





# **WORKING MATERIALS**

**“Regional Standard for Conscientious Objection - standardization of legislation in the countries of the region on the issues of conscientious objection and adjusting of it to the international standards”**

**Regional conference on conscientious objection and civilian service  
«To Europe Through Conscientious Objection and Civilian Service»  
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## INTRODUCTION

### Standardization of the right to conscientious objection in the region

Every country in the region of Southeastern Europe had its specific development regarding conscientious objection and civilian service and built on different ways the process of recognition of this human right for those who declare conscientious objection on performance of military duties in armed forces. Anyhow, there are many common things related to these issues which should unify common aims of all countries of the region.

All countries of the region share without any doubt the belonging to European cultural and political area, and as such, they want to accept the standards of the European Council and European Union and this way, by creating compatible national systems with member countries of the European Union, to make one step further towards democratization of societies in the countries of the region.

As far as the conscientious objection on participation in performance of military duties in armed forces is concerned, there are a significant number of international documents that define fundamental postulates of application of this human right. We can name these documents as international standards about conscientious objection on participation in performing military duties in armed forces. As the priority and natural integration and belonging of the regional countries is the one towards the European Council and European Union, we will mainly follow the standards about conscientious objection prescribed by the European Council and European Union, i.e. specifically by the Committee of Ministers of European Council and European Parliament.

In order to include all standards and basic regulations of aforementioned institutions into a unique document, and to conform these standards to situations and specificities of the region we live in, the regional network of initiatives that deal with issues of conscientious objection in countries of Southeastern Europe "Objection for Peace" elaborated the "Regional standards for conscientious objection", the document which unifies all European recommendations and which should become a basis for unification of legislations of the countries of the region.

The significance of conscientious objection on participation in performance of military duties in armed forces is great in this region. After years of war and hate, we encounter once more the possibility for cooperation in the region. This is even more significant in the work on conscientious objection if we consider the fact that there are a great number of young people who, because of conscience or religious reasons, refuse to serve military service or carry arms. Most of them do that because of an active resistance to wars that were lead in this region in previous decade, and many of them risked their integrity by doing so, organized actions, campaigns, and a number of them even served time in prison for their beliefs.

For these reasons this conference and this delicate situation the region is in right now, shows us that this is the right moment for action and recognition of the right to conscientious objection completely and in accordance with international standards i.e. Regional standard for conscientious objection of the network "Objection for Peace".

## THE REGIONAL STANDARD FOR CONSCIENTIOUS OBJECTION

### Preface:

In all of the countries of the region of Southeast Europe, the military service is still obligatory. In all of the countries of the region of Southeast Europe there are people which refuse to serve such service for the reasons of conscience. Those people are conscientious objectors. Conscientious objectors incarnate their efforts for a future without war and violence through their refusal to be trained to kill. In almost all of the countries of EU there's a right for an alternative - civilian service. With these standards we would like to contribute in the process of implementation of civilian service and improvement of the position of pacifists in this area. After the years of war that kept the region of Southeast Europe in darkness, it seems very important to empower the conscientious objectors as people that were during all this period in the past promoting, with their personal example, that violence has an alternative. A true civilian service could be a pawn for the future. This document is the draft version of the Regional Standard for Conscientious Objection and Civilian Service and as such is an effort of the Regional Network of Initiatives Working on Conscientious Objection in the SEE Region to put all recommendations of the Council of Europe into one document with strict guidelines for the legal provisions on the matter and to adjust international recommendations to the region and regional attitude towards the issue of conscientious objection and pacification of the region.

Regional standard has taken into consideration and refers to the following international documents:

- Resolution 337 and of the Parliamentary Assembly of the Council of Europe
- Recommendation 478 (1967) of the Parliamentary Assembly of the Council of Europe
- Recommendation 816 (1977) of the Parliamentary Assembly of the Council of Europe
- Recommendation No. R(87)8 of the Committee of Ministers of the Council of Europe
- Resolution 1042 (1994) of the Parliamentary Assembly of the Council of Europe
- The Macciocchi resolution of the European Parliament
- The Schmidbauer resolution of the European Parliament
- The De Gucht resolution of the European Parliament
- The Bandrés, Molet & Bindi resolution of the European Parliament
- Resolution of 1993 concerning conscientious objection to military service of the United Nations General Assembly
- International Covenant on Civil and Political Rights
- Universal Declaration of Human Rights
- European Convention on Human rights

