

Mandate of the Special Rapporteur on freedom of religion or belief

REFERENCE:
OL GRC 3/2019

11 July 2019

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on freedom of religion or belief, pursuant to Human Rights Council resolution 40/10.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning **the recently adopted law (4609/2019), which regrettably fails to recognize the status of conscientious objectors (COs) to military service in accordance with international human rights standards.**

I regret that my concerns are similar to what has previously been expressed regarding the prosecution and punishment of COs in a communication to your Excellency's Government dated 31 October 2016 (ref. no. **GRC 3/2016**) and to which a reply has yet to be received.

According to the information received:

On 12 April 2019, the Ministry of National Defence submitted a bill regarding arrangements for Armed Forces Personnel, the Army, including conscientious objectors (COs) to military service.

On 18 April 2019, the bill was approved by Parliament and published in the official journal of the Government of Greece, the Government's Gazette on 3 May 2019.

On 24 June 2019, the Alternate Minister of National Defence announced in the Government's Gazette a reduction in the length of alternative civilian service, the reduction length being directly dependent on the service category. Full service individuals, for example, received a 3 month reduction, in comparison to 2nd category reduced service individuals, who received a 2 month reduction.

The provisions concerning conscientious objectors that I wish to address are as follows:

Article 18 (7) lowers the age at which a conscientious objector will be eligible to buy out the greatest part of the alternative civilian service, from 35 to 33, making it equal to the regulations regarding those serving in the armed forces.

Article 18 (7) makes changes to the Special Committee that assesses applications for conscientious objector status, reducing the inclusion of military officers on the Committee from two to one. The assessment procedure remains unchanged.

Article 22 reduces the minimum number of days that a conscientious objector over the age of 33 will be required to serve before being eligible to buy out the rest of the alternative service, from 40 to 20 days, bringing it in line with the minimum required number of days for those serving in the armed forces.

Article 23 (1) of the legislation gives the Minister of National Defence the discretion to reduce the length of the alternative civil service, bringing it closer in line with the length of military service.

Article 23 (4) stipulates that in situations where an individual with recognized CO status has been granted postponement to report for service, will have to re-apply for CO status after this period. This results in a *de facto* revocation of CO status in cases of postponement.

Finally, Article 23 (6) abolishes the ability of the Minister of National Defence to suspend provisions regarding conscientious objectors during wartime as formerly enshrined in Law 3421/2005, while Article 65 (2); and (7) guarantee that in appeal cases regarding a rejection of application for CO status, applicants are automatically granted suspension until the appeal is examined.

Continued punishment of conscientious objectors and total objectors

Currently, conscientious and total objectors face administrative fines, trials in absentia, and trials before military courts. These trials can result in a prison sentence of up to two years. I note that sentences are often suspended and eligible to be converted to a financial penalty, separate from the administrative fine. However, some COs do not receive suspended sentences due prior criminal records. A disqualifying criminal record may consist of previous cases of insubordination.

Punishment for insubordination does not exempt a person from military service. As discussed in GRC 3/2016, the period of eligibility for conscription ranges from 19 to 45 years old. COs who reject calls for enrolment in the military service are thus repeatedly called to service. Each refusal is considered a new act of insubordination, disobedience, or desertion, resulting in repeated fines and prosecutions.

In regards to detention procedures, in practice, COs may be arrested and briefly detained for a period lasting a few hours and up to two days. Individuals are then brought before a military court, or released upon a trial date being scheduled.

The proposed legislation does not make significant changes towards ending the abovementioned practices.

Before addressing my concerns, I recognize and respectfully commend your Excellency's Government for proposing to take steps to reduce the burden and discrepancy of COs alternative civilian service versus service in the armed forces. I further commend your Excellency's Government for taking steps to address concerns raised by the Human Rights Committee (CCPR/C/GRC/CO/2) regarding the "composition of the Special Committee and its reported lack of independence and impartiality."

