INTERNATIONAL FELLOWSHIP OF RECONCILIATION

Submission to the 115th Session of the Human Rights Committee

GREECE

(Military service, conscientious objection and related issues)

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Basic Information

POPULATION (November 2014, estimated[1]): 10,776,000

MILITARY RECRUITMENT: Obligatory for males
Length of service 9 months (up to 12 months in the navy and air force)

MINIMUM AGE[2]: 18,

CONSCIENTIOUS OBJECTION: Provisions first introduced 1997.
Alternative service currently 15 months.

MALES reaching "militarily significant age" in 2010 [3]: 52,754

ARMED FORCES: active strength, Nov. 2014:[4] 144,950
as a percentage of the number of men reaching "military age" 274.8%

MILITARY EXPENDITURE US $ equivalent, 2014[5] $5,585m
per capita $518
as % of GDP 2.2%

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1 Source: The Military Balance 2015 (International Institute of Strategic Studies, London), which bases its estimate on "demographic statistics taken from the US Census Bureau".

2 Source: Child Soldiers International (formerly Coalition to Stop the Use of Child Soldiers), Louder than words: an agenda for action to end state use of child soldiers London, September 2012.

3 Source: CIA World Factbook. . The CIA defines "militarily significant age" as 16, which is the lowest age of legal recruitment found anywhere in the world. Their latest estimate, dating from 2010, thus covers the cohort of young men born in 1994, ie aged 20 in 2014.

4 Source: The Military Balance 2015,.https://www.cia.gov/library/publications/the-world-factbook/index.html

5 Stockholm International Peace Research Institute (SIPRI), April 2015

Background: the issue in the Human Rights Committee

In its concluding observations on the Initial Report of Greece under the International Covenant on Civil and Political Rights (ICCPR), the Human Rights Committee expresses its concern "that the length of alternative service for conscientious objectors is much longer than military service, and that the assessment of applications for such service is solely under the control of the Ministry of Defence", and recommends "The State party should ensure that the length of service alternative to military service does not have a punitive character, and should consider placing the assessment of applications for conscientious objector status under the control of civilian authorities."[6]

Greece's response to this concluding observation, given in its Second Periodic Report, was as follows.

> "According to the legislation in force, those who are recognized as conscientious objectors shall be obliged to perform civilian service which is double the length of the military service. It is to be noted that, by virtue of a decision of the Minister of National Defense, conscientious objectors may be discharged even before the completion of the term of the civilian service. Currently, the duration of the civilian service, which has been fixed by ministerial decision, ranges from 5 to 15 months, while the duration of the military service ranges from 3 to 12 months. Thus, civilian service is, in most cases, only 3 months (25%) longer than military service.
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> "Civilian service is fulfilled under more favorable conditions than military service. This justifies the longer length of the civilian service, which is based on objective and reasonable criteria, is in accordance with the principle of proportional equality of rights and obligations and has no punitive character. The institution of civilian service should not be abused nor resorted to solely for opportunistic reasons, while the capacity of the military forces should be preserved.
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> "Conscientious objectors are recognized by decision of the Minister of National Defense following an opinion by a Special Committee, which examines whether interested persons fulfill the conditions set out in the law. It is to be noted that the majority of the members of the said Committee are non-military personnel. More specifically, the Committee is composed of two university professors, specialized in humanities, a member of the Legal Council of the State and two higher-ranking officers. Members are appointed by joint decision of the Ministers of Finance, National Defense, Education, Lifelong learning and Religious Affairs. The composition of the Committee guarantees its credibility and the fair treatment of all applicants."[7]

In the List of Issues for the Second Periodic Report, the Committee asked "In light of the Committee's previous concluding observations (CCPR/CO/83/GRC, para. 15), please clarify the maximum length of military, navy and air force service. Please respond to reports that in the majority of cases, the duration of civilian service is 6 months longer than military service. How does the State party ensure that the Special Committee works independently and that persons submitting applications on the grounds of conscientious objection have the right to appeal the Committee's decision? Please also clarify if and to what extent repeated punishment is inflicted by Greek military courts to conscientious objections for the same act of refusing the military service."[8]

Greece's reply was:

"Currently, the duration of the military service for the compulsorily enlisted personnel in the Army is 9 months. However it may be reduced to 8 or 6 months, provided that the conscript meets certain

6 CCPR/CO/83/GRC, 25th April 2005, para15.
7 CCPR/C/GRC/2, 26th February 2014, paras 140-142.
8 CCPR/C/GRC/Q/2, para 24.

social criteria. In the Navy and the Air Forces the duration of full military service is 12 months and of the reduced one is 9 or 6 months. Those who object to armed military service on ideological or religious grounds may apply to obtain the status of conscientious objectors. This means that they are bound to offer civilian social service, performed in services of the public sector. The duties of conscientious objectors entail offering community service in hospitals, nursing homes, public finance departments, Post Offices, etc. At present, the duration of civilian social service is 15 months (full service) and can be reduced to 12 or 9 months, in proportion to the categories of reduced armed service, on the basis of social criteria.

"A Special Committee examines if the persons seeking to be recognized as conscientious objectors meet the relevant conditions and, following its opinion, the Minister of National Defense decides if the alternative (civilian) service status may be granted to the applicant. The establishment, operation and responsibilities of that Committee are defined by the law. The Committee includes two university professors specializing in philosophy, social – political sciences or psychology, one adviser or member of the Legal Council of the State and two senior Officers, one of the Recruitment – Military Legal Adviser Corps and one of the Medical Corps. The composition of the Committee guarantees an objective opinion, since: (a) except for the two senior Officers who participate as members, the Committee also includes two distinguished university professors specializing in the humanities, whose opinion is given particular weight, as well as a State legal adviser. In addition, the Committee is subject to the general provisions of article 7 of the Code of Administrative Procedure, which establishes the impartiality of administrative bodies; (b) the opinion of the Committee, although not subject *per se* to judicial review, due to its advisory character, can be judicially reviewed in case an appeal has been filed against the final decision of the Minister of National Defense before the Council of State (Supreme Administrative Court); the same applies to the lawfulness of the establishment of the Committee. Furthermore, the national law provides for full interim judicial protection for those who file such an appeal in order to defer their obligation to join the Armed Forces for as long as the legal proceedings last.