### The Regional Standard:

1. The right of conscientious objection is a fundamental aspect of the right to freedom of thought, conscience and religion, as enshrined in the Universal Declaration of Human Rights and the European Convention on Human Rights and as such should be recognized by constitution of respective countries

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Explanation: European documents that the Regional Standard refers to:

- Resolution 337 (1967) of the Council of Europe Committee of Ministers, section A:  
“1. Persons liable to conscription for military service who, for reasons of conscience or profound conviction arising from religious, ethical, moral, humanitarian, philosophical or similar motives, refuse to perform armed service shall enjoy a personal right to be released from the obligation to perform such service.  
2. This right shall be regarded as deriving logically from the fundamental rights of the individual in democratic Rule of Law States which are guaranteed in Article 9 of the European Convention on Human Rights.”

- Resolution 1518 (2001) of the General Assembly), paragraph 2:  
“2. The right of conscientious objection is a fundamental aspect of the right to freedom of thought, conscience and religion enshrined in the Universal Declaration of Human Rights and the European Convention on Human Rights”

The recognition of the right to conscientious objection is the obligation of every state since the right to conscientious objection is directly derived from the highest international human rights documents - the Universal Declaration of Human Rights and the European Convention on Human Rights and therefore the countries of the region are obliged to recognize the right to conscientious objection to all people without boundaries.

2. Conscientious objection can be declared at any time: before, during and after conscription or performance of military service and the declaration of conscientious objection must immediately stop or prolong any possible call-up to the military service of the person concerned

Explanation: European documents that the Regional Standard refers to:

- Resolution 1518 (2001) of the General Assembly, section 5:  
“5. The Assembly accordingly recommends that the Committee of Ministers invite those member states that have not yet done so to introduce into their legislation:  
i. the right to be registered as a conscientious objector at any time: before, during or after conscription, or performance of military service.”

- the De Gucht Resolution, paragraph 49:  
“49. Considers that these common principles should include minimum guarantees to ensure that:  
- sufficient information is made available on conscientious objector status,  
- conscientious objector status can be applied for at any time, including during military service,”

- Recommendation No. R(87)8 of the Committee of Ministers, section B paragraph 8:  
“8. The law may also provide for the possibility of applying for and obtaining conscientious objector status in cases where the requisite conditions for conscientious objection appears during military service or periods of military training after initial service.”

- Resolution 337 (1967) of the Council of Europe Committee of Ministers, section B, Paragraph 4:  
“4. The legislative authorities should investigate how the exercise of the right claimed can be

made more effective by ensuring that objections and judicial appeals have the effect of suspending the armed service call-up order until the decision regarding the claim has been rendered.”

One of the main points enshrined in the European Convention on Human Rights (Paragraph 9, section 2) is that the conscience can not be limited with any deadlines. The philosophy behind this is that anyone should be able to change their conscience or belief at any time of their life. European standard on conscientious objection approve of this, so most of them declare that the conscientious objection can be declared at any time of military obligation and that no limits or deadlines can be put on this. Furthermore, any call-up or continuation of the military obligation process for the individual that has applied for conscientious objection is unacceptable and the final decision on the case should come before any further actions regarding military service for this individual are to be stopped.

3. The basis for gaining the status of conscientious objector is only a free statement of the conscientious objector and any further investigation done by any commission is completely unacceptable

Explanation: European documents that the Regional Standard refers to:

- The Schmidbauer resolution of the European Parliament, section A paragraph 4:  
“A. whereas no court and no committee can examine a person’s conscience,  
4. Urges that, in order to be recognized as a conscientious objector, a declaration setting out the individual’s motives should suffice in order to obtain the status of conscientious objector”
- The Machiochi resolution of the European Parliament, paragraph 3:  
“3. Points out that no court or commission can penetrate the conscience of an individual and that a declaration setting out the individual’s motives must therefore suffice in the vast majority of cases to secure the status of conscientious objector”

Any examination of the conscience of an individual isn’t possible in an objective way from a different individual or group of individuals. So, when it comes to conscientious objection, any person is to be able only to declaratively state their choice of service and then they are to be allowed to enjoy the right to conscientious objection. In this case, any validation of the person’s reasons for applying is not possible and only grounds for eventual refusal of the application could not be connected to this.

4. The civilian service must be of a pure civilian character, and the whole process of applying and serving should be carried out by a civilian ministry department. The Ministry of Defense cannot be considered a civilian ministry.