Despite these efforts, the legislation does not fully address concerns regarding CO raised by the Human Rights Committee. The alternative service does not appear to be accessible to all COs in a manner that is not punitive or discriminatory in nature, cost, or duration. In this regard, I note the following:

That the new requirement to reapply for CO status after postponement imposes an additional punitive burden on applicants.

That the discretionary power enshrined in Article 23 (1), allowing the Minister of National Defence to reduce the length of full alternative civilian service, also serves to reduce the discrepancy in civilian service versus military service. This is further supported by the reduction in the length of alternative civilian service of 24 June 2019. However, due to its discretionary nature, the actual length of full alternative civilian service remains 12 months, versus 9 months for military service. A reduction in length, and by extension greater equality, is therefore not fully guaranteed.

That an additional financial burden is placed upon COs due to their comparatively lower salaries and the higher costs associated with buying out time of alternative service as compared to buying out time serving in the armed forces. This has not been addressed thus far.

I finally wish to reiterate the Human Rights Committee's concluding observations regarding the nature of alternative civilian service, namely the length of alternative civilian service as compared to military service (CCPR/CO/83/GRC para. 15), the burden on COs being required to complete the alternative service away from their place of residence; as well as concerns regarding the "repeated punishment of conscientious objectors, in violation of the principle of *ne bis in idem*." (CCPR/C/GRC/CO/2 para. 37-38).

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned information.
2. Please indicate what measures have been taken to ensure that legislation and practice regarding conscientious objection and the alternative civil service in Greece is compatible with the right to freedom of thought, conscience, belief and religion.
3. Please provide information on which concrete measures have been taken to implement the recommendations regarding conscientious objection made to the Government by the Human Rights Committee in para. 37 and 38 of the concluding observations (CCPR/C/GRC/CO/2).

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting website within 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, I respectfully urge that all necessary interim measures be taken to review the legislation, to ensure that all the concerns raised by different stakeholders are carefully considered, and not to rush the process of promulgating that law.

Please accept, Excellency, the assurances of my highest consideration.

Ahmed Shaheed
Special Rapporteur on freedom of religion or belief

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, I would like to refer your Excellency's Government to the right to freedom of religion or belief, enshrined in article 18, of the International Covenant on Civil and Political Rights (ICCPR), accessed by Greece on 5 May 1997.

In addition, I would like to draw the attention of Your Excellency's Government to General Comment No. 22 issued by the Human Rights Committee (CCPR/C/21/Rev.1/Add.4): "Many individuals have claimed the right to refuse to perform military service (conscientious objection) on the basis that such right derives from their freedoms under article 18. In response to such claims, a growing number of States have in their laws exempted from compulsory military service citizens who genuinely hold religious or other beliefs that forbid the performance of military service and replaced it with alternative national service. The Covenant does not explicitly refer to a right to conscientious objection, but the Committee believes that such a right can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief. (...) The Committee invites States parties to report on the conditions under which persons can be exempted from military service on the basis of their rights under article 18 and on the nature and length of alternative national service."

In regards to differences in cost and duration imposing burdens, I respectfully refer to your Excellency's Government recommendations issued to Greece by the UN Human Rights Committee in 2005 (CCPR/CO/83/GRC, par. 15) and 2015 (CCPR/C/GRC/CO/2, par. 37-38), namely that the length of alternative service should not be of a punitive nor discriminatory nature.

Moreover, concerning the legislative conditions conscientious objectors are obliged to abide by, I further highlight the following recommendations also issued in CCPR/CO/83/GRC, par. 15 and CCPR/C/GRC/CO/2, par. 37-38. Firstly, that the assessment of applications for conscientious objector status should be within the jurisdiction of civilian authorities. Secondly, that the recognition of this status should not be executed in a discriminatory manner based on different application grounds, and finally that conscientious objectors do not suffer repeated punishments in violation of the *ne bis in idem* principle, which declares that no legal action may be instituted twice for the same cause of action.