INTERNATIONAL FELLOWSHIP OF RECONCILIATION (IFOR) and
CONSCIENCE AND PEACE TAX INTERNATIONAL (CPTI)

Submission to the 111th Session of the Human Rights Committee for the attention of the Country Report Task Force on CYPRUS

(Military service, conscientious objection and related issues)


Basic Information

POPULATION (November 2013, estimated\(^1\))  
1,155,000

MILITARY RECRUITMENT: The National Guard Law (No 20/1964) established six months' obligatory military service for male citizens aged 18 to 50, and has since remained in force, amended on various occasions, most recently as Law 19/2011. The current duration of service is 24 months.

MINIMUM AGE\(^2\): 17 (see details in text)

The de facto authorities in the North of the island also impose conscription, currently regulated by the Military Service Law No. 59/2000 of the self-styled “Turkish Republic of North Cyprus” (TRNC), which reduced the term of service from 24 to 15 months, with reserve duties until the age of 50. Conscription age is 19, but 17 for volunteers.

CONSCIENTIOUS OBJECTION: first provisions were included in the 1992 amendment of the National Guard Law (No. 2/1992), establishing 42 months' “unarmed military service outside the armed forces”. There was however considerable delay in implementing these provisions. Alternative service is now set at 33 months.

MALES reaching “militarily significant age” in 2010 3:
8,167

ARMED FORCES: active strength, Nov. 2013 (of whom conscripts):\(^4\) 12,000 (10,700 – 89%)  
Add 3,500 Cypriots (mainly conscripts) serving in the TRNC armed forces, and the number on active military service is thus approximately 190% of the size of the annual cohort reaching recruitment age; the number of conscripts 170% of that figure. (ie equivalent to 85% of all those liable performing two full years of military service.)

MILITARY EXPENDITURE (Government only) US $ equivalent, 2013  5 $455m

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\(^1\) Source: The Military Balance 2014 (International Institute of Strategic Studies, London), which bases its estimate on “demographic statistics taken from the US Census Bureau”.

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


\(^4\) Source: The Military Balance 2014, which also lists the presence of 42,000 Turkish troops in the North, over 1,000 members of the Greek Army (including those seconded to the Cypriot National Guard), some 800 international troops assigned to the UN peacekeeping force and approximately 2,500 UK troops in the two sovereign bases.

\(^5\) Stockholm International Peace Research Institute (SIPRI), April 2014
BACKGROUND TO THE STATE PARTY’S REPORT

The issue of conscientious objection to military service was raised on the last two occasions when Cyprus reported under the International Covenant on Civil and Political Rights, in 1994 and 1998.

In 1994, the Human Rights Committee recommended “that the laws concerning conscientious objectors be amended in order to ensure their fair treatment under the law and to reduce the excessively lengthy period of alternative service and the possibility of repeated punishment.”

The 1998 Concluding Observations included the paragraph: “The Committee remains concerned about the discriminatory treatment accorded to conscientious objectors in Cyprus, who may be subject to punishment on one or more occasion for failure to perform military service. The Committee recommends that the proposed new law concerning conscientious objectors ensure their fair treatment under the law and eradicate lengthy imprisonment as a form of punishment.”

In the Fourth Periodic Report, Cyprus answers this latest observation, noting that the duration of alternative service is now set at 33 months, against 24 months of military service. This it claims is “reasonable and proportionate” given that “Conscientious objectors usually serve in civil departments during normal office hours (07:30-14:30) whilst their colleagues have to serve on a twenty-four hour basis in military camps. In addition, the degree of difficulty and physical strain (military training, military exercises, security duties and duties in observation posts, alongside the ceasefire line) that normal conscripts have to endure is much greater in relation to those of conscientious objectors.”

The Report goes on to add that “Taking into consideration the particular situation that exists in Cyprus due to the continuous occupation of 36.2 per cent of the territory of Cyprus by the Turkish army, we consider that the said amended provisions of the Law comply with international standards for the protection of human rights.”