Explanation: European documents that the Regional Standard refers to:

- Recommendation 337 (1967) of the Council of Europe Committee of Ministers, section B paragraph 2:  
“2. Where the decision regarding the recognition of the right of conscientious objection is taken in the first instance by an administrative authority, the decision taking body shall be entirely separate from the military authorities and its composition shall guarantee maximum independence and impartiality.”
- The Bandrés Molet & Bindi resolution of the European Parliament, paragraph 9:



“9. Calls on the Member States to ensure that compulsory military service and civilian service performed at institutions which do not come under the supervision of the Defense Ministry are of the same length, pursuant to paragraph 51 of its aforementioned resolution of 11 March 1993 on respect for human rights in the EC”

Civilian service is a state-prescribed duty for conscientious objection. Since those people have conscientious objection to military service, the whole process regarding it should be under the jurisdiction of a non-military governmental body. Also, it was proven that civilian ministries can gain much more benefits from civilian service and that there are fewer mistreatments of conscientious objectors if a civilian institution has the jurisdiction over the whole process. Also, the work done by conscientious objectors must be also totally civilian and in no direct or indirect connection to the military – because of the reasons people apply for conscientious objection.

5. The civilian service must not be of a punitive or degrading character neither in terms of work, neither in terms of length, for the people performing it, as well as it can not bring any punitive repercussions for the people that have served it – e.g. in terms of exclusion from certain employment, or housing benefits

Explanation: European documents that the Regional Standard refers to:

- Machiochi resolution of the European Parliament, paragraphs 4 and 5:

“4. Stresses that the performance of alternative service as provided for in Resolution No. 337 (1967) of the Consultative Assembly of the Council of Europe may not be regarded as a sanction and must therefore be organized in such a way as to respect the dignity of the person concerned and benefit the community, particularly in the social field and in the field of aid and development cooperation;

5. Considers that the duration of such alternative service when carried out within a civil administration or organization should not exceed the period of normal military service including military exercises following the period of basic military training”

- The Schmidbauer resolution of the European Parliament, paragraphs 3,5 and 6:

“3. Urges the Member States concerned to ensure that individuals performing alternative service are not denied their constitutional and/or civil rights and that their dignity is preserved;...

5. Urges that the length of alternative service should be allowed to exceed the duration of ordinary service only by half as much again to compensate for periods of reserve training by those performing military service;

6. Calls for persons performing alternative service to be safeguarded against exploitation and for individuals in civilian service to receive the same pay as conscripts;”

- The de Gucht resolution of the European Parliament, paragraphs 48 and 51:

“48. Calls for common principles to be defined with a view to eliminating discrimination between European citizens with respect to military service;

51 Stresses that an alternative civilian service should be provided for, of the same length as military service, so that it is not seen as a sanction or deterrent;”

- The Bandrés Molet & Bindi resolution of the European Parliament, paragraph 10:

“10. Believes furthermore that conscientious objectors performing civilian service must enjoy the same rights as conscripts engaged in armed military service, both in social terms - in respect of access to vocational training, for example - and in terms of pay;”

- Resolution 1518 (2001) of the General Assembly of the Council of Europe, paragraph 5.iv:

“5. The Assembly accordingly recommends that the Committee of Ministers invite those member states that have not yet done so to introduce into their legislation:

iv. genuine alternative service of a clearly civilian nature, which should be neither deterrent nor punitive in character.”

The civilian service is a supplement for military service for conscientious objectors and, as such, can not at any case be of punitive or degrading character or the rights of people serving civilian service can not be any different to the rights of those serving military service. Main points to be considered are that the treatment of conscientious objectors must not be any different to the treatment of others that their human rights are not to be violated, that the work they are doing is not in any case degrading or punitive and that the dignity of conscientious objectors is preserved at all time. However, this should be the case also in any situation after the service meaning that ones who have served civilian service are not to be treated differently nor they could have any repercussions because of the service they served.

6. All the expenses of the civilian service must be overtaken by the state, in no way by the organization in which the service is being performed.

Explanation: European documents that the Regional Standard refers to:

- The Bandrés Molet & Bindi resolution of the European Parliament, paragraph 10:  
“10. Believes furthermore that conscientious objectors performing civilian service must enjoy the same rights as conscripts engaged in armed military service, both in social terms - in respect of access to vocational training, for example - and in terms of pay;”

- Recommendation No. R(87)8 of the Committee of Ministers, section C paragraph 9:  
“9. Alternative service, if any, shall be in principle civilian and in the public interest. Nevertheless, in addition to civilian service, the State may also provide for unarmed military service, assigning to it only those conscientious objectors whose objections are restricted to the personal use of arms;”

Civilian service, being the substitution for military service, must be financially provided for by the state and its projection in the state budget cannot in any way influence the military budget in the sense of providing it with more funds, since that would be in contradiction with the conscientious objection philosophy. All expenses for the objector and his service must be overtaken by the state and be sure to give equal conditions to the person serving civilian service as to the one serving military service.