"It is to be clarified that some persons refuse both the military and the alternative service and do not recognize the role of the Special Committee on political and ideological grounds. As a result, the abovementioned persons deliberately ignore the calls of Recruiting Offices to join the Greek Armed Forces, while, at the same time, they do not have the possibility to obtain the status of conscientious objector, since they deny participating in the procedure before the Special Committee. Only in such cases Greek Military Courts file a new charge though Prosecutor's Departments for multiple acts of refusal to perform military service and inflict repeated punishment for each of these offenses. Such measures, which, according to the case-law of the Greek Supreme Court (Arios Pagos) do not violate the fundamental principle of "*ne bis in idem*", are a direct consequence of the refusal to recognize the institutional guarantees provided in an efficient and also sufficient way for the protection of their rights."[9]

One might dispute the contention that conscientious objection is a status granted by the authorities rather than being inherent to the objector. That said, this information essentially conforms with that from IFOR's sources, and is certainly much fuller than that previously given by Greece to the Committee. It does not however entirely reflect the reality on the ground and is therefore in some respects misleading, as will be seen from the account which follows.

Duration of military and civilian service

Greece operates a system of obligatory military service, applicable to all male citizens, which it defines as persons of Greek descent, whether or not born or resident in Greece. The basic term of service has been steadily reduced in the course of recent years, from 19 months to 18

9 CCPR/C/GRC/Q2/Add.1, 4th August 2015, paras 130 – 132.

months in the late 1990's, to 16 months in 2001, and to 12 months in 2003[10]. It now stands at nine months in the army but can be longer, up to twelve months, in the air force and the navy.

Greece was at the time[11] the last member state of the European Union (EU) to make provision for alternative civilian service for conscientious objectors - doing so only in Act No.2510/1997, which entered into force on 1st January 1998. This was replaced by Act No.3421/2005 ("Recruitment of Greeks and other Provisions"), which in turn was amended by Act No.3383/2010, of 24th. September 2010.

Under the 1998 Act, the duration of alternative service was set at 36 months, exactly twice the normal duration of military service. When the duration of military service was reduced by six months in 2003, an equal reduction was made in the duration of alternative service. This meant that military service of 12 months was matched by alternative service of thirty months, two-and-a-half times as long.

There can be no doubt that the Greek authorities were well aware that an alternative service twice as long as military service was considered excessive by international and regional bodies. To quote from their own Initial Report under the ICCPR:

> "It is to be noted that the length of alternative service has been examined by the European Committee of Social Rights (ECSR) in the context of a complaint against Greece under the 1995 Additional Protocol to the European Social Charter providing for a system of collective complaints. The ECSR considered that the additional 18 months civilian service performed by conscientious objectors in Greece, during which the persons concerned are denied the right to earn their living in an occupation freely entered upon, do not come within reasonable limits, compared to the duration of military service. It therefore considered that this additional duration, because of its excessive character, amounts to a disproportionate restriction on "the right of the worker to earn his living in an occupation freely entered upon". On 6 March 2002, the Committee of Ministers of the Council of Europe adopted Resolution ResChs(2002)3, in which it noted that the Greek Government had taken certain measures, including the decrease of the length of military service and had undertaken to take the matter into consideration with a view to bringing the situation into conformity with the Charter in good time.
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> "The Council of Europe Commissioner for Human Rights recommended the amendment of the legislation on the alternative civilian service in order, in particular, to reduce its length. The NCHR [National Commission on Human Rights] has also made proposals on the issue of alternative service, suggesting, among others, a more reasonable length."[12]

The 2005 Act attempted to do the minimum necessary to meet what Greece mistakenly thought were the minimum international standards. The normal duration of alternative service was reduced to 23 months – one month less than twice the duration of military service. Similarly, those who would have qualified for the shorter periods of military service mentioned in paragraph 140 of the Second Periodic Report (eg men from large families or those who were themselves the parents of two or more children) were if accepted for civilian service required in each case to perform one month less than twice the duration of military service they would have faced – seventeen months as opposed to nine months, eleven months as opposed to six months, and five months as opposed to three months. Following the same logic, when the duration of obligatory service in the army was reduced to nine months, the normal length of civilian service was accordingly reduced to seventeen

10 Stolwijk, M., The Right to Conscientious Objection in Europe: A Review of the Current Situation, Quaker Council on European Affairs, Brussels, 2005, p.35.

11 Cyprus had in its 1992 National Guard Law allowed for unarmed military service for conscientious objectors. There are doubts as to whether this provision was ever used.

12 CCPR/C/GRC/2004/1, 15th April 2004, paras 689, 690.

months. In February 2011, the duration of civilian service was by ministerial decision[13] further reduced to 15 months.

The assertion in paragraph 140 of the Second Periodic Report that "civilian service is, in most cases, only 3 months (25%) longer than military service" does not tally with the information given by civil society contacts in Greece. Three months is the difference between the *maximum* length of military service and the *normal* length of civilian service. But the maximum length of military service is applicable only to the dwindling number of 3,350 conscripts in the navy and the air force. (In 2009 it was hoped that these branches of the armed forces would be completely "professionalised" from 2012.[14] Although this goal has not been reached, by 2014 the numbers were down to some 1,600 in the navy and 1,750 in the air force, as compared with 9,800 in the navy alone in 2006.)[15] For the 45,000 conscripts in the army the maximum length is nine months, and naval and air force conscripts who perform their service stationed near the eastern border also serve only nine months.[16] At fifteen months the *normal* (ie excluding any reductions based on social criteria) duration of civilian service is therefore one-and-two-thirds that of the normal duration of military service.

