



SUBMISSION

TO THE 144th SESSION OF THE HUMAN RIGHTS COMMITTEE

For the List of Issues Prior to Reporting (LOIPR)

SWITZERLAND

Conscientious objection to military service and related issues

Updated April 2025 1

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INTRODUCTION

This submission concerns mainly possible violations of the right to conscientious objection to military service, and of further rights of conscientious objectors in Switzerland, a State party which maintains compulsory military service.

In its Concluding Observations concerning the initial report of Switzerland, in 1996, the Human Rights Committee stated:

“10. The Committee welcomes the entry into force of the Civilian Service Act, which has introduced a civil procedure for determining cases of conscientious objection.”¹

However, the Swiss legislation concerning conscientious objectors to military service still falls short from being in line with international law and international and regional human rights standards. Moreover, international human rights law and standards, including the Committee’s standards and jurisprudence, have evolved since 1996. Further concerns arise from attempts to deteriorate the regime governing conscientious objectors to military service.

It should be also emphasised that recently, in the context of the 4th Cycle of the Universal Periodic Review, Switzerland received a recommendation concerning conscientious objectors to military service: **“39.140 End all discriminatory treatment of conscientious objectors who opt for alternative civilian service (Cyprus)”**.²

Unfortunately, this recommendation was **not supported** (only “noted”) by the State under review.³

Connection e.V. would like to focus mainly on the following concerning aspects, analysing them separately and also in interrelation with each other:

- a. the **punitive duration** of the alternative civilian service,
- b. the possible **criminalisation / punishment** of conscientious objectors who refuse or fail to perform such a punitive and discriminatory alternative civilian service,
- c. reports that in such cases conscientious objectors are **tried by military courts** which would constitute a **violation of their right to fair trial**.

Connection e.V. also wishes to highlight the issue of the **requirement for an effective remedy** for previous violations of human rights of conscientious objectors to military service, as far as it concerns both:

- those who had been punished because of their conscientious objection to military service, **prior** to the establishment of the alternative civilian service;
- those conscientious objectors who have been punished because of their conscientious objection to military service and refusal or failure to perform the **punitive and discriminatory** alternative civilian service, from its establishment **until today**.

Furthermore, Connection e.V. wishes to add its concerns to those already expressed by other civil society organisations, in relation to **proposed amendments in legislation** which would deteriorate the situation of conscientious objectors in the State party.

Finally, Connection e.V. would like to highlight the issue of **conscientious objectors and deserters arriving in Switzerland from other countries**. Specifically, Connection e.V. wishes to add its concerns to those already expressed by other civil society organisations, in relation to the legislation concerning

¹ CCPR/C/79/Add.70, 8 November 1996, para. 10. <https://docs.un.org/en/CCPR/C/79/Add.70>

² UN General Assembly, Human Rights Council, “Report of the Working Group on the Universal Periodic Review, Switzerland”, (A/HRC/53/12), 31 March 2023, Recommendation 39.140 (Cyprus). <https://docs.un.org/en/A/HRC/53/12>

³ UN General Assembly, Human Rights Council, “Report of the Working Group on the Universal Periodic Review, Switzerland. Addendum. Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review”, (A/HRC/53/12/Add.1), 9 June 2023, p. 5. <https://docs.un.org/en/A/HRC/53/12/Add.1>

asylum for conscientious objectors to military service (including deserters) from countries where there is no adequate protection of the right to conscientious objection to military service, and deserters from countries with serious violations of human rights in the context of military service.

MAIN ISSUES OF CONCERN

a. Punitive duration of the alternative civilian service

According to the latest annual report of the European Bureau for Conscientious Objection (EBCO), based on feedback from the Swiss authorities: “For conscripts (privates and lance corporals), the initial duration of [military] service is at the most 280, but currently **245** days to be served in the period of 10 years. They are composed of a basic training of 5 months followed by yearly refresher-courses of 3-4 weeks.”⁴

On the other hand, as reported by EBCO, the duration of the alternative civilian service is **368** days (150% of the military service).⁵

The “significantly longer” duration of the alternative civilian service has been highlighted also by the OHCHR:

“In some States, alternative service is significantly longer than military service; in Switzerland, for example, civilian service is one and a half times longer than military service”.⁶

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In fact, strictly speaking, the duration of the alternative civilian service **rather slightly exceeds the 150%** of the duration of the military service.

Such an increased duration of the alternative civilian service **contravenes all the international and regional human rights standards.**

Specifically:

- 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.⁷
- The **European Court of Human Rights**, in 2017, appeared to adopt the aforementioned criterion of the European Committee of Social Rights of the Council of Europe, that the alternative service cannot exceed in length 1.5 times [50% increase] the length of military service.⁸ However, this standard appears to be **obsolete compared to UN standards, including the Committee’s ones.**
- According to the **UN Human Rights Committee**, an increase of the length of alternative service of 50%⁹ compared to that of military service “may be punitively long if not based on reasonable and

⁴ EBCO Annual Report 2023/2024, p. 144. https://ebco-beoc.org/sites/ebco-beoc.org/files/2024-05-15-EBCO_Annual_Report_2023-24.pdf

⁵ Ibid. p. 142.

⁶ 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. 58. <https://docs.un.org/en/A/HRC/41/23>

⁷ See for example Council of Europe, European Committee of Social Rights, *European Social Charter (Revised): Conclusions 2008 (vol. I)*, Estonia – Article I, p. 231. <https://www.refworld.org/legal/resolution/coeecs/2008/en/78043>
See also: ECSR, Conclusions XIX-1 - Greece - Article 1-2, (XIX-1/def/GRC/1/2/EN), 24 October 2008, Article 1 - Right to work. Paragraph 2 - Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects), 3. Other aspects of the right to earn one’s living in an occupation freely entered upon. Service required to replace military service. <https://hudoc.esc.coe.int/eng?i=XIX-1/def/GRC/1/2/EN>

⁸ ECtHR, Case of Adyan and others v. Armenia, (Application no. 75604/11), Court (First Section), 12/10/2017, para. 70. <http://hudoc.echr.coe.int/eng?i=001-177429>

⁹ 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. 131. <https://docs.un.org/en/CCPR/C/AUT/Q/5/Add.1>

objective grounds”.¹⁰ More recently, in **2024**, examining the case of Greece, where the discrepancy between alternative and military service ranges between 25% and 67%, depending on the category of full or reduced service according, mainly, to family status, and where the (full) alternative service is 25% longer than the (full) military service (15 months compared to 12 months),¹¹ the **Human Rights Committee** has raised concerns:

“28. The Committee remains concerned about: (a) the **length** of alternative service for conscientious objectors, which is **longer than military service**; [...]