7. The control of the process must be done by a civilian institution or organization.

Explanation: European documents that the Regional Standard refers to:

- Recommendation 337 (1967) of the Council of Europe Committee of Ministers, section B paragraph 2:

“2. Where the decision regarding the recognition of the right of conscientious objection is taken in the first instance by an administrative authority, the decision taking body shall be entirely separate from the military authorities and its composition shall guarantee maximum independence and impartiality.”

- The Bandrés Molet & Bindi resolution of the European Parliament, paragraph 9:  
“9. Calls on the Member States to ensure that compulsory military service and civilian service performed at institutions which do not come under the supervision of the Defense Ministry are of the same length, pursuant to paragraph 51 of its aforementioned resolution of 11 March 1993 on respect for human rights in the EC”

All aspects of applying for conscientious objector status and serving civilian service must be under the supervision of a civilian institution or organization, thus giving the necessary requirements for proper implementation of the process. The state has to provide all the concerned governmental bodies with the means for proper monitoring and control, as well as to allow the civilian society complete oversight and control of this work.

8. The state has an obligation to clearly and thoroughly inform the conscripts about their right to conscientious objection

Explanation: European documents that the Regional Standard refers to:

- The de Gucht resolution of the European Parliament, paragraph 49:

“49. Considers that these common principles should include minimum guarantees to ensure that:

- sufficient information is made available on conscientious objector status,”

- Resolution 337 (1967) of the Council of Europe Committee of Ministers, section B paragraph 1:

“1. Persons liable for military service should be informed, when notified of their call-up of the rights they are entitled to exercise.”

- Recommendation No. R(87)8 of the Committee of Ministers of the Council of Europe, section B paragraph 3:

“3. With a view to the effective application of the principles and rules of this recommendation, persons liable to conscription shall be informed in advance of their rights. For this purpose, the state shall provide them with all relevant information directly or allow private organizations concerned to furnish that information;”

- Resolution 1518 (2001) of the General Assembly of the Council of Europe, paragraph 5.iii:

“5. The Assembly accordingly recommends that the Committee of Ministers invite those member states that have not yet done so to introduce into their legislation:

iii. the right for all conscripts to receive information on conscientious objector status and the means of obtaining it;”

One of the main issues for proper implementation of the right to conscientious objection is certainly the institutionalization of the information on conscientious objection. The state has to provide with the models and structures for providing all recruits with adequate information on all issues concerning the right to conscientious objection, applying for it and serving civilian service, since the majority of the people is not aware of these information before being drafted.

9. Everybody has the right to inform freely about the right of conscientious objection.

Explanation: European documents that the Regional Standard refers to:

- Recommendation No. R(87)8 of the Committee of Ministers of the Council of Europe, section B paragraph 3:

“3. With a view to the effective application of the principles and rules of this recommendation, persons liable to conscription shall be informed in advance of their rights. For this purpose, the state shall provide them with all relevant information directly or allow private organizations concerned to furnish that information;”

Apart from the obligation for the state to give information on conscientious objection, it has to approve of and provide all necessities for any interested party to provide people with information on the matter.

Also, based on Council of Europe recommendations upon accepting states in the member status, we give another point to the regional standard that is not concerning the context of legal provisions, but the form of the provision:

- Conscientious objection and civilian service should be considered in the Law on civilian service completely separate to the Law of defense

We would also like to emphasize that we think that it is problematic that the state asks underage persons to make a decision on such an important issue as the one of serving the military service. We consider that such a dilemma should be canceled until maturity.

## **COMPARATIVE STUDY**

On level of implementation of the regional standards about the right to conscientious objection in legislation and practice - Croatia

1. The right to conscientious objection is the fundamental aspect of the right of freedom of speech, conscience and religion, established by the Universal Declaration of Human Rights and European Convention on Human Rights and Fundamental Freedoms (based on the Recommendation 337 (1967) of the Council of Europe Committee of Ministers and the Resolution 1518 (2001) of the General Assembly of European Council);

The conscientious objection is allowed to all those who, because of their religious or moral principles, are not ready to participate in performance of military duties in armed forces (the Constitution of the Republic of Croatia, article 47.). The status of objector was regulated by several articles within the Law of Defense and several Regulation books and internal instructions. In February 2003, the Croatian Parliament brought the Law on civilian service, which is being applied in practice since May 1st 2003. This Law is of great importance because it regulates

the status of conscientious objector and it represents good basis to ensure an improvement of conditions and rights of conscientious objectors without major changes.

