].

The 1980 Law on Conscientious Objection is now obsolete. On 31 December 1992 it was amended so that it became applicable only to conscripts drafted in 1993 and earlier.

### Conscientious objection for professional soldiers

There is no right to conscientious objection for professional soldiers. According to Article 52 of the Law for professional soldiers [5], soldiers can “request” their dismissal at any time, but such a request can be rejected when it conflicts with service requirements. Paragraph 3 of this article lists situations in which such a request more or less automatically conflicts with service requirements:

- when the soldier has so far served for less than three years following military training;
- in times of crisis;
- in times of mobilisation;



- in times of war;
- in peace time when the soldiers' unit is on operation, or prepares for an operation.

In fact, in situations where it would be most likely that a conflict of conscience might arise, it is most difficult to leave the Armed Forces prematurely.

### Draft evasion and desertion

Desertion is punished with military prison from two months to two years, according to Article 43 and following of the Military Penal Code (*Militair Strafwetboek*) from 1870 [6]. Information on practice is not available.

The question of draft evasion does not arise as there is presently no conscription.

## Notes

- [1] Gecoördineerde Dienstplichtwetten, <http://tinyurl.com/2quv6o>  
 [2] Directie Gewetensbezwaarden 1996. Reply to CONCODOC questionnaire.  
 [3] Email Hans Lammerant, Vredesactie, 4 April 2008  
 [4] Statuut van de gewetensbezwaarden, <http://tinyurl.com/2l9xov>  
 [5] <http://tinyurl.com/2ulbpu>  
 [6] <http://tinyurl.com/32qf3e>

# Bulgaria

## Issues

- The end of conscription in Bulgaria also meant the end of conscientious objection. Bulgaria does not recognise the right to conscientious objection for professional soldiers.

## Military recruitment

### Conscription

Conscription was abolished on 1 January 2008 through amendments to the Defence and Armed Forces Act [1]. In addition, Article 59 paragraph 2 of the Bulgarian constitution has been changed [2]. It now reads: “*The training of the citizens to defend the country shall be established by law.*” [3] Consequently, the last batch of 2 413 conscripts completed their military service on 25 November 2007 [4].

### Professional soldiers

The maximum age for applying to join the Bulgarian Armed Forces is 32 years, and the maximum age for discharge is 49 years [5].

In July 2006, Bulgaria opened a first recruitment centre for recruiting soldiers for the country's professional army. This centre was to be followed by 47 similar centres in other Bulgarian cities [6].

It is unlikely that Bulgaria presently needs to recruit large amounts of new soldiers. Bulgaria's Defence Minister Veselin Bliznakov announced on 6 March 2008 that 8 000 soldiers would be laid off, to reduce the Armed Forces [7]. However, a report from April 2007 suggests that the Army faces problems filling the few open positions it has [8].

## Conscientious objection

### Conscientious objection for conscripts

With the end of conscription, the regulations for conscientious objection are also no longer in force.

### Conscientious objection for professional soldiers

Bulgaria does not recognise the right to conscientious objection for professional soldiers. In fact, the Defence and Armed Forces Act is being amended again to make participation in international operations mandatory for all serving soldiers from day 1 of their service [9].

The regulations for leaving the Armed Forces prematurely are presently not known.

### Draft evasion and desertion

Article 102 of the Bulgarian Criminal Code punishes “*a person who, for the purpose of decreasing the defence capacity of the Republic, provokes rebellion or insubordination in the Bulgarian army, or desertion therefrom, or for the same purpose disorganises its preparedness or supplies ... by deprivation of liberty for five to fifteen years.*”

Chapter 12, section II (Articles 361–368) of the Criminal Code 2005 deals with “*Crimes Against Doing Military Service*”. Section IIa deals with “*Crimes Against Doing Alternative Service*”. It is unclear whether those sections have been

.14. repealed since conscription has been abolished.



Chapter 13 of the Criminal Code deals with “*Military Crimes*”. According to Article 372, disobeying an order can be punished with up to two years imprisonment.

According to Article 374, even “*a person who openly expresses dissatisfaction with an order or command of his superior shall be punished by deprivation of liberty for up to one year.*”

According to Article 380 being absent without leave from 24 to 72 hours can be punished with up to two years' imprisonment. If one is absent for more than 72 hours, then – according to Article 381 – the punishment increases to up to five years' imprisonment.

Desertion is punishable according to article 382 by imprisonment from one up to eight years [10].

No information on practice is available.

## Notes

- [1] Bulgarian News Network: Final Defence and Armed Forces Act amendments, 16 February 2007, <http://www.bgnewsnet.com/story.php?lang=en&sid=22537>, accessed 8 April 2008
- [2] The Sofia Echo, 5 February 2007, [http://www.sofiaecho.com/article/bulgaria-s-constitution-amended/id\\_20308/catid\\_5](http://www.sofiaecho.com/article/bulgaria-s-constitution-amended/id_20308/catid_5), accessed 8 April 2008
- [3] <http://www.online.bg/law/const/const0.htm>, accessed 8 April 2008
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# Croatia

## Issues

- The end of conscription in Croatia also meant the end of conscientious objection. Croatia does not recognise the right to conscientious objection for professional soldiers.

## Military recruitment

### Conscription

On 4 October 2007, the Croatia government decided to suspend conscription from 1 January 2008 on [1]. However, conscription is only suspended. According to the decision of the Croatian government, which is based on article 39a of the Defence Law, the suspension of conscription does not apply in cases of emergency or war, or if the Armed Forces cannot carry out their duty [2]. Conscription also remains in article 47.1 of the Croatian constitution, which reads: "*Military service and the defence of the Republic of Croatia shall be the duty of every capable citizen of the Republic of Croatia*" [3].

According to the law, registration for conscription of Croatian young males continues. The local military offices also continue to invite young men to a medical examination, which establishes whether a person is fit for military service or not.

### Professional soldiers

Every citizen of Croatia between 18 and 30 years can apply for a voluntary military service, which lasts 14 weeks [4]. After someone successfully finishes this service, it is possible to join the Croatian Armed Forces as a professional soldier.

The first group of soldiers in voluntary military service will begin their service on 5 October 2008. For 250 positions, about 1 274 persons applied, among them 147 women [5]. The majority of applications came from the eastern part of Croatia, a region with high unemployment. The wages offered for voluntary military service are about 2 660 Kn (about €360), which is roughly equivalent to the minimum wage, but means solid money compared to unemployment. In addition to the wages, refund of travel costs for going to and leaving the place of service, basic and additional medical insurance, insurance for injuries at work, accommodation and food are covered too [6].

## Conscientious objection

### Conscientious objection for conscripts

With the suspension of conscription, conscientious objection is also suspended. However, should conscription be reactivated, the laws and regulations on conscientious objection will also be in force again.

The right to conscientious objection is enshrined in Article 47 paragraph 2 of the 1990 Constitution, according to which: "*Conscientious objection shall be allowed to all those who, for religious or moral beliefs, are not willing to participate in the performance of military duties in the armed forces. Such persons shall be obliged to perform other duties specified by law.*" [7]



There are no time limits for submitting CO applications. Applications can thus be made before, during and after military service, by both serving conscripts and reservists [8].

Applications must be made to the Civil Service Commission (Ministry of Justice). Since the introduction of the Law on Civilian Service in 2003, applications are not individually examined and there is no personal interview with the applicant. The applicant must state in his written application that he has religious or moral reasons for conscientious objection, but he does not need to explain his reasons in detail. Consequently, almost all applications are automatically granted.

Applications may be rejected if the applicant does not clearly state he refuses military service for moral or religious reasons, if he has been convicted for a criminal offence or if he possesses weapons (Law on Civilian Service, Article 13).

Further legal provisions on conscientious objection are laid down in the Law on Civilian Service, which was passed by the Croatian Parliament in February 2003 and entered into force in May 2003.

In 2007, only 2 051 of a total of 25 130 potential recruits carried out the compulsory six months of military service as up to 10 000 of the recruits who get called up each year apply for conscientious objection and perform a substitute service [9].

### Conscientious objection for professional soldiers

Croatia does not recognise the right to conscientious objection for professional soldiers.

If someone serving voluntary military service wants to leave before the end of the 14 weeks, he or she will need to repay all expenses to the Ministry of Defence (articles 25 & 26 of the rules about voluntary military service) [10]. Nothing is presently known about the regulations governing professional soldiers.

## Draft evasion and desertion

### penalties

For draft evasion (not responding to call-up) military disciplinary measures, including fines or imprisonment for up to 60 days, may be prescribed (art. 187 & 188 Defence Law).

Chapter 18 of the Basic Criminal Code of the Republic of Croatia (Offences against the Armed Forces of the Republic of Croatia) prescribes penalties for draft evasion and desertion:

- failure to respond to mobilisation call-up: maximum one year's imprisonment in peacetime; one to 10 years in wartime (art. 166, paragraph 1);
- hiding within the country in order to avoid mobilisation: 3 months to 5 years in peacetime; 5 to 10 years in times of threatened war.
- leaving the country to avoid mobilisation: one to 10 years in peacetime; 5 to 20 years in wartime times of threatened war [11].

Nothing is presently known about practice.

## Notes

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# Cyprus

## Republic of Cyprus

### Issues

- Cyprus still maintains conscription. The recognition of the right to conscientious objection does not meet international standards.
- The right to conscientious objection is not recognised for professional soldiers, nor for serving conscripts.

### Military recruitment

#### Conscription

Conscription is enshrined in Article 129 of the 1960 Constitution, according to which "(1) *The Republic shall have an army of two thousand men of whom sixty per cent shall be Greeks and forty per cent shall be Turks. (2) Compulsory military service shall not be instituted except by common agreement of the President and the Vice-President of the Republic*" [1].

Conscription is regulated by the National Guard Law of 1964. Presently, conscription service lasts for 25 months, based on a decision of the Council of Ministers No.57068/8 of January 2003 [2]. Presently, a discussion is under way to shorten military service from 2009 on, possibly to 19 months [3].

According to the law, all male Cypriots are obliged to perform military service from 18 years until 50 years. Those who belong to the Maronite, Armenian and Latin Communities were in the past exempted from their service in the National Guard, unless they declared that they wished to enlist in the National Guard (Voluntary Enlistment) [4]. However, an amendment to the National Guard Law abolished this exemption, and from 1 January 2008 on members of those communities are also being conscripted [5].

The enlistment of conscripts is initiated by a decision of the Council of Ministers and is implemented in two intakes in the months of January and July of each year.

#### Professional soldiers

All Cypriot citizens – men and women – can join the National Guard voluntarily, initially on a three year contract, which can be extended for further three year terms, depending on the needs of the National Guard [6].

#### Conscientious objection

##### Conscientious objection for conscripts

In 1992, provisions for conscientious objection were included in Section 5 of the National Guard Law (Law 2/1992). There is no separate law on conscientious objection.

Although Cyprus joined the Council of Europe in 1961, it did not introduce legal provisions for conscientious objection for several decades. The Cypriot government has always defended its repressive position towards conscientious objectors by referring to the Turkish occupation of the northern part of the island.



The right to conscientious objection is, in fact, enshrined in the Constitution. According to Article 10: "*No person shall be required to perform forced or compulsory labour*" but this shall not include "*any service of a military character if imposed or, in case of conscientious objectors, subject to their recognition by a law, service exacted instead of compulsory military service*" [7].

The application for conscientious objection, together with the required supporting documents, is submitted to the competent Recruitment Office, and the decision is taken by the Minister of Defence [8]. No further details are known about the application procedure and the criteria that are used by the Ministry when deciding on applications.

### Substitute service

Since 1 January 2007, section 5 of the National Guard Law provided for a 34 months' "*community service*", nine months longer than the military service [9]. According to amendment 88(1)/2007, substitute service is now five months longer than military service – a total of 30 months, compared to 25 months. This amendment came into force on 1 January 2008 [10].

Substitute service is performed in posts of the public domain and consists of serving in services of public utilities or undertaking public duties within the field social care and environmental protection.

During wartime or time of mobilisation, provisions for 'unarmed military service outside the armed forces' can be suspended by a decision of the Ministry of Defence (National Guard Law, Section 5A, Paragraph 10). COs would then be incorporated into unarmed military service within the armed forces [11].

### Practice

It is not clear how far the application procedure functions in practice and how many CO applications have been made. According to the Minister of Defence in 2001, there are approx. 10 COs per year [12]. Until 1992 COs were only allowed to do an unarmed military service within the armed forces. During the 1980s and 1990s many COs were imprisoned because they refused to perform unarmed military service. They could be sentenced to between two and fifteen months' imprisonment. Upon release, they could be called up again and, if they continued to refuse service, they were sentenced again [13].

All known cases of COs are members of religious denominations who forbid their members to bear arms, in particular Jehovah's Witnesses. Since 1997 Jehovah's Witnesses have apparently not been called up for service, pending the introduction of a substitute service outside the armed forces. In 2001 the Ministry of Defence announced that it would start calling up COs for 'unarmed military service outside the armed forces'. According to the Ministry of Defence, COs who had not been called up during previous years were to be called up as well. According to the Ministry, a total number of 300 COs were to be called up for service [14]. However, it is not known if these 300 COs have been called up in practice, nor is it known for what kind of service they have been called up.

In 2002, the European Committee of Social Rights judged



that the length of 'unarmed military service outside the armed forces', being more than one and a half times the length of military service, is a violation of Article 1 paragraph 2 of the European Social Charter. According to the Committee, the length of substitute service is a violation of "*the right of the worker to earn his living in an occupation freely entered upon*" [15]. Nevertheless, the Cypriot government has not shown any intention of reducing the length of 'unarmed military service outside the armed forces'. In November 2002, there were five trials against five reservists who refused to participate in reservist military exercises and claimed their right to conscientious objection. The Ministry of Defence rejected their CO applications because the National Guard Law does not allow reservists to apply for CO status. Two of the COs on trial had actually been tried in the past for refusing military service. In November 2002, their cases were suspended pending a revision of the National Guard Law [16]. So far, the National Guard Law has not been revised. Pending a revision of the law, the legal position of reservist COs remains unclear.

Most COs are members of the Jehovah's Witnesses. It is not known how CO applications that are made on non-religious grounds would be treated by the authorities, although the National Guard Law does not specifically restrict the right to conscientious objection to religious grounds.

### Conscientious objection for professional soldiers

The Republic of Cyprus does not recognise the right to conscientious objection for serving conscripts, nor for professional soldiers who joined the National Guard voluntarily.

The regulations for leaving the National Guard prematurely are presently not known.

### Draft evasion and desertion

The penalties for draft evasion and desertion are set out in the National Guard Law. However, the exact provisions are presently unknown.

A reservist omitting or neglecting to conform without a reasonable excuse to any call-up order or not turning up to the fixed dates defined in the order, the proof burden is at the expense of the interested party. The reservist is guilty of a tort (desertion) and is liable to imprisonment not exceeding the two (2) years or a money penalty not exceeding five hundred (500) CP or to both sentences included [17].

No information on practice is available.

# Turkish Occupied Territories

Since the Turkish army invaded the northern part of Cyprus in 1974, the northern part of Cyprus is ruled by a Turkish Cypriot administration. In 1983, it proclaimed 'The Turkish Republic of Northern Cyprus' (TRNC). The entity has not been recognised by any country except Turkey.

TRNC has its own armed forces and conscription system. Conscription is included in Article 74 of the Constitution, which states: "*National service in the armed forces shall be the right and sacred duty of every citizen*". It is further regulated by the 2000 Military Service Law (59/2000) [18]. All men between the ages of 19 and 30 are liable for military service. The length of military service is 15 months. A reduced term of service is possible for those who are considered as Turkish Cypriot citizens and who reside abroad [19].

The right to conscientious objection is not legally recognised. In 1993, there was one known case of a conscientious objector. He was sentenced to 39 months' imprisonment, but he was released early [20]. Although there are no known recent cases of COs, a new initiative for the right to conscientious objection has been founded in autumn 2007 [21].

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# Czech Republic



## Issues

- The right to conscientious objection is recognised in case conscription will again be enforced, but the provisions do not meet international standards.
- The Czech Republic does not recognise the right to conscientious objection for professional soldiers.