29. The State party should ensure that its legislation recognizing the right to conscientious objection to military service encompasses an alternative to military service that is accessible to all conscientious objectors and is not punitive or discriminatory in terms of its nature, cost or **duration**.”¹² (emphasis added)

- 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. Equalizing the duration of alternative service with military service should be considered a good practice.”¹³
- The **European Parliament** has repeatedly stated that the length of alternative service should be the same and not last longer than the military service.¹⁴

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As far as it concerns UN standards, the State party has not provided reasonable and objective criteria or grounds for such an increase.

On the contrary, from a response of the Federal Office of Civilian Service of Switzerland to EBCO in 2021, which explicitly states that “Readiness to undertake civilian service, which lasts one and a half times as long as military service is regarded as sufficient proof for conscientious objection”¹⁵, it is understood that **the State party is rather maintaining such a punitive duration of alternative civilian service in order to establish the sincerity of the conscientious objectors**. This is corroborated in the most recent EBCO’s annual report where, in the part of the “feedback from the state”, it is written: “Conscripts that choose to serve in the Alternative Civilian Service prove their conscientious objection by accepting the longer duration of civil service (1.5 times the duration of the military service)”.¹⁶

It has been also corroborated by the OHCHR stating that “the fact that a person accepts to serve longer

¹⁰ UN Human Rights Committee, Concluding observations on the fifth periodic report of Austria, (CCPR/C/AUT/CO/5), 3 December 2015, paras. 33-34. <https://docs.un.org/en/CCPR/C/AUT/CO/5>

¹¹ UN Human Rights Committee, “Third periodic report submitted by Greece under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2022”, (CCPR/C/GRC/3), 13 September 2023, paras. 184-185. <https://undocs.org/en/CCPR/C/GRC/3>

¹² UN Human Rights Committee, Concluding observations on the third periodic report of Greece, (CCPR/C/GRC/CO/3), 28 November 2024, paras. 28-29. <https://docs.un.org/en/CCPR/C/GRC/CO/3>

¹³ 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, (I). <https://docs.un.org/en/A/HRC/41/23>

¹⁴ 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.

https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOC_1993_115_R_0139_01&from=EN

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.

https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOC_1994_044_R_0075_01&from=EN

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. <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P5-TA-2003-0012+0+DOC+XML+V0//EN>

¹⁵ EBCO, “Switzerland”, previously published information, citing a reply of the Federal Office of Civilian Service of Switzerland to the Questionnaire about EBCO’s Annual Report 2020 (e-mail on 26/01/2021).

It can be retrieved from: <https://web.archive.org/web/20220117132721/https://www.ebco-beoc.org/switzerland>

¹⁶ EBCO Annual Report 2023/2024, p. 144.

https://ebco-beoc.org/sites/ebco-beoc.org/files/2024-05-15-EBCO_Annual_Report_2023-24.pdf

is considered “proof” of the person’s motivation.”¹⁷

However, according to the **jurisprudence of the Human Rights Committee** when the reasoning of a State party is rather based on the argument that the differentiation in length of service is the only way to test the sincerity of an individual’s convictions, then, in the Committee’s view, such argument does not satisfy the requirement that the difference in treatment is based on reasonable and objective criteria.¹⁸

Worth noting also that:

- the issue of the punitive duration of the alternative civilian service might be further deteriorated for certain categories - e.g. those who have already served part of their military service before transferred to alternative service, and particularly officers or Non-commissioned officers (NCOs);
- considerations to reinstate the individual examination of claims of conscientious objection to military service do not appear to entail reduction of the duration of alternative service, despite the claim that the differential duration of alternative service serves to test the sincerity of such objection.

These issues are explained in more detail in the relevant part titled “Concerns about possible deterioration of the legislation”.

b. Possible criminalisation / punishment of conscientious objectors who refuse or fail to perform the punitive and discriminatory alternative civilian service

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The criminalisation of conscientious objectors for failing to perform both the military service and an alternative civilian service can be hardly considered as necessary in a democratic society, even in the cases where such an alternative civilian service is considered non-punitive and non-discriminatory. In this regard, worth noting that according to international law, States have the obligation to exempt conscientious objectors from military service, but they do not have an obligation to impose an alternative civilian service instead.¹⁹

For example, Norway has virtually exempted conscientious objectors without requiring an alternative civilian service (apart, possibly, from a 3-week start up course in Civil Protection and 2 days a year as training).²⁰

In Finland, Jehovah’s Witnesses have been simply exempted for years (1985-2019) without requirement to perform the (punitive) alternative civilian service, and the Human Rights Committee had asked the State to “extend the preferential treatment accorded to Jehovah’s Witnesses to other groups of conscientious objectors”.²¹ Unfortunately, Finland, instead of removing the exemption from military and civilian service accorded to Jehovah’s Witnesses, opted, in contrast to the Committee’s previous recommendations to extend such exemption to other groups of conscientious objectors. This raised the concerns of the Committee.²²

Furthermore, the OHCHR, in its more recent report on conscientious objection to military service

¹⁷ 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. 58. <https://docs.un.org/en/A/HRC/41/23>