(This last statement is, of course, completely irrelevant, implying as it does that the right of conscientious objection to military service is somehow to be limited when there is a situation or a threat of armed conflict.)

The discrepancy in duration between armed military service and the alternative offered has been repeatedly criticised by the European Committee of Social Rights as a probable violation of the Article 1.2 of the European Social Charter (“to protect effectively the right of the worker to earn his living in an occupation freely entered upon”). The most recent report from Cyprus to the Committee did not mention the issue, but having received verbal information on the latest changes, the Committee in its 2012 report reiterated its view that the discrepancy was still too large.

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7 CCPR/C/79/Add.88, 6th April 1998, para 17.
8 CCPR/C/CYP/4, 19th March, 2013, paras 250 - 252
9 Ibid, para 253.
10 See Council of Europe, European Committee of Social Rights, Conclusions 2012 (CYPRUS), (January 2013), pp 7, 8.
MILITARY SERVICE AND CONSCIENTIOUS OBJECTION

The Republic of Cyprus was one of the last members of the European Union to recognise the right of conscientious objection to military service. The amended National Guard Law of 9th January 1992 contained the first provisions concerning conscientious objectors to military service. It set obligatory military service at 26 months, but allowed for unarmed military service within the armed forces of 36 months and “unarmed military service outside the armed forces” (sic) of 42 months.11

In June 2007, the National Guard Law was amended to reduce the duration of military service to 25 months, and the duration of the “unarmed military service outside the armed forces” to 34 months. At the same time, the exemptions from military service which had been granted to all members of the Armenian Orthodox, Latin (ie. Roman Catholic) and Maronite churches were abolished.12 These exemptions do not appear to have been related to assumed conscientious objection – Jehovah's Witnesses, whose principled refusal of military service is well known, and who account for most conscientious objectors in Cyprus, had not received this privilege. The very few Turkish Cypriots still living in the area under Government control are not called upon to perform military service. They are however liable to conscription into the army of the “TRNC” if they cross into the area outside government control.

In December 2008 the duration of military service was further reduced to 24 months, without any change in the duration of alternative service. This had been intended as the first step in an intended progressive reduction in the length of military service to 19 months, coupled with a reform of the National Guard system to incorporate two annual intakes, rather than just one. It was not clear what the effect on the length of alternative service would have been. However, in March 2009 faced with disquiet that the proposed “two-tier” conscription would cause (unspecified) social problems, the Council of Ministers announced the temporary postponement of further cuts in the duration of military service.13 Nothing more has been heard of this proposal.

A Council of Europe report in 200114 cast doubt on whether anything described as “unarmed military service outside the armed forces” could be in practice a truly civilian option, compatible in all cases with the reasons for conscientious objection.15 In fact, in 2003, the Jehovah’s Witnesses, who had been successfully obtaining recognition as conscientious objectors, reported that the provisions establishing alternative service outside the armed forces had not yet been implemented at all.16

Subsequently, it would appear that various public sector placements in the areas of environmental protection and social services have been made available, and on his visit to Cyprus in

14 “Exercise of the right of conscientious objection to military service in Council of Europe member states”, Report of the Committee on Legal Affairs and Human Rights to the meeting of the Standing Committee of the Parliamentary Assembly of the Council of Europe in Istanbul, 22nd and 23rd March, 2001 (Document 8809, revised 4 May, 2001).
16 Evidence submitted by the General Counsel of the Jehovah’s Witnesses to the OHCHR for its report on “best practices” in the field of conscientious objection to military service, 1st August 2003.
April 2012, the Special Rapporteur on Freedom of Religion or Belief was informed that since 2008, between ten and twelve conscientious objectors each year had taken up such placements. The Special Rapporteur however recorded his “impression that the topic of conscientious objection does not receive much public attention and that the few existing cases have not led to larger public discussion.”