## Military recruitment

### Conscription

In 2001, the Czech government decided to end conscription. The government initially intended to suspend conscription by 2007, but the transformation process into professional armed forces proceeded faster than was initially anticipated. The last conscripts left the military on 22 December 2004. Compulsory military service and substitute service for conscientious objectors have been abolished by an amendment to the Military Act passed by the House of Deputies of the Parliament of the Czech Republic on 24 September 2004 and by the Senate on 4 November 2004. As stipulated by the current legislation, military service will only be required in situations of a threat to national security or state of war [1].

Conscription is suspended and it may be re-introduced if this is considered to be necessary by the government [2]. In fact, the present Conscription Act maintains conscription in the case of a national emergency or state of war [3].

### Professional soldiers

Since 1 January 2005, the Czech Armed Forces consist entirely of professional soldiers. The Armed Forces therefore recruit using commercial adverts on TV or in newspapers and magazines [4]. As of 1 January 2006, recruitment centres, formerly subordinated to the Recruitment and Professionalisation Agency, have been integrated in the structures of the Regional Military Commands [5].

The Professional Soldiers Act (221/1999) regulates the establishment, change, discontinuance and content of the service relationships of professional soldiers. However, details of the regulations are not known.

## Conscientious objection

### Conscientious objection for conscripts

The right to conscientious objection was legally recognised in Law No. 18/1992. During the 1990s the number of COs was in fact considerable. In 2003, 8 600 COs were performing substitute service, which was approximately the same as the number of conscripts serving in the armed forces [6].

The right to conscientious objection is still included in Article 15 paragraph 3 of the Constitution, according to which "*No individual may be forced to perform military duties if this is contrary to his or her conscience or religious faith or conviction.*" As of 1 January 2005, the refusal to take part in special services has been regulated by the Conscription Act (Act

No. 585/2004). This law retains the general defence duty solely in the event of a national emergency or state of war. Under the Conscription Act, on grounds of conscience or religious conviction a reservist may refuse to take part in special service, i.e. mandatory service during a state of war or national emergency, within 15 days of the date on which the decision on his ability to take part in active military service, issued in the conscription procedure, is delivered, or within 15 days of the effective date of the declaration of a national emergency or state of war. This individual is then required to assume work duties under the Act on the Defence of the Czech Republic (Act No. 222/1999) [7].

### Conscientious objection for professional soldiers

The Czech Republic does not recognise the right to conscientious objection for soldiers who joined the Armed Forces voluntarily. The regulations for leaving the Armed Forces prematurely are presently not known.

### Draft evasion and desertion

No information on practice is available.

## Notes

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# Denmark

## Issues

- Denmark still maintains conscription. The right to conscientious objection is not recognised for professional soldiers.

## Military recruitment

### Conscription

Conscription is enshrined in art. 81 of the 1953 Constitution, which states: "*All men able to bear arms are under the obligation (...) to the defence of the nation*" [1]. The present basis of conscription is the 2006 National Service Law (Værnepligtsloven) [2].

The length of military service is between 3 days and 14 months, depending on the branch of the armed forces and the rank attained. Most conscripts perform a 4 months' military service.

All men between the ages of 18 and 30 are liable for military service. The National Service Law does not cover the self-governing territories of the Faroe Islands and Greenland. If a young man moves to mainland Denmark after living in one of those territories for ten years or more, he is not liable for military service.

The selection of conscripts is by balloting, as the number of young men available for military service is much greater than the number considered necessary by the Danish National Forces. Selection involves drawing lots during medical examination, which takes place during newly introduced "Danish Defence Days" (Forsvarets dag). The lots are actually not drawn by the conscripts themselves but by the military authorities. Apparently this is because once somebody ate his lot ticket, which meant they had to suspend the draft that day in order to find out which lot number had been eaten.

The lot numbers range from 1 to 35 000. Firstly, conscripts who have applied to serve voluntarily are drafted, whatever lot number they might have. From the remaining conscripts only those with the lowest numbers are drafted, until the necessary amount is reached. Therefore it takes some months, before conscripts are told whether or not they must serve. Conscripts drawing a 'blank' are not called up but transferred to a reservist-category liable to be called up in wartime.

There are more conscripts than the armed forces need. Therefore in practice only 30 to 50 percent of all liable conscripts are called up for military service. Most conscripts in the armed forces have volunteered to serve [3].

Voluntary applications for military service can be made from the age of 17 when the person has special reasons to do so, for example for reasons of education.

### Professional soldiers

The newly introduced "Danish Defence Days" are not only important for the recruitment of conscripts, they are also a tool to attract professional soldiers. At those days



declared suitable for military service receive a presentation on Danish Defence and the emergency management services. The presentation comprises information about military service, employment and career opportunities and response force contracts, etc. After the presentation those found suitable or partly suitable for military service may, if they so wish, conclude an agreement on military service and employment following individual guidance [4].

## Conscientious objection

### Conscientious objection for conscripts

The right to conscientious objection has been legally recognized since 1917. Its present legal basis is laid down in the 2006 National Service Law and the 2006 Civil Service Act (Militærnægterloven, 226/2006) [5]. Art. 1 of the Civil Service Act states: "*Conscripts for whom military service in any form is judged, from available information, to be incompatible with the dictates of their conscience, may (...) be exempted from military service on condition that they are engaged in other national work, which is not, however, serving any military purpose.*"

Written applications must be made to the conscientious objection administration board of the Ministry of the Interior within four weeks of receipt of call-up papers. According to the government, all kinds of reasons of conscience (religious, ethical) are acceptable but applications based solely on political grounds are not to be granted.

There are no individual examinations of applications and in practice almost all applications are granted, provided the word conscience is mentioned. CO groups have evolved a standard formula that is said to be generally acceptable to the authorities.

Applications can be made while serving, in which case the application needs to be more elaborate and should include an explanation as to when and where the applicant's conflict of conscience took place.

### Conscientious objection for professional soldiers

The Civil Service Act only applies to conscripts, and not to soldiers who joined the Armed Forces voluntarily. According to information provided by the Royal Danish Embassy, professional soldiers do always have the right to resign, albeit with three months notice [6]. However, certain trainings within the Armed Forces require the

soldier to sign a “duty to serve” contract, the length of which depends on the duration of the training. In case a soldier wants to resign prematurely before the end of his/her contract, this might lead to repayment of training expenses.

### Draft evasion and desertion

#### penalties

Draft evasion and desertion are punishable under the Military Penal Code, but COs are not subject to its provisions.

Desertion is punishable according to the Military Penal Code (Militær straffelov) [7].

Refusal to perform substitute service is punishable by a fine and up to a year's imprisonment under art. 6 of the 2006 Civil Service Act. The length of imprisonment is equivalent to the length of time that should have been served.

#### total objection

Up to the mid-1990s, every year about 25 people refuse to perform both military and substitute service, all of them Jehovah's Witnesses. They were normally twice sentenced to a fine. After a third refusal they were sentenced to imprisonment to the length of time that they should have served. This normally meant six months' imprisonment, as the judges considered them to refuse to perform the shortest possible service. In practice total objectors were usually released when they had served half the prison sentence. Then, as a rule, they were expected to hand over DKK 9 000 to cover costs of board and lodging while in prison [8].

More recent cases of total objection are presently not known.

### Notes

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## Estonia

### Issues

- A genuinely civilian substitute service for conscientious objectors is not available.
- Estonia does not recognise the right to conscientious objection for professional soldiers.

### Military recruitment

#### Conscription

Conscription is enshrined in article 124 paragraph 1 of the constitution, according to which “*Estonian citizens have a duty to participate in national defence on the bases of and pursuant to procedure provided by law*” [1]. It is further regulated by the 2000 Defence Forces Service Act [2].

The duration of the compulsory military service is 8 or 11 months, depending on the education and the position in the Defence Forces [3]. After completion of military service, conscripts may be called up for reservist duties every five years.

Only approximately 1,500 of a total of 3,800 Armed Forces personnel are made up of conscripts [4].

#### Professional soldiers

The Defence Forces Service Act 2000 also includes regulations for “contract service”. Estonian citizens only who are at minimum 18 years old can apply to join the Estonian Defence Forces (Article 79). According to article 83, a contract can either be for a fixed term, or unspecified.

### Conscientious objection

#### Conscientious objection for conscripts

The right to conscientious objection is enshrined in article 124 paragraph 2 of the Estonian constitution, which states that “a person who refuses to serve in the Defence Forces for religious or moral reasons has a duty to perform alternative service pursuant to procedure prescribed by law” [5].

According to article 3 paragraph 6 of the Defence Forces Service Act, “*refusal to serve in the Defence Forces on religious or moral grounds does not release the person concerned from performance of the duty to serve in the Defence Forces*”. However, according to article 4 paragraph 2 of the same law, “*alternative service shall be conducted pursuant to the procedure provided for in this Act and legislation issued on the basis thereof*.”

The application procedure is outlined in article 72.

According to this article, the Defence Forces Agency decides on an application for conscientious objection. To “*verify the justification*”, the “*Defence Forces Agency shall: 1) collect explanations from the person eligible to be drafted and those closest to him; 2) make inquiries of the place of study or work of the person eligible to be drafted and of the religious organisation specified by him.*”

It is also possible to request further documents or to call the applicant for an interview. If an application is rejected, an appeal either to the Defence Forces service commission or to a court is possible.

According to article 73 of the Defence Forces Service Act, “persons in alternative service shall serve in structural units determined by the Government of the Republic which are in the area of government of the Ministry of Internal Affairs or the Ministry of Social Affairs and which are engaged in rescue, social care or emergency work”. Read together with article 3, however, the character of substitute service remains unclear.

After completion of substitute service, COs “shall be registered in the register of persons liable to service in the Defence Forces” (Article 78). Consequently, COs may still have to serve in the armed forces as reservists. Article 78 states that reservist duties should not violate the guarantees that are laid down in Article 76 paragraph 1, which suggests that reservist duties of COs may entail unarmed duties within the armed forces.

The length of substitute service is 16 months. This is twice the length of military service [6]. In 2003, the United Nations' Human Rights Committee stressed its concern “that the duration of alternative service for conscientious objectors may be up to twice as long as the duration of regular military service”, and pointed out that Estonia “is under an obligation to ensure that conscientious objectors can opt for alternative service, the duration of which is without punitive effect” [7].

In practice, there are not many applications for conscientious objection. During the period of 1995-2001, only in 1996 11 conscientious objectors served their substitute service in the Tallinn Military Rescue Company (under the Estonian Rescue Board) [8].

The Defence Forces Service Act requires the government to implement further regulations on the organisation of substitute service, but the government has not managed to do so. In practice, a substitute service is therefore not available, and conscientious objectors are usually not called up for substitute service [9].

### Conscientious objection for professional soldiers

The right to conscientious objectors is not recognised for professional soldiers.

According to article 109 of the Defence Forces Service Act 2000, “a regular member of the Defence Forces is required to give at least two months' advance notice of his or her wish to terminate the contract.” However, according to article 120, “the active service contract of a regular member of the Defence Forces shall not be terminated and he or she shall not be released from active service during a state of emergency or a state of war. In the event of mobilisation, all regular members of the Defence Forces are deemed to be mobilised in the Defence Forces as of the declaration of mobilisation”. This in fact makes it impossible to leave the Armed Forces in times of war or emergency, when a conflict of conscience is most likely to arise.

### Draft evasion and desertion

Draft evasion and desertion are punishable under the criminal code [10]. According to article 439, desertion, defined as “unauthorised departure from a military unit or any other place of service with the intention to evade service in the Defence Forces” is punishable by 1 to 5 years' imprisonment in peacetime, and 2 to 10 years' imprisonment during a state of emergency or war.

**22.** Article 440 deals with draft evasion, or “evasion of service in



Defence Forces”. According to this article, “a person who evades service in the Defence Forces by causing an injury to himself or by having an injury caused to him by another person, or by simulating an illness, falsifying documents or using any other fraud shall be punished by 1 to 5 years' imprisonment.

“The same act, if committed with the intention to evade performance of duties related to service in the Defence Forces, is punishable by up to 3 years' imprisonment.”

“An act provided for in subsection (1) or (2) of this section, if committed during a state of emergency or a state of war, is punishable by 2 to 10 years' imprisonment”.

No information on practice is available.

### Notes

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# Finland

## Issues

- Finland maintains conscription. The length of substitute service is punitive.
- The right to conscientious objection is not recognised for professional soldiers.

## Military recruitment

### Conscription

Conscription is enshrined in Article 127 of the 1999 Constitution, which states that "[e]very Finnish citizen is obligated to participate or assist in national defence, as provided by an Act." [1]. The Finnish legislation concerning conscription has been completely overhauled in 2007. The new legislation came into force 1 January 2008.

Conscription is now legislated by the 2007 Military Service Law (Asevelvollisuuslaki 28.12.2007/1438 [2]).

Conscription lasts 180, 270 or 362 days (6, 9 or 12 months) [3]. The training period for officers and non-commissioned officers or for special duties is 362 days. The period for conscripts trained for work requiring special or professional skills is 270 days, and for the other rank and file duties 180 days. About 50% of conscripts perform a 180 days' military service [4].

All men between the ages of 18 and 30 are liable for military service. However, persons with a right of domicile on the demilitarised Åland Islands are by law exempt from conscription [5]. Reservist obligations apply up to the age of 50, and up to the age of 60 for officers. Reservist training lasts for a maximum of between 40 and 100 days, but in practice reservists are called up for training for a considerably shorter time [6]. The peacetime strength of the Army is approximately 16 500 persons, of whom 8 700 are professional soldiers. Each year, 27 000 conscripts (including nearly 500 women) and about 30 000 reservists undergo training [7].

Since 1985, Jehovah's Witnesses are legally exempt from service in peacetime, on providing proof of membership and participation in its activities [8].

Since 1995, women can perform a voluntary military service (not to be confused with a military career) in the Finnish Armed Forces. The requirements for being accepted to carry out women's voluntary military service are: Finnish citizenship, 18-29 years of age as well as a good state of health and suitability of other personal qualities for military training.

A woman who has received call-up papers can, in writing, give notice that she will not enter into service.

Correspondingly, a woman who has begun her military service may give notice within 45 days of the date of entry into service, that she will not continue her service. A woman who has been ordered into service is subject to regulations concerning all conscripts [9].

Annual conscription takes place from September to November, the exact date depending on the district in question. Male citizens who have turned 18 during the year



are expected to present themselves at call-up to establish whether they are fit for service. Finnish citizens residing abroad may register by proxy. All those eligible for military service receive a draft notice in spring, even if residing abroad, assuming their address is known. If no notice has been received, the Provincial Headquarters in question, or when abroad, the nearest Embassy of Finland has to be contacted in August at the latest. Despite not having received the notice, the conscripts must take care of their recruitment duty [10].

After completing military service, conscripts pass to the reserve. The new Conscription Act allows for selective activation of reservists even in situations which do not require even partial mobilisation (articles 78–89) [11].

### Professional soldiers

About 50% of the Finnish army is made up of professional soldiers, and probably an even higher number of the Navy and Air Force.

Soldiers serve essentially under the same general contract as other persons employed by the state, which can be in form of a permanent post or a fixed-term contract. However, in addition there are regulations on military discipline and on personnel in crisis management operations.

## Conscientious objection

### Conscientious objection for conscripts

With the overhaul of legislation on conscription, also the legislation on conscientious objection has been overhauled. Conscientious objection is now regulated by the civilian service act 2007 (Siviilipalveluslaki 28. December 2007/1446) [12]. As the conscription act also applies to women who wish to perform a voluntary military service, the civilian service act also applies to those women (article 1).

An application for conscientious objection is possible at any time, before, during and after military service (article 12). Applications must be made to the Ministry of Defence. Applications can be made with a standard

application form that is available from the Ministry. Since 1987, there is no personal interview during the application procedure. Consequently, applications are almost automatically granted.

Unlike before, an application is now also possible in times of crisis or war. However, under those circumstances the application will be dealt with by a specially constituted board, which includes one member from the military. It is possible to appeal against the decision of the board (articles 18-22).