¹⁸ Human Rights Committee, Views on Communication No 666/1995, Frédéric Foin v. France, (CCPR/C/67/D/666/1995), 9 November 1999, para. 10.3. <https://docs.un.org/en/CCPR/C/67/D/666/1995>
Human Rights Committee, Views on Communications No. 690/1996 & 691/1996, Marc Venier and Paul Nicolas v. France, (CCPR/C/69/D/690/1996 & 691/1996), para. 10.4. <https://www.refworld.org/jurisprudence/caselaw/hrc/2000/en/89601>

¹⁹ See for example in A/HRC/56/30, para. 36. <https://docs.un.org/en/A/HRC/56/30>

²⁰ <https://ebco-beoc.org/norway> (accessed 22 April 2025). See also in A/HRC/56/30, para. 36. <https://docs.un.org/en/A/HRC/56/30>

²¹ Human Rights Committee, Concluding observations on the sixth periodic report of Finland, CCPR/C/FIN/CO/6, 22 August 2013, para. 14. <https://docs.un.org/en/CCPR/C/FIN/CO/6>

²² Human Rights Committee, Concluding observations on the seventh periodic report of Finland, (CCPR/C/FIN/CO/7), 3 May 2021, para. 36. <https://docs.un.org/en/CCPR/C/FIN/CO/7>

recommended:

“In order to facilitate respect for the right to conscientious objection, States should consider removing compulsory alternative service for individuals exempted from military service”.²³

However, in the case of Switzerland, not only an alternative civilian service is imposed, but such an alternative civilian service, as it has been previously explained, is punitive and discriminatory, and moreover, according to some reports, the failure to perform it entails serious penal consequences.

According to information which had been provided by EBCO in previous years, “failure to perform military service is punishable under Article 8 of the Military Criminal Code”. Furthermore: “Total Objection: Conscientious objectors refusing all forms of service are tried and sentenced by military courts to jail sentences of 8 to 14 months. Objection during or toward the end of military or civilian alternative service can be punished with 1 to 8 months in prison. Approximately 40 young men are sentenced to prison terms every year.”²⁴

It has been also reported, in previous years: “There is also a small number of objectors each year who are imprisoned for their refusal even to perform the alternative service, whether because they see it as too closely related to the system of military service, or in protest against its punitive and discriminatory duration and other conditions”.²⁵

Any punishment of a conscientious objector refusing or failing to perform a **punitive and discriminatory** alternative civilian service, and especially a prison sentence, constitutes a severe violation of human rights, including the right to freedom of thought, conscience and religion, the right to freedom from discrimination, and (in case any actual detention takes place) constitutes an arbitrary detention in violation of the right to liberty.

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This is corroborated also by **recent jurisprudence of the Human Rights Committee** in the case of a conscientious objector in Greece who did not perform the punitive and discriminatory alternative civilian service.²⁶ It is also corroborated by **recent concluding observations of the Human Rights Committee**, in the equivalent case of Finland, where the alternative service is considered punitive, and therefore the Committee has asked the State party to “halt all prosecutions of individuals who refuse to perform military service on grounds of conscience and release those who are currently serving related prison sentences”.²⁷

In such cases, the State is under an obligation to provide the conscientious objector (who has been punished for failing to perform a punitive and discriminatory alternative civilian service), with an effective remedy. This issue will be examined in detailed in a separate part of this submission.

c. Possible violation of the right to fair trial of conscientious objectors tried by military courts

As previously noted, according to the information which had been provided by EBCO in previous years, “failure to perform military service is punishable under Article 8 of the Military Criminal Code” and “Conscientious objectors refusing all forms of service are tried and sentenced by military courts”.²⁸

²³ A/HRC/56/30, para. 56. Available at: <https://docs.un.org/en/A/HRC/56/30>

²⁴ EBCO, “Switzerland”, previously published information which can be retrieved from:

<https://web.archive.org/web/20220117132721/https://www.ebco-beoc.org/switzerland>

See also: IFOR, “Submission to the 42nd session of the Universal Periodic Review, Switzerland, Military service, conscientious objection and related issues”, updated July 2022, para. 11. <https://www.ohchr.org/en/hr-bodies/upr/ch-stakeholders-info-s42>

²⁵ CPTI, “UPR Submission, Switzerland, 42nd session (Jan/Feb 2023), para. 33. Can be accessed through <https://www.ohchr.org/en/hr-bodies/upr/ch-stakeholders-info-s42>

²⁶ See: *Petromelidis v. Greece* (CCPR/C/132/D/3065/2017), 24 August 2022. <https://docs.un.org/en/CCPR/C/132/D/3065/2017>

²⁷ Human Rights Committee, Concluding observations on the seventh periodic report of Finland, (CCPR/C/FIN/CO/7), 3 May 2021, para.

37. <https://docs.un.org/en/CCPR/C/FIN/CO/7>

²⁸ <https://web.archive.org/web/20220117132721/https://www.ebco-beoc.org/switzerland>

See also: IFOR, “Submission to the 42nd session of the Universal Periodic Review, Switzerland, Military service, conscientious objection

Any trial of a civilian by a military court raises issues of fairness. But in the case of conscientious objectors to military service, additional issues are raised.

Therefore, both the **general issue of trials of civilians** by military courts, as well as the **particular issue of trials of conscientious objectors to military service** by military courts should be examined.

