

**SUBMISSION**

**TO THE 136<sup>th</sup> SESSION OF THE HUMAN RIGHTS COMMITTEE**

**KYRGYZSTAN**

**Conscientious objection to military service and related issues**

Updated September 2022

**Content Index**

- Background
- Issues of concern regarding the right to conscientious objection to military service
  - a. Limited recognition only to members of registered religious organizations whose teaching prohibits the use of arms (art. 18)
  - b. Discrimination based on different grounds of conscientious objection and between groups (art. 26)
  - c. Discriminatory length of alternative civilian service (art. 18 and 26)
  - d. Discriminatory fee for alternative service (art. 18 and 26)
- Other issues of concern
  - e. Limitations on freedom of religion and obstructions to state registration (art. 18)

## BACKGROUND

Kyrgyzstan applies conscription to male citizens.

According to external sources, military service for men between the ages of 18 and 27 is usually 1 year, but only 9 months for university graduates.<sup>1</sup>

According to the State Party's report in 2020: "Under article 32 of the Act on Universal Conscription of Kyrgyz Nationals, and Military and Alternative Service, male citizens between the ages of 18 and 25 who do not have the right to deferment or have lost the right to deferment and have not completed their national service are subject to call-up for alternative service if they belong to a registered religious organization whose creed does not allow the use of weapons or service in the armed forces. [...] Between 2014 and 2018, only 144 citizens were called up for alternative service on the basis of their religious beliefs: 12 in 2014, 22 in 2015, 35 in 2016, 49 in 2017 and 26 in 2018."<sup>2</sup>

The Human Rights Committee has previously expressed concerns about aspects of the legislation on conscientious objection to military service.

In the context of the initial periodic report, in its concluding observations, the Committee noted:

"18. The Committee takes note that conscientious objection to military service is allowed only to members of a registered religious organization whose teachings prohibit the use of arms. The Committee regrets that the State party has not sought to justify why the provision on alternative service entails a period of service twice as long as that required of military conscripts, and why persons of higher education serve for a considerably lesser period in the military and in alternative service (arts. 18 and 26).

Conscientious objection should be provided for in law, in a manner that is consistent with articles 18 and 26 of the Covenant, bearing in mind that article 18 also protects freedom of conscience of non-believers. The State party should fix the periods of military service and alternative service on a non-discriminatory basis."<sup>3</sup>

In the context of the second periodic report, the Committee noted:

"The right to conscientious objection

23. The Committee reiterates its previous concerns (CCPR/CO/69/KGZ, para. 18) about the limiting of conscientious objection to military service only to members of registered religious organizations whose teaching prohibits the use of arms and the stipulation of a shorter period of military and alternative service for persons with higher education. The Committee notes the State party's initiative to amend the Law on Universal Conscription of Citizens of the Kyrgyz Republic on Military and Alternative Service (arts. 2, 18 and 26).

The State party should ensure that amendments to the Law on Universal Conscription of Citizens of the Kyrgyz Republic, on Military and Alternative Service provide for conscientious objections in a manner consistent with articles 18 and 26 of the Covenant, bearing in mind that article 18 also protects freedom of conscience of nonbelievers. It should also stipulate periods of military and alternative service on a non-discriminatory basis."<sup>4</sup>

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<sup>1</sup> CIA The World Factbook, available at: <https://www.cia.gov/the-world-factbook/countries/kyrgyzstan/#military-and-security>

<sup>2</sup> Third periodic report submitted by Kyrgyzstan under article 40 of the Covenant, due in 2018, (CCPR/C/KGZ/3), 12 May 2020, paras. 340-341.

<sup>3</sup> CCPR/CO/69/KGZ, 24 July 2000, para. 18.

<sup>4</sup> CCPR/C/KGZ/CO/2, 23 April 2014, para. 23.

An element of difficulty in analysing the implementation of human rights in the country is the poor availability of data and access to sources of information, especially when it comes to conscientious objection to military service.

According to information provided by the Jehovah's Witnesses, in June 2015, the Government amended the law on military service by providing conscientious objectors with a program of alternative service that is not under military control.<sup>5</sup> This would be a positive development since the previous periodic report.

However, the main concerns of the Committee do not appear to have been addressed.

**RECOMMENDATION:** Unless new information proving a different trend is provided by the State Party during the session, IFOR invites the Committee to restate its previous concluding observations and complement them with further recommendations.

## **ISSUES OF CONCERN REGARDING THE RIGHT TO CONSCIENTIOUS OBJECTION TO MILITARY SERVICE**

### **A) Limited recognition of the right to conscientious objection only to members of registered religious organizations whose teaching prohibits the use of arms**

The right to conscientious objection to military service inheres in the right to freedom of thought, conscience and religion. It entitles any individual to an exemption from compulsory military service if such service cannot be reconciled with that individual's religion or beliefs. The right must not be impaired by coercion. A State may, if it wishes, compel the objector to undertake a civilian alternative to military service, outside the military sphere and not under military command. The alternative service must not be of a punitive nature. It must be a real service to the community and compatible with respect for human rights.<sup>6</sup>

Despite the above, as well previous concluding observations, Kyrgyzstan fails to adequately recognise the right to conscientious objection to military service.