According to article 4 of the new act, the period prescribed for non-military service is 362 days [13] – equal to the longest possible service time for conscripts, and twice as long as the service time of 50% of conscripts.

### Conscientious objection for professional soldiers

The new act on civilian service does not include the right to conscientious objection for professional soldiers.

### Draft evasion and desertion

#### penalties

Draft evasion is punished with a fine and a new call-up, which has led some into a repeating circle of fines and call-ups, if they refuse to comply [14]. The case of total objector Antti Rautiainen is one example. Rautiainen has consistently refused to attend call-ups every time he has been called up since November 1997. Since then he has been called up altogether 20 times, and went to prison at least three times (59 days in 2001, 15 days in 2005, 16 days in 2007). In November 2005, Rautiainen was finally exempted from military service, officially for medical reasons, and against his will and without proper medical examination. However, at that point he still had some unpaid fines (because he had not attended the call-ups) which had then been converted into prison sentences [15]. Since the length of substitute service has become twice as long as military service in 1998 (due to the reduced length of military service), the number of total objectors has increased significantly. According to estimates by Aseistakieltäytyjäliitto, approximately 70 conscientious objectors declare themselves total objectors annually. Total objectors are sentenced according to two different laws, depending on whether they first applied for legal recognition as conscientious objector or not.

Total objectors who are recognised as conscientious objectors and subsequently refuse to perform substitute service are sentenced according to Article 75 of the Civilian Service Act. According to the article, the maximum sentence is half of the remaining service time. However, if the sentence is less than half the remaining service time, then the total objector can be called up to finish his service after serving the prison sentence. The remainder of his service time is then calculated on the basis that each day in prison equals two days of civilian service. In practice, this means that the courts have not much choice when sentencing a total objector.

Total objectors who did not apply for conscientious objector status will be sentenced according to the

.24. Conscription Act.

### Notes

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# France

## Issues

- France does not recognise the right to conscientious objection for professional soldiers.

## Military recruitment

### Conscription

In 2001, France ended conscription in peacetime [1]. This was based on a change of the National Service Law in 1997 [2]. However, conscription is in fact only suspended, and can be reintroduced in times of war or an emergency. The relevant articles of the National Service Law have been changed in a way that presently they are suspended for persons born after 31 December 1978 [3]. They can easily be reinstated.

Conscription has been replaced by a compulsory one day "rendez-vous citoyen" (national day of preparation for national defence). All young men and women between the ages of 16 and 18 are obliged to participate in this day. On this day, people have civil status and do not have to bear arms or wear a uniform or be subjected to military discipline. Participation in the "rendez-vous citoyen" is a necessary condition for taking part in final examinations or obtaining a diploma in state universities [4].

### Professional soldiers

The service of professional soldiers is regulated in the Defence Law (Code de la Defense) [5].

## Conscientious objection

### Conscientious objection for conscripts

The right to conscientious objection was legally recognised in 1963. French CO legislation was restrictive and did not comply with international standards on conscientious objection. CO applications could only be made before starting military service and not by serving conscripts, and substitute service lasted twice as long as military service. In 1999, the United Nations Human Rights Committee came to the conclusion that this length of substitute service constituted a violation of article 26 of the International Covenant on Civil and Political Rights [6].

Compared to other European countries, the number of COs in France has always remained relatively low. During the 1990s approx. 6 000 CO applications were made per year, which was only 3 per cent of all eligible conscripts. With the suspension of conscription in 2001, the 1983 Law on Conscientious Objection (Law 83/605) became applicable only to men born before 31 December 1978. Consequently, young men who are born after 1979 have no possibility of claiming the right to conscientious objection.

### Conscientious objection for professional soldiers

The right to conscientious objectors is not recognised for professional soldiers.

### Draft evasion and desertion

No information on practice is available.



## Notes

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# Germany

## Issues

- Germany maintains conscription.
- Germany continues to impose several disciplinary arrests for total objectors.

## Military recruitment

### Conscription

Conscription is enshrined in article 12(1) of the Constitution (as amended in 1956), according to which all men over 18 may be obliged to serve in the armed forces [1]. It is further regulated with the Compulsory military service law (Wehrpflichtgesetz) [2] from 1956, which states in article 1.1: *“All men who have attained the age of 18 years and are Germans within the meaning of the Basic Law are obliged to perform military service.”* Article 3 paragraph 1 states: *“The obligation to perform military service is satisfied by military service or, in the case referred to in Paragraph 1 of the Kriegsdienstverweigerungsgesetz (Law on refusal to perform war service) ... by civilian service ...”*

All men between the ages of 18 and 45 are liable for military service (1956 Law, art. 3). However, according to article 5 call-up for military service is only possible between 18 and 23, and in some cases until 25 or 30 and even 32 years [3].

The length of military service is 9 months.

Reservist obligations pertain in peacetime up to the age of 45, up to the age of 60 in the case of officers and non-commissioned officers. Those who volunteer for the reserve forces are bound to be called up.

In wartime (according to the constitution, this applies only in a case of a defensive war) men up to the age of 60 may be called up to serve for an indefinite period.

Various types of 'special service' are referred to in art. 13a and 13b of the Law on Compulsory Military Service: civil defence service (Katastrophenschutz/Zivilschutz) lasting at least six years, or work in voluntary development aid abroad lasting at least two years. Those who have performed special service are exempted from military service.

### Professional soldiers

The armed forces comprise 247 712 troops, including 35 490 conscripts, 24 351 conscripts who voluntarily extended their service, and 187 871 professional soldiers either on fixed-term contracts or unlimited contracts. (May 2008) [4]. This means that more than 80% of the Armed Forces of Germany are made up of professional soldiers, and not by conscripts. The Armed Forces therefore make special efforts to attract potential recruits, among others via a special website targeting young people (<http://treff.bundeswehr.de>). Recruiting teams also visit community events and job fairs.

With another website (<http://www.bundeswehr-karriere.de/>), the Armed Forces target those wishing to join the Armed Forces.

**.26.** The service of professional soldiers (and conscripts) is



regulated in the soldiers' law (Soldatengesetz) from 1956 [5].

## Conscientious objection

### Conscientious objection for conscripts

The right to conscientious objection is included in Article 4 paragraph 3 of the 1949 Constitution. Legal provisions are laid down in the 2003 Law on Conscientious Objection (Kriegsdienstverweigerungsgesetz), which replaced the previous 1983 Law on Conscientious Objection [6]. The new Law on Conscientious Objection entered into force on 1 November 2003.

The law applies to conscripts and professional soldiers (Article 2 paragraph 6). A conscientious objection is possible before, during, and after military service. Both religious and non-religious grounds for conscientious objection are legally recognised. According to Article 1 of the Law on Conscientious Objection, CO status is to be granted to those who refuse military service for reasons of conscience as described in the Constitution. Article 4 paragraph 3 of the Constitution in fact states that *“no one shall be compelled to perform armed war service contrary to his conscience”*. An application has to explicitly refer to Article 4 paragraph 3 of the Constitution, and has to be accompanied by a complete CV and a written explanation of the personal reasons for the conscientious objection (Article 2 paragraph 3).

The length of substitute service is 9 months, which is the same length as military service. The length of substitute service was actually reduced from 10 months in 2004, meaning that after 40 years, substitute service now has the same duration as military service.

Substitute service is administered by the Federal Office of Civilian Service (Ministry of Youth, Family Affairs, Women and Health), and regulated by the Law on the Alternative Civilian Service of Conscientious Objectors (Zivildienstgesetz) [7]. Substitute service is mainly performed in social welfare institutions, such as hospitals, nursing and working with handicapped people. The salaries of COs are partially paid for by the employing organisation and partly by the government. A few

placements are made with (non-profit) non-governmental organisations.

COs who have completed one year of voluntary work, either within Germany or abroad, mostly ecological or social work, do not have to perform substitute service. After completing substitute service, COs have no reservist duties. During wartime the right to conscientious objection is guaranteed and COs may not be called up for military service.

Since 1991, the number of CO applications exceeds 100 000 per year. In 2007, 161 448 CO applications have been submitted [8].

### Conscientious objection for professional soldiers

The right to conscientious objection also applies to professional soldiers. Some provisions on conscientious objection for professional soldiers are laid down in a decree of the Ministry of Defence of 21 October 2003, last amended on 3 November 2005 [9]. The application procedure for professional soldiers who wish to be discharged from the armed forces because of conscientious objection is comparable with the application procedure for conscripts.

Applications must be made to the 'Kreiswehersatzamt' (regional recruitment office) and must include a motivation letter in which the applicant explains in more detail how and when his/her problems of conscience started. The application is forwarded to the Federal Office of Civilian Service (Ministry of Youth, Family Affairs, Women and Health), which makes a decision. The Federal Office may ask the opinion of the military commander or the personnel office. If the Federal Office has doubts about the application, it may order the applicant to attend for a personal interview. In practice, this does not seem to happen often. In cases where the application has been submitted with all necessary documents, the Federal Office usually decides within a timeframe of a few weeks up to several months.

During the time of the application procedure, a CO applicant has to continue serving, including with arms. However, according to article 2.2 it is possible to request to be relieved of the duty to bear arms.

If a professional soldier is recognised as a conscientious objector he needs to be released from the armed forces immediately (2003 Decree of the Ministry of Defence, Article 3.2).

The application procedure is the same during wartime or time of emergency or during combat (2003 Decree, Article 3.6).

Every year approx. 70 professional soldiers ask for discharge from the armed forces because of conscientious objection [10]. There are no detailed figures available about the number of applications granted, but most applications are reportedly being granted.

The military authorities regard a release from the armed forces which is based on conscientious objection as a release on someone's own initiative. This means that a professional soldier who has been recognised as a conscientious objector, needs to pay back the costs of any

courses that (s)he has followed in the military and that have a civilian use.

### Draft evasion and desertion (including total objection)

#### penalties

Refusal to perform compulsory military service is considered as desertion and punishable by up to 5 years' imprisonment (Military Penal Code, article 16) [11]. If a draft evader gives himself up within a month and agrees to perform service, the maximum punishment is three years. Disobeying military orders is punishable by up to three years' imprisonment, and in certain cases up to five years' (articles 19 and 20).

Absence without leave is punishable by up to three years' imprisonment (article 15). Desertion is punishable by up to five years' imprisonment, although deserters who return to their unit within a month may be sentenced to up to three years' (article 16).

The Law on the Alternative Civilian Service of Conscientious Objectors prescribes the same penalties for COs performing substitute service who disobey orders, are absent without leave or desert (Law on Alternative Civilian Service, articles 52, 53, 54).

#### Practice

Total objectors to military and substitute service are repeatedly sentenced either under article 16 military penal code ('desertion') or article 53 of the Law on Alternative Civilian Service, depending on whether they first attempted to be recognised as conscientious objectors.

Total objectors who are not recognised as conscientious objectors regularly face repeated military arrest, often up to 63 or even 84 days. According to a decree of the Ministry of Defence from 21 April 2008 [12], total objectors should not be released from the military before they have not served at least two arrests of 21 days each. Following a military arrest, the case will be handed over to the civilian authorities to be tried in a civilian court. They are then usually sentenced to several months imprisonment, usually on probation, or community sentences. In case they refuse to serve their community sentences, or refuse to comply with the conditions for probation, imprisonment follows.

In 2007 and 2008 several total objectors have been called up by the military, and have been serving time in military arrest. This is a change of policy, as no total objector had been called up between 2004-2006 [13].

In 2005, a German officer who in 2003 refused to follow an order to continue working on a project that would be used in Iraq was acquitted by the Federal Administrative Court. The court granted him the right to refuse the order based on his freedom of conscience [14].

#### Notes

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- [9] Erlass des Bundesministers für Verteidigung vom 21.10.2003, last amended on 3 November 2005, <http://zentralstelle-kdv.de/z.php?ID=5#03>, accessed 26 August 2008
- [10] Antwort des Parlamentarischen Staatssekretärs Thomas Kossendey, 9 May 2007: Kriegsdienstverweigerung – Antragstellungen von Soldaten seit 2001 nach Statusgruppen und insgesamt, <http://dip.bundestag.de/btd/16/053/1605317.pdf>, accessed 30 September 2008
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Support action for total objectors in Germany

Photo: Andreas Kiefer

# Greece

## Issues

- Greece maintains conscription. However, the implementation of the right to conscientious objection for conscripts does not conform to international standards.
- Greece does not recognise the right to conscientious objection for professional soldiers.

## Military recruitment

### Conscription

Conscription is enshrined in Article 4 paragraph 6 of the Greek constitution from 1975, which reads: “*Every Greek capable of bearing arms is obliged to contribute to the defence of the Fatherland as provided by law*” [1]. The relevant law is Law 3421/2005 [2]. According to this law, all Greek males are obliged to serve in the Armed Forces, from 1st January of their 19th year until the 31st December of the 45th year [3]. The duration of service is quite complex to calculate, as there are a range of rules about reduction of service time. Since 1 January 2004, the starting point for the calculation of those reduction is a service time of 17 months for Reserve Officers and 12 months for regular soldiers [4].

Although conscription is supposed to be universal, only about one third of those called up for military service do actually serve. The majority is able to obtain deferments or some form of exemption, mostly for health reasons [5].

### Professional soldiers

Although the Greek Armed Forces still rely heavily on conscripts, the Greek military too aims to attract an increasing number of voluntary professional soldiers. According to reports, about 50% of the strength of the Greek army are made up of professional soldiers [6]. The Greek military promotes a career in the Armed Forces through recruitment adverts on TV, but also through its presence during so-called “professional orientation” lessons during the last year of high school. It is believed that the Greek Armed Forces mostly achieve their recruitment targets for professional soldiers [7].

## Conscientious objection

### Conscientious objection for conscripts

The right to conscientious objection was first recognised in 1997 with Law 2510/1997 [8]. This law came into effect on 1 January 1998. Presently, this right is regulated by Law 3421/2005. Both religious and non-religious grounds for conscientious objection are legally recognised. According to Article 59 paragraph 1 of the Law 3421/2005, CO status may be granted to “*those who invoke their religious or ideological convictions in order not to fulfil their draft obligations for reasons of conscience*”. Article 59 paragraph 2 stipulates that the reasons of conscience “*are considered to be related to a general perception of life, based on conscientious religious, philosophical or moral convictions, which are inviolably applied by the person and are expressed by a corresponding behaviour*”.



There is a strict time limit for submitting CO applications. Applications can only be made before starting military service, at the latest on the day before enlistment into the armed forces.

According to Article 59 paragraph 3(a) of Law 3421/2005: “*those who have carried arms for whatever length of time in the Greek or foreign armed forces or in the security forces*” cannot be considered as conscientious objectors. CO applications can thus not be made by serving conscripts or reservists. CO applications must be made to the Ministry of Defence. The application must include a copy of the applicant's criminal record and documents proving that the applicant does not have a gun licence or a licence for hunting (Law 3421/2005, Article 59.3(c) and 59.3(b)). Applications are considered by a committee, which falls under the authority of the Ministry of Defence. The committee consists of a legal expert, two university professors who are specialised in philosophy, psychology or social-political sciences, and two military officers. Applicants may be ordered for a personal interview with the committee, during which they need to prove their “*general perception of life, based on conscious religious, philosophical or moral convictions, implemented infrangibly by the person and expressed by holding a respective attitude*”, as laid down in Article 59 paragraph 2 of Law 3421/2005.

The committee makes a consultative decision, which needs to be confirmed by the Ministry of Defence. The Ministry of Defence usually accepts the consultative decisions of the committee.

If the application is rejected, there is a right of appeal to the civil court within five days of receiving the decision.

### Substitute service

The length of substitute service is 23 months, which is almost twice the length of military service. In some cases, due to family reasons, COs are allowed to perform a shorter service of at least 15 months.

### Conscientious objection for professional soldiers

Greece does not recognise the right to conscientious objection for professional soldiers.

The regulations for leaving the Armed Forces prematurely are presently not known.