Even were it accepted that "objective and reasonable criteria" justified some difference in duration between military and civilian service (and the fact that several States[17] have found it unnecessary to make such a distinction is the biggest weakness in this argument), the discriminatory duration of alternative service can have consequences which are not consistent with the claim of proportionality in paragraph 141 of the State Report. In one case known to IFOR, a successful applicant for recognition as a conscientious objector had newly obtained a permanent contract as a primary school teacher. He would automatically have been granted nine months leave of absence to perform military service, but as he was required to perform (at the time) seventeen months of civilian service, this led to the termination of his schoolteaching contract. Since performing his civilian service he has been able to work only by seeking a different one-year contract each academic year, with no realistic prospect in current circumstances of again obtaining a permanent position.

Inadequate information on the right and the means of exercising it

Paragraph 8 of Commission on Human Rights Resolution 1998/77, partly echoing the wording of Recommendation 87/8 of the Committee of Ministers of the Council of Europe, refers to "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."

There is no specific reference to conscientious objection in some 40 pages of information materials provided to potential conscripts in Greece, although at one stage there was a statement that "applications under Law 2510/1997 are available",[18] which is meaningless, and seemingly irrelevant, to those who do not already know the content of the law in question.

13 Decision of the Greek Minister of Defence No.F.421.4/1/280115 (FEK 111/07-02-2011)

14 European Bureau for Conscientious Objection (EBCO) Report to the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament: Conscientious Objection in Europe 2009/10 , ["EBCO Report"] Brussels, May 2010, p.26).

15 Figures from International Institute for Strategic Studies, London, The Military Balance 2015, pp 101, 102 and The Military Balance 2007 p120..

16 Decision of the Minister of Defense, Φ.421.4/13/209290, FEK 2465b, 17 December 2009

17 Denmark, Estonia, Moldova and (before they suspended conscription) also Albania, Germany, Italy and Sweden.

18 Greek National Commission for Human Rights. Evidence submitted to the OHCHR in response to the questionnaire on "best practices concerning the right of everyone to have conscientious objections to military service", 2003.

Non-recognition of conscientious objectors on discriminatory and arbitrary grounds

Article 59.1 of Act No. 3421/2005 states that recognition as conscientious objectors and thus admission to alternative service 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 59.2 specifies that such 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."

Article 59 also makes a number of exclusions on who may be admitted to alternative service which bear at the most a spurious relationship to whether or not he may be considered a conscientious objector. They include: a) that he must never have been charged with a crime of violence, even if acquitted, (which is in blatant contradiction of the presumption of innocence required by Article 14 of the International Covenant on Civil and Political Rights.) b) that he must never have held a firearms licence, or have been a member of a hunting club, (which presumes that the use of a firearm for sport or obtaining food is incompatible with a moral objection to the use of lethal force against human beings) and c) that he must never have served for any length of time in the Greek or any other armed forces (Para 59 3a).

Indeed, whereas most States excuse from military service anyone who has already performed such service in another State, any man of Greek descent who comes to Greece having previously performed military service elsewhere is explicitly required to undertake a supplementary period of service in the Greek armed forces. Greece is not a party to the Council of Europe's Conventions on Nationality (ETS43 and ETS166) under which, since 1963, dual nationals are not subject to military service obligations in more than one state.

The stipulation in Para 59(3a) mentioned above for many years had the effect that no one was able to apply for recognition as a conscientious objector when called up for a period of reserve service, even if he had originally been obliged to perform military service before any legislation came into force. On April 22nd 2010, however, the Council of State, the highest domestic court, in a case concerning conversion to the Jehovah's Witnesses, ruled that regulations concerning conscientious objection must be read in such a way that a person has the right to change his religion even after having served in the military.[19] Later the same year, this decision was reflected in Law 3883/2010, article 78 γ of which amends the paragraph from Law 3421/2005, to refer to "those who have served for any length of time in the Greek or any other armed forces ***after adopting the beliefs that prevent them from performing military service for reasons of conscience***". This has in practice granted recognition particularly to a number of persons who became Jehovah's Witnesses after returning to Greece, having done miitary service elsewhere, but also to others who became conscientious objectors between performing their military service and first being called up for reserve service.

It remains to be seen how far the Council of State may further develop the logic of this decision in order to strike down various other recruitment provisions and practices. One particularly invidious reading of the relevant provision is that persons who are obliged for administrative reasons, and against their will, to remain in military barracks overnight at an early stage of the registration process - before their application to perform alternative service can be lodged - are regarded as having commenced military service. At least five applications to perform alternative service are known to have been rejected in such circumstances during the year 2009.[20]

19 European Bureau of Conscientious Objection (www.ebco-beoc.org), Report to the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament, Conscientious Objection In Europe 2009/2010, p27.

20 Ibid., p29.

Applicants are required to produce certification from the relevant authorities, including the police and the Forest Public Service that they are not subject to any of the grounds of exclusion. Moreover such documentation must accompany the application and must be submitted before the date set for call up. It has in the past been alleged that politically hostile officials in the relevant authorities have (at least) contrived to fail to provide such documentation. But bureaucratic delays with no visibly hostile intent also frequently have the consequence that applications are rejected as out of time.

