



# Conscience and Peace Tax International

**Internacional de Conciencia e Impuestos para la Paz**

NGO in Special Consultative Status with the Economic and Social Council of the UN

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## **Submission to the 95th Session of the Human Rights Committee: March 2009 Conscientious Objection to Military Service: SWITZERLAND**

### **Summary**

**CPTI wishes to draw three concerns to the attention of the Committee.**

**The first is that the Law on Civilian Service, while excellent in some respects, does not grant automatic recognition to those who declare a conscientious objection to military but requires them to convince a commission regarding the nature of their objections before permitting them to opt for civilian rather than military service, and sets a duration for civilian service which appears to be discriminatory and punitive by comparison with that of military service.**

**The second is that Switzerland retains a “military exemption tax” which is imposed on male citizens who do not perform military service. As CPTI exists in order to uphold the right of conscientious objection to taxation for military purposes, it follows that we deplore any system which imposes a military service obligation in a financial form. Moreover this provision is discriminatory and impinges on conscientious objectors to military service in their exercise of their freedom of thought, conscience and religion under article 18 of the Covenant.**

**The third is that revisions to the Asylum Law are currently under consideration which have the explicit intention of debarring from its provisions conscientious objectors and others who are seeking asylum in order to escape military service in countries where there is no provision for conscientious objectors.**

### **Background**

Switzerland's armed forces remain based on the model of the “citizen's militia”. Article 13 of the Constitution prohibits the maintenance of a standing army.<sup>1</sup> Instead, all male citizens - in principle - are required to attend an initial period of military training at around the age of 20, followed by service in the mobilisation reserve until at least their mid-30s. The latter usually entails keeping one's uniform and rifle at home, and turning out with them to regular target practice and, at approximately two-

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<sup>1</sup> Haltiner, K.W. “Switzerland: Questioning the Civilian Soldier” in Moskos C.C. & Chambers, J. W., ( 1993 ). The New Conscientious Objection, from sacred to secular resistance. Oxford University Press, New York/Oxford, pp135-145, at p136.

yearly intervals, on refresher courses, typically of seventeen days' duration. With effect from the beginning of 2004 the combined length of initial and reserve training required of each conscript was reduced from 300 to 260 days; for officers and NCOs the cumulative requirement is greater, and in the case of officers the obligations continue until the age of 50. Fully-paid leave of absence from civilian employment is normal during reserve training. Only some 4,000 training personnel and officers above the rank of brigade commander do not follow this pattern but serve in the armed forces on a continuing basis. At any one time it is estimated that between 20,000 and 25,000 conscripts are in uniform, but a further 225,000 are available for mobilisation at 72 hours notice.<sup>2</sup>

As in many other countries, there has in recent years been some debate about the possible "professionalisation" of the armed forces, but the constitutional changes which this would necessitate mean that, unlike elsewhere, this is seen as a move towards rather than away from militarism.

Another feature which may be explained by the different military ethos was that Switzerland was much later than its neighbours in accepting a right of conscientious objection to military service. This was conceded partially in 1991, when those who satisfied a military tribunal that their refusal to perform military service was the result of a "severe conflict of conscience" were permitted to expunge the relevant criminal convictions by performing compulsory labour of a duration one-and-a-half times that of military service,<sup>3</sup> but it was only with the passage of a Civilian Service Law<sup>4</sup> which took effect at the beginning of 1996 that conscientious objection to military service was effectively decriminalised.

### **The Civilian Service Law**

The Civilian Service Law of 1995 gave the possibility for those for whom military service would present a "severe conflict of conscience" to apply to a civilian Commission reporting to the Ministry of Economic Affairs for permission to perform a purely civilian alternative service. This was an enlightened piece of legislation in that the civilian nature of the alternative service was guaranteed by placing all aspects of its administration outside the control of the military authorities, and also in that no artificial time limits were placed on application. Those who had already commenced their military service - including those who were subject to reserve obligations - were (and are) able to take advantage of the Law's provisions, receiving credit for the proportion of their military service obligation which they had fulfilled. Two other aspects of the Civilian Service Law are however not in accordance with best international practice in this field. All those declaring a conscientious objection have to appear before the commission in order to establish their case - hence the "clarifications" of the definition which it was seen necessary to introduce in 2003.<sup>5</sup> And the duration of alternative service is set as at least one and a half times that of the basic military service. There is no evidence that this discrepancy is objectively justified<sup>6</sup> therefore it would appear to be discriminatory and punitive in nature.

Alarming, proposals currently being discussed in the national parliament would remedy one of these shortcomings only at the expense of a further worsening of the other; the interrogation of conscientious objectors would be dropped but accompanied

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<sup>2</sup> *The Military Balance 2007* (International Institute for Strategic Studies, London), p

<sup>3</sup> Horeman, B. & Stolwijk, M., *Refusing to Bear Arms*, War Resisters International, London, 1998.