Moreover, the State Party refrains from using the term and concept of the "right to conscientious objection" in its report.

Even if it is considered that the right to conscientious objection to military service is recognised for certain citizens, (although not explicitly as a "right"), such recognition is still limited. The State Party clearly states that: "Under article 32 of the Act on Universal Conscription of Kyrgyz Nationals, and Military and Alternative Service, male citizens between the ages of 18 and 25 who do not have the right to deferment or have lost the right to deferment and have not completed their national service

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<sup>5</sup> <https://www.jw.org/en/news/legal/by-region/kyrgyzstan/>

<sup>6</sup> See, Min-Kyu Jeong et al. v. Republic of Korea (CCPR/C/101/D/1642-1741/2007), para. 7.3; Jong-nam Kim et al. v. Republic of Korea, para. 7.4; Abdullayev v. Turkmenistan, para. 7.7; Mahmud Hidaybergenov v. Turkmenistan, para. 7.5; Ahmet Hidaybergenov v. Turkmenistan, para. 7.5; Sunnet Japparow v. Turkmenistan, para. 7.6; Akmurad Nurjanov v. Turkmenistan, para. 9.3; Shadurdy Uchetov v. Turkmenistan, para. 7.6; Dawletow v. Turkmenistan, para. 6.3 and others.

are subject to call-up for alternative service **if they belong to a registered religious organization whose creed does not allow the use of weapons or service in the armed forces.**<sup>7</sup> (emphasis added) This indicates that there has been no substantial change since the previous periodic report.

The requirement cited by the State Party indicates that potentially there could be several categories of conscientious objectors who could face non-recognition of their right to conscientious objection to military service, and thus, a **violation of article 18 of ICCPR**:

- a) members of religious communities, minorities or organisations whose creed does not allow the use of weapons or service in the armed forces, and which could be registered, but are not registered due to the “burdensome registration requirements for religious associations”, as cited in the List of issues.
- b) members of religious communities, minorities or organisations whose creed does not allow the use of weapons or service in the armed forces, but are not registered due to other reasons, or they are prohibited.
- c) conscientious objectors whose objection is not on religious but rather on ideological, political, moral, philosophical etc. grounds, including non-believers.

It is not clear whether the limited number of citizens called up for alternative service, as indicated in the State party’s 2020 report, is due to the exclusion of conscientious objectors of the above categories.

## **B) Discrimination based on different grounds of conscientious objection and between groups**

Limiting the possibility for alternative service only to those who “belong to a registered religious organization whose creed does not allow the use of weapons or service in the armed forces” constitutes also discrimination based on different grounds of conscientious objection and between groups of conscientious objectors, and thus, a **violation of article 26 of ICCPR**.

Contemporary human rights standards are explicit on the requirement of non-discrimination on the basis of the grounds for conscientious objection and between groups of conscientious objectors:

- The **OHCHR** has compiled the minimum criteria in order for the procedures for conscientious objector status to be in line with international human rights law and standards. Among them, there is the requirement for: “Non-discrimination on the basis of the grounds for conscientious objection and between groups. Alternative service arrangements should be accessible to all conscientious objectors without discrimination as to the nature of their religious or non-religious beliefs; there should be no discrimination between groups of conscientious objectors.”<sup>8</sup>
- The **Human Rights Committee**, in its General Comment 22, has stated that “there shall be no differentiation among conscientious objectors on the basis of the nature of their particular beliefs”.<sup>9</sup>

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<sup>7</sup> Third periodic report submitted by Kyrgyzstan under article 40 of the Covenant, due in 2018, (CCPR/C/KGZ/3), 12 May 2020, para. 340.

<sup>8</sup> OHCHR, Approaches and challenges with regard to application procedures for obtaining the status of conscientious objector to military service in accordance with human rights standards, (A/HRC/41/23), 24 May 2019, para. 60 (e). Available at: <https://undocs.org/A/HRC/41/23>

See also: Conscientious objection to military service, Analytical report of the Office of the United Nations High Commissioner for Human Rights, (A/HRC/35/4), 1 May 2017, para. 64. Available at: <http://undocs.org/A/HRC/35/4>

<sup>9</sup> Human Rights Committee General Comment No. 22 (CCPR/C/21/Rev.1/Add.4), 27 September 1993, ‘The right to freedom of thought, conscience and religion or belief (Art. 18)’, para. 11. Available at: <https://undocs.org/CCPR/C/21/Rev.1/Add.4>