The role of the Special Committee

Article 62.1 of Act No. 3421/2005 stipulates that a Special Committee appointed by the Minister of Defence will examine candidates "either through documentation that they submit or in person if this is required…" and makes a recommendation in the form of a draft ministerial decision.[21] The Committee's decisions are taken by a majority vote of those present; in the event of a tie the chairman has the casting vote.

Rejected applicants are called for military service at the next enlistment, but have two possibilities of appeal. The first is to appeal directly to the Minister of Defence within 30 days. The second is to appeal to the Council of State, the highest administrative court, within 60 days; including legal representation this costs between €2,000 and €2,500.

In the Second Periodic Report and the Replies to the List of Issues, Greece accurately describes the composition of the Special Committee.

The comments, particularly in the "Replies" about the safeguards for the independence of the process, do not however hold water.

The Committee's role is advisory only; the Minister may order a redraft of their recommended decision, and has sole responsibility for considering appeals. Moreover, the formal composition of the Committee does not guarantee the way in which it will actually operate.

According to information provided by the Ministry of Defence to Amnesty International Greece, between January and September 2013 the Special Committee held four sessions. In each session the Committee comprised only three members: the representative of the Legal Council of the State as the Chair and two military officers. The two university professors were absent throughout. Thus in each session there was a majority of military officers. Moreover, one of the objectors who appeared before the Committee alleges that during his interview a third military officer, not a member of the Committee, was present and took part in the questioning.

The Special Committee met again on 2nd October 2013. Six applicants are known to have been interviewed on that occasion. Before the session, the two university professors who had not attended the four previous sessions were replaced by new appointees. One of the new appointees attended, meaning that at the start of the session the Committee comprised four persons, with an equal number of military and civilian members. However the final two applicants were examined by just three members, two of whom were military officers.

Finally, the Committee met on 23rd October 2013 with all five members present. Five applicants are known to have been interviewed on that occasion. Once more, however, one of the

21 Ministerial decision Φ.420/79/81978/Σ.300 (FEK 1853b/2005), article 3, paragraph 6

civilian members left early, so that three applicants were examined by a four-person committee.

Of the 19 applicants known to have been called to interview by the Committee between the beginning of the year 2013 and 23rd October, only two were interviewed by the full five-person committee with a majority of civilians. Seven were examined by four persons, with an equal number of civilians and military officers. Ten were examined by a Committee comprising a majority of military officers.

Discrimination between different grounds of objection

In the days before Greece acknowledged the concept of conscientious objection, Jehovah's Witnesses were almost certainly in the majority of those who suffered direct and indirect persecution as a result of their conscientious objection to military service, and likewise they were among the first to suffer from the exceptionally discriminatory and punitive nature of the early civilian service arrangements.

That said, the current implementation of the legislation in Greece displays a systematic bias in favour of Jehovah's Witnesses as opposed to objectors from any other standpoint. The Special Committee's practice appears to be that a conscientious objector who has provided with his application an attestation from the Jehovah's Witnesses that he is a baptised member is not called for interview but is recognized automatically. *All* other objectors, whether they are described (following the wording of the Act) as "religious" or "ideological" (ie. basing their objection on "philosophical or moral convictions") are called for interview.

That this is a purely bureaucratic procedure, rather than representing a recognition of the (undoubted) sincerity of Jehovah's Witness teaching on the bearing of arms is illustrated by the case of Dimitris K, whose application to be recognized as a conscientious objector had been rejected by the Minister on 29th August 2011, on the grounds that he "did not connect to alleged beliefs (religious, because of his upbringing by Jehovah's Witnesses) integration, and action on this doctrine". It appears that the point buried in this obscure wording (or inept translation) was that although brought up as a Jehovah's Witness K had not personally been baptised.[22]

By contrast, purely anecdotal evidence is that any member of the Greek Orthodox Church who has conscientious objections to military service would be well advised to present himself as an "ideological" rather than as a "religious" objector, as there is no tradition of conscientious objection within that denomination.

To the end of 2008, when the Law on Alternative Service had been in force for eleven years, 1425 applications had been received, of which 1402 (over 98%) had been accepted. These applications were classified by the Ministry of Defence as being on "religious" or "ideolgical" grounds. Within the small minority of applications on "ideological" grounds, only 47% had been accepted.[23]

22 An appeal to the Council of State was unsuccessful. Our latest information is that K had by March 2013 refused two further call-ups for military service, and had been fined, and that the case is ongoing.

23 EBCO Report 2009/10, op cit, p26.

Figures year by year since 2006 (thus overlapping the earlier aggregate) are as follows:[24]
2006: On religious grounds: 102 of 102. On ideological grounds: 0 of 2 Total 102 of 104 - 98.1%
2007: On religious grounds: 174 of 174 On ideological grounds: 2 of 4 Total 176 of 198 - 98.9%
2008: On religious grounds: 110 of 110. On ideological grounds: 1 of 2. Total 111 of 113 – 99.1%
2009 : On religious grounds: 165 of 167. On ideological grounds: 0 of 3 Total 165 of 170 – 97.1%
2010: On religious grounds: 98 of 99. On ideological grounds: 3 of 4 Total 101 of 103 – 98.1%
2011: On religious grounds: 125 of 129 On ideological grounds: 1 of 3 Total 126 of 132 - 95.5%
2012: On religious grounds:.157 of 158 On ideological grounds:7 of 17.Total 164 of 175 – 93.7%
Total acceptances on religious grounds 931 of 939 - 99.2%; on ideological grounds 14 of 35 – 40%.

In fact only in 2010 were over half the "ideological" applications accepted. Omitting that year the acceptance rate goes down to 35.5% (11 of 31). The lowest proportion of "religious" applications accepted was 96.9% in 2011.