- International standards about trials of civilians by military courts

The Committee's views

“The Committee notes the existence, in many countries, of military or special courts which try civilians. While the Covenant does not prohibit the trial of civilians in military or special courts, it requires that such trials are in full conformity with the requirements of article 14 and that its guarantees cannot be limited or modified because of the military or special character of the court concerned. The Committee also notes that the trial of civilians in military or special courts may raise serious problems as far as the equitable, impartial and independent administration of justice is concerned. Therefore, it is important to take all necessary measures to ensure that such trials take place under conditions which genuinely afford the full guarantees stipulated in article 14. Trials of civilians by military or special courts should be exceptional,²⁹ 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.”^{30,31}

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The Committee has also stated that: “It is incumbent on a State party that does try civilians before military courts to justify the practice. The Committee considers that the State party must demonstrate, with regard to the specific class of individuals at issue, that the regular civilian courts are unable to undertake the trials, that other alternative forms of special or high-security civilian courts are inadequate to the task and that recourse to military courts is unavoidable. The State party must further demonstrate how military courts ensure the full protection of the rights of the accused pursuant to article 14. [...] The State party's failure to demonstrate the need to rely on a military court in this case means that the Committee need not examine whether the military court, as a matter of fact, afforded the full guarantees of article 14.”³²

However, on another occasion, the Committee has even recommended: “that the Criminal Code be amended so as to prohibit the trial of civilians by military tribunals in any circumstances”.³³

Principles

Connection e.V. points out that the Principle No. 5 of the “Draft principles governing the administration of justice through military tribunals” requires that: “Military courts should, in principle, have no jurisdiction to try civilians. In all circumstances, the State shall ensure that civilians accused of a criminal offence of any nature are tried by civilian courts”.³⁴ This Principle has been cited also by the Special

and related issues”, updated July 2022, para. 15. Can be accessed through <https://www.ohchr.org/en/hr-bodies/upr/ch-stakeholders-info-s42>

²⁹ Also see Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, art. 64 and general comment No. 31 (2004) on the *Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, para. 11.

³⁰ See communication No. 1172/2003, *Madani v. Algeria*, para. 8.7.

³¹ UN Human Rights Committee, General Comment No. 32 “Article 14: Right to equality before courts and tribunals and to a fair trial”, (CCPR/C/GC/32), 23 August 2007, para. 22. <https://undocs.org/en/CCPR/C/GC/32>

³² See communication No. 1172/2003, *Madani v. Algeria*, (CCPR/C/89/D/1172/2003), 21 June 2007 para. 8.7. <https://undocs.org/en/CCPR/C/89/D/1172/2003>

³³ UN Human Rights Committee, Concluding observations on the initial report of Slovakia, (CCPR/C/79/Add.79), 4 August 1997, para. 20.

<https://undocs.org/en/CCPR/C/79/Add.79>

³⁴ UN Economic and Social Council, Commission on Human Rights, Civil and political rights, including the question of independence of the judiciary, administration of justice, impunity, Issue of the administration of justice through military tribunals, Report submitted by the Special Rapporteur of the Sub-Commission on the Promotion and Protection of Human Rights, Emmanuel Decaux, (E/CN.4/2006/58), 13 January 2006, Draft principles governing the administration of justice through military tribunals, Principle No. 5 “Jurisdiction of military

Rapporteur on the independence of judges and lawyers, pointing out that according to it: “military courts should have no jurisdiction to try civilians”.³⁵ This has also been cited by the European Court of Human Rights.³⁶

Principle 29 of the “Updated Set of principles for the protection and promotion of human rights through action to combat impunity” requires explicitly that: “The jurisdiction of military tribunals must be restricted solely to specifically military offences committed by military personnel [...]”.³⁷

Similarly, in the “Principles and guidelines on the right to a fair trial and legal assistance in Africa”, the section L, titled “Right of civilians not to be tried by military courts”, para. (a) requires that: “The only purpose of Military Courts shall be to determine offences of a purely military nature committed by military personnel.” And para (c) requires that: “Military courts should not in any circumstances whatsoever have jurisdiction over civilians.”³⁸

Regional Courts

The Inter-American Court of Human Rights has ruled that “The State must align the domestic legal system to the international standards regarding criminal military jurisdiction within a reasonable period of time, so that in case it considers the existence of a military criminal jurisdiction to be necessary, this must be restricted only to crimes committed by military personnel in active service. Therefore, the State shall set limits to the material and personal jurisdiction of the military courts through its legislation, so that under no circumstances may a civilian be subjected to the jurisdiction of military criminal courts [...]”.³⁹

The European Court of Human Rights has repeatedly ruled against the trial of civilians by military courts or courts with even some participation of military judges (“composed, even if only in part, of members of the armed forces”) finding a violation of article 6.1 of the ECHR, equivalent to Article 14.1 of the ICCPR.⁴⁰

The European Court of Human Rights has stated that it “has attached importance in numerous previous judgments to the fact that a civilian has had to appear before a court composed, if only in part, of members of the armed forces (see, most recently, *Öcalan v. Turkey* [GC], no. 46221/99, § 116, ECHR 2005-..., and *Şahiner v. Turkey*, no. 29279/95, § 45, ECHR 2001-IX). It has held that such a situation seriously undermined the confidence that courts ought to inspire in a democratic society.”⁴¹

Noting also that such concern “is all the more valid when a court is composed solely of military judges.”⁴²

courts to try civilians”. <https://undocs.org/en/E/CN.4/2006/58>

³⁵ Report of the Special Rapporteur on the independence of judges and lawyers, (A/HRC/11/41) 24 March 2009, para. 36.

<https://undocs.org/en/A/HRC/11/41>

³⁶ ECtHR, *Ergin v Turkey* (No.6) (47533/99), 4 May 2006, para. 24. <https://hudoc.echr.coe.int/eng?i=001-75327>

³⁷ UN Economic and Social Council, Commission on Human Rights, Report of the independent expert to update the Set of principles to combat impunity, Diane Orentlicher, Addendum, Updated Set of principles for the protection and promotion of human rights through action to combat impunity, (E/CN.4/2005/102/Add.1), 8 February 2005, Principle 29. <https://undocs.org/en/E/CN.4/2005/102/Add.1>

³⁸ Principles and guidelines on the right to a fair trial and legal assistance in Africa.

http://hrlibrary.umn.edu/research/ZIM%20Principles_And_G.pdf

³⁹ Inter-American Court: *Palamara-Iribarne v Chile* (2005), para. 269(14).