<sup>4</sup> RS 824.0 *Loi fédérale du 6 octobre 1995 sur le service civil (LSC)*

<sup>5</sup> See para 264 of the State Report (CCPR/C/CHE/3)

<sup>6</sup> See the criteria set out in the Human Rights Committee's jurisprudence: *Foin v France* Communication 666/1995, ICCPR, A/55/40 vol II (3<sup>rd</sup> November 1999)

by an increase in the minimum duration of alternative service to 1.8 times that of the basic military service.<sup>7</sup>

Moreover, even civilian alternative service laws are not in every individual case “compatible with the reasons for conscientious objection”.<sup>8</sup> There is always a small minority who are not prepared to perform even alternative service; in such cases Swiss law still permits imprisonment: the annual total of such “absolute objectors” sentenced to imprisonment in Switzerland during the period from 1999 and 2004 varied between 61 and 110. Most of the sentences were short, and many commuted to labour, but the maximum sentence for refusal to perform military service is 18 months.<sup>9</sup> In 2005 a military court in Bern handed down a sentence of seven months’ imprisonment on a young Jehovah’s Witness, identified as “J”, who had failed to report for recruitment the previous November.<sup>10</sup>

### **Military exemption tax**

The antecedents of the military exemption tax (*Wehrpflichtersatzabgabe / taxe d’exemption du service militaire*) date back at least to Article 3 of the military organisation law of 1907;<sup>11</sup> the current arrangements were created by Law 661 of 12<sup>th</sup> June 1959, Article 2 of the Law defined those subject to the tax as all male citizens of the age group eligible for military service, whether or not resident in Switzerland, who for more than six months of a given tax year have - for whatever reason - not been attached to a military or reserve unit, or who have failed to attend when summoned to perform their military service. This meant primarily the large number - since before 1990 about 50% of those eligible - who were exempted from military service on medical grounds, or as clergy, members of the Federal Assembly<sup>12</sup>, or essential hospital staff. It also of course applied to conscientious objectors who had persisted in their refusal to perform military service notwithstanding criminal penalties. Perhaps in response to anecdotes about disabled Swiss who begged that a suitable assignment could be found to enable them to perform their patriotic duty of military service, but who were nevertheless deemed unsuitable and duly subjected to the military tax, revisions to the Law in 1994 exonerated the most severely handicapped persons. Other disabled persons benefit from a 50% reduction in the rate, which, with effect from 2004, was raised from 2% of taxable income, or Fr.150 if greater, to 3% of taxable income, subject to a minimum payment of Fr.200.<sup>13</sup>

With the creation of Civilian Service in the mid-1990s, the Law was redrafted so as to exclude those who fulfilled this alternative to military service (this included the dropping of the word “military” from its French title).<sup>14</sup> A substantial redraft was necessary in 2002 as part of the overhaul of the federal taxation system; it seems that in the process the specific penalties for refusal to pay the tax - between one and ten days imprisonment on each occasion<sup>15</sup> - may have been lost.

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<sup>7</sup> “Nationalrat gegen Gewissensunsinn”, *Zivilcourage* 4/08, June 2008.

(<http://zivildienst.ch/pdf/Zivilcourage/2008/Zivilcourage0408.pdf>)

<sup>8</sup> Commission on Human Rights Resolution 1998/77, Operative Paragraph 4.

<sup>9</sup> Stolwijk, M., *The Right to Conscientious Objection in Europe: A Review of the Current Situation*, Quaker Council on European Affairs, Brussels, 2005, p 69

<sup>10</sup> “Militärdienstverweigerer soll für sieben Monate ins Gefängnis” *Zivilcourage* 6/05, October 2005. (<http://zivildienst.ch/pdf/Zivilcourage/2005/Zivilcourage0605.pdf>)

<sup>11</sup> Prasad, D. & Smythe, T. (1968), *Conscription - a world survey: compulsory military service and resistance to it*, War Resisters International, London, p124

<sup>12</sup> Exempted in the reforms of 4<sup>th</sup> October 2002, which took effect at the beginning of 2004.

<sup>13</sup> Law 661, Article 13, as revised by the Law of 4<sup>th</sup> October 2002.

<sup>14</sup> Now “Loi fédérale sur la taxe d’exemption de l’obligation de servir”

<sup>15</sup> See Horeman & Stolwijk, 1998, op cit.

The Alternative Service Law meant that repeated imprisonment for non-payment of the military tax became less of a focus for the conscientious objection movement in Switzerland than it had been at an earlier stage.<sup>16</sup> Nevertheless, over and above its general discriminatory nature, this tax still impinges on conscientious objectors in two ways. First, only those who have been declared fit for military service and do not qualify for any exemption are allowed to apply for recognition as conscientious objectors. The concept is still recognised only in the context of the performance of alternative service. In fact many of those who in practice are not being called into the army would have a conscientious objection to military service and for some this extends to objecting to contribution to military expenditure. Second, it impinges on “absolute objectors”. Whatever their sentences, such persons also acquire a criminal record; the liability to a supplementary tax represents yet another penalty resulting from the exercise of the freedom of thought conscience and religion under article 18 of the Covenant.