It is also noteworthy how sharply the acceptance rate fell off after 2010, even after allowing for the greater number of "ideological" applications. While not posessing official figures, we believe that this trend continued in 2013. Whereas most "religious" objectors continued to be accepted without interview, of the nineteen interviews our local partners monitored – fourteen of "ideological"and five of "religious" objectors, - only four of the "ideological" objectors were recommended for acceptance.

Repeated punishment of conscientious objectors

Unless they are currently under the active consideration of the Special Committee, men who fail to appear for enlistment on the scheduled date are liable to prosecution under the military penal code for "insubordination" (hereinafter quotation marks are dispensed with but the word "insubordination" is used in this technical sense only). All such prosecutions take place in military courts, despite the civilian status of the defendants.[25] .

Until 2002, Greece was in a state of general mobilisation, and insubordination carried a maximum penalty of five years' imprisonment. Subsequently the maximum penalty has been two years' imprisonment. This development is not however altogether positive; the lesser penalty means that it is permissible under Greek law for a trial to go ahead without the presence of the defendant.

An example is the case of Yiannis Glarnetatzis, now 47 years old. In March 2014, he received (at his current address) a bill from the tax authorities for €200, being the costs of a trial in the Court Martial of Thessaloniki on 19th September 2013. On enquiry, he discovered that both the summons and the *in absentia* verdict (one year's imprisonment, postponed for two years) had been "notified" to him at the address from which he had failed to respond to call up in the 1990's. On 23rd October 2014 he was given exceptional leave to appeal on the grounds that he had not been aware of the verdict before the usual deadline for lodging an appeal. (The appeal hearing will take place on 21st October 2015 – the day after the conclusion of the Committee's consideration of the State report.)

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24 Ibid , supplemented by figures reported to Parliament by the Minister of Defence in 2w013.

25 The European Court of Human Rights, in the cases of Ercep v Turkey, Feti Demirtas v Turkey and Savda v Turkey, all concerning conscientious objectors, found that the trial before military courts of civilians was in violation of Article 6.1 (the right to fair trial) of the European Convention.
Furthermore, the Human Rights Committee in General Comment 32, paragraph 21, rules that: "*Trials of civilians by military or special courts should be exceptional, i.e. limited to cases where the State party can show that resorting to such trials is necessary and justified by objective and serious reasons, and where with regard to the specific class of individuals and offences at issue the regular civilian courts are unable to undertake the trials.*"

Insubordination is considered to be an ongoing offence which continues until the person reports to the military authorites, is arrested, or reaches the age of 45. This means that for the purpose of the rules governing the power of arrest, it can be treated as a "recent" offence, for which arrest is in all cases permitted until the end of the day following the commission of the offence. In 2014, in a further amending law,[26] a summons to a military court was added to the events which might terminate a period of insubodinatiom. The effect of this amendment is that a new period of insubordination begins when such a summons is issued. This increases the number of "separate offences" for which, according to the State Party's jusisprudence, prosecutions may be brought without breaching the principle of ***ne bis in idem***.

Moreover, conviction and sentencing for insubordination <u>does not</u> discharge the requirement to perform military service.

Although the offence of insubordination comes to an end, along with the liability to perform military service, on the 31st December following the 45th birthday, prosecutions may still be brought for up to five years afterwards. And if the "offender" has been summonsed to appear in court within that five years the law extends the period for another three years. In such circumstances it is technically possible to be tried on charges of insubordination up to the age of 53.

The most extreme case is that of Lazaros Petromilidis. Petromilidis was born in 1962. On 17th March 1992 he was called up for military service in the Navy and responded by declaring his conscientious objection (for which at the time there were of course no provisions). On 20th July 1992 an order was issued prohibiting him to leave the country. On 23rd September 1993 he received a second call-up for military service, which he ignored. On 6th February 1997 an arrest warrant was issued.

On 31st March 1998 he applied under the newly-operative Law 2510/1997 for recognition as a conscientious objector and for admission to alternative civilian service. This application was rejected because he had not supplied a police certificate that he did not have a firearms licence. (Had he gone to the police station to obtain the certificate he would have been arrested under a warrant relating to his previous refusals.) On 27th May 1998 he was arrested and imprisoned in Korinthos prison. As there was now nothing to prevent him obtaining the firearms certificate and submitting a new application for recognition as a conscientious objector, he was released on 2nd June after five days' detention. On 23rd November his application was accepted and he was allocated to 30 months of alternative service at the infirmary for chronic diseases at Kilkis, although as a father, he would have been liable for only four months of military service with the option of officially "buying off" the rest.

In protest against the punitive duration of alternative service, he, like a number of other objectors, refused to report for alternative service. On 10th February 1999 his official recognition as a conscientious objector was withdrawn in punishment for his refusal to report. No grounds were cited to indicate that there was any new evidence to cast doubt on his initial claim to be a conscientious objector.

On 20th February 1999 he lodged an appeal to the Council of State regarding the excessive duration of alternative service and the withdrawal of his recognition as a conscientious objector. On 8th March he received his third call-up for military service. On 15th April his trial on the charge from February 1997 went ahead at the Naval Court of Piraeus. He was sentenced to four years' imprisonment, and began serving the sentence immediately. On 28th June the hearing of his appeal

26 Law 4278, August 2014, article 28b

at the Military Court of Appeals was interrupted in the light of his appeal to the Council of State and he was conditionally released after 74 days' detention.

On 26th July 1999 he received his fourth call-up for military service.

On 10th April 2000, for the second time, an arrest warrant was issued, and on 12th May the Naval Court of Piraeus ordered his pre-trial detention on the new charge.

On 19th September 2000, the Council of State heard the appeal lodged in February 1999; he was notified of the rejection of his appeal in April 2002, and in the light of this ruling the Military Court of Appeals agreed, at the request of the defence, to a postponement of the hearing of his appeal against the April 1999 verdict.