https://www.corteidh.or.cr/docs/casos/articulos/seriec_135_ing.pdf

⁴⁰ E.g. *Onaran v. Turkey* (65344/01), 5 June 2007. <https://hudoc.echr.coe.int/eng?i=001-80851>

Düzgören v. Turkey, (56827/00), 9 November 2006. <https://hudoc.echr.coe.int/eng?i=001-77919>

Ergin v Turkey (No.6) (47533/99), 4 May 2006. <https://hudoc.echr.coe.int/eng?i=001-75327>

[See also: *Öcalan v. Turkey* [GC], (46221/99), 12 May 2005, § 116. <https://hudoc.echr.coe.int/eng?i=001-69022>]

Canevi and Others v. Turkey, (40395/98), 10 November 2004. <https://hudoc.echr.coe.int/eng?i=001-67394>

Şahiner v. Turkey, (29279/95), 25 September 2001. <https://hudoc.echr.coe.int/eng?i=001-59666>

⁴¹ *Ergin v Turkey* (No.6) (47533/99), 4 May 2006, para. 43. <https://hudoc.echr.coe.int/eng?i=001-75327>

⁴² Ibid. para. 44.

And concluded that: “Lastly, situations in which a military court has jurisdiction to try a civilian for acts against the armed forces may give rise to reasonable doubts about such a court’s objective impartiality. A judicial system in which a military court is empowered to try a person who is not a member of the armed forces may easily be perceived as reducing to nothing the distance_which should exist between the court and the parties to criminal proceedings, even if there are sufficient safeguards to guarantee that court’s independence.”⁴³

- **International standards about trials of conscientious objectors to military service by military courts**

As for the issue of possible trials of conscientious objectors by military courts, it should be noted that conscientious objectors should not be punished for exercising their right to conscientious objection to military service, and **therefore they should not be tried, in the first place.**

However, in cases of trials of conscientious objectors by military courts, an **additional** violation occurs, that of the right to fair trial.

Apart from the broader issues of the lack of impartiality raised, in general, in cases of civilians tried by military courts, the particular issue of trials of conscientious objectors by military courts raises further and even more obvious and severe issues of lack of impartiality.

As it has been put in the “Draft principles governing the administration of justice through military tribunals”: “By definition, in such cases military tribunals would be judges in their own cause”.⁴⁴ It should be stressed also that in the same principles, it is explicitly stated that: “Conscientious objectors are civilians who should be tried in civil courts, under the supervision of ordinary judges”.⁴⁵

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The European Court of Human Rights has repeatedly ruled against the trials of conscientious objectors by military courts, finding a violation of article 6.1 of the ECHR,⁴⁶ equivalent to Article 14.1 of the ICCPR.

The European Court of Human Rights, in such cases of conscientious objectors tried by military courts has considered that: “It was understandable that, as a conscientious objector being prosecuted for offences of a purely military nature before a tribunal made up exclusively of military officers, the applicant should have been apprehensive about being tried by judges who were attached to the armed forces, which could be equated to a party to the proceedings. As a result, he could legitimately have feared that the Air Force Command Tribunal might allow itself to be unduly influenced by one-sided considerations. The applicant’s doubts as to the independence and impartiality of the tribunal could therefore be said to have been objectively justified.”⁴⁷

d. Possible lack of effective remedy

It is relevant the issue of the requirement for an effective remedy for previous violations of human rights of conscientious objectors to military service. This concerns **all** conscientious objectors who have suffered violations of their human rights. However, due to the significant changes in the situation, it is

⁴³ Ibid. para. 49.

⁴⁴ UN Economic and Social Council, Commission on Human Rights, (E/CN.4/2006/58), 13 January 2006, Draft principles governing the administration of justice through military tribunals, Principle No. 6 “Conscientious objection to military service”, para. 22. <https://undocs.org/en/E/CN.4/2006/58>

⁴⁵ Ibid.

⁴⁶ ECtHR, *Ercep v Turkey* (43965/04), 22 November 2011, paras. 69-70. <https://hudoc.echr.coe.int/?i=001-107532>

Savda v Turkey (42730/05), 12 June 2012, para. 111. <https://hudoc.echr.coe.int/eng?i=001-111414>

Feti Demirtas v Turkey (5260/07), 17 January 2012, para. 125. <https://hudoc.echr.coe.int/eng?i=001-108617>

Bouldu and others v. Turkey, (14017/08), 3 June 2014, paras. 98-99. <https://hudoc.echr.coe.int/fre?i=001-144352>

⁴⁷ Excerpt from the Information Note on the Court’s case-law No. 148, January 2012, *Feti Demirtas v. Turkey* (5260/07) Judgment 17.1.2012 [Section II], as published in the website of the ECtHR: <http://hudoc.echr.coe.int/eng?i=002-5>

convenient to examine separately:

- those who had been punished because of their conscientious objection to military service, **prior** to the establishment of the alternative civilian service.
- those conscientious objectors who have been punished because of their conscientious objection to military service and refusal or failure to perform the **punitive and discriminatory** alternative civilian service, from its establishment **until today**.
- **The case of conscientious objectors punished prior to the establishment of the alternative civilian service**

According to reports, between 1968 and 1996, some 12,000 men have been sentenced to prison for conscientious objection to military service. In September 2018, Green Party parliamentarian Lisa Mazzone submitted a motion which called for criminal sentences, handed down between 1968 and 1996 against those who refused military service on grounds of conscience, to be lifted. Mazzone cited a 1967 resolution of the Council of Europe, referring to the European Convention on Human Rights, which called on member states to grant their citizens the right to conscientious objection to military service. In September 2019, the Swiss government decided against Mazzone's motion.⁴⁸

There is an abundance of Committee's views in cases of conscientious objectors versus States without provisions for alternative civilian service, where it has been established that there are violations of art. 18, and consequently (in cases of deprivation of liberty) of art. 9, and the victims have the right to an effective remedy according to article 2, paragraph 3 (a), of the Covenant, which requires full reparation, including, *inter alia*, expunging criminal records and adequate compensations.⁴⁹

