

AMNESTY INTERNATIONAL PUBLIC STATEMENT

20 March 2019 EUR 25/0088/2019

GREECE: OBSERVATIONS ON THE RIGHT TO CONSCIENTIOUS OBJECTION - “SERIOUS VIOLATIONS OF GREECE’S OBLIGATIONS TOWARDS CONSCIENTIOUS OBJECTORS REMAIN UNADDRESSED IN PROPOSED BILL DESPITE SOME POSITIVE STEPS”

On 8 March 2019, the Greek Alternate Minister of National Defence presented a bill that regulates, among other, issues linked to the right of conscientious objection. The bill was open for public consultation until 18 March 2019. On 18 March 2019, Amnesty International presented its observations on the proposed bill.¹

Amnesty International has repeatedly urged the Greek authorities to bring their legislation in line with international and European human rights law and standards regarding conscientious objectors. A detailed Memorandum with the positions and recommendations of the organization on this issue has been submitted to the Ministry of National Defence by the Greek Section of Amnesty International in October 2018.² These positions were also discussed in a subsequent meeting with the Alternate Minister of National Defence.³

On the basis of our existing analysis and recommendations, Amnesty International concludes that while this bill introduces some positive changes, it continues to fall short in some crucial areas and does not address many serious breaches of the rights of conscientious objectors. These breaches have been already identified by the framework of six European and UN human rights bodies during the years that the current government has been in power.⁴

In particular:

1. ON THE LENGTH OF ALTERNATIVE CIVILIAN SERVICE

Amnesty International has continuously expressed concern that the alternative civilian service in Greece is of a punitive and discriminatory nature because of its length. Currently, for those liable to full service, the alternative civilian service is 15 months, compared to 9 months of military service for the vast majority of conscripts (a 66.7% increase). For those liable to reduced military service of 3 months, they are required to serve 5 months of alternative service (a similar 66.7% increase in comparison with the Army).

Amnesty International has urged the Greek authorities to amend the legislation so that the length of alternative service is not punitive or discriminatory. Any duration of alternative service which exceeds that of military service should be justified on reasonable and objective grounds, otherwise it would tend to be punitive or discriminatory. Particular attention should be

¹ TG EUR 25/2019.002

² See Memorandum to the Greek Alternate Minister of National Defence by the Greek Section of Amnesty International, ‘Harmonization of the Greek legislation with international law and international human rights standards concerning conscientious objectors’, 18 October 2018 (in Greek).

³ Amnesty International, «Meeting of Amnesty International with Deputy Alternate Minister of National Defence regarding conscientious objectors », Press Release of 25 October 2018 (in Greek). <https://www.amnesty.gr/news/press/article/21713/synantisi-tis-diethnoys-amnistias-me-ton-anapliroti-ypoyrgo-ethnikis-amynas>

⁴ UN Human Rights Committee, Concluding observations on the second periodic report of Greece, (CCPR/C/GRC/CO/2), 3 December 2015, paras. 37-38; UN Human Rights Council, Report of the Working Group on the Universal Periodic Review, Greece, (A/HRC/33/7), 8 July 2016, recommendation 136.15 (Uruguay), 136.16 (Slovenia); ECtHR, CASE OF PAPAVALAKIS v. GREECE, Application No 66899/14, 15.9.2016; UN Special Rapporteur on freedom of religion or belief, Communication GRC 3/2016, 31 October 2016; ECSR, Conclusions XXI-1 - Greece - Article 1-2, para. 3. Other aspects of the right to earn one’s living in an occupation freely entered upon. Service alternative to military service; OHCHR, 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, paras. 18 (note 29), 51, 53, 54 (note 77).

drawn to the European Parliament resolution specifically asking Greece “to introduce forms of alternative service which do not last longer than compulsory military service”.⁵

Article 22 para. 1 of the proposed bill grants a discretionary power to the Minister of National Defence to reduce the length of the alternative civilian service down to 12 months in order to bring it closer to the length of military service.⁶ While this is a step in the right direction, Amnesty International is concerned that the proposed bill does not guarantee the envisaged reduction of the length of alternative service as this is not changed by law and it is instead left to the discretion of the Minister of National Defence. Moreover, the proposed bill retains in force Article 60 para. 1 of Law 3421/2005, which provides that in principle the length of alternative service is double to that of military service, in contravention of all relevant international standards.

Amnesty International remains concerned that the authorities have failed to provide an explanation that would justify such different lengths of the alternative civilian service. Even if the length of alternative service is reduced but not to the same time required for military service, without a reasonable and objective justification the alternative civilian service would retain its punitive and discriminatory character.

Furthermore, several other elements that discriminate against those conscientious objectors that take alternative civilian service have not yet been addressed such as the cost or the prohibition to serve in the place of residence, which also render the alternative service punitive compared to the military service.⁷

2. PROCEDURE OF EXAMINATION OF APPLICATIONS FOR RECOGNITION OF CONSCIENTIOUS OBJECTORS

According to the current legislation⁸, the decision on applications for recognition of conscientious objectors is taken by the Minister of National Defence after a recommendation by a five-membered committee that includes two military officers. The Committee can examine the reasons to exercise the right to conscientious objection either through documentation or in person.