Meanwhile, on 1st August 2000, he had received his fifth call-up for military service.

On 17th September 2000, the hearing of the appeal against the only conviction to date (that of April 1999 for the "offence" of 1992) was again postponed, but he was arrested on a charge of insubordination with regard to his non-fulfilment of the alternative service posting in January 1999 and was detained for a third time.

On 19th September the Naval Court of Piraeus declared itself not competent to hear the charge regarding the alternative service posting, which it referred to the Naval Court of Thessaloniki, meanwhile ordering his conditional release after two days' detention.

On 7th November 2002 he received his sixth call-up for military service.

On 12th June 2003 the Military Court of Appeals dismissed the appeal against the 1997 conviction, but reduced the sentence from four years' to twenty months' imprisonment, suspended for three years.

On 3rd July and 6th November of that year he received his seventh and eighth call-up for military service, respectively.

On 18th November 2003 the trial regarding the alternative service placement was postponed because of a lawyers' strike. Two days later an attempt was made to arrest him on a new warrant, citing non-response to repeated call-ups.

On 22nd January 2004 he received his ninth call-up for military service.

The trial regarding the alternative service placement eventually went ahead on 19th February 2004. The Naval Court of Thessaloniki in turn found itself not competent to deal with this case and ended the prosecution, lifting the conditions of release imposed in September 2000.

On 7th October 2004 he received his tenth call-up for military service, meanwhile between September and November that year four unsuccesful attempts were made to arrest him at his home address, which he had made no attempt to conceal from the authorities.

On 7th December the High Court (Areios Pagos) dismissed the appeal against the first conviction, regarding 1992.

On 16th December the Naval Court of Piraeus issued his second conviction on multiple charges relating to the period 1999 - 2003 and sentenced him to thirty months' imprisonment, with

no suspension pending appeal.

On 3rd January 2005 a fresh attempt was made to arrest him; his brother was briefly detained by mistake; on 13th January he received his eleventh call -up for military service.

In March 2005 his case was mentioned in submissions by Amnesty International and War Resisters International for the examination of Greece's initial report under the ICCPR, but the saga was far from over.

On 4th May 2006 the Military Court of Appeals in Athens heard the appeal against his second conviction. The conviction was upheld, but the penalty was reduced to five months' suspended sentence. On 20th May 2008 the Naval Court of Piraeus issued his third conviction (in absentia) regarding two further call-ups, and sentenced him to three years' imprisonment. He was granted bail of €7,000 pending his appeal,[27] which was finally heard on 31st March 2009. The conviction was upheld, but the sentence reduced to 18 months, suspended in the first instance in view of a proposed appeal to the High Court.

For four years, nothing happened. Then, on 20th June 2013, Petromilidis testified at the trial of a new conscientious objector. The same evening, he was arrested and detained in order to serve the sentence of 18 months handed down by the Military Court of Appeals in 2009. The following day he was offered the opportunity to finally "redeem" the sentence against payment of the sum of €5,431,[28] and having raised the amount was released after only one day's detention. Despite this, a further attempt to arrest him was made on 21st May, 2014.

Arbitrary prosecutions of conscientious objectors from earlier years

In past years, despite the classification of insubordination as an ongoing offence, the usual practice was to summons the defendant to appear in court to answer charges of insubordination, not to arrest and arbitrarily detain such persons. The first reported *arrest* on charges of insubordination since 2005 took place on 20th February 2013. Over the next four months, there were four further instances, not including the arrest of Petromilidis regarding an earlier charge, and at least five more persons were arrested on such charges in 2014, one of them on two separate occasions.

Conscientious objectors who are now over the age for military service were generally first called up before alternative service provisions were introduced in 1998. It is worth noting that at that time, the European Parliament, in its Resolution on respect for human rights in the European Union during 1996,[29] had called upon Greece, "(b) to exempt those who refused military service prior to the entry into force of [Law 2510/1997] from civilian service, either completely or partly, depending on individual circumstances, as many of them have already had their freedom restricted, (c) to grant a full amnesty to all those who refused military service in the past, […], and who were not permitted to claim the status retrospectively."

In 2012 one person was charged with insubordination relating to a period before 1998; in

27 Amnesty International Document - Greece: Lazaros Petromelidis repeatedly convicted for his beliefs

28 It appears that in Greece all sentences of imprisonment, except possibly for the most heinous crimes, can be officially transmuted into cash payments on a *per diem* basis.

29 (A4-0034/98, paragraph 120)

2013 there were four such cases. All except one of the victims were aged between 46 and 49. Again, the brief detention of Petromilidis, now aged 50, is not included, as it related to a prosecution andconviction for a more recent period.

In at least three cases, the victims had at one time been recognised under the relevant provisions as conscientious objectors, but that recognition had subsequently been withdrawn as punishment for actions which did not cast any doubt on the "genuineness" of the objection, with the consequence that the objectors once again became liable for military service. This is by definition a blatant violation of the right to freedom of religion or belief – if you recognise someone as a conscientious objector you cannot subsequently require him to perform military service as punishment.

Several of the prosecutions were of conscientious objectors who had already been convicted of insubordination, and therefore breached the principle of *ne bis in idem.* The repeated trial of a conscientious objector on charges arising out of his refusal to perform military service is tantamount to coercion to change his religion or belief.[30] In two of these cases, former total objectors abandoned theie position in the face of such coercion, and agreed to apply for alternative service..

Faced with the prospect of arrest, prosecution and repeated call-up, many objectors over the years have found themselves living in the situation which the European Court of Human Rights,in the case of *Ulke v Turkey* described as civil death.[31] This is most fully documented in the case of Dimitris Sotiropoulos.