⁴⁸ Andrea Tognina, "Is it possible to refuse military service in Switzerland?", *Swissinfo.ch*, 26 November 2019.

https://www.swissinfo.ch/eng/politics/conscientious-objection_is-it-possible-to-refuse-military-service-in-switzerland/45306024

⁴⁹ E.g. Human Rights Committee, *Yeo-Bum Yoon and Myung-Jin Choi v. the Republic of Korea*, communication No. 1321/2004 and 1322/2004, (CCPR/C/88/D/1321-1322/2004), 23 January 2007. <https://docs.un.org/en/CCPR/C/88/D/1321-1322/2004>

Eu-min-Jung et al v. the Republic of Korea, communications No. 1593-1603/2007, (CCPR/C/98/D/1593-1603/2007), 30 April 2010. <https://docs.un.org/en/CCPR/C/98/D/1593-1603/2007>

Views on Communication No.1642-1741/2007, *Jeong et al. v. Republic of Korea* (CCPR/C/101/D/1642-1741/2007), 27 April 2011. <https://docs.un.org/en/CCPR/C/101/D/1642-1741/2007>

See also Views on Communications No:

1853/2008 and 1854/2008, *Atasoy and Sarkut v. Turkey*, (CCPR/C/104/D/1853-1854/2008), 19 June 2012.

<https://docs.un.org/en/CCPR/C/104/D/1853-1854/2008>

1786/2008, *Jong-nam Kim et al. v. The Republic of Korea*, (CCPR/C/106/D/1786/2008), 1 February 2013.

<https://docs.un.org/en/CCPR/C/106/D/1786/2008>

2179/2012, *Young-kwan Kim et al. v. Republic of Korea*, (CCPR/C/112/D/2179/2012), 14 January 2015.

<https://docs.un.org/en/CCPR/C/112/D/2179/2012>

2218/2012, *Abdullayev v. Turkmenistan*, (CCPR/C/113/D/2218/2012), 19 May 2015. <https://docs.un.org/en/CCPR/C/113/D/2218/2012>

2223/2012, *Japparow v. Turkmenistan*, (CCPR/C/115/D/2223/2012), 17 December 2015.

<https://docs.un.org/en/CCPR/C/115/D/2223/2012>

2221/2012, *Mahmud Hudaybergenov v. Turkmenistan*, (CCPR/C/115/D/2221/2012), 22 December 2015.

<https://docs.un.org/en/CCPR/C/115/D/2221/2012>

2222/2012, *Ahmet Hudaybergenov v. Turkmenistan*, (CCPR/C/115/D/2222/2012), 23 December 2015.

<https://docs.un.org/en/CCPR/C/115/D/2222/2012>

2225/2012, *Nurjanov v. Turkmenistan*, (CCPR/C/117/D/2225/2012), 19 September 2016.

<https://docs.un.org/en/CCPR/C/117/D/2225/2012>

2219/2012, *Nasyrlyayev v. Turkmenistan*, (CCPR/C/117/D/2219/2012), 26 September 2016.

<https://docs.un.org/en/CCPR/C/117/D/2219/2012>

2224/2012, *Matyakubov v. Turkmenistan*, (CCPR/C/117/D/2224/2012), 26 September 2016.

<https://docs.un.org/en/CCPR/C/117/D/2224/2012>

2226/2012, *Uchetov v. Turkmenistan*, (CCPR/C/117/D/2226/2012), 26 September 2016. <https://docs.un.org/en/CCPR/C/117/D/2226/2012>

2220/2012, *Aminov v. Turkmenistan*, (CCPR/C/117/D/2220/2012), 27 September 2016.

<https://docs.un.org/en/CCPR/C/117/D/2220/2012>

2227/2012, *Yegendurdyyew v. Turkmenistan*, (CCPR/C/117/D/2227/2012), 11 October 2016.

<https://docs.un.org/en/CCPR/C/117/D/2227/2012>

2846/2016, *Jong-bum Bae et al. v. Republic of Korea*, (CCPR/C/128/D/2846/2016), 29 June 2020.

<https://docs.un.org/en/CCPR/C/128/D/2846/2016>

Furthermore, in the case of another State party, Greece, the Committee has asked in the List of Issues Prior to Reporting about whether the State party intends to address the issue of those who had been **already sentenced and punished** before the establishment of alternative civilian service (in that case 1998), raising specifically the issue of **compensation**:

“Please provide information on the impact of Law No. 4361/2016, which ended prosecutions against those who had declared their conscientious objection before 1998, and indicate if the State party intends to provide adequate compensation to those who have already been sentenced and punished.”⁵⁰

In the case of Switzerland, considering the **high number of conscientious objectors reportedly sentenced** prior to the establishment of alternative civilian service, it is **highly important that the State party is asked** what measures has taken to provide effective remedy for the violations suffered, including the issues of **expunging of criminal records, return of possible fines or other sums paid and adequate compensation**.

Worth noting also that the State party’s accession to ICCPR occurred in 1992,⁵¹ while the Civilian Service Act came into force in October 1996,⁵² which means that for several years there have been violations of ICCPR, *per se*, while the Covenant was in force, in cases of conscientious objectors. Furthermore, even as far as it concerns prison sentences prior to 1992, it can be well argued that they “continue or have continuing effects that in themselves constitute a violation of the Covenant”.⁵³ After all, this was the reason why the lift of the sentences was asked by parliamentarian Lisa Mazzone in 2018.

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Therefore, the State party should be asked about providing effective remedy to all conscientious objectors punished before the establishment of alternative civilian service in 1996.