17 He felt it appropriate to issue a firm reminder of the international standards in this field.

In certain respects, the arrangements are clearly still not in accordance with international standards. An application for recognition as a conscientious objector must be submitted to the Ministry of Defence. This cannot constitute an “independent and impartial decision-making body.”

Moreover, the National Guard Law does not provide for persons liable to military reserve service to declare themselves as conscientious objectors. This was highlighted in 2002 when five Jehovah’s Witnesses went on trial for refusing call up to reservist training. Some of the five had previously tried and failed to establish conscientious objector status, others had been converted subsequent to performing their military service. Although the trial was suspended pending a rationalisation of the provisions in the National Service Act, there are no reports that this has yet happened.

This also raises wider issues regarding serving members of the armed forces. Cyprus is a member of the Council of Europe, whose Committee of Ministers recommended in 2010:

“42. Professional members of the armed forces should be able to leave the armed forces for reasons of conscience.

43. Requests by members of the armed forces to leave the armed forces for reasons of conscience should be examined within a reasonable time. Pending the examination of their requests they should be transferred to non-combat duties, where possible.

44. Any request to leave the armed forces for reasons of conscience should ultimately, where denied, be examined by an independent and impartial body.

45. Members of the armed forces having legally left the armed forces for reasons of conscience should not be subject to discrimination or to any criminal prosecution. No discrimination or prosecution should result from asking to leave the armed forces for reasons of conscience.

46. Members of the armed forces should be informed of the rights mentioned in paragraphs 41 to 45 above and the procedures available to exercise them.”

Cyprus did not respond to the Council of Europe's follow-up questionnaire on the implementation of this recommendation, which was circulated early in 2012.

17 A/HRC/22/51/Add.1, 24th December 2012, para 67.
18 Ibid, para 69.
20 CM/Rec(2010)4, 24th February 2010
ASYLUM FOR CONSCIENTIOUS OBJECTORS

Because of its geographical situation, Cyprus may well find arriving on its shores conscientious objectors who are escaping military service in nearby countries. The one hitherto documented case, however, sets an unfortunate precedent.

In July 2013, Onur Erdem, a declared conscientious objector who was sought by the Turkish military justice system on desertion charges, managed to get to Cyprus and to slip across the “green line” to the area under government control, where he applied for asylum. Not only was this not granted, but he was immediately returned to Turkey, via Jordan. On his arrival in Istanbul on 11th July he was brought on arrival before the Military Prosecutor at Kasimpasa Naval Base, Istanbul, arrested and detained in the military prison in Kasimpasa. His lawyer, Davut Erkan of the conscientious objectors’ organisation VR-DER, expressed concern that he would face a repeat of the torture and abuse he had suffered under previous arrests. Some fears were also expressed at the time that he might be seen as having tried to defect to “the enemy” and therefore be at heightened risk of persecution. Although these fears were not realised, the Cypriot authorities could have had no reason for confidence on this score. On 17th July, Erdem was transferred to the 2nd Army Corps Command Military Prison in Gelibolu where he was detained until 5th September.

JUVENILE RECRUITMENT

Cyprus ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC) on 2nd July 2010, but has not yet produced its initial report.

The first paragraph of the declaration made on ratification stated: “The National Guard Law No. 20 of 1964, as variously amended, most recently in 2006, hereinafter ‘The National Guard Law’, provides that the obligation to military service, in times of peace, begins the 1st January of the year the citizen becomes 18 years old. Although military service is compulsory for all Cypriot citizens, women and some categories of [males] (e.g. clergymen) are exempted from military service in times of peace”

Clarification obtained by Child Soldiers International from the Ministry of Defence indicated that the National Guard Law (the most recent amendment of which was in 2011) requires all male citizens to register at the age of 16 and that indeed the date on which they are required to commence their military service may be before their eighteenth birthday. “Conscripts under 18 who are called to service participate in training only.” Further clarification of the details is needed, but there can be no doubt that any compulsory recruitment, even for training only, of persons who have not reached 18 years is in direct contravention of Article 2 of OPAC.