### **Revision of the Asylum Law**

It will be recalled that the UN Commission on Human Rights, in Operative Paragraph 7 of its Resolution 1998/77, “encourages States, subject to the circumstances of the individual case meeting the other requirements of the definition of a refugee as set out in the 1951 Convention relating to the Status of Refugees, to consider granting asylum to those conscientious objectors compelled to leave their country of origin because they fear persecution owing to their refusal to perform military service when there is no provision, or no adequate provision, for conscientious objection to military service.” In this the Commission was reinforcing the principles set out in 1979 by the United Nations High Commissioner for Refugees.<sup>17</sup> The UNHCR has subsequently expanded with specific reference to conscientious objection: “Where military service is compulsory, refugee status may be established if the refusal to serve is based on genuine political, religious, or moral convictions, or valid reasons of conscience... In conscientious objector cases, a law purporting to be of general application may, depending on the circumstances, nonetheless be persecutory where, for instance, it impacts differently on particular groups, where it is applied or enforced in a discriminatory manner, where the punishment itself is excessive or disproportionately severe, *or* where the military service cannot reasonably be expected to be performed by the individual because of his or her genuine beliefs or religious convictions... In addition, the claimant may be able to establish a claim to refugee status where ... the individual has a well-founded fear of serious harassment, discrimination or violence by other individuals (for example, soldiers, local authorities, or neighbours) for his or her refusal to serve.”<sup>18</sup>

On 20<sup>th</sup> December 2005<sup>19</sup>, the Swiss Asylum Appeals Commission (*Asylrekurskommission - ARK*), ruled in favour of an Eritrean appellant who had shown that he would face the death penalty as a deserter if repatriated - a punishment which was (reasonably) held to be disproportionate. Moreover, the Commission took into account the findings by the European Court of Human Rights<sup>20</sup> and by Immigration Appeals Tribunals in the UK and elsewhere that the treatment of deserters and

<sup>16</sup> See Prasad & Smythe, 1968, op cit p127

<sup>17</sup> UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees UN Document HCR/IP/4/Eng/REV.1, Chapter V, B. (paras 167 - 174)

<sup>18</sup> GUIDELINES ON INTERNATIONAL PROTECTION: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees HCR/GIP/04/06, (2004), Para 26.

<sup>19</sup> Decision reported in EMARK 2006 No. 3, pp29 et seq.

<sup>20</sup> *Said v Netherlands*, Application No.2345/02, Judgment of 5<sup>th</sup> July 2005.

military service evaders in Eritrea constituted inhuman and degrading punishment contrary to Article 3 of the European Convention on Human Rights.<sup>21</sup>

This ruling has been blamed by politicians for the subsequent increase in the number of asylum applications lodged by Eritreans - from 181 in 2005 to 1,207 in 2006 and 1,661 in 2007. In October 2007 the Federal Justice and Police Department (EJPD<sup>22</sup>) was instructed to begin work on a redraft of the Asylum Law. Detailed drafting has still not been made public at the time of writing, but according to an EJPD press release of 24<sup>th</sup> October, 2007, the purpose of the proposed redrafting was to change the existing law so that desertion from or avoidance of military service could no longer be the sole grounds of an asylum claim. Further explanations given in April 2008 by the responsible minister, Frau Widmer-Schlumpf, and reported in the *Neue Zürcher Zeitung* indicated that the lodging of what was deemed to be an ill-founded asylum claim, or aiding and abetting this, was to be made subject to criminal penalties and that the rules regarding the safety of return to the country of origin would be reversed, so as to put the onus of proof on the potential deportee.<sup>23</sup>

The authors of the quoted account of these developments published by the Swiss Refugee Council point out that the increasing number of asylum applications from Eritreans is in fact a Europe-wide phenomenon, and fear that if the proposed legislation is to fulfil the stated objectives it may well conflict with Switzerland's obligations under the refugee convention. To this general concern CPTI would add that it puts at severe risk many persons who have fled Eritrea where the unusually severe treatment of declared conscientious objectors and others who seek to avoid military service is very well documented; that as reported it seems to make no allowance for the specific protections refugee law gives to conscientious objectors from states where they have no means of claiming such status; and that its effect would appear to fall most heavily, and in a discriminatory fashion, on declared and undeclared conscientious objectors from the very state where they are at present most in need of protection.

30<sup>th</sup> December, 2008.

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<sup>21</sup> Caroni, M. & Hofstatter, S., "Flüchtlingsrechtliche und rechtsstaatliche Überlegungen zur geplanten Teilrevision des Asylgesetzes betreffend Desertion und Dienstverweigerung", *ASYL 3/08*, (Swiss Refugee Council 7<sup>th</sup> August 2008). ([http://www.osar.ch/2008/08/07/eritrea\\_desertion](http://www.osar.ch/2008/08/07/eritrea_desertion))

<sup>22</sup> Eidgenössische Justiz- und Polizeidepartement

<sup>23</sup> Caroni, M. & Hofstatter, S., *op.cit.*