Subsequently, the Committee, in the context of its concluding observations, has consistently advocated for recognition of “the right to conscientious objection to military service without discrimination as to the nature of the beliefs (religious or non-religious beliefs grounded in conscience) justifying the objection”,<sup>10</sup> or “without limitation on the category of conscientiously held beliefs”,<sup>11</sup> and has expressed concerns “about the limiting of conscientious objection to military service only to members of registered religious organizations whose teaching prohibits the use of arms”.<sup>12</sup>

- The **Human Rights Council** has reminded states of “the requirement not to discriminate between conscientious objectors on the basis of the nature of their particular beliefs”.<sup>13</sup>

### C) Discriminatory length of alternative civilian service

The State Party’s 2020 report does not appear to provide information on the length of the alternative civilian service. Nothing indicates that there have been significant changes of the previous conditions. There have been mainly two aspects of concern as of the length of alternative service:

#### 1) The length of alternative service in comparison with the length of military service

According to previous information “the provision on alternative service entails a period of service twice as long as that required of military conscripts”.<sup>14</sup> If there has not been any significant change, such provision would contravene all international human rights standards and would constitute a **violation of articles 18 and 26**.

- According to the **European Committee of Social Rights (ECSR) of the Council of Europe**, the alternative service should not exceed in length 1.5 times [50% increase] the length of military service.<sup>15</sup>
- However, according to the **Human Rights Committee**, an increase of the length of alternative service of 50%<sup>16</sup> compared to that of military service “may be punitively long if not based on reasonable and objective grounds”.<sup>17</sup>
- According to the **OHCHR**, “Any duration longer than that of military service is permissible only if the additional time for alternative service is based on reasonable and objective criteria.

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<sup>10</sup> E.g. UN Human Rights Committee, Concluding observations on the fifth periodic report of Belarus, (CCPR/C/BLR/CO/5), 22 November 2018, paras. 47-48. Available at: <http://undocs.org/CCPR/C/BLR/CO/5>

See also: UN Human Rights Committee, Concluding observations on the seventh periodic report of Ukraine, (CCPR/C/UKR/CO/7), 22 August 2013, para. 19. Available at: <https://undocs.org/CCPR/C/UKR/CO/7>

<sup>11</sup> UN Human Rights Committee, Concluding observations on the fourth periodic report of Azerbaijan, (CCPR/C/AZE/CO/4), 16 November 2016, paras. 34-35. Available at: <http://undocs.org/CCPR/C/AZE/CO/4>

<sup>12</sup> UN Human Rights Committee, Concluding observations on the second periodic report of Kyrgyzstan, (CCPR/C/KGZ/CO/2), 23 April 2014, para. 23. Available at: <http://undocs.org/CCPR/C/KGZ/CO/2>

<sup>13</sup> Human Rights Council resolution 24/17 (A/HRC/RES/24/17), 27 September 2013, para. 8. Available at: <https://undocs.org/A/HRC/RES/24/17>

<sup>14</sup> CCPR/CO/69/KGZ, 24 July 2000, para. 18. See also IFOR and CPTI Submission to the 110th Session of the Human Rights Committee.

<sup>15</sup> See for example Council of Europe, European Committee of Social Rights, *European Social Charter (Revised): Conclusions 2008 (vol. I)*, Estonia – Article I, p. 231.

<sup>16</sup> As in the case of Austria: UN Human Rights Committee, List of issues in relation to the fifth periodic report of Austria, Addendum, Replies of Austria to the list of issues, (CCPR/C/AUT/Q/5/Add.1), 4 August 2015, para. 139. Available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FAUT%2FQ%2F5%2FAdd.1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FAUT%2FQ%2F5%2FAdd.1&Lang=en)

<sup>17</sup> UN Human Rights Committee, Concluding observations on the fifth periodic report of Austria, (CCPR/C/AUT/CO/5), 3 December 2015, paras. 33-34. Available at <http://undocs.org/CCPR/C/AUT/CO/5>

Equalizing the duration of alternative service with military service should be considered a good practice.”<sup>18</sup>

- The **European Parliament** has repeatedly stated that the length of alternative service should be the same and not last longer than the military service.<sup>19</sup>

## **2) The length of military and alternative service for persons of higher education is significantly shorter**

The difference in the length of the military and the alternative service between persons of higher education and others constitutes a discrimination between citizens with regard to their military service obligations on the grounds of their educational qualifications. As previously noted by IFOR, “the Committee was quite right to question the objective validity of such discrimination, which would indeed seem to favour those who are already in a more advantaged position.”<sup>20</sup>

Nothing indicates that there have been significant changes in this regard, on the contrary, external sources indicate that the military service is 1 year, but only 9 months for university graduates.<sup>21</sup>

**RECOMMENDATION:** IFOR invites the Committee to ask for clarifications from the State party on the issue of the length of the military and alternative service, and if necessary to restate its previous concluding observations.