Cyprus’ declaration upon ratification of OPAC also indicates that persons aged 17 may volunteer for military service. “The National Guard Law also provides for the voluntary enlistment of citizens under 18 who have attained the age of 17 by the date of their recruitment in the armed forces. The acceptance of volunteers to Military Service, requires special authorization from the Ministry of Defense. Volunteers must have recent written consent from parents or legal guardians.

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22 See War Resisters’ International, CO Alert 19th July 2011, “Turkey: Conscientious objector Onur Erden denied asylum in Cyprus, detained in a military prison on his return to Turkey.” (http://wri-irg.org/node/22077)
The recruitment, on a voluntary basis, by the armed forces at the minimum age of 17 years shall continue to be permitted under the conditions and with the safeguards provided in Article 3, paragraph 3, of the Optional Protocol.”

The declaration closes:
“The Republic of Cyprus understands that Article 1 of the Optional Protocol would not prevent members of its armed forces to be deployed where:
a. There is a genuine military need to deploy their unit to an area in which hostilities are taking place; and b. By reason of the nature and urgency of the situation: (i) it is not practicable to withdraw such persons before deployment; or (ii) do so would undermine the operational effectiveness of their unit, and thereby put at risk the successful conduct of the military mission and/or the safety of other personnel. The above understanding is all the more necessary under the circumstances prevailing nowadays in the Republic of Cyprus as a result of the continued illegal military occupation of 37% of its national territory by a foreign State, Party to the Optional Protocol.”

This declaration sounds suspiciously like a reservation. If in view of the circumstances which prevail in Cyprus it is envisaged that there is a particularly strong likelihood of the deployment in hostilities of units including 17-year-old recruits, “all feasible measures” to ensure that such persons do not take a direct part in hostilities must include not attaching them to active service units, and indeed giving serious reconsideration to the wisdom of allowing their recruitment in the first place.

Although the Committee on the Rights of the Child has not yet had the opportunity to examine a report from Cyprus under the OPAC, in its concluding observations on the Second Periodic Report of Cyprus under the Convention itself, it stated that it was “concerned that under-18s may be deployed since no distinction is made between the age for recruitment and deployment”, and called upon the State party to take measures to ensure that this was not possible. It is unfortunate that when examining the Third and Fourth Periodic Reports in June 2012, the Committee seems to have left follow-up on this point for the pending OPAC Report.

THE AREA UNDER TURKISH OCCUPATION

Although of course the area is not under Government control, interesting developments must be reported from the northern part of the island.

Provision for conscription was made in Article 74 of the Constitution of the TRNC. The arrangements are currently regulated by the Military Service Law (No. 59/2000), which stipulates that all men aged between 19 and 30 are liable to fifteen months service in the “Security Forces” (GKK) - reduced to 12 months for University graduates. In theory, this obligation extends to all those who are considered to be entitled by descent to citizenship of the TRNC, whether or not resident. As in the Republic of Cyprus, voluntary recruitment with parental consent is possible.

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24 CRC/C/15/Add.205, paras. 57-58.
25 References to the TRNC, its constitution, legislation, courts and jurisprudence, reflect the de facto situation and must not be construed as recognising any form of legitimacy.
26 At an earlier date the service had been of 24 months.
27 Although under Turkish military command, the GKK is completely separate from the Turkish Army itself, which has approximately 40,000 personnel stationed in Cyprus.
from the age of 17.\textsuperscript{28} It is to be assumed that likewise there are no effective safeguards against under-age deployment.

There is no provision for conscientious objectors to be excused military service or to substitute a service of a civilian nature. In the absence of any procedures for dealing with conscientious objectors, only one conscript is known to have openly declared his refusal to serve on the grounds of conscientious objection, Salih Askeroglu, who was sentenced to 39 months’ imprisonment in 1993, but was subsequently released, apparently on condition that he did nothing to further publicise his case.\textsuperscript{29}

Until the age of 50, all those who have served in the GKK are also required to report each year for a nominal day of reserve training. This provision might seem banal, but it is designed to facilitate rapid general mobilisation - all that needs to be done is to retain the reporting reservists.