- **The case of conscientious objectors punished after the establishment of the punitive and discriminatory alternative civilian service**

According to the jurisprudence of the Committee, in cases of conscientious objectors to military service who have been punished for failing to perform a punitive and discriminatory alternative civilian service, the State party is under an obligation to provide the conscientious objector with an effective remedy. This requires it to make full reparation to individuals whose rights have been violated. Accordingly, the State is obligated, *inter alia*, to expunge the conscientious objector’s criminal record, to reimburse all sums paid as fines and to provide adequate compensation. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.⁵⁴

e. Concerns about possible deterioration of the legislation

Connection e.V. wishes to add its concerns to those already expressed by other civil society organisations, in relation to proposed amendments in legislation which would deteriorate the situation of conscientious objectors in the State party.

More specifically, in the latest EBCO’s annual report it is stated:

“Current situation & recent developments

Feedback from organisations

3272/2018, *Begenchov v. Turkmenistan*, (CCPR/C/134/D/3272/2018), 5 August 2022.

<https://docs.un.org/en/CCPR/C/134/D/3272/2018>

⁵⁰ Human Rights Committee, List of issues prior to submission of the third periodic report of Greece, (CCPR/C/GRC/QPR/3), 2 December 2021, para. 20. <https://docs.un.org/en/CCPR/C/GRC/QPR/3>

⁵¹ https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&clang=en

⁵² Loi fédérale sur le service civil (LSC), Art. 84. Available at: https://www.fedlex.admin.ch/eli/cc/1996/1445_1445_1445/fr

⁵³ For this issue see also: See: *Petromelidis v. Greece* (CCPR/C/132/D/3065/2017), 24 August 2022, para. 8.7.

<https://docs.un.org/en/CCPR/C/132/D/3065/2017>

⁵⁴ *Petromelidis v. Greece* (CCPR/C/132/D/3065/2017), 24 August 2022, para. 11. <https://docs.un.org/en/CCPR/C/132/D/3065/2017>

As reported by EBCO's Swiss member CIVIVA:⁵⁵

At the request of the far right-wing political party SVP, the Swiss Federal Council has yet again decided on several adaptations to the civilian alternative service (Zivildienst) laws in 2023, in order to restrict access to, and worsen the conditions of serving in alternative civilian service. This is only three years after it had proposed a package of restrictions in 2019. The declared intention of the adaptations is to prevent young men from accessing their right to Conscientious Objector status.

One change is to undermine the independence of the civilian service from the military by placing it under the command of the civil defence authority.

A further package of six measures has been proposed for 2024:

1. a minimum number of 150 days of alternative service (irrespective of the number of days already served in the military prior to application for CO status)
2. the application of the 1.5 ratio of the duration of alternative service to that of military service to officers and NCOs, whose periods of military service are longer than those of the rank and file.
3. no placements that require a degree in human, dental or veterinary medicine
4. no admission of members of the armed forces with 0 remaining days of military service
5. a tightening of the rules regarding the timing of alternative civilian service, requiring that a placement by [sic] taken up within the year of admission.
6. likewise, in the case where the application was submitted during military basic training period (recruit school), an obligation to complete the long period of service within the calendar year following the legally binding admission.

The new minimum number of days to be served in civilian alternative service (item 1), and the new conditions for officers (item 2) will result in an increase in the relative duration of alternative service to up to 200% of that of military service, or more depending on the time of application. Moreover, it is once again being suggested that the individual examination of claims of conscientious objection should be reinstated, despite the claim that the differential duration of alternative service serves to test the sincerity of the objection. CIVIVA points out, furthermore, that the fact that currently no applications are formally rejected, by no means all lead to acceptances; in fact figures quoted in our report last year's report indicated that something like a quarter of all applications, and a greater proportion of applications lodged after military service had begun, were for one reason or another not proceeded with (although in some cases a later application might have been lodged by the same person). In total, less than a quarter of those passed as fit for military service are admitted to alternative service.”⁵⁶

According to information received, the above concerns are still valid since the amendments are still pending in 2025.

f. Concerns about the legislation regarding asylum for conscientious objectors to military service and deserters

Connection e.V. wishes to add its concerns to those already expressed by other civil society organisations,⁵⁷ in relation to the legislation concerning asylum for conscientious objectors to military service (including deserters) from countries where there is no adequate protection of the right to conscientious objection to military service, and deserters from countries with serious violations of human rights in the context of military service.

As it has been reported: “new provisions in Swiss asylum law [...] were voted in by the Swiss people in June 2013. Among them is a clause that states that Switzerland no longer provides refugee status to conscientious objectors and army deserters. This amendment was meant to limit the number of asylum seekers from Eritrea where all able bodied men are required to serve in the army for an unlimited amount of time on little pay.

⁵⁵ More info about the organisation at: <https://www.servicecivil.ch/civiva>

⁵⁶ EBCO Annual Report 2023/2024, pp. 142-143.

https://ebco-beoc.org/sites/ebco-beoc.org/files/2024-05-15-EBCO_Annual_Report_2023-24.pdf

⁵⁷ E.g. CPTI, “UPR Submission, Switzerland, 42nd session (Jan/Feb 2023), paras. 2(c), 34-37, 42. Can be accessed through <https://www.ohchr.org/en/hr-bodies/upr/ch-stakeholders-info-s42>

IFOR, “UPR Submission, Switzerland, 28th session (Oct/Nov 2017), paras. 2, 26-30. Can be accessed through <https://www.ohchr.org/en/hr-bodies/upr/upr-switzerland-stakeholders-info-s28>

The St Gallen court however said that the 2013 amendments do not prevent the granting of asylum to people who face serious risk of persecution and not just penalties for refusing compulsory military service.”⁵⁸

The reported amendments of the legislation in 2013 appear to fall short of international human rights law and standards (see below) and could lead also to violations of ICCPR (e.g. art. 9, 13).