Amnesty International has concluded that because of the inadequate procedure of examination of applications for recognition of conscientious objectors, there is a violation of the right to freedom of thought, conscience and religion established in Article 18 of the ICCPR and Article 9 of the ECHR. The organization has urged the Greek authorities to ensure that, in line with the recommendation by the UN Human Rights Committee and its repeated expressions of concern about the Special Committee’s composition, the assessment of applications for conscientious objector status be placed under the full control of civilian authorities (i.e. be transferred from the Ministry of National Defence) by a panel with a wholly civilian composition.

In 2005, the UN Human Rights Committee expressed its concern for the fact that the examination of applications was solely under the control of the Ministry of Defence, and had recommended Greece to consider placing the assessment of applications for conscientious objector status under the control of civilian authorities.⁹ The Committee, indirectly but clearly, found that the Ministry of National Defence is not a civilian authority, and has expressed similar positions in the case of Russia too.¹⁰ Ten years later, it expressed its concerns about, among other things, “the composition of the Special Committee and its reported lack of independence and impartiality, especially when hearings are held without all members present”, and after referring to discrimination on the basis of different grounds of objection, recommended Greece to “consider placing the assessment of applications for conscientious objector status under the full control of civilian authorities”.¹¹

Amnesty International considers the changes introduced by Article 22 para. 2 of the proposed bill a step towards the right direction as they alter the composition of the Special Committee to three academics, one representative of the State’s Legal Council and one senior military officer.¹² However, the amended provision continues to be in contravention of the recommendations of the UN Human Rights Committee by not requiring the new Special Committee to be wholly civilian and ensuring that the decision of granting conscientious objector status is not made by the Minister of Defence. As a result, the

⁵ 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>

⁶ Article 22 para. 1 of the proposed bill amending Article 60 para 2. of Law 3421/2005.

⁷ See Memorandum to the Greek Alternate Minister of National Defence by the Greek Section of Amnesty International, ‘Harmonization of the Greek legislation with international law and international human rights standards concerning conscientious objectors’, 18 October 2018 (in Greek), section 2.2.

⁸ Law 3421/2005, articles 62 and 63, as it has been amended by article 78 of the law 3883/2010. Decision of the Minister of National Defence Φ.420/79/81978/Σ.300 (Government’s Gazette Vol. B 1854/29-12-2005), as it has been amended by the Decision of the Minister of Defence Φ.429.1/1/280116/11-1-2011 (Government’s Gazette Vol. B 111/7-2-2011).

⁹ UN Human Rights Committee, Concluding observations on the initial report of Greece, (CCPR/CO/83/GRC), 25 April 2005, para. 15. Available at <http://undocs.org/CCPR/CO/83/GRC>

¹⁰ 10 UN Human Rights Committee, Concluding observations on the sixth periodic report of the Russian Federation, (CCPR/C/RUS/CO/6), 24 November 2009, para. 23.

¹¹ UN Human Rights Committee, Concluding observations on the second periodic report of Greece, (CCPR/C/GRC/CO/2), 3 December 2015, paras. 37-38. Available at <http://undocs.org/CCPR/C/GRC/CO/2>

¹² Article 22 para. 2 of the proposed bill amending Article 62 of Law 3421/2005.

proposed legislation still fails to place the assessment of applications for conscientious objector status under the full control of civilian authorities.

3. RIGHT TO CONSCIENTIOUS OBJECTION IN A TIME OF WAR

Amnesty International welcomes that the proposed bill repeals a provision that was giving to the Minister of National Defence the power to suspend the right to conscientious objection in a time of war.¹³ The repealed provision was in obvious breach of the right to freedom of thought, conscience and religion, as it is enshrined in Article 18 of the ICCPR and the equivalent Article 9 of the ECHR.

4. BUYING OFF ALTERNATIVE SERVICE

According to the relevant law¹⁴ and subsequent ministerial decisions, the amount of money for buying off a month of the military service and subsequently of the alternative service has been set to the same amount.

Given that the duration of alternative service is in all cases longer than that of the military service, and that the amount to buy off each month is the same, it is evident that in all cases the conscientious objectors, in order to buy off the same duty, are required to pay a far greater amount than the one paid by those performing military service.

The organization considers as positive the amendment that reduces the age that a conscientious objector can buy off his service (from 35 years to 33 years of age); and the reduction of the minimum time one can serve in this case (from 40 to 20 days), bringing them at the same level as for those serving military service.¹⁵ The organization believes that this addresses the discrimination as for these two aspects of the buying off provisions.

However, the question of the amount of money for buying off alternative service, which is one of the most important aspects of discrimination that older conscientious objectors experience, remains, as they will continue to pay additional thousands of euros for the same obligation in comparison to those serving their military service.