### Draft evasion and desertion

According to Articles 51 to 54 of Law No. 3421 of 12 December 2005, unofficially translated as "Military Service for the Greeks," those who evade compulsory military service will face several consequences, including the following:

- They will not receive a military certificate showing that they served in the army, which is a prerequisite for obtaining certain jobs;
- They cannot vote or be elected;
- If they pursue a professional career that requires a licence (such as medicine, law, etc.), they cannot get this licence; if they already possess such a licence, it will be revoked;
- They cannot be employed as civil servants;
- They cannot leave the country or work on a ship that sails outside Greek waters;
- They cannot obtain a passport; if they already have one, it cannot be extended;
- If they eventually decide to complete their military service, they must serve six months in addition to the time normally required;

Once they complete their military service, the previously mentioned consequences are void and their record is cleared [9].

Conscripts who respond the call-up and enlist in the armed forces but refuse to don uniform or bear arms, are ordered to perform unarmed military service. If they refuse to do so they are tried before a military court for 'disobedience'. Because such refusal is no longer considered a felony the conscript is not imprisoned, but must remain in the military camp until trial. Art. 53 of the Military Penal Code prescribes the penalties for disobeying orders. The penalty is imprisonment for double the duration of military service, that is for 4 years [10].

According to art. 33 of the new Military Penal Code desertion is punishable

- in peacetime by one year's imprisonment;
- in wartime by death or life imprisonment;
- in periods of general mobilisation by a minimum of

two years' imprisonment.

According to art. 36, desertion and fleeing abroad is punishable

- in peacetime by one to 10 years' imprisonment;
- in wartime by death or life imprisonment.

Deserters are treated very harsh. They receive heavy sentences and then are still required to serve in the armed forces. Most of them have fled abroad and are unable to return.

### Notes

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# Hungary

## Issues

- Hungary does not recognise the right to conscientious objection for professional soldiers.

## Military recruitment

### Conscription

Hungary abolished conscription in 2004, at least in times of peace. Article 70H of the constitution was changed, and now reads: “(1) All citizens of the Republic of Hungary have the obligation to defend their country. (2) In times of an emergency, or in times of a situation of preventive defence when parliament decides with the votes of two-third of members of parliament present, conscription is compulsory for every adult men, who is Hungarian citizen and resident within the Republic of Hungary, in accordance with the conditions established by law. Whose conscience does not allow him to perform military service has to perform a civilian service” [1].

What regulations will be in force if conscription will be reintroduced is presently not clear. It is only known that the Law on Defence and the constitution have been changed on 4 November 2004 to abolish conscription [2]. The last 2 000 conscripts were discharged from military service in November 2004. Since December 2004 the armed forces consist of professional soldiers only [3].

### Professional soldiers

Since November 2004, recruitment for the Hungarian Armed Forces is entirely voluntary. All Hungarian citizens aged between 18 and 47 can apply to join the Armed Forces, either as professional soldiers or voluntary reserve soldiers. The terms of service are defined by the Law on the Legal Status of Professional and Contracted Soldiers from 2001 [4].

The minimum contract period for officers and non-commissioned officers is five years, for rank and file soldiers it is two years. It can be extended to a maximum service time of 20 years for officers and non-commissioned officers, and 15 years for rank and file.

### Conscientious objection

#### Conscientious objection for conscripts

The right to conscientious objection was legally recognised in 1989, following a liberal revolt in the Communist Party. Since 1993, CO applications were no longer individually examined and personal interviews no longer took place. Since then, the number of CO applications increased significantly from 500 to approx. 5 000 applications per year.

When conscription applied, the Law on Civilian Service allowed for CO applications to be made by serving conscripts, but only until the military oath was taken (after performance of three weeks' military service) [5]. It is unclear if these regulations would apply in case conscription would be enforced in an emergency.



### Conscientious objection for professional soldiers

There are no legal provisions for conscientious objection for professional soldiers.

According to the Law on the Legal Status of Professional and Contracted Soldiers, a contract can be cancelled when “such changes occur in the conditions of the contracted soldier that the further fulfillment of service may cause disproportionate difficulty or disadvantages for him”. However, it is also stated that “during a state of emergency, a contracted service relation shall not be terminated” [6].

Normally, two months notice has to be given.

### Draft evasion and desertion

Under the criminal code draft evasion is punishable by up to five years' imprisonment, and five to 15 years' in wartime (art. 336) [7].

Information on practice is not available.

## Notes

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- [3] Ministry of Defence: Conscript service abolished, 14 June 2004, [www.honveledem.hu](http://www.honveledem.hu).
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# Ireland

## Issues

- Ireland did never introduce conscription. However, professional soldiers do not have the right to conscientious objection.

## Military recruitment

### Conscription

Conscription has never existed in Ireland.

Article 28 of the Constitution [1] and article 54 of the 1954 Defence Act [2] allow for conscription to be introduced in a state of emergency.

There is no further legislative provision for conscription and there never has been since Ireland became independent as the Irish Free State in 1922.

### Professional soldiers

The minimum age at which a person can join the Irish Defence Forces is 17.

Volunteers sign up for a period they themselves determine, the required minimum being three years followed by six years in the Reserve Defence Force [3]. The usual term of a contract, however, is five years, and can be extended by four or three years up to a total of 12 years [4].

Interestingly, article 256 of the Defence Act makes “*interfering with recruiting*” an offence which is punishable by a fine.

### Conscientious objection

#### Conscientious objection for conscripts

As there has never been conscription in Ireland, there are no laws for conscientious objection in case conscription should be introduced.

#### Conscientious objection for professional soldiers

There is no right to conscientious objection for professional soldiers. Article 49 of the Defence Act 1954 deals with the resignation of officers, who can apply for resignation, but this has to be approved by the Minister of Defence.

Non-commissioned officers and privates are entitled to “*discharge by purchase*” according to Article 75 of the Defence Act 1954. The amount to be paid is laid out in a scale, but the exact amount is presently not known.

However, this does not apply in an emergency.

In fact, in situations where it would be most likely that a conflict of conscience might arise, it is most difficult to leave the Armed Forces prematurely.

#### Draft evasion and desertion

Article 135 (Desertion) and article 137 (Absence without Leave) specify that the respective military offences can be punished with imprisonment awarded by a court martial. The question of draft evasion does not apply as there is presently no conscription.

Information on practice is not available.



## Notes

- [1] [http://www.taoiseach.gov.ie/attached\\_files/html\\_files/Constitution\\_of\\_Ireland\\_\(Eng\)Nov2004.htm](http://www.taoiseach.gov.ie/attached_files/html_files/Constitution_of_Ireland_(Eng)Nov2004.htm), accessed 23 April 2008
- [2] Defence Act 1954, <http://www.irishstatutebook.ie:80/1954/en/act/pub/0018/print.html>, accessed 23 April 2008, last amended in 2006 with the Defence (Amendment) Act 2006, <http://www.irishstatutebook.ie:80/2006/en/act/pub/0020/print.html>, accessed 23 April 2008
- [3] UN Commission on Human Rights, 1994. Report of the Secretary-General prepared pursuant to Commission resolution 1993/84 (and Addendum). United Nations, Geneva.
- [4] Department of Defence, letter to Irish Embassy London in response to WRI questionnaire, 12 February 2008



# Italy

## Issues

- Italy does not recognise the right to conscientious objection for professional soldiers.

## Military recruitment

### Conscription

The Italian Parliament decided to end conscription in November 2000 [1]. Originally, it was planned to end conscription by 2007, but the transformation process into professional armed forces went faster than anticipated. On 29 July 2004, Parliament finally approved Law 4233-B, relating to the “*early suspension of compulsory military service and regulation of previously enlisted voluntary servicemen*” [2]. Decree n. 226 of 23 August 2004 finally set the date for the transition to a fully professional military for 1 January 2005 [3]. Accordingly, young men born after 1985 were no longer called up for military service. The last conscripts were called up in February 2004 and since 1 January 2005 the Italian armed forces consist of professional soldiers only [4].

Conscription is in fact suspended. According to Law 331/20005, conscription may be reintroduced in case of war or national emergency.

However, anyone wanting to join the police, the paramilitary carabinieri, the customs service or the fire service will still have first to serve a year in the army [6].

### Professional soldiers

According to Law 226/2004, the minimum age for joining the Armed Forces is now 18. Only Italian citizen can join the Italian Armed Forces [7].

## Conscientious objection

### Conscientious objection for conscripts

When conscription was enforced, legal provisions for conscientious objection were laid down in the 1998 Law on Conscientious Objection (230/1998 [8]). If conscription is reintroduced in case of war or national emergency, COs will be called up to serve in civil protection or the Red Cross (Article 13 paragraph 4). In addition, according to Article 2 of the 1998 Law on Conscientious Objection, the right to conscientious objection to military service did not apply to those “*who have presented a request within less than two years to serve in the Military Armed Forces*” or any other government institutions which involve the use of weapons. This restriction practically excludes professional soldiers from claiming the right to conscientious objection.

The law was last modified in 2007, to bring it up to date with a situation where conscription is generally not enforced [9].

### Conscientious objection for professional soldiers

There are no legal provisions for conscientious objection for professional soldiers.

The rules for leaving the Armed Forces prematurely are



presently not known.

### Draft evasion and desertion

Under the criminal code draft evasion is punishable by up to five years' imprisonment, and five to 15 years' in wartime (art. 336) [10].

Information on practice is not available.

## Notes

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# Latvia

## Issues

- Latvia does not recognise the right to conscientious objection for professional soldiers.

## Military recruitment

### Conscription

On 7 June, 2005, the Latvian government approved the “National Armed Forces Medium-Term Development Plan” for the period 2005-2008, which envisaged the phasing out of conscription by the end of 2006 [1]. On 24 November 2006, the last conscripts finished their military service [2].

It is not clear whether all laws governing conscription have been amended or abolished [3]. According to the 2006 Defence White Paper, the conscription centre, responsible for the recruitment of conscripts, was planned to cease to exist by 1 January 2007 [4].

### Professional soldiers

The Military Service Law of 2002 [5] provides the general framework for military service of any kind, including of professional soldiers. The minimum contract times are generally three years, but for officers the minimum is five years (Article 20 paragraph 3). A contract can be extended for the same time.

The NAF Recruitment and Selection Centre (RSC), which replaced the conscription centre, visits educational institutions including orphanages to “*promote comprehensive information on professional military service, as well as on education and career opportunities within the armed forces*”. In addition, the RSC promotes joining the Armed Forces at city festivals and through the mass media [6].

### Conscientious objection

#### Conscientious objection for conscripts

The right to conscientious objection was legally recognised by the 2002 Law on Alternative Service. The Law entered into force on 1 July 2002. Before 2002, the right to conscientious objection was not legally recognised. The status of the law after the end/suspension of conscription is unclear. It has to be assumed that the law is no longer in force. It does no longer appear on the website of the Ministry of Defence.

#### Conscientious objection for professional soldiers

There is no legal provision for conscientious objection by professional soldiers [7].

According to Article 43 paragraph 1 of the Military Service Law, “*a professional service contract may be terminated before the end of the term at any time by agreement of the parties*”. According to Article 44 paragraph 5 “*during an armed conflict, state of war or state of emergency and in case of mobilisation the retirement of soldiers shall be suspended except for cases where a soldier has become unfit for military service*.”

## 34. Draft evasion and desertion

No information available.



## Notes

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- [2] Ministry of Defence: Female soldiers represented 17% of NAF personnel in 2007, 8 February 2008, <http://www.mod.gov.lv/AMI/jaunumi/aktualitates.aspx?gpath={479593DA-3DC2-4018-9EB0-EF70D70439F8}&lang=lv>, accessed 29 April 2008
- [3] I.e. article 13 of the Mobilisation Law 2002, last amended in 2004, still states: “The conscription of Latvian citizens – reserve soldiers and reservists – into the active military service in case of mobilisation shall take place in accordance with the Mandatory Military Service Law according to procedures determined by the Cabinet of Ministers” (<http://www.mod.gov.lv/Normativie%20akti/Likumi/Mobilizacijas%20likums.aspx>, accessed 29 April 2008). The Mandatory Military Service Law, however, is no longer available from the website of the Ministry of Defence.
- [4] Defence White Paper (Minister for Defence Report to the Parliament on National Defence Policy and National Armed Forces Development in 2006) 2006, [http://www.mod.gov.lv/upload/balta\\_gram\\_2006eng.pdf](http://www.mod.gov.lv/upload/balta_gram_2006eng.pdf), accessed 29 April 2008
- [5] Military Service Law 2002, <http://www.mod.gov.lv/Normativie%20akti/Likumi/Militara%20dienesta%20likums.aspx>, accessed 29 April 2008
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# Lithuania

## Issues

- A genuinely civilian substitute service for conscientious objectors is not available.
- Lithuania does not recognise the right to conscientious objection for professional soldiers.

## Military recruitment

### Conscription

Conscription is enshrined in Article 139 of the 1992 Constitution, which says: “*Citizens of the Republic of Lithuania must perform military or alternative national defence service according to the procedure established by law*” [1]. It is further regulated by the 1996 Law on National Conscription (1593/1996).

The length of military service is 12 months, and 6 months for university and college graduates.

All men between the ages of 19 and 26 are liable for military service. Reservist obligations apply up to the age of 35.

All male citizens of the Republic of Lithuania, upon reaching 16 years of age, enter in a military register at local territorial military office and are issued a draftee’s certificate. Draftees, upon reaching 19 years of age, must appear at a local territorial military office within a 45-day period, which starts 30 days prior to the draftee’s 19th birthday and ends 15 days after the birthday [2].

However, the number of young men being drafted into the military is going down. In 2007, only 2 738 men joined the military as conscripts (compared to a total strength of 7 170 professional soldiers) [3]. This number is to go down to only 2 000 by 2011 [4].

### Professional soldiers

Pursuant to legislation of the Republic of Lithuania only citizens of the Republic of Lithuania who have attained the age of 18 can be voluntarily accepted into active military service [5].

No more details are known.

## Conscientious objection

### Conscientious objection for conscripts

The right to conscientious objection is enshrined in Article 139 of the constitution. Article 4, paragraph 3, of the Law on National Conscription governs substitute service for those who do not wish to bear arms on the grounds of religious or pacifist beliefs. However, the scope of the accepted beliefs is unclear, and the United Nation Human Rights Committee repeatedly asked for clarification on the matter [6].

According to the available information, a special commission composed of representatives of the military, doctors and priests decides on applications for conscientious objection and appropriate “alternative military service”. The phrasing “alternative military service” makes it doubtful that this substitute service is a genuine civilian substitute service.



The Law on National Conscription does not specify if there are time limits for submitting CO applications. However, the absence of clear legal provisions implies that serving conscripts and reservists cannot apply for CO status. Moreover, the Lithuanian government has stated in the past that applications can only be made before starting military service [7].

Lithuanian representatives declared at the meeting of the UN Human Rights Committee in March 2004: “*However, new draft regulations were being prepared which would make it possible to do alternative service outside the framework of the national defence system*” [8]. If these new regulations have in fact been passed, and what they include, is presently not known.

According to Article 23 paragraph 2 of the Law on National Conscription, the length of substitute service is 18 months. This is one and a half times the length of military service. In practice, substitute service is not organised and only an unarmed military service within the armed forces is available [9].

In 2006 and in 2007, the US State Department reported that “*conscientious objectors may petition for alternative military service within military structures, but there is no option for alternative non-military service, despite requests by members of Jehovah’s Witnesses. Persons enrolled in alternative military service must follow military regulations and reside on military installations. They receive assignments to work in nonviolent military roles, such as grounds maintenance, or can work as unskilled labourers in government health or social care institutions*” [10]. These reports make it appear unlikely that any new regulations have been passed, or if so, then that these new regulations led to substantial changes.

Ms. Milašiūtė, a member of the Lithuanian delegation to the UN Human Rights Committee session in March 2004, “*noted that there had been one recent case in which two Jehovah’s Witnesses, after being denied the right to perform alternative service, had appealed to the courts and won their case*” [11].

### Conscientious objection for professional soldiers

Lithuania does not recognise the right to conscientious objection for professional soldiers [12].

### Draft evasion and desertion

Draft evasion and desertion are punishable under the criminal code [13].