2. The conscientious objection can be declared at any time: before, during and after serving the military service (it is not logical to put any time limits to someone's conscience, free opinion or religion, meaning that once the choice has been made, it cannot be changed anymore) and the declaration of Demand for conscientious objection must immediately stop any possibility to recruit this person until his demand is solved (based on Resolution 1518 (2001) of the General Assembly of European Council, De Gucht Resolution of European Parliament, Recommendation no. 87(8) and Recommendation 337 (1967) of the Council of Europe Committee of Ministers)

Even though at the beginning there was a deadline of 90 days from the day of conscription in military evidence, the Constitutional Court abolished that regulation. Today, as the Law states, conscientious objection can be declared at any time, and after positive solution of the demand, the conscientious objector is assigned to the structure of civilian protection. In case the demand for civilian service was made before the age of 27 and before the recruitment, the military service has to be postponed. In all other cases conscientious objector is obliged to act according to recruitment letter, i.e. to serve military service/training until the Commission for civilian service brings the solution which allows the civilian service.

3. Basis to obtain the status of conscientious objector is solely the free statement of conscientious objector, and any further analysis of someone's reasons of conscience by any commission is not acceptable (based on Schmidbauer and Machiocci Resolutions of the European Parliament)

According to the Law on civilian service (2003), it is no longer necessary to write an explanation, on basis of which the Commission was deciding about how convincing the reasons are. Now, it is only necessary to state whether the conscientious objection is declared because of religious or moral reasons, which do not get analyzed any further.

4. Civilian service must have a clear civilian feature and the entire process of application and performance of civilian service must be under jurisdiction of a civilian ministry. Ministry of Defense cannot be considered as civilian ministry (based on the Recommendation no. 87(8) and the recommendation 337 (1967) of the Council of Europe Committee of Ministers)

The civilian service was under the jurisdiction of the Commission within the Ministry of Justice even before the Law on civilian service went into effect. After the Law on civilian service went into effect, the Ministry of health and social care took over the jurisdiction completely. The civilian service itself, from its beginnings, has always been represented by the State as a military service without arms, even though in 1995 the Regulation book about appointing the legal persons where the civilian service in the Republic of Croatia could be performed and the Decision about duties of civilian service performers were brought.

Once the appointing the objectors into civilian institutions started, the practice of appointing them into military barracks terminated. During elaborating and bringing the Law on civilian service, the suggestion to enable to non governmental associations to approve conscientious objectors to perform their civilian service was accepted, and the criteria are regulated by the Regulation book about appointing the legal persons and bodies where the civilian service could

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be performed in the Republic of Croatia.

5. Civilian service cannot have a punitive feature in regard to work and length in comparison to military service (based on Schmidbauer, de Gucht, Banders-Molet and Bindi and Machiucci Resolutions of the European Parliament)

As far as the length is concerned, the civilian service definitely has a punitive character being 8 months long (2 months longer than the military service). The most frequently used arguments for longer duration are that soldiers are 24 hours a day, 7 days a week in military barracks, while conscientious objectors are 8 hours a day, 5 days a week on civilian service. However, it is necessary to mention that it is about 8 hours of effective work. Soldiers in military barracks do not work 24 hours a day, and in contrast to objectors, they have breakfast, lunch, dinner, rest and sleep, and so on.

Regarding the work, there were cases of inappropriate treatment of conscientious objectors in institutions and cases of assigning them hard works on purpose. After our interventions, as the time was passing and the number of conscientious objectors grew, those cases became insignificant and almost gone.

6. The State must take over all the costs of civilian service, not the organization where the civilian service is performed (based on the Recommendation 337 (1967) of the Council of Europe Committee of Ministers and practice in countries of European Union)

The Law on civilian service clearly states that a ministry in charge of social care services funds resources necessary to carry out the Law itself. Actually, it is all about administrative expenses, as there are no compensations for objectors any longer (before the Law on civilian service went into effect, traveling expenses were compensated).

7. Work of conscientious objectors in civilian service must be supervised by civilian institution (based on the Recommendation no. 87(8) and the Recommendation 337 (1967) of the Council of Europe Committee of Ministers)

This regulation is being entirely respected, because the person in charge of conscientious objectors in the institution supervises them, and the Commission for civilian service, which can come to institutions where the civilian services are being performed at any time without announcement, also performs the supervision.