In 2009 Murat Kanatli declared himself a conscientious objector and did not report. When charged over this in the Military Court, he pleaded not guilty on the grounds that he was exercising the freedom of thought, conscience and religion guaranteed under the European Convention on Human Rights and the Constitution of the TRNC itself. After several postponements, the Military Court finally decided to refer the case to the Constitutional Court, which heard the case on 16\textsuperscript{th} May 2013.

In 10\textsuperscript{th} October 2013 the Constitutional Court issued its judgement\textsuperscript{30} It cited the judgments of the European Court of Human Rights in Bayatyan v Armenia, Erçep v Turkey and Savda v Turkey, with particular reference to the last named, where the objection was not based on religious grounds, and also the Views of the United Nations Human Rights Committee in Atasoy and Sarkut v Turkey, all of which recognized that although the right of conscientious objection is not explicitly referred in the European Convention on Human Rights or the International Covenant on Civil and Political Rights, opposition to military service, where it is motivated by a serious and insurmountable conflict between the obligation to serve in the army and a person’s conscience or his deeply and genuinely held religious or other beliefs, constituted a conviction or belief of sufficient cogency, seriousness, cohesion and importance to attract the guarantees that are safeguarded in Article 9 of European Convention of Human Rights and Article 18 of the International Covenant on Civil and Political Rights. The Constitutional Court noted particularly that Article 23 of the Constitution of the TRNC relating to the freedom of thought, conscience and religion was closely based on Article 9 of the European Convention on Human Rights. The Court stated that the unavailability of alternative service constitutes an interference with the right to freedom of thought, conscience and religion safeguarded in the Article 23 of the Constitution, and added that the duty is upon the legislator to provide in laws and regulations for alternative service to military service and when doing so to review the article of the Constitution that relates to the duty of armed service.

Only one individual opinion, however, held that the Court ought to apply the European jurisprudence directly to the Kanatli case, which was therefore referred back to the Military Court. On 25\textsuperscript{th} February, 2014 the Military Court sentenced Kanatli to ten days’ imprisonment.

Kanatli himself faces further charges regarding his non-reporting for reserve mobilisation in subsequent years. And at least one parallel case before the Military Court was deferred pending the outcome of his appeal to the Constitutional Court.

\textsuperscript{29} Horeman, B. & Stolwijk, M. Refusing to Bear Arms (War Resisters International, London, 1998)
\textsuperscript{30} Constitutional Court of the TRNC, D2.2013, Case No. 13/2011, 10\textsuperscript{th} October, 2013. (It must be made clear that the reporting of this decision, including its references to the “Constitution of the TRNC” does not imply any acceptance on the part of the interveners of the legitimacy of the \textit{de facto} administration in the northern part of Cyprus.
Suggestions for the list of issues

Please give details of the number of applications which have been made in recent years to perform civilian service or unarmed military service on grounds of conscientious objection, indicating how many applications were accepted, and if possible the religious affiliations (if any) of successful and unsuccessful applicants, also details of the civilian service placements actually performed. What action is the State Party taking in response to the repeated finding by the European Committee of Social Rights that even after the latest reductions the discrepancy in duration between military and alternative civilian service remains unreasonable and discriminatory? Is the State Party taking any action to permit persons to apply for release as conscientious objectors after commencing military service, including extending this right to professional members of the armed forces and reservists?

Please explain the decision in July 2013 to return Onur Erdem, a conscientious objector who had sought asylum in Cyprus, to Turkey, where in the absence of any provision for conscientious objection to military service he faced immediate detention and the likelihood of torture and abuse.

And (In view of the uncertainty as to how long it may be before the appearance of Cyprus' initial report under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.)

What action is the State Party taking to bring its procedures on military recruitment and deployment fully into line with the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, so that the Declaration made on ratification may be withdrawn or amended?

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