5. BENEFITS

Amnesty International has called the Greek authorities on several occasions to increase the amount of money received by conscientious objector so it corresponds to the real level of necessary expenses of a conscientious objector who performs alternative service.¹⁶ The level of remuneration should be sufficient to ensure an adequate standard of living in accordance with Articles 7 and 11 of the ICESCR.

It is to be noted that some conscientious objectors do not receive any money at all but only food and housing. These benefits are not just insufficient but also discriminatory since those serving their military service also receive a very small amount of money in addition to food and housing. Other conscientious objectors receive an amount of money (223.53 euros) instead of food and housing.

The organization regrets that the proposed bill fails to increase the amount of money received currently by conscientious objectors which remains insufficient to ensure an adequate standard of living in accordance with Articles 7 and 11 of the ICESCR, especially considering that, contrary to those serving in the armed forces, conscientious objectors are prohibited by law to serve at their place of residence, and therefore have greater expenses. Under current legislation, the expenses of transportation of conscripts and reservists fall on the state in several instances, but there is no equivalent provision for conscientious objectors. Amnesty International thus considers a step towards the right direction that the proposed bill provides that expenses for transportation of conscientious objectors fall on the state.¹⁷ However, this is not enough to address neither their needs, nor the discrimination they face in comparison to conscripts serving military service.

¹³ Article 22 para. 5 of the proposed bill repealing Article 65 para. 2 of Law 3421/2005.

¹⁴ "Law 3421/2005, Article 57, paragraph 2, as it has been amended by the article 39 of the law 4361/2016".

¹⁵ Article 21 of the proposed bill amending Article 79 of Law 3883/2010.

¹⁶ Amnesty International, "Greece: New Law on conscientious objection – New lost opportunity", Public Statement, 13 September 2010, para. 6. <https://www.amnesty.gr/news/press/article/5839/ellada-neos-nomos-gia-tin-antirrisi-syneidisis-nea-hameni-eykairia>

¹⁷ Article 22 para. 7 of the proposed bill amending Article 68 of Law 3421/2005.

Finally, Amnesty International notes as a positive step towards addressing discrimination, a provision in the proposed bill that extends also to conscientious objectors the guarantee enjoyed by conscripts that allows them to return to the working position they had before leaving for service.¹⁸

6. REMAINING CONCERNS

The organization remains particularly concerned that the current bill does not include any provision that would ensure the ending of the (repeated) prosecutions of conscientious objectors, administrative fines, trials before military courts, trials in absentia and convictions of conscientious objectors including total objectors. Such practices are in breach of international law and standards, and it has been observed that they have intensified in this period.¹⁹

The proposed bill also fails to abolish the possibility to revoke the status of a conscientious objector because of a disciplinary offence and to ensure the right to conscientious objection also after enlistment, including for volunteers/professional military staff.

RECOMMENDATIONS

Amnesty International urges the Ministry of National Defence to adopt the following recommendations in the proposed bill to ensure it fully complies with Greece's obligations under international human rights law:

- Immediately end the punitive character of the alternative service and of the discrimination conscientious objectors are subjected to regarding the duration of the alternative civilian service, the place of service, and the benefits conscientious objectors are granted.
- Place the examination of applications for alternative service status under the full control of civilian authorities (i.e. outside the Ministry of National Defence) and establish a committee of entirely civilian composition.
- Put an ending to the prosecution of conscientious objectors by military courts, and cease the repeated punishment of conscientious objectors for their refusal to perform military or alternative service for reasons of conscience.
- Address the discrimination against conscientious objectors of greater age, including by ensuring that the amount of money for buying off is the same as for those performing military service.
- Abolish of the possibility to revoke the status of conscientious objector because of a disciplinary offence.
- Ensure the right to conscientious objection also after enlistment, including for volunteers/professional military staff.
- Repeal the conditions set forth in Article 59 para. 3 of law 3421/2005 which result in an automatic disqualification of applicants to be recognised as conscientious objectors.²⁰
- Cease the prosecutions and quash the criminal and administrative sanctions which have been imposed until today to conscientious objectors (including total objectors) in violation of international law.
- Ensure that conscientious objectors whose right to freedom of thought, conscience or religion and/or other rights have been violated have access to an effective remedy and adequate reparations.

¹⁸ Article 22 para. 8 of the proposed bill amending Article 69 of Law 3421/2005.

¹⁹ There have been at least three convictions of total objectors in February 2019. See https://www.efsyn.gr/ellada/koinonia/186788_meteores-diataxeis-gia-antirrisies-syneidisi

²⁰ Amnesty International, "Greece: Application procedures for obtaining the status of conscientious objectors to military service in accordance with human rights standards" [submission to the OHCHR], 17 December 2018, Index number: EUR 25/9575/2018. <https://www.amnesty.org/en/documents/eur25/9575/2018/en/>.