In 1992 and 1993, before there were any provisions, Sotiropoulos had replied in writing to call-ups to military service, declaring his conscientious objection and asking to be permitted to perform alternative service. On 27th September 1993 his passport was confiscated at Athens airport, (preventing him from boarding the plane to Cyprus in order to support the Turkish-Cypriot objector Salih Askerogul). He was not given a receipt. In 1995 his identity card was stolen, and as az the timd he was evading arrest on charges of "insubordination during general mobilization", he was unable to apply for a replacement. Until 2008 he lived with no official proof of identity.

In June 1999 Sotiropoulos lodged a complaint to the Ombudsman, alleging among others violations of his right to vote and to be elected, his right to obtain property, and his right to recognize his children as a result of not having official documents. The Ombudsman replied that there was no solution other than performing military service or the alternative service which had now been introduced (the duration of which in this case, however, would be at least twice that of the military service which would otherwise apply.).,

In 2008, when his third child was born, Sotiropoulos became exempt from military service, although still facing the earlier charges. His case was finally brought to trial on 13th May 2014, when he was sentenced to ten months imprisonment suspended for two years and €200 of costs. On his appeal, heard on 16th June 2015 by the Militaury Court of Appeals of Athens, the original sentence was uphelded and Sotiropoulos was again required to pay the costs...

In general, decisions to issue call-up notices and to bring cases seem to have been completely arbitrary. Petromelides, who was for many years the highest-profile conscientious objector, having brought a complaint to the Council of State, received no fewer than eleven call-up notices between 1992 and 2005. By contrast, in other cases reported below, charges were for the

30 European Court of Human Rights, Chamber Judgement, Second Section, *Ülke v Turkey* (Application no. 39437/98) 24 January 2006

31 Ibid

first time brought in 2013 dating back to call-ups in 1987, 1988, 1996 and 1999.

The timing of arrests and charges sometimes appeared to take the nature of reprisals, or to be directed at suppressing the freedom of speech, assembly or association, or deterring other political activity. But irrespective of the outcome, the repeated court appearances are in themselves a form of harassment or intimidation of conscientious objectors. Moreover, they each entail an automatic administrative penalty of €6,000. This is issued by the recruitment office of the armed forces, and is collected through the tax office. It is completely independent of any penalty imposed as a result of a prosecution, and is not cancelled in the event of an acquittal . This penalty is levied every time a call-up to military service is issued, so in an individual case the financial implications may be severe. One of the total objectors who abandoned his position and applied for alternative service did so in September 2013 when he was faced with a third prosecution, having already been charged the €6,000 penalty in December 2012 and June 2013.

Moreover, if this charge is not paid, it could (as a debt to the Government of over €5,000) lead under Greek law to imprisonment (which would seem to be in contradiction of Article 11 of the ICCPR). By contrast, for those whose resources are adequate, many sentences of imprisonment in Greece, including for insubordiation, are "redeemable" against payment, as Petromilidis discovered, for which an official scale of charges applies.

Continuing restrictions on civil rights

Over and above any punishments for insubordination, male citizens within the age range of liability for military service who have not satisfied the requirements experience severe restrictions of their civil rights, including eligibility for employment in the public sector, for membership of professional associations, to participate in elections as voter or candidate, to obtain a passport or leave the country, or to serve on a ship which leaves Greek waters. Moreover, some of these restrictions, for instance affecting public employment, may apply to persons whose "failure" to perform military service is because an application to perform alternative service is still under consideration.

Provisions in time of war or general mobilisation

Article 1 of Law 2510/1997 stated that liability for obligatory military service began at the beginning of the calendar year containing the 19th birthday, but also stipulated that during times of war or general mobilisation men could be called up for obligatory military service from the beginning of the calendar year of their 18th birthday, ie at an age between 17 and 18. Such a provision would be clearly contrary to Greece's commitment under Article 2 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (CRC-OPAC), which it ratified on 22nd October 2003.

Article 14 of the same Law stipulated that, also in time of war or general mobilisation, voluntary enlistment for military service, including the early performance of obligatory military service, was possible from the age of 17 to 50.[32] By the time of ratification, the state of general mobilisation which had existed in Greece since 1976 had been lifted, and although these provisions were clearly still in the statute book there was no mention of them in the Declaration lodged by Greece at the time of ratification, which simply stated that the minimum age for voluntary recruitment was 18, an age limit which had been set in Article 2 of Law 2936/2001, concerning admission to "professional" service in the armed forces. The possibility of conscription from the

32 Coalition to Stop the Use of Child Soldiers, Child Soldiers Global Report 2004 (London, 2004),p243

age of 17 in times of war or general mobilisation continues however to be mentioned in the CIA World Factbook.[33]

In its initial report under the CRC-OPAC, Greece cites Article 1 of Law 3421/2005 concerning the age for conscription, Article 38 as permitting conscripts to bring their obligatory military service forward as far as their eighteenth birthday, and Article 39 as permitting voluntary enlistment for military service of any "Greek national or Greek expatriate" in time of war or general mobilisation, subject to the same age limitation.[34] It would be reassuring to have explicit confirmation that these have entirely replaced the wartime provisions in Articles 1 and 14 of Law 2510/1997.

Harassment of those supporting conscientious objectors

.On Tuesday 24th February, 2009 at around 10 pm, an attempt was made to throw a hand grenade through a window into a public meeting hosted by the Greek Association of Conscientious Objectors in the Migrants' House at 13A Tsamadou Street in Exarchia, Athens. Through good fortune only the outer panel of the window's double glazing broke and the grenade bounced back and exploded in the empty street with no casualties. - had it exploded in the room there could well have been fatalities. As it was some damage was caused to the pavement and windows in surrounding buildings were broken. There are suspicions that the grenade used might have illicitly come from military sources, and it is disturbing that despite detailed witness accounts the police have completely failed to identify the perpetrators.