Evasion of the regular draft or alternative (labour) service is punishable by up to two years’ imprisonment; up to five years’ if a conscript deliberately injures himself, fakes illness, forges documents or avoids performing his duty in any other way. (article 79)

Evasion of the mobilisation draft for national defence service is punishable by two to five years' imprisonment. (article 80)

In June 1993 parliament amended the criminal code, increasing fines for ignoring call-up notices to 80 Litass and increasing the penalty for repeat offenders to up to a year's imprisonment [14].

No information on practice is available.

## Notes

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# Luxembourg

## Issues

- Luxembourg does not recognise the right to conscientious objection for professional soldiers.

## Military recruitment

### Conscription

Conscription was abolished in 1967 [1].

Conscription is not enshrined in the 1868 Constitution [2].

### Professional soldiers

To fulfil its NATO obligations Luxembourg has a small armed force of volunteers. Its present legal basis is the amended 1952 Military Law.

Volunteers aged between 17 and 25 may join the armed forces. They must sign on for at least three years, which can be followed by another four year contract [3], up to a total of 15 years [4]. A 2002 law now allows EU citizens, under certain conditions (i.e. having been resident for a minimum of 36 months in Luxembourg), to join the Luxembourg Army [5].

The number of volunteers in the Army has been decreasing since 1994 and Luxembourg has had some difficulty meeting personnel recruiting goals (male and female). In 2000, the Army launched a recruitment campaign aiming at making the voluntary military service more attractive and at motivating more young people to commit themselves for a minimum of 18 months. The pay was increased substantially and civilian guardians were recruited in order to allow volunteers to concentrate on their military training [6].

Volunteer soldiers are the only eligible candidates for postmen, customs officers or forest wardens. Moreover they have a priority enrolment right in other areas, as for instance the police [7].

## Conscientious objection

### Conscientious objection for conscripts

In 1963 a legal provision for the right to conscientious objection for conscripts had been introduced [8]. COs had to perform substitute service for one and a half times as long as military service. Between 1963 and 1967 there were about five known CO cases. Between 1945 and 1963 there were two CO trials [9]. As conscription has been abolished in 1967, the issue does presently not arise.

### Conscientious objection for professional soldiers

There is no legal provision for conscientious objection by professional soldiers [10].

### Draft evasion and desertion

In 1982 the Military Penal Code was revised [11]. According to Article 51 of the 1982 Military Penal Code, desertion is punishable in peacetime with imprisonment from two months to two years. Under certain circumstances set out in articles 52 and following, the punishment can be higher.

No information on practice is available.



## Notes

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# FYROM (Macedonia)

## Issues

- The end of conscription in Macedonia also meant the end of conscientious objection. Macedonia does not recognise the right to conscientious objection for professional soldiers.

## Military recruitment

### Conscription

Although Macedonia abolished conscription, the constitution of Macedonia still states in its Article 28: “*The defence of the Republic of Macedonia is the right and duty of every citizen. The exercise of this right and duty of citizens is regulated by law*” [1]. Conscription was abolished with the Law for Change and Supplement of the Defence Law (ЗАКОН ЗА ИЗМЕНУВАЊЕ И ДОПОЛНУВАЊЕ НА ЗАКОНОТ ЗА ОДБРАНА) in 2006 [2]. However, in theory military duty is still mandatory for all male Macedonian citizens aged 18 to 55, according to Article 3 paragraph 1 on the Defence Law (ЗАКОН ЗА ОДБРАНА) [3]. This seems to be only a specification of the provisions in the constitution, as there is no further implementation of this duty in the law.

### Professional soldiers

“Voluntary military service” is available to men and women and generally lasts three months (Article 7 paragraph 1 Defence Law). Article 25 of the Army Service Regulation Law (ЗАКОН ЗА СЛУЖБА ВО АРМИЈАТА) [4] specifies who can join the military. According to this article, applicants have to be citizens of the Republic of Macedonia and have to be “mature” (generally believed to mean 18 years or older). The Macedonian military issues calls to the general public to achieve its recruitment targets, and also aims to recruit those finishing their voluntary military service of three months.

### Conscientious objection

#### Conscientious objection for conscripts

With the amendment of the Defence Law in 2006, all provisions for conscientious objection have been deleted from the law.

#### Conscientious objection for professional soldiers

Macedonia does not recognise the right to conscientious objection for professional soldiers.

Article 225 of the Army Service Regulation Law sets out the possibilities for discharge from the Armed Forces. According to paragraph 9 of this article, a discharge is possible on application, and the Ministry of Defence has to decide on such an application within 1-3 months (Article 226). An appeal against the decision of the Ministry of Defence is possible.

It is clear that this does not provide for a right to conscientious objection.



### Draft evasion and desertion

Both, the Army Service Regulation Law and the Penal Code of Macedonia set out punishments for crimes in relation to military duties.

Article 341 of the Penal Code deals with avoiding call-up, presumably also in case of call-up of reserves. According to this article, not responding to call up can be punished with a fine, or up to one year imprisonment. If someone goes into hiding to avoid call-up, the punishment increases from 3 months to three years imprisonment, and leaving the country in order to avoid service can be punished with 1 to 5 years imprisonment.

According to article 344 of the Penal Code, being absent without leave for up to 10 days can be punished with a fine or up to 1 year imprisonment, being absent for up to 30 days can be punished with between six months and 5 years imprisonment. If someone absents him/herself by leaving the country, the punishment is from 1 to 10 years imprisonment.

Abandoning ones unit “*during the execution of an important task or during an increased level of combat readiness*” can be punished with 3 months to 3 years imprisonment.

No information on practice is available.

### Notes

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# Malta

## Issues

- Malta does not recognise the right to conscientious objection for professional soldiers.

## Military recruitment

### Conscription

Conscription has never existed in Malta [1]. According to the Armed Forces Act, the Armed Forces of Malta can only be raised “*by voluntary enlistment*” (Article 3) [2].

### Professional soldiers

The legal basis for enlistment into the Armed Forces of Malta is the 1970 Malta Armed Forces Act [3].

The minimum age for joining the Armed Forces of Malta is 18 years, and the maximum age is presently set at 25 years, and 23 years for Officer Cadets [4]. There is also the option to join the Emergency Voluntary Reserve Force, in which case the maximum age for joining is 35 years [5]. This is a part-time force.

Recruitment is by public announcement. There is at least one call for applications annually. This is published in the Malta Government Gazette and advertised in all the local newspapers [6].

Volunteers must sign up for at least 3 years.

### Conscientious objection

#### Conscientious objection for conscripts

Article 35 paragraph 2 (c) of the constitution on the prohibition of forced labour mentions conscientious objection to serving in the military [7]. However, this does not guarantee a right to conscientious objection, it only excludes a substitute service for conscientious objectors from the definition of forced labour.

As Malta does not have conscription, and does not have laws giving the power to conscript, the issue of conscientious objection for conscripts does presently not arise.

#### Conscientious objection for professional soldiers

There are no legal provisions for conscientious objection for professional soldiers.

According to Article 9 of the Armed Forces Act 1970, the service of voluntary soldiers can be extended in an emergency or war for up to twelve months. In fact, in this case any discharge is automatically postponed [8]. Article 10 makes similar provisions in case a war is imminent. Article 14 allows for the purchase of discharge before the end of a contract, but this is not possible in case service has been extended according to Article 10 (see above).

#### Draft evasion and desertion

According to article 47 of the Armed Forces Act 1970 disobeying a lawful order can be punished by up to two years imprisonment [9]. Desertion is punishable by up to two years imprisonment, according to Article 50. In case of desertion from active service, the punishment is more than two years.



Similar punishments are possible for being absent without leave (article 51).

Information on practice is not available.

## Notes

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# Netherlands

## Issues

- Conscription is suspended. Little is known about the situation of professional soldiers who want to apply for conscientious objection.

## Military recruitment

### Conscription

*The Dutch Constitution (art. 98) states: "1. The armed forces shall consist of volunteers and may also include conscripts.*

*2. Compulsory military service and the power to defer the call-up to active service shall be regulated by Act of Parliament."* [1].

Formally, conscription exists in the Netherlands, but in 1992 parliament decided to suspend the call-ups. On 29 February 1996 the last conscripts were called up to perform six months' service. After January 1997 there are no more conscripts. The Netherlands armed forces are now completely professional.

However, there is still a law on conscription ('Kaderwet dienstplicht') [2], which includes regulations for the compulsory registration of all young male Dutch citizens [3].

### Professional soldiers

Service of professional soldiers is regulated in the law on military personnel ('Militaire Ambtenarenwet') from 1931 [4], and the general military personnel regulations ('Algemeen militair ambtenarenreglement') from 1982 [5]. Since conscription has been suspended, all branches of the Armed Forces recruit volunteers, and do so using a variety of promotion tools. The Dutch army has its own recruitment website

(<http://www.werkenbijdelandmacht.nl/>), as has the Air Force (<http://www.werkenbijdeluchtmacht.nl/>) and the navy (<http://www.werkenbijdemarine.nl/>).

Little is known about the recruitment practice of the Dutch Armed Forces.

## Conscientious objection

### Conscientious objection for conscripts

Conscription is suspended in peace time, but registration for conscription continues. In case conscription would be enacted again, the right to conscientious objection exists. The right to conscientious objection is enshrined in article 99 of the constitution: "*Exemption from military service because of serious conscientious objections shall be regulated by Act of Parliament*" [6].

Conscientious objection is regulated with Law on conscientious objection to military service of 27 September 1962 (Wet gewetensbezwaren militaire dienst, Stb. 370 [7]), last amended on 1 September 2003.

All conscripts who have been declared fit may apply for CO status. This means that registered conscripts can not apply, as they have not had a medical examination.

Art. 2 of the Law on CO states: "*Serious conscientious objection, in terms of the law, is insurmountable conscientious objection to the personal performance of military service bound up*



*with the employment of violence means inherent in service in the Dutch armed forces"* [8].

This means that anyone seriously objecting to the use of violence in the Dutch armed forces, on religious, moral, ethical or even political grounds, can be recognised as a CO.

Application for CO status involves submitting a written notice. The applicant has to appear before a one-person committee, which considers the application, then advises the Minister of Defence, who makes the decision. If applicants are not recognised as COs, they receive a psychiatric examination and must appear before a three-person committee, which makes the final decision.

### Conscientious objection for professional soldiers

The law on conscientious objection to military service is drafted in a way that it only applies to conscripts ('dienstplichtige'), but it has been reported that voluntary recruits can also apply for conscientious objection [9]. According to 'Aanwijzing inzake Gewetensbezwaren militaire dienst' from 1 January 1994, volunteers will be dealt with in the same way as conscripts [10], which means that the procedure as outlined before should also apply to voluntary soldiers.

However, little is known about recent practice. According to the Ministry of Defence in 2004, professional soldiers who have conscientious objection to particular campaigns of the armed forces, for example deployment in Iraq, do not have the right to claim conscientious objection to participation in these particular campaigns. According to the Ministry, professional soldiers who have conscientious objection to a particular army campaign may only seek discharge from the armed forces [11].

In addition, military personnel can apply to resign from service. However, according to article 12m of the law on military personnel, the Minister of Defence can turn down such an application under certain conditions [12]. This does not constitute a right to resign from service, as especially in times of war it can be expected that applications for resignation from service will be denied.



## Draft evasion and desertion

### penalties

Art. 36 of the new Law on military service (Kaderwet Dienstplicht) prescribes a maximum two-year prison sentence or a fourth category fine for failure to respond to the call-up. In wartime – when a call-up might be re-introduced – a five-year prison sentence or a 4th category fine [13].

Art. 139 of the Military Penal Code (Wetboek van Militair Strafrecht) states: "*1. A member of the military who refuses to or deliberately refrains from performing any service, of whatever sort, will be punished with a maximum of 2 years' imprisonment or a fourth category fine. 2. When the crime is committed in wartime the convicted person will be punished by a maximum of 5 years' imprisonment or a fourth category fine*" [14].

Desertion in peacetime can be punished by a maximum 2 years' imprisonment or 4th category fine. In wartime the punishment is a maximum of 7.5 years' imprisonment or a 5th category fine. Often the maximum penalty can be doubled. (Military Penal Code, art. 100 and 101).

### Practice

Not much is known about practice. However, in 2007 the appeal court in Arnhem acquitted a soldier who refused to deploy to Afghanistan [15], after he had initially been sentenced to two months imprisonment [16]. There was also a second case of refusal, which led to a prosecution [17]. However, a second person has also been finally acquitted in December 2007 [18].

### Notes

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# Poland

## Issues

- Poland does not recognise the right to conscientious objection for professional soldiers.

## Military recruitment

### Conscription

According to article 85 paragraph 1 of the Polish constitution, *“it shall be the duty of every Polish citizen to defend the Homeland”*. However, paragraph 2 says: *“The nature of military service shall be specified by statute”* [1]. While the constitution clearly allows for conscription, it does not require it.

According to the presently valid law on conscription, all men between the ages of 18 and 28 are liable for military service. Reservist obligations apply up to the age of 50, but in practice most conscripts are not called up for reservist training in peacetime. In 2005, military service was shortened from 12 months to 9 months [2].

Nevertheless, Poland presently maintains conscription, but it is to be suspended in 2009 [3]. Already now, only 40% of the personnel of the Armed Forces is made up of conscripts [4]. Every year, approx. 330 000 young men reach conscription age; approx. 20 per cent are recruited [5].

### Professional soldiers

The service of professional soldiers is based on the law on military service of regular soldiers from 20 October 2003 [6]. Men can only join the Armed Forces as professional soldiers once they have completed their military service as conscripts [7].

Since 1 July 2004, professional soldiers sign up for a fixed period of time (from 1 to 3 years), which can be extended. While originally only officers and non-commissioned officers could join the Polish Armed Forces as professional soldiers, it is now also possible to join as privates, and the number of privates is to be increased to 24 000 by 2010 [8].

## Conscientious objection

### Conscientious objection for conscripts

The right to conscientious objection is enshrined in article 85 paragraph 3 of the Polish constitution, which states: *“Any citizen whose religious convictions or moral principles do not allow him to perform military service may be obliged to perform substitute service in accordance with principles specified by statute”* [9].

Both religious and non-religious grounds for conscientious objection are legally recognised.

Substitute service is based on the law on substitute military service from 28 November 2003, which entered into force on 1 January 2004 (Journal of Law no 223, item 2217) [10]. There is a time limit for submitting CO applications.

Applications can only be made before starting military service, at the latest by the time of receiving the call-up order for military service. Applications can thus not be



Applications must be made to the local 'voivod' (local government) commission. The commission consists of five members, three of whom must be present in order to make a decision. At least two of the commission members are specialists in ethical or religious issues. The commission conducts a personal interview with the applicant, after which it makes a decision.

If the application is rejected, it is possible to make a new CO application within six months of the first decision. If the application is rejected again, an appeal can be made to the alternative service commission at a higher level and then to the administrative court.

When military service was 12 months, the length of substitute service was 18 months, and 6 months for university graduates. The present length of substitute service is not clear.

Substitute service is administered by the Ministry of Labour, in cooperation with local governments. It can be performed in government institutions in areas like health care, nursing, social work and environmental protection. Substitute service may also be performed with religious organisations that have received public benefit status, and with non-governmental organisations that have been approved by the Ministry [11].

After completing substitute service, COs are not called up for reservist duties in peacetime. According to the 1999 Law on the Obligation to Defend Poland, the right to perform substitute service is suspended during wartime. Consequently, COs may be called up for military service during wartime [12].

### Conscientious objection for professional soldiers

The right to conscientious objection is not recognised for professional soldiers. However, according to information provided by Poland to the Human Rights Committee, in 2004 it was envisaged to create the possibility to dissolve the employment contract of a professional soldier without specifying a reason at an appropriate notice. However, this would require the repayment of relevant training and accommodation costs.