### **D) Discriminatory fee for alternative service**

In its 2014 submission, IFOR raised the issue of the fee or tax required to be paid by those performing alternative service.

Such practice appears to have been retained even after the amendment of the relevant legislation in 2015.

According to a news piece of August 2015:

“The amendments require conscientious objectors to pay a fee of 18,000 to 20,000 soms -- or about \$285 to \$300.”<sup>22</sup>

Thus, if such requirement persists and there is no equivalent fee for those serving military service, then, apart from possible violation of economic and social rights, it constitutes a violation of **articles**

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<sup>18</sup> OHCHR, Approaches and challenges with regard to application procedures for obtaining the status of conscientious objector to military service in accordance with human rights standards, 24 May 2019, para. 60, (I). Available at: <http://undocs.org/A/HRC/41/23>

<sup>19</sup> European Parliament, Resolution on respect for human rights in the European Community (annual report of the European Parliament), (A3-0025/93), 11 March 1993, para. 51, as it has been published in the Official Journal of the European Communities C 115, 26 April 1993, [Minutes of the sitting of Thursday, 11 March 1993](#), page 183. Resolution on conscientious objection in the Member States of the Community, (A3-0411/93), 19 January 1994, para. 9, as it has been published in the Official Journal of the European Communities C 44, 14 February 1994, [Minutes of the sitting of Wednesday, 19 January 1994](#), page 105. See also in the case of Greece: Resolution on the situation concerning basic rights in the European Union (2001) (2001/2014(INI)), para 42, text adopted on 15 January 2003, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P5-TA-2003-0012+0+DOC+XML+V0//EN>

<sup>20</sup> IFOR and CPTI Submission to the 110th Session of the Human Rights Committee.

<sup>21</sup> CIA The World Factbook, available at: <https://www.cia.gov/the-world-factbook/countries/kyrgyzstan/#military-and-security>

<sup>22</sup> RFE/RL's Kyrgyz Service, «Conscientious Objectors In Kyrgyzstan Allowed To Avoid Military Service», Radio Free Europe / Radio Liberty, 11 August 2015. Available at: <https://www.rferl.org/a/kyrgyzstan-conscientious-objectors/27183276.html>

## **18 and 26 of ICCPR.**

**RECOMMENDATION:** IFOR invites the Committee to request further information on this aspect to the State party, and if there have been no changes, to consider this aspect in the concluding observations.

### **E) Limitations on freedom of religion and obstructions to state registration**

The issue of the right to conscientious objection to military service and the violations of such right are highly interrelated with the broader issue of the right to freedom of religion, and particularly with the obstructions to state registration of religious organisations - insofar conscientious objection is only recognised for members of *registered* religious organizations whose creed does not allow the use of weapons or service in the armed forces.

The Committee has consistently highlighted issues concerning the right to freedom of conscience and religion in Kyrgyzstan, including the issue of registration, through its concluding observations<sup>23</sup>, views on individual complaints (e.g. about Jehovah's Witnesses),<sup>24</sup> and in the List of Issues in relation to the third periodic report of Kyrgyzstan.<sup>25</sup>

The 2021 Report of the Special Rapporteur on minority issues, following the 2019 visit to Kyrgyzstan indicates, as submissions from civil society -such as the one of the European Association of Jehovah's Witnesses- prior to the adoption of the List of Issues- and reports by non-governmental organisations -such as the Forum 18's January 2021 survey-<sup>26</sup> that these issues of serious concern remain un-addressed and in some cases the situation might have been even deteriorated.

Considering that the right to conscientious objection to military service "inheres in the right to freedom of thought, conscience and religion", it is obvious that it is affected by "limitations on freedom of religion" as cited in the List of Issues (para. 20 (b)).

**RECOMMENDATION:** IFOR invites the Committee to examine the issue of the right to conscientious objection to military service in the context of the broader issue of the right to freedom of thought, conscience and religion, to request further information and restate the concerns in the concluding observations.

IFOR is highly concerned that a failure to include the right to conscientious objection in the upcoming concluding observations, could result in the exacerbation of human rights violations of conscientious objectors in Kyrgyzstan.

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<sup>23</sup> CCPR/C/KGZ/CO/2, 23 April 2014, para. 22.

<sup>24</sup> E.g. CCPR/C/125/D/2312/2013, in March 2019, and CCPR/C/132/D/2659/2015, in December 2021.

<sup>25</sup> CCPR/C/KGZ/Q/3, 18 June 2021, para. 20.

<sup>26</sup> Mushfig Bayram, Forum 18, and John Kinahan, Forum 18, «KYRGYZSTAN: Religious freedom survey, January 2022». Available at: [https://www.forum18.org/archive.php?article\\_id=2711](https://www.forum18.org/archive.php?article_id=2711)