It is not known whether the attack was specifically targeted at the Association of Conscientious Objectors; the building known as the Migrants' House, also houses a number of left-wing, feminist, homosexual and immigrant groups. A short time before the attack, the daily Greek language courses for non-native speakers, attended by dozens of immigrants, had been taking place.

Earlier attacks had specifically targetted conscientious objectors in Greece. The extreme-right "Organisation of Young Noiseless Raiders" attempted to plantt a bomb at the trial of conscientious objector Pavlos Nathanail in 1991. In April 2008, a bomb threat was made by telephone against a public event on conscientious objection organized by the Greek Section of Amnesty International on the occasion of the ten-year anniversary of the law on conscientious objection

On 1st March 2014 members of the European Bureau for Conscientious Objection and Amnesty International were harrassed and detained in the General Police Directorate of Attica, after their symbolic peaceful protest in front of the Turkish embassy in Athens against the imprisonment of Turkish Cypriot conscientious objector Murat Kanatli.

33 CIA World Factbook at https://www.cia.gov/library/publications/the-world-factbook/geos/gr.html consulted December, 2014.

34 CRC/C/GRC/OPAC/1, (undated advance version) para 13.

Treatment of refugees

One refugee case in Greece in 2009 concerned two sisters from Eritrea who had escaped forcible recruitment and abuse in the Eritrean army. Despite the ample evidence to the contrary the tribunal chose to find that there was no known history of forced recruitment in Eritrea and also, despite the fact that their experiences had been shared, to disbelieve the girls because of the similarity of their stories.

A linked concern is the treatment of refugees from Syria, many of whom, including some declared conscientious objectors, are seeking not just safety, but to avoid being embroiled in the conflict, on any side.

In February 2013, the Greek immigration authorities sought to return to Syria a member of the Syrian air force, who had deserted rather than obey orders to bomb civilian areas; they relented only in the face of considerable international pressure. Even Greece now seems to have realised that under the current situation, no person should be returned to Syria against his or her will. Asylum seekers from Syria still however suffer indefinite imprisonment in appalling conditions, justified by the authorities on the grounds that they do not have addquate proof of identity. Not surprisingly, many of those fleeing from their own government were unable to bring with them any official documentation.

On 23rd May 2013, the European Parliament passed a resolution[35] on the situation of Syrian refugees in neighbouring countries . In this, it gave welcome acknowledgment of the particular difficulties faced by deserters and conscientious objectors.
Preambular paragraph C reads:
"whereas thousands of those of who have fled Syria have deserted from the armed forces to escape having to commit war crimes or crimes against humanity, or are evading military service for similar reasons;"
In the resolution, the Parliament
“Notes that all deserters from Syria are entitled to further protection, being at risk on other grounds than those set out in paragraph 26 of the UNHCR guidelines, namely ‘excessive or disproportionately severe’ punishment, possibly amounting to torture, inhuman or degrading treatment or even arbitrary execution” (para 6)
“Calls for the EU to take appropriate, responsible measures regarding the possible influx of refugees into its Member States;” (para 15),
and with obvious reference to the situation in Greece:
"Calls for the Member States immediately to cease their reported use of prolonged detention periods and the practice of refoulement, which are in direct violation of international and EU law” (para 16)

Nevertheless Greece has persisted in the illegal practice of “push-backs” of Syrian refugees to Turkey,.[36] the tragic consequences of which have recently been widely documented:.

One of many previous examples was given by the Association of Free Syrian Expatriates in Greece.[37]:

“On 14th.September 2013 a boat with 54 refugees departed from Izmir (Turkey) and arrived in Ikaria island (Greece). There were 14 refugees from Syria among them, including 3 women and 2

35 No. 2013/2611(RSP)

36 See Amnesty International, Greece: Frontier Europe: Human rights abuses on Greece’s border with Turkey. , August 2013.

37 As quoted in European Bureau of Conscientious Objection (www.ebco-beoc.org), Annual Report: Conscientious Objection In Europe 2013, (Athens, October 2013)

twin girls of 7 years old each one. The Greek local people brought food and clothes to the refugees but then the Greek Coastal Guard arrived and transfered the refugees to another place of the island, after taking away of them all their mobile/cell phones. They were all transfered on a big military ship on which there were around 20 Greek men with black hoods covering their faces. These men had truncheons with electricity on the touch and beat them all a lot, even the women and the girls. They also stole their money (for example 2800 euros from the family with the girls). They approached Turkey and they threw a plastic inflatable boat on the sea and took all the refugees out of the ship. They also threw to them two plastic bottles of water, after taking out the label, so that they hide the greek origin of the object. Later on some Turkish fishermen found them and they called the Turkish Coastal Guard who finally took them on the turkish land. Some of the refugees were transferred to Turkish hospitals because of the greek beatings. Later on, the two girls with their mother managed to arrive in Greece, but their father is still in Turkey. On Sunday, 28th September a similar incident took place between the Turkish coast and the greek Chios island. Some of the refugees who had tried to pass in September were on the boat on Sunday and the same greek military ship pushed them back to Turkish waters. One of the refugees recognised one of the Greek hooded man, and so did the Greek man who shouted at him: "it's you again? second time?"

IFOR suggests that Greece be asked to indicate what steps it is taking:

1) to put the process of application for alternative civilian service into completely civilian hands

2) to eliminate the punitive disparity between the duration of military and alternative civilian service..

3) to halt the practice of "push-backs" of refugees, particularly from Syria arriving via Turkey, and to comply with Para 16 of European Parliament Resolution No. 2013/2611(RSP) of "to cease [the] use of prolonged detention periods and the practice of refoulement."?