A judgement of the Constitutional Court from 16 February 1999 on the case of a professional soldier who wished to leave prematurely, which gave rise to the consideration of changes, made clear that it did not want the lawmakers to consider a right to conscientious objection for professional soldiers. It states: *“There is no doubt that departures from the army of professional soldiers, also*

*those motivated by significant religious considerations, must be subject – as in all other cases – to rigours, since this is required by the public interest connected with the functioning of the armed forces of each state. Consequently, even in the situation of the plaintiff, when the character of the professed religion excludes the performance of military service since the values of this religion stand in stark contradiction to the very essence of the duties of a professional soldier – it cannot be expected that the regulations at work will contribute to an automatic and free departure from military service. Such a solution would, in turn, remain in contradistinction to the important public interest connected with the security of the State. The problem of the clash of interests existing here should be, however, as has been indicated before, resolved on a different plane than the protection of the freedom of religion. What is in the foreground here is the principle of equal treatment of all soldiers being in the same legal position, which means irrespective of particular motives for the intention to leave the army. Therefore, only within such a context, rather than in connection with the question about the limits of religious freedom, can be properly evaluated the public interest that comes into play here, as a justification of possible limitations and differentiation of the situation of individual categories of soldiers”* [13].

At stake in the case was the then requirement of repayment of costs prior to the dissolution of the contract, without the possibility to do so afterwards and in instalments.

It is presently not clear what changes have been implemented, and if those were included in the law on military service of regular soldiers from 20 October 2003.

### Draft evasion and desertion

Refusal to perform military service or to carry out a task inherent in such service is punishable by 6 months' to 5 years' imprisonment – 3 to years' in wartime (Criminal Code, art. 305) [14].

No information on practice is available.

### Notes

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- [13] Judgement of the Constitutional Tribunal of 16 February 1999, Journal of Laws of 1998 no. 20 item 182, quoted from Fifth Periodic Report, CCPR/C/POL/2004/5, <http://daccess-ods.un.org/access.nsf/Get?Open&DS=CCPR/C/POL/2004/5&Lang=E>, accessed 13 May 2008
- [14] One World Association 1998. Corrections to the draft report, 20 February 1998.

# Portugal

## Issues

- Portugal does not recognise the right to conscientious objection for professional soldiers.

## Military recruitment

### Conscription

With Law 174/1999 (Law on Military Service, Lei do Serviço Militar) [1] Portugal abolished conscription and started a transformation process into fully professional armed forces. The last conscripts were called up for military service in 2004. Since November 2004, the armed forces consist of professional soldiers only. In fact, conscription is presently not enforced.

However, according to Article 11 of Law 174/1999, male Portuguese citizens have to attend a National Defence Day (Dia da Defesa Nacional), which is aimed at giving information on national defence and the role of the Armed Forces [2].

### Professional soldiers

Recruitment is regulated by Law 174/1999. Only Portuguese citizens who are at least 18 years old can apply to join the Armed Forces, either for a contract service or a voluntary military service. Contract service lasts for an initial period from two to six years, and can be extended to a maximum of 20 years of service (Article 28). Voluntary military service lasts 12 months (Article 31).

### Conscientious objection

#### Conscientious objection for conscripts

The right to conscientious objection was legally recognised in 1976. Legal provisions on conscientious objection were laid down in Law 7/1992, last changed with Law 138/1999 in August 1999 [3].

This law only applies to conscripts. CO applications could only be made before starting military service. Article 13 practically excludes professional soldiers from claiming the right to conscientious objection. According to this Article, the right to conscientious objection does not apply to those whose work includes bearing arms, have a licence to do so or whose work is connected with the manufacture of arms and armaments.

An application can be made using a simple form, which can be downloaded from the internet [4]. While conscription is not being enforced, an application for conscientious objection frees an objector from any military obligation, including the National Defence Day [5].

#### Conscientious objection for professional soldiers

There are no legal provisions for the right to conscientious objection for professional soldiers.

The rules for leaving the Armed Forces prematurely are presently not known.

### Draft evasion and desertion

.44. Articles 72-74 of the Military Penal Code deal with desertion, and the potential punishments. According to



article 74, desertion can be punished with prison from one to four years in times of peace, and from two to eight years in times of war. The punishment for officers is higher [6].

No information on practice is available.

## Notes

- [1] <http://www.mdn.gov.pt/NR/rdonlyres/EE0812AB-BC25-4A4D-9270-211E9AFF60CF/0/LSM.pdf>, accessed 25 April 2008
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# Romania

## Issues

- Romania abolished conscription in 2007. It is unclear whether the right to conscientious objection is recognised for professional soldiers.
- With the change of the constitution to abolish conscription, also the provisions for a substitute service for conscientious objectors have been abolished.

## Military recruitment

### Conscription

Romania abolished conscription in peacetime in 2007, based on law 395/2005 “*regarding the suspension of conscription during peacetime and the transition to a voluntary military service*” [1].

However, conscription can be easily introduced in times of war or an emergency. According to Article 55 of the Romanian constitution, “*citizens have the right and duty to defend Romania*” and “*may be conscripted from the age of 20 up to the age of 35*” [2].

According to the law, Romanian male citizens still have to report to the military authorities upon turning 18, to register and for the establishment of their abilities in case of the reintroduction of conscription as outlined in Article 3 of the law.

### Professional soldiers

The Romanian Armed Forces recruit professional soldiers based on Law 384/2006 “*on the status of voluntary soldiers*”. According to the law, volunteers initially sign a contract for up to four years, which can be extended by two or three years up to a maximum age of 40 [3].

## Conscientious objection

### Conscientious objection for conscripts

Until 2007, when Romania still had conscription in peacetime, Romania recognised the right to conscientious objection for conscripts. The right to conscientious objection was regulated by the 1996 Law on the Preparation of the Population for Defence (1996/46) and the 1997 Government Decree 'As regards the way of execution of the alternative service law according to the provision of Article 4 from Law 46/1996' (618/1997).

Only religious grounds for conscientious objection were legally recognised. According to Article 4 of the 1996 Law: “*Citizens who, for religious reasons, refuse military service under arms shall perform alternative utilitarian service, according to present law*”. The grounds for recognition were further restricted by Article 6.3 of the 1997 Government Decree, which stated that the right to conscientious objection only applies to “*members of religious groups that do not allow the discharge of military service under arms*”.

The religious groups concerned were named in a list that is made by the State Secretariat for Religious Denominations. The list includes the Pentecostals, Adventists, Baptists, Seventh Day Adventists and Jehovah's Witnesses. There also was a strict time limit for submitting CO



applications. Applications had to be made within 15 days of receiving call-up papers. Applications could thus not be made by serving conscripts or reservists [4].

With the revision of the constitution by Law 429/2003 the relevant article dealing with substitute service has been abolished.

### Conscientious objection for professional soldiers

It is not clear what regulations apply for the conscientious objection of voluntary soldiers. Before conscription was suspended in peacetime, serving conscripts, professional soldiers, and reservists had no right to conscientious objection.

According to the Romanian Embassy London, a “*voluntary soldier can cancel the contract at any time by resignation*”.

However, if a soldier has attended professional training programmes that lasted more than 90 days, and they wish to leave before two years after completion of the training, then the costs of these trainings have to be paid back [5] – making it almost impossible to leave prematurely.

## Draft evasion and desertion

### penalties

The offence of desertion as stipulated and sanctioned in Article 332 of the Penal Code is applicable to any member of the armed forces absent without any reason from his military unit or duty for more than three days. The action is punished with prison from 1 to 7 years (Law 80/1995 on the Military Personnel Status). The commander of the specific military unit must initiate penal action against an individual. However, penalties depend on the circumstances (alleviating or aggravating). In the case of desertion, if the absence is strongly motivated by objective reasons, this can be used to defend the accused [6].

## Notes

- [1] Embassy of Romania: Response to War Resisters' International, 28 February 2008, TL-1078
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- [3] Ministry of Defence of Romania, Press Release 497, “Opportunities for the military profession”, 29 November 2007, <http://english.mapn.ro/cpresa/nou.php?id=1769>
- [4] Quaker Council for European Affairs, The Right to Conscientious Objection in Europe, Quaker Council for European Affairs, 2005, <http://www.quaker.org/qcea/coreport/index.html>
- [5] Embassy of Romania: Response to War Resisters' International, 28 February 2008, TL-1078
- [6] Home Office: Romania. Country Report, 2004. Country Information and Policy Unit, Immigration and Nationality Directorate, [http://www.ecoi.net/file\\_upload/panja1\\_02784rom.pdf](http://www.ecoi.net/file_upload/panja1_02784rom.pdf)

# Slovakia

## Issues

- Slovakia does not recognise the right to conscientious objection for professional soldiers.
- In case of the reintroduction of conscription, there will be a right to conscientious objection. Details of the provisions are however not known.

## Military recruitment

### Conscription

Slovakia abolished conscription in 2005. However, Article 25 paragraph 1 of the constitution still reads “*The defence of the Slovak Republic is a matter of honor for each citizen*” [1]. Presently, Slovakia maintains fully voluntary Armed Forces. However, Law No. 570/2005 Coll. on “*National Service and on Change and Amendment of Some Acts*” [2] regulates conscription in times of crisis or war. The detailed regulations are not known.

### Professional soldiers

The service of professional soldiers is regulated in Law 346/2005 on “*State Service of Professional Soldiers of Armed Forces of the Slovak Republic and on Change and Amendment of Some Acts*” [3]. According to Article 13 of this law, Slovak citizens can apply to join the Slovak Armed Forces once they are 18 years old. A contract will first include a preparatory service, which is followed by a time based contract according to Article 20 (Temporary State Service). The service time is usually from three to six years, but can be extended (Article 21).

## Conscientious objection

### Conscientious objection for conscripts

The constitution recognises the right to conscientious objection in Article 25 paragraph 2: “*No one must be forced to perform military service if this runs counter to his conscience or religious belief. The details will be specified in a law*” [4].

Should conscription be introduced in times of crisis or war (according to Law 570/2005), then Law No. 569/2005 Coll. on “*Alternative Service at the Time of War and State of War*” [5] regulates the right to conscientious objection, and the duty to perform a substitute service.

The law regulates the substitute service which a registered citizen or soldier in reserve is obliged to perform in the time of war and state of war instead of extraordinary military services, the procedure for refusal to perform the extraordinary military service, the records of registered citizens and soldiers in reserve obliged to perform substitute service, conscription of registered citizens and soldiers in reserve obliged to perform substitute service, and performance of substitute service [6].

### Conscientious objection for professional soldiers

The Slovak Republic does not recognise the right to conscientious objection for soldiers who joined the Armed Forces voluntarily.

.46. According to Article 69 of Law 346/2005, during



preparatory state service “*the service relationship shall also end on the base of an application by the professional soldiers*”.

According to Article 70 paragraph 2, a professional soldier can also apply “*for termination of service relationship*” before the end of the term. According to Article 72, a decision on dismissal has to be taken “*without delay*”, but more specifically within two month of the day the reason for dismissal has been established, or within one year the reason occurred.

It is clear that this does not constitute a right to leave the Armed Forces prematurely. Also, reasons of conscience are not mentioned anywhere as a reason for premature dismissal.

## Draft evasion and desertion

No information on practice is available.

## Notes

- [1] Constitution of the Slovak Republic, <http://www.slovensko.com/docs/const/>, accessed 10 April 2008
- [2] Law No. 570/2005 Coll. on National Service and on Change and Amendment of Some Acts, [http://www.mosr.sk/legislativa/zakony/zakon05\\_570.pdf](http://www.mosr.sk/legislativa/zakony/zakon05_570.pdf), accessed 10 April 2008
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- [4] Constitution of the Slovak Republic, <http://www.slovensko.com/docs/const/>, accessed 10 April 2008
- [5] Law No. 569/2005 Coll. on Alternative Service at the Time of War and State of War, [http://www.mosr.sk/legislativa/zakony/zakon05\\_569.pdf](http://www.mosr.sk/legislativa/zakony/zakon05_569.pdf), accessed 10 April 2008
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# Slovenia

## Issues

- The right to conscientious objection is not recognised in times of war.
- It is unclear whether Slovenia recognises the right to conscientious objection for professional soldiers.

## Military recruitment

### Conscription

According to Article 123 of the constitution, “*participation in the national defence is compulsory for citizens within the limits and in the manner provided by law*” [1].

Slovenia suspended conscription in 2003, nine months earlier than originally planned [2]. Conscription is only suspended in peacetime [3]. It seems that male Slovenian citizens still are automatically registered for military duty, according to the Military Duty Act, and a “familiarisation briefing” is supposed to give information on military duties in peacetime and in the immediate threat of war. In addition, such a familiarisation briefing includes information on the possibility of voluntary training in the SAF, joining the contract reserve component, and of a career path in the SAF. According to the report of the Ministry of Defence, in 2005 “*out of a total 12 720 candidates born in 1987, 10 353, or 81.4 percent showed up for the familiarisation briefing; the rest of them were notified by mail*” [4].

### Professional soldiers

Slovenia expects to have a professional force of up to 8 500 men by 2010 [5]. As part of its recruitment efforts, the Slovenian Armed Forces offer a three-month voluntary military service for men and women, which is available since January 2004 [6].

## Conscientious objection

### Conscientious objection for conscripts

Article 46 of the constitution of the Republic of Slovenia guarantees the right to conscientious objection. It reads: “*Conscientious objection shall be permissible in cases provided by law where this does not limit the rights and freedoms of others.*” [7]

Article 123 paragraph 2 of the constitution says: “*Citizens who for their religious, philosophical or humanitarian convictions are not willing to perform military duties, must be given the opportunity to participate in the national defence in some other manner.*” [8]

As conscription is presently suspended, the right to conscientious objection for conscripts is only relevant in case conscription would again be enforced.

The right to conscientious objection was legally recognised since Slovenia became an independent country in 1992. Since 1995 the length of substitute service was in fact the same as military service (7 months). Slovenia was thus one of the few European countries where substitute service and military service had the same duration. Slovenian CO legislation was liberal in other respects as well, as there were no time limits for submitting CO applications and applications could be made by both serving conscripts and reservists [9]. However, there are no separate legal



provisions on the right to conscientious objection in wartime [10].

### Conscientious objection for professional soldiers

It is not clear if there are legal provisions for conscientious objection for professional soldiers. The constitution does not limit the right to conscientious objection to conscripts only. A study published by the Council of Europe in 2001 suggests that professional soldiers may apply for CO status [11]. No further information is available and it remains unclear if there is an application procedure for professional soldiers who wish to be discharged from the armed forces for reasons of conscientious objection.

When conscription was enforced, the right to conscientious objection was legally regulated by the Military Service Act. This law actually only applied to conscripts so it provides no legal basis for the recognition of the right to conscientious objection for professional soldiers.

The rules for leaving the Armed Forces prematurely are presently not known.

### Draft evasion and desertion

No information available.

## Notes

- [1] Constitution of the Republic of Slovenia, <http://www.varuh-rs.si/index.php?id=113&L=6#c824>, accessed 28 April 2008
- [2] Slovenia Abolishes the Draft, Transitions Online, 16 September 2003, <http://tinyurl.com/5zbloy>, accessed 28 April 2008
- [3] Government Communication Office: GOVERNMENT SESSION: New Regulations for the Professionalisation of the Armed Forces, 28.06.2002, <http://tinyurl.com/5k7z2s>, accessed 28 April 2008
- [4] Ministry of Defence: Annual Report of the MoD for 2005, [http://www.mors.si/fileadmin/mors/pdf/dokumenti/annual\\_report\\_2005.pdf](http://www.mors.si/fileadmin/mors/pdf/dokumenti/annual_report_2005.pdf), accessed 28 April 2008
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- [7] Constitution of the Republic of Slovenia, <http://www.varuh-rs.si/index.php?id=113&L=6#c824>, accessed 28 April 2008
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- [9] The Right to Conscientious Objection in Europe, Quaker Council for European Affairs, 2005, <http://wri-irg.org/co/rtba/slovenia.htm>, accessed 28 April 2008
- [10] War Resisters' International: Refusing to bear arms. Country report Slovenia, 1998, <http://wri-irg.org/co/rtba/archive/slovenia.htm>, accessed 28 April 2008
- [11] Exercise of the right of conscientious objection to military service in Council of Europe member states, Report

Committee on Legal Affairs and Human Rights, Doc. 8809 (Revised), 4 May 2001 (<http://assembly.coe.int/WorkingDocs/doc01/EDOC8809.htm>). The report states, referring to the recognition of the right to conscientious objection for permanent members of the armed forces, "Following Slovenia's example, this possibility should be extended to permanent members of the armed forces". This conclusion is based on information provided by the Slovenian government. As the text of the government response is not publicly available, it is not known which information was exactly submitted, and if the conclusion in the report may result from a misinterpretation of the information provided by the Slovenian government.