- **International standards on international protection of conscientious objectors**

A non-exhaustive compilation of international standards on the issue of international protection of conscientious objectors to military service follows:

- The UNHCR has included the issue of persecution of conscientious objectors in its guidelines for international protection. The UNHCR has also clarified that “Such an objection is not confined to absolute conscientious objectors [pacifists], that is, those who object to all use of armed force or participation in all wars. It also encompasses those who believe that ‘the use of force is justified in some circumstances but not in others, and that therefore it is necessary to object in those other cases’ [partial or selective objection to military service].⁵⁹ A conscientious objection may develop over time, and thus volunteers may at some stage also raise claims based on conscientious objection, whether absolute or partial.”⁶⁰
- As it has been also highlighted by the OHCHR⁶¹:
 - the Human Rights Council has encouraged States “to consider granting asylum to those conscientious objectors to military service who have a well-founded fear of persecution in their country of origin owing to their refusal to perform military service when there is no provision, or no adequate provision, for conscientious objection to military service”⁶²
 - UNHCR has noted that a well-founded fear of persecution may arise after an applicant has left her or his country of origin, owing to circumstances arising in the country of origin during the applicant’s absence and/or as a result of her or his own actions after she or he has left the country of origin, for example for having expressed objections or taken a stance against a situation of armed conflict and violence.⁶³
 - In 2019, the Working Group on Arbitrary Detention reminded States to respect, protect and fulfil the right to personal liberty of conscientious objectors to military service by exercising due diligence to prevent their expulsion, return (refoulement) or extradition to another State where there are substantial grounds for believing that they would be in danger of being subjected to arbitrary deprivation of liberty.⁶⁴
 - In its general comment No. 4 (2017), the Committee against Torture noted that “violations of the right to freedom of thought, conscience and religion” (as well “desertion from the national armed forces or armed groups”) were indications of the complainant’s personal risk

⁵⁸ “Court accepts Syrian army objector’s asylum plea”, *Swissinfo.ch*, 6 March 2015. <https://www.swissinfo.ch/eng/society/court-accepts-syrian-army-objector-s-asylum-plea/41309390>

⁵⁹ See, UN Conscientious Objection to Military Service, E/CN.4/Sub.2/1983/30/Rev.1, 1985 (the “Eide and Mubanga-Chipoya report”), <http://www.refworld.org/pdfid/5107cd132.pdf>, para. 21. See also, paras. 128-135 regarding persecution in the context of conscientious objection to conflicts which violate basic rules of human conduct.

⁶⁰ UNHCR: Guidelines on International Protection No. 10, para. 3. <https://www.unhcr.org/sites/default/files/legacy-pdf/529efd2e9.pdf>

⁶¹ United Nations, General Assembly, Conscientious objection to military service, Analytical report of the Office of the United Nations High Commissioner for Human Rights, (A/HRC/50/43), 11 May 2022, paras. 20-22. <http://undocs.org/A/HRC/50/43>

⁶² UN Human Rights Council, Resolution 24/17 (A/HRC/RES/24/17), 8 October 2013, para. 13. <http://undocs.org/A/HRC/RES/24/17>

⁶³ UNHCR, Handbook on procedures and criteria for determining refugee status and guidelines on international protection, Reissued, Geneva, February 2019, p. 226. <https://www.refworld.org/pdfid/5cb474b27.pdf>.

⁶⁴ UN Human Rights Council, "Arbitrary detention. Report of the Working Group on Arbitrary Detention", (A/HRC/42/39), 16 July 2019, para. 63. <http://undocs.org/A/HRC/42/39>

and that the Committee would assess “substantial grounds” and consider the risk of torture as foreseeable, personal, present and real when the existence of facts relating to the risk by itself, at the time of its decision, would affect the rights of the complainant under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in case of the complainant’s deportation.⁶⁵

- More recently, the OHCHR has stressed: “States should respect and protect the rights of conscientious objectors arriving from third States, including through adherence to the principle of non-refoulement and international human rights and refugee law and the implementation and dissemination of guidance on the interpretation of applicable international law, such as the UNHCR guidelines on international protection on claims to refugee status related to military service.”⁶⁶
- There is an evolving jurisprudence of the European Court of Human Rights, which takes into consideration the issue of conscientious objection to military service as for the expulsion of persons.⁶⁷

SUGGESTED QUESTIONS

1. What are the legal, penal, administrative and/or other consequences if someone refuses or fails to perform both the military and the (punitive) alternative civilian service?
2. If there are criminal prosecutions of people refusing or failing to perform both the military and the (punitive) alternative civilian service, please clarify whether they are tried by military courts or not.
3. Please provide the number of people refusing or failing to perform both the military and the (punitive) alternative civilian service each year, since the establishment of the alternative civilian service, and statistics on possible prosecutions, sentences, imprisonments, as well as fines or other administrative punishment.
4. What measures, if any, have been taken by the State party to provide effective remedy (full reparation, including, *inter alia*, expunging criminal records and adequate compensations):
 - a. To those conscientious objectors who have been punished because of their conscientious objection to military service, prior to the establishment of the alternative civilian service?
 - b. To those conscientious objectors who have been punished because of their conscientious objection to military service and refusal or failure to perform the punitive alternative civilian service, from its establishment until today?
5. Please, explain the reasoning behind the proposed amendments in legislation concerning conscientious objectors to military service, which have provoked concerns by the civil society organisations, and whether such proposed amendments comply with the relevant contemporary international human rights law and standards.
6. Please, provide details about the current legislation concerning asylum for conscientious objectors to military service (including deserters) coming from countries where there is no adequate protection of the right to conscientious objection to military service, and deserters (or draft evaders) coming

⁶⁵ Committee against Torture, “General comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22”, (CAT/C/GC/4), 4 September 2018, para. 45. <http://undocs.org/CAT/C/GC/4>

⁶⁶ UN Human Rights Council, Conscientious objection to military service, Report of the Office of the United Nations High Commissioner for Human Rights, (A/HRC/56/30), 23 April 2024, para. 58. <https://undocs.org/A/HRC/56/30>

⁶⁷ See for example ECtHR, *M.D. and others v. Russia*, paras. 45 and 110. <https://hudoc.echr.coe.int/eng?i=001-211791>

from countries with serious violations of human rights in the context of military service. Please, provide statistics about relevant applications, and their acceptance or rejection.