## Spain

### Issues

- Conscription is suspended. The right to conscientious objection is not recognised for professional soldiers.

### Military recruitment

#### Conscription

Conscription is allowed by Article 30 of the Spanish constitution from 1978, which reads:

*"1. Citizens have the right and the duty to defend Spain.  
2. The law shall determine the military obligations of Spaniards ... with all due guarantees ..."* [1].

However, with Law 17/1999, the Armed Forces Personnel (Regulations) Act (Régimen del Personal de las Fuerzas Armadas) [2], the Spanish government in fact suspended conscription, originally aimed at ending conscription in 2003, but later brought it forward to 2001 [3]. Since 2002 the armed forces consist of professional soldiers only [4]. Still, conscription is only suspended. Article 4 paragraph 2 of Law 17/1999 allows for the call-up of all forms of reservists if the needs of the national defence can not be met by professional soldiers only. The call-up of "compulsory reservists" (according to Article 178 possibly all Spanish citizens between 19-25 years), which basically would reintroduce conscription, requires the approval of congress. According to the law, this possibility is not limited to an emergency or war.

#### Professional soldiers

Law 37/2007 "about the military career" ('de la carrera militar') [5] deals with the service of professional soldiers. Article 3 of the law provides for Spanish citizens and also for legally resident foreigners to join the Armed Forces, albeit under different conditions.

The Spanish Armed Forces maintain a joint recruitment website at <http://www.soldados.com/>, which also announces open positions for foreigners.

#### Conscientious objection

##### Conscientious objection for conscripts

The right to conscientious objection for conscripts is enshrined in Article 30 of the Spanish constitution. Paragraph 2 of this article requires that military obligations are only introduced "*with all due guarantees, conscientious objection as well as other grounds for exemption from compulsory military service; it may also, when appropriate, impose a community service in place of military service*" [6].

Only one year before the law to suspend conscription was passed, the Spanish government passed a new law on conscientious objection (Ley 22/1998, de 6 de julio, reguladora de la Objeción de Conciencia y de la Prestación Social Sustitutoria) [7]. However, with the suspension of conscription, it seems that this law is no longer in force. Article 180 of Law 17/1999 regulates the right to conscientious objection in the case of a call-up of compulsory reservists. According to this article, compulsory reservists can declare their conscientious



.48. Action of Spanish total objectors Photo: KEM-MOC



objection to serving in the Armed Forces or other services in which they would need to bear arms. According to this article, “*this declaration, made by the interested party, will not require any other approval*” [8].

Declared conscientious objectors can then only be assigned to services of general interest in which they do not have to bear arms. According to article 183 of the same law, conscientious objectors then have the same status as volunteers in the organisation, and do not have any military status.

However, from the law it is unclear whether a declaration for conscientious objection can only be made before the incorporation of a compulsory reservist into the Armed Forces, or whether such a declaration is also possible during service.

### Conscientious objection for professional soldiers

Law 17/1999 does not include any regulation for conscientious objection of any soldier other than compulsory reservists. This means that professional soldiers and voluntary reservists do not have the right to conscientious objection according to Spanish law. Article 117 paragraph 2 of Law 39/2007 has a provision for soldiers in a professional career for leaving the Armed Forces prematurely. According to this article, six months notice have to be given, and a compensation for training expenses has to be paid [9].

Article 118 makes provisions for professional soldiers on a temporary contract. It allows for premature resignation within the first three years of a contract under “*extraordinary circumstances*” [10].

None of this constitutes a right to conscientious objection.

### Draft evasion and desertion

#### penalties

According to Article 102 of the Military Penal Code, disobeying orders can be punished with imprisonment from three months to two years.

If the disobedience persists and amounts to a non-fulfilment of military obligations, it can be punished with imprisonment from two years and four months up to six years [11].

Desertion is punishable from two years and four months up to six years of prison, and if committed during times of war with six to 15 years of imprisonment [12].

### Practice

No information is available on practice.

### Notes

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# Sweden

## Issues

- Sweden does not recognise the right to conscientious objection for professional soldiers.

## Military recruitment

Swedish defence policy is based on the concept of total defence, which means that all inhabitants are obliged to participate in national defence in case of emergency or war. Total defence consists of military service, civil defence service and general service. Conscription only takes place into military service and civil defence service. General service does not involve any form of training, but means that one may be called up for service in time of war or emergency.

## Conscription

Presently, a discussion is under way to abolish conscription in peacetime. In December 2007, the government announced the creation of a parliamentary committee to decide on how conscription can be abolished. The committee will complete its work by February 2009, with the changes in the law due to take effect in 2010 [1]. According to the 1994 Swedish Act on Defence (*Lag om totalförsvarsplikt*) [2], all Swedish citizens (both men and women) and all foreigners living in Sweden are liable for general service between the ages of 16 and 70. General service does not involve any form of training, and is an obligation which may only be imposed during "*periods of intensified preparedness*".

All men between the ages of 18 and 47 are liable for military service (Article 5 Swedish Act on Defence). Conscription for military service, however, applies essentially only to men between the ages of 18 and 24 and it is also open to women on a voluntary basis [3].

Most conscripts undergo military service of 2 periods totalling around 11 months. The conscript may then apply to undergo a third period of training concentrating on international missions.

The conscripts who are accepted for the third period are employed on the basis of a contract with a salary instead of a daily conscription allowance. The employee under contract is on standby, together with the unit, for possible interventions or for carrying out a foreign mission [4]. In the current system, 8 000 people out of an annual cohort of 120 000 Swedish citizens are called in to carry out military service [5].

## Professional soldiers

According to the website of the Swedish Armed Forces, one of the main tasks of the Armed Forces is to train soldiers for international missions. International service is not something a conscript can be forced to do during National Service, but is subject to voluntary choice after National Service is completed [6].

The Swedish Army also has its own recruitment website (<http://forsvar.fileflat.com/english/>), especially aimed at attracting officers.



## Conscientious objection

### Conscientious objection for conscripts

The right to conscientious objection has been legally recognised since 1920. Its present legal basis is the 1994 Act on Defence, which replaced the 1966 Non-Military Service Act.

According to the law CO status is to be granted if someone has "*such a personal serious conviction about the use of weapons against another person so that this conviction is inconsistent with a combatant role*" (Chapter 3 Article 16)

According to the government there is no separate legal provision for the right to conscientious objection in wartime.

With the discussion about an end of conscription, and the low rate of call-up for military service, the numbers of conscientious objectors went down. While more than 2 000 people applied for conscientious objection every year until the mid-1990s, in 2005 and 2006 there were only 160 and 128 CO applications [7]. The institutions providing non-military basic training for conscientious objectors in Sweden are closing down due to lack of funds. As a consequence, conscientious objectors in Sweden cannot get basic training and do a substitute service, and will be placed in the "training reserve".

### Conscientious objection for professional soldiers

Sweden does not recognise the right to conscientious objection for professional soldiers [8].

The rules for leaving the Armed Forces prematurely are presently not known.

### Draft evasion and desertion

Draft evasion and desertion are punishable under the 1994 Act on Defence and the 1995 Ordinance on Discipline of the Total Defence System. The same punishments are applicable in all forms of service.

Failure to appear at medical examination is punishable by a fine. Failing to respond to a call-up for service is

punishable by a fine or up to a years' imprisonment. If the misdeed is considered a serious crime imprisonment can last from six months to four years (Total Defence Service Act, Chapter 10).

A number of people are still jailed every year for refusing to carry out compulsory military service [9]. Some 41 men were jailed in 2006 for refusing to attend the armed forces recruitment days, failing to turn up to military service or deserting [10].

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# Turkey

## Issues

- Turkey maintains conscription.
- The right to conscientious objection is not recognised.
- In several cases, conscientious objectors faced repeated imprisonment.

## Military recruitment

### Conscription

According to art. 72 of the 1982 constitution – which was passed after the 1980 military coup – all Turkish citizens must perform a so called 'national service': "*National service is the right and duty of every Turk. The manner in which this service shall be performed, or considered as performed, either in the Armed Forces or in public service shall be regulated by law.*" [1]

This means the Turkish Constitution leaves it up to the legislator how 'national service' is carried out. In theory, it can be non-military service.

In Turkish law 'national service' is prescribed by the Law on Military Service (Law No. 1111) [2] and the Law for Reserve Officers and Reserve Military Servants (Law No. 1076). Art. 1 of the Law on Military Service specifies that all males who are citizens of the Turkish Republic, must receive armed military training, irrespective of their age. Law No. 1111 was enacted in 1927 and states that 'fatherland service' is compulsory military service, so refusal to perform 'fatherland service' is a crime punishable by the military penal code.

Law 1111 was changed in 1992 when Law 3802 came into force on 1 June 1992. Amendments to the law on 19 February 1994 created further changes.

The length of military service is 15 months. University graduates may perform 6 months' military service, or 12 months if they are trained to become reserve officers. Certain professional groups (doctors, teachers, civil servants) may be permitted to perform special service. However, this special services is a service within the Armed Forces, and with uniform. Usually, those serving in special service are not sent on combat operations. All men between the ages of 19 and 40 are liable for military service. Men who have not fulfilled their military service by the age of 40 and who have not been legally exempt from service, may still be called up after the age of 40 [3].

Police officers are exempted from military service. Under certain condition, a person whose brother died during his military service might be exempted from military service. Students may postpone their military service up to the age of 29, or up to the age of 35 in the case of postgraduate students.

After completion of military service, reservist duties apply up to the age of 40.

Different military service regulations apply for Turkish citizens who are living abroad. They can postpone their service up to the age of 38, for a period of three years at a time. Turkish citizens living abroad may also partially buy



themselves out of military service by paying a sum of 5 112 Euro. However, in this case they still need to perform one month of military service [4].

### Professional soldiers

Although the Turkish Embassy wrote to WRI as late as December 2007 that "professional soldiers is not in the military practice of Turkey" [5], two Turkish Armed Forces contributors to a NATO study wrote in October 2007 that service of professional soldiers in Turkey is governed by the Turkish Armed Forces Personnel Law No. 926 [6].

Currently, women can serve as officers in the Turkish Armed Forces, but not as non-commissioned officers or enlisted personnel. After graduating from a military college or having a 4-year degree from a civilian university as a military student, officers have 15 years of obligatory service. Similar to officers, once on the job, non-commissioned officers have a 15-year obligatory service in the Turkish Armed Forces.

The specialists are professional enlisted leaders. They are employed at certain positions requiring continuity such as Squad Leader, Tank Driver, Tank Gunner, Repairer, Artillery Sergeant, etc. These specialists are selected from among qualified conscripts who have finished their military service. Their first contract is for 2 years, and later contracts may be between 1 to 5 years depending on the qualification of the person, his willingness, and the requirements of the service. They can serve until the age of 45 when they retire with pension pay and benefits [7]. DefenseNews reported in May 2008 that the Turkish army has stopped assigning formerly conscripted reserve officers to special commando units, and that "*professional soldiers, including the Special Forces Command, will become the backbone of the Turkish military's fight against separatist Kurds*" [8]. According to the same article, "*by the end of next year [2009 – WRI] no conscript soldiers will be involved in anti-terrorism operations in units on both sides of Turkey's border with Iraq, where the military is fighting the outlawed Kurdistan Workers Party (PKK).*" Presently, the commando units number about 30 000 soldiers.

According to Eurasia Daily Monitor, about 100 000 of the 600 000 strong Turkish Armed Forces are professional soldiers. Even though it remains a predominantly conscript force, in recent years the Turkish military has increased the numbers of its full-time private soldiers and non-commissioned officers (NCOs). It appears to have had little difficulty in attracting recruits. In 2007, 25 084 Turks applied for positions as full-time "specialist NCOs" in the Turkish Land Forces, of whom only 1 540 were eventually accepted. Another 3 018 specialist NCOs are expected to be enrolled in 2008. Salaries are good by

Turkish standards at around US\$1 000 a month net, approximately the same as a mid-level civil servant, although fringe benefits can take the total to over US\$1 500, which is almost five times the current minimum wage [9].

These new developments are based on a resolution adopted at the beginning of May 2008 [10], although it is unclear which authority passed this resolution.

## Conscientious objection

### Conscientious objection for conscripts

Turkey does not recognise the right to conscientious objection for conscripts. Article 72 of the Turkish constitution states: “*National service is the right and duty of every Turk. The manner in which this service shall be performed, or considered as performed, either in the Armed Forces or in public service, shall be regulated by law*” [11]. This in principle would allow for a non-military alternative. However, Turkish law does not provide for this.

In the past, the Turkish government never considered introducing legislation on conscientious objection. A brochure published by the Armed Forces in 1999 in fact states: “*In our laws there are no provisions on exemption from military service for reasons of conscience. This is because of the pressing need for security, caused by the strategic geographical position of our country and the circumstances we find ourselves in. As long as the factors threatening the internal and external security of Turkey do not change, it is considered to be impossible to introduce the concept of 'conscientious objection' into our legislation*” [12].

In fact, article 45 of the Turkish Military Penal Code explicitly states: “*Individuals may not evade military service, and penalties may not be revoked, for religious or moral reasons.*”

Following the judgement of the European Court of Human Rights in the case of Turkish conscientious objector Osman Murat Ülke [13] in January 2006 [14], the Turkish government declared at the Council of Europe that a law solving the problems would be in preparation [15]. However, so far the Turkish government failed to provide any more details, and it can be doubted that the law will implement the right to conscientious objection.

Also, Osman Murat Ülke's legal situation has not changed, and he is still considered a deserter and has an outstanding arrest warrant. But the Turkish government did not appeal against the ECHR judgement, and also paid the compensation of 11 000 Euro to Osman Murat Ülke.

About 60 other declared conscientious objectors are in a similar situation, either after spending some time in prison or after a public declaration of conscientious objection, and ignoring a call-up.

In May 2008, the United Nations Working Group on Arbitrary Detention gave an opinion on the case of Halil Savda [16], who has been imprisoned and sentenced repeatedly and is presently serving a sentence of 15 months. The Working Group came to the following conclusion: “*The deprivation of liberty of Mr. Halil Savda during the periods between 16 and 28 December 2004, between 7 December 2006 and 2 February 2007, as well as between 5 February and 28 July 2007 was arbitrary. His deprivation of liberty since 27 March 2008 is also arbitrary, being in contravention*

*of articles 9 and 18 of the Universal Declaration of Human Rights and of articles 9 and 18 of the International Covenant on Civil and Political Rights from which the Republic of Turkey is a State Party, falling under category II of the categories applicable to the consideration of cases submitted to the Working Group. In addition, it also falls under category III of the categories applied by the Working Group, as far as Mr. Savda would have to serve his prison term following his conviction by judgement No. 2007/742-396*” [17].

### Conscientious objection for professional soldiers

As Turkey does not even recognise the right to conscientious objection for conscripts, it also does not allow its professional soldiers to claim conscientious objector status.

Details of Law 926 governing the service of professional soldiers, and how they would be able to leave the Armed Forces prematurely, are not known.

## Draft evasion and desertion

### penalties

Draft evasion and desertion are punishable under the Law on Military Service and the Turkish Military Penal Code. Turkish law actually makes a distinction between evasion of military registration, evasion of medical examination, evasion of enlistment and desertion.

According to Article 63 of the Penal Code, draft evasion is punishable (in peacetime) by imprisonment of:

- One month for those who report themselves within seven days;
- Three months for those who are arrested within seven days;
- Between three months and one year for those who report themselves within three months;
- Between four months and 18 months for those who are arrested within three months;
- Between four months and two years for those who report themselves after three months;
- Between six months and three years for those who are arrested after three months [18];
- Up to ten years' imprisonment in the case of aggravating circumstances, such as self-inflicted injuries, using false documents (Articles 79-81 of the Penal Code).

Desertion is punishable under Articles 66-68 of the Penal Code with up to three years' imprisonment. Deserters who have fled abroad may be sentenced to up to five years' imprisonment, and up to ten years in case of aggravating circumstances (Article 67) [19].

### practice

Since the 1990s, there are a small number of COs who publicly state that they refuse to perform military service for non-religious, pacifist reasons. The Turkish language actually makes a distinction between conscientious objectors (*vicdani retci*) and draft evaders (*asker kacagi*). The first known Turkish COs were Tayfun Gonul and Vedat Zencir, who declared their objections in 1990. Osman Murat Ülke, a Turkish citizen who grew up in Germany and returned to Turkey, became the first famous

conscientious objector, and the first to go to prison for his conscientious objection. In 1995 he publicly declared that he was a conscientious objector and refused to perform military service. Since then, dozens of others have followed. Between 1995 and 2007 approx. 60 men have openly declared themselves as conscientious objectors, mostly by making a public statement or giving media interviews about their reasons for refusing military service. COs may be punished under Article 63 of the Turkish Military Penal Code for avoiding military service. COs who attract media attention or publish articles about their refusal to perform military service may also be punished to between six months' and two years' imprisonment under Article 318 of the Turkish Criminal Code for "*alienating the people from the armed forces*". In 2004, a new Criminal Code was introduced (Law No 5237). Under the previous Criminal Code, "*alienating people from the armed forces*" was punishable under Article 155 with a similar term of imprisonment [20].

In the past, there have been several cases of COs who have been sentenced under these two articles. The most well known case was Osman Murat Ülke, who was arrested in October 1996 and during the following years spent a total of 30 months in prison on several charges of disobeying orders. In some other cases, COs have been acquitted of the charges by military court.

In recent years, it appears that the Turkish authorities have refrained from harsh punishment of COs, albeit with some exceptions, such as the case of Halil Savda. This may have been caused by the fact that previous trials of COs attracted considerable (international) attention and the Turkish authorities may wish to avoid further attention for the issue of conscientious objection.

However, as long as there are no legal provisions for their right to conscientious objection, the legal position of COs remains vulnerable and they may still be subject to criminal prosecution.

Monitoring of draft evasion and desertion is strict [21].

The registration of conscripts is, in fact, one of the most effective government registrations in Turkey. Draft evaders and deserters may be arrested after routine checks such as traffic control. They are not able to leave Turkey, as the fact that they are evading military service would be visible to any customs and immigration officer or police officer. In addition, police and gendarma authorities are responsible for finding draft evaders and deserters and may conduct house searches and arrest them.

There are no detailed figures available on the scale of prosecution of draft evaders and deserters, but military courts are believed to deal with approx. 60 000 cases per year that are connected to draft evasion. About half of these cases reportedly deal with cases of conscripts going absent for less than a week, mostly conscripts who do not report themselves back in time after a period of leave. Prison sentences of less than one year's imprisonment for evasion of registration/examination for enlistment or for desertion are generally commuted into fines, which must be paid after the end of military service. Sentences for

**.54.** draft evasion for periods longer than three months, when

the draft evader has not reported himself voluntarily, may not be commuted into a fine. Suspended sentences may not be imposed for evasion of registration/examination or enlistment or for desertion.

Those who are convicted for draft evasion must still complete their term of military service. Repeated offenders may thus be sentenced again. Prison sentences for repeated offenders may not be commuted into fines. Those convicted to less than six months' imprisonment usually serve their prison sentence in military prisons; those convicted to over six months' imprisonment are imprisoned in regular prisons. After serving their prison sentence, they still need to perform the remaining term of their military service [22].

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Action in support of then imprisoned Turkish conscientious objector Mehmet Tarhan, Istanbul, 25 April 2005

Photo: savaskarsitlari.org

# United Kingdom

## Issues

- The regulations governing the right to conscientious objection are not in the public domain, and information is difficult to obtain by members of the public, and also by members of the Armed Forces.
- Decision making on an application for conscientious objection in the first instance is by the respective branch of the Armed Forces itself, and not by an independent body. Only the appeal body – the Advisory Committee on Conscientious Objectors – is an independent body.

## Military recruitment

### Conscription

Britain only had short periods of conscription. Conscription was originally introduced in 1916, but abolished in 1919. It was re-introduced in May 1939 and remained in force on a war-time footing until 1948. In that year, the National Service Act provided for conscription for five years with an option for renewal every five years. The provision was renewed in 1953, but before the next renewal in 1958, the government had announced in the 1957 annual Defence Review that it was to be legally phased out by the end of 1960. In the same review the governments' commitment to the 'British H-bomb' was announced, rendering large military forces an unnecessary expense. The last conscripts were discharged in 1963 [1].

### Professional soldiers

Recruitment to the UK's Armed Forces is voluntary. The regulations and terms of service differ considerably between the three different branches of the Armed Forces – the Army, Royal Navy, and Royal Air Force.

All three Armed Forces recruit from the age of 16 [2], the army more intensively than the other two, which generally prefer recruits with some qualifications or qualification potential. Unlike the other two Armed Forces, the army requires under-18s to serve a longer minimum term than adults, by not counting the period up to the 18th birthday as part of the minimum requirement. The Army also enlists more recruits in any year than the two other Armed Forces added together [3].

More reason for concern is that the Armed Forces target young people even below the age of 16 – and that goes down to 12 years “old”:

- According to a report of the National Audit Office, “the services also target marketing activity at young people before they become eligible to join the Armed Forces at 16 years old” [4].
- a special “Army Student Presentation Team” target young people aged 14–21 at schools, colleges and universities. The “SPT”, as it is called, promotes itself to schools with the argument that their “presentation also complements Key Stages 3 and 4 of the Citizenship element of the National Curriculum”.
- The Armed Forces maintain a special website – <http://www.mycamouflage.co.uk/> – targeted at 13–17



years old youth, which also offers a “members area”, featuring “games, videos and other cool features”. Young people who sign up for this site also “get ARMY magazine three times a year – packed with exciting articles on Army life, quizzes and competitions”.

- Cadet Forces: According to the official website, “there are currently 253 CCF contingents based in both state and independent schools and colleges throughout the UK” [5]. In addition, an even higher number of Sea Cadet Corps, Army Cadet Forces and Air Training Corps exist.

Situating recruiting offices in deprived areas indicates so-called ‘economic conscription’ policy of the armed forces. Serving personnel are severely restricted in their human rights, far beyond what could be deemed necessary. For the army, QR(Army) J5.581 states: “a. Regular service personnel are not to take any active part in the affairs of any political organisation, party or movement. They are not to participate in political marches or demonstrations.” [6]

## Conscientious objection

### Conscientious objection for conscripts

As the United Kingdom does not maintain conscription, there are no regulations for conscientious objection in case conscription should be introduced again. Historically, provision was always made for conscientious objection.

### Conscientious objection for professional soldiers

Each one of the three services has its own regulations governing the right to conscientious objection. These have so far not been in the public domain, and have only recently been obtained by War Resisters' International under the Freedom of Information Act 2000. These are:

- Instruction 006 – Retirement or Discharge on Grounds of Conscience for the Army, including the Territorial Army;
- AP3392 Vol 5. Leaflet 113, Procedure for Dealing with



Conscientious Objectors within the Royal Air Force for the Air Force;

- Personnel, Legal, Administrative and General Orders 0801, Application for Discharge on Grounds of Conscientious Objection for the Navy.

While the application procedure is similar for the three branches of the Armed Forces, there are also important differences.

Generally, an application has to be submitted to the Commanding Officer, together with written evidence to support the case (i.e. references). In case of religious conscientious objectors, a statement by a minister of the religion concerned should also be included.

It has to be pointed out that for all three services an application for discharge on grounds of conscience does not prevent deployment. During the time the application is being processed, the applicant remains a member of the Armed Forces with all duties this implies. There is no right to ask for service without arms during the processing of the CO application.

While the regulations for the army and the navy do allow for applications to be made at any time, the regulations for the Air Force state under paragraph 9:

*“Applications will not be considered from any applicant who is:*

- 1. Absent without leave or a deserter.*
- 2. The subject of outstanding disciplinary action.*
- 3. Undergoing a sentence of detention or imprisonment.*

*Until such time as the individual has returned to unit, any outstanding disciplinary action has been taken and any sentence imposed has been completed.”* [7]

According to the appeal court judgement Mohisin Khan v RAF, paragraph 9 has been added with the update of the regulations on 28 October 2003 [8].

### Practice

It is almost impossible to describe the practice in the last years – or even decades – as the entire system is almost unheard of. Until recently, the regulations governing the right to conscientious objection have not been in the public domain. In a 2005 report, Mark Stolwijk wrote, concerning the regulations for the army: *“The Ministry of Defence considers the Instruction as a confidential document and it is actually forbidden to publish the Instruction outside the army. There are believed to be similar instructions for the navy and the air force, but the content of these instructions is not known.”*

In August 2007, War Resisters' International submitted a request for information under the Freedom of Information Act 2000, and finally received the regulations for all three forces. As mentioned above, the rules and regulations governing this right are not easy to come by, making it difficult for serving personnel to claim this right. The term “conscientious objection” does not yield any results using the Ministry of Defence's search utility [9], nor is it included in the MoD's index [10].

It is therefore not surprising that not many serving soldiers or officers know about the existence of this right, and make use of it. This is contrary to United Nations Commissions on Human Rights resolution 1998/77, in which the Commission affirms *“the importance of the*

*availability of information about the right to conscientious objection to military service, and the means of acquiring conscientious objector status, to all persons affected by military service”* [11]. Until recently, the regulations have not even been available to organisations counselling conscientious objectors, such as At Ease.

The lack of access to and knowledge about the right to conscientious objection has also been an issue in the case of reservist Leading Aircraftsman Mohisin Khan, who went absent without leave when recalled for service. He claimed that he was not aware of the right to conscientious objection. In its judgement, the High Court says *“It is, however, true that the call-out materials in this case, like the 1997 Regulations, do not mention conscientious objection expressly. In that respect, it would seem that the information provided to the recalled reservist could be improved”* [12].

It is therefore no surprise that according to the information obtained by War Resisters' International, only six individuals (3 RAF personnel, 3 Navy personnel) have applied for discharge on the grounds of conscientious objection since 2000. Of these cases, five were successful (3 RAF personnel, 2 Navy personnel) [13]. War Resisters' International is also aware of the case of an Army Reserve Officer who applied for discharge as conscientious objector, but has then simply been discharged administratively, as if his application had been a matter of convenience rather than conscience [14].

It is also no surprise that the Advisory Committee on Conscientious Objectors has not convened since 2001, and only handled 36 appeals from 1970 to 2001 (in fact from 1970-1996 [15]).

### Draft evasion and desertion

#### penalties

Penalties for desertion and absence without leave and for other military related crimes are regulated in the Armed Forces Act 2006 [16].

According to section 8, desertion can be punished with life imprisonment if the aim was to avoid a period of active service, otherwise with no more than two years imprisonment.

Being absent without leave can also be punished with imprisonment of up to two years (section 9).

Disobedience to lawful commands can be punished with up to ten years imprisonment (section 12).

#### Practice

According to media reports, many soldiers are trying to get out of their service using a variety of means. John McDonnell, Labour MP, said that the numbers of British troops trying to absent themselves from service in Iraq were rising. According to him, a lot more seeking to avoid service, through different mechanisms [17].

According to military law expert Gilbert Blades, who represents soldiers at courts martial, the numbers leaving because of Iraq are often obscured as they were not counted as conscientious objectors [18].

Two high-profile cases of Iraq war resisters underline this point. Benjamin Griffin, a former SAS soldier, refused to

return to Iraq while on leave in March 2005 after three month of service in Baghdad. Unexpectedly, he was discharged from the army “with a glowing testimonial” [19]. Malcolm Kendall-Smith, a medical officer in the Royal Air Force, fared less well. He refused to serve in Iraq in July 2005, and was subsequently court-martialed, and sentenced to eight month imprisonment, plus a discharge from the Air Force.

While Kendall-Smith did not argue with conscientious objection [20], but on the grounds of the illegality of the war in Iraq, his case raises the issue of selective conscientious objection.

Taken together, the cases of Khan, Griffin and Kendall-Smith leave completely open the question whether the United Kingdom might formally recognise selective objection in the case of a member of the professional armed forces. Selective objection was sometimes recognised in implementing conscription legislation.

- [19] SAS man quits in protest at 'illegal' Iraq war, The Guardian, 13 March 2006, <http://www.guardian.co.uk/Iraq/Story/0,,1729553,00.html>, accessed 1 October 2008
- [20] RAF doctor jailed over Iraq refusal, The Guardian, 13 April 2006, <http://www.guardian.co.uk/Iraq/Story/0,,1753241,00.html>, accessed 1 October 2008

**Notes**

- [1] Peace Pledge Union 1996. Response to CONCODOC inquiry.
- [2] Royal Navy: Royal Navy Careers: Eligibility. <http://www.royal-navy.mod.uk/server/show/nav.6251>, accessed 1 October 2008, Royal Air Force: The Royal Air Force Terms of Service Regulations 2007, [http://www.opsi.gov.uk/si/si2007/uksi\\_20070650\\_en\\_1](http://www.opsi.gov.uk/si/si2007/uksi_20070650_en_1), accessed 2 October 2008, Army: Armed Forces Careers Office Form 5, March 2007
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- [4] National Audit Office, Ministry of Defence – Recruitment and Retention in the Armed Forces, 3 November 2006, [http://www.nao.org.uk/publications/nao\\_reports/05-06/05061633-1.pdf](http://www.nao.org.uk/publications/nao_reports/05-06/05061633-1.pdf)
- [5] <http://www.mod.uk/DefenceInternet/AboutDefence/WhatWeDo/ReserveForcesandCadets/DRFC/TheCombinedCadetForceAUNiqueEducationalPartnership.htm>
- [6] Queens Regulation (Army), J5.581a
- [7] AP3392 Vol 5, Leaflet 113
- [8] Mohisin Khan v RAF, [2004] EWHC (2230), paragraph 57, <http://www.hmcourts-service.gov.uk/judgmentsfiles/j2822/khan-v-raf.htm>, accessed 1 October 2008
- [9] Search performed on 1 October 2008
- [10] <http://www.mod.uk/DefenceInternet/AZIndex/AtozList.htm>, accessed 1 October 2008
- [11] United Nations, Commission on Human Rights, resolution 1998/77, Conscientious objection to military service, 22 April 1998
- [12] Mohisin Khan v RAF, [2004] EWHC (2230), paragraph 57, <http://www.hmcourts-service.gov.uk/judgmentsfiles/j2822/khan-v-raf.htm>
- [13] It is interesting that according to information obtained by David Gee in March 2007, from April 2001 to March 2006 there had been four successful applications, all from Air Force personnel, and none for the Navy or Army. These numbers do not add up.
- [14] Email Bill Hetherington, Peace Pledge Union, 2 October 2008
- [15] Email Bill Hetherington, Peace Pledge Union, 20 September 2007
- [16] Armed Forces Act 2006, [http://www.opsi.gov.uk/Acts/acts2006/ukpga\\_20060052\\_en\\_2#gp1-pt1-pb3-11g8](http://www.opsi.gov.uk/Acts/acts2006/ukpga_20060052_en_2#gp1-pt1-pb3-11g8), accessed 1 October 2008
- [17] At least 1,000 UK soldiers desert, BBC News, 28 May 2006, <http://news.bbc.co.uk/1/hi/uk/5024104.stm>, accessed 1 October 2008
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# TOBIAS PFLÜGER

## MEP

### COMMITTEES:

- Member in the Committee for Foreign Relations (AFET)
- Member in the Subcommittee for Security and Defence (SEDE), there co-ordinator of the Left Group (GUE/NGL)
- Substitute member in the Committee on Development (DEVE)

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- First vice president of the delegation for the relations to the Gulf states and to Yemen
- Substitute member of the delegation for the relations to Iran
- Member of the delegation for the relationship to the parliamentary assembly of NATO

### INTER-PARLIAMENTARY GROUPS:

- Co-president of the “Inter-group Peace Initiatives” (jointly with British Green MEP Caroline Lucas)

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