8. The State is obliged to inform properly the conscripts about the right to conscientious objection (based on the Recommendation no. 87(8) and the Recommendation 337 (1967) of the Council of Europe Committee of Ministers, the Resolution 1518 (2001) of the General Assembly of European Council)

This obligation is being issued since 1991 by the Regulation book about performing compulsory military service, and today, according to the Law on civilian service, the Department for defense in charge is obliged to inform in writing the conscript, during conscription into military evidence, about his constitutional and legal rights to apply for civilian service on basis of conscientious objection. At the beginning, the Departments for defense did not inform often the conscripts about their right or they would give them incomplete information about how hard it is to obtain

the civilian service or they just convinced them that the length is longer than it really is. Also, there were several cases of talking back, blackmailing and threatening. As the number of objectors grew bigger and disrespect of legislative acts was pointed out, these cases became rare and in some Departments for defense the tolerance and understanding developed to the point where departments for defense suggest on their own the application for conscientious objection.

9. Everyone has the right to inform freely about the right to conscientious objection (based on the Recommendation no. 87(8) of the Council of Europe Committee of Ministers)

There is no legislative regulation to prohibit the informing. Existence of such a regulation would be definitely unconstitutional, for it would mean the violation of freedom of speech.

## **COMPARATIVE STUDY**

On level of implementation of the regional standards about the right to conscientious objection in legislation and practice - BiH

1. The conscientious objection is the fundamental aspect of the right of freedom of opinion, religion and conviction established by the Universal Declaration of Human Rights and the European Convention on Human Rights.

In the legislation of Bosnia and Herzegovina, the conscientious objection is accepted as recognized human right in both entities. The declarative part of the law states that conscientious objection is approved to all those who do not want to serve military service carrying arms in the army, due to their philosophical, moral or ethical reasons with assumption that these reasons are convincing and subjected to certain limitations.

In practice, this right was neglected from year 1996, when the laws were passed, until year 2000 in the Federation BiH and until 2001 in the Republic of Srpska. Today there are mechanisms to acquire the status of conscientious objector in both entities that work mainly according to the law.

2. Objection to military service can be declared before, during and after serving the military service, and both regular and reserve structure of armed force are included (it is not logical to limit the freedom of opinion, conscience and religion by any temporal deadlines).

In the Republic of Srpska, conscientious objection can be declared within 15 days from the day of recruitment. In Federation BiH, conscientious objection can be declared within 7 days after

recruitment.

In Federation BiH there was a possibility to apply for the status of conscientious objector according to the International recommendations (before, during and after serving the military service) and it was defined by the document "Temporary instruction about performance of civilian service in a legal person and in units of the Federation BiH Army", which went into effect on 27th October 2003 and was valid until the last Defense Law of Federation BiH was brought (May 2004). The commission that decides about the status of the right to conscientious objection follows the regulations of this law in its work, which means that during and after serving the military service it is not possible to apply for conscientious objection. In the Republic of Srpska, it is possible to apply for conscientious objection within legal deadlines, even though the Ministry of Defense states that the situation is different and that in practice it is possible to apply after legal deadlines. However, the practice shows that applications made after deadline, due to lack of information, sometimes get rejected and sometimes, after complaint to organ of second level of jurisdiction, get accepted, so there is no clear rule or practice in this case.

3. Basis to obtain the status of conscientious objector is solely the statement of objector which is not subjected to any further analysis by any commission.

In both entities, the legislation requires the reasons for civilian service to be given and made convincing to authorized organs- to the Commission for civilian service within the Ministry of Justice in F BiH or to the Recruit commission within local departments of the Ministry of Defense in the Republic of Srpska. However, in F BiH these reasons do not have to appear convincing but only stated.

In Federation BiH, the practice is that the reasons have to be stated in the application, but for their approval by the current structure of the commission, they do not have to be convincing because the members of the Commission for civilian service consider that they cannot judge no one's conscience. In the Republic of Srpska, the local recruit commissions that solve application in the first level of jurisdiction require the judgment of reasons for conscientious objection, which are delivered to them in the form of application- demand for civilian service.

4. Civilian service must have a clear civilian feature and must be performed in civilian institutions, and the entire process of application and performance of civilian service must be under jurisdiction of civilian ministry (Ministry of defense cannot be considered as civilian ministry in this case). Civilian service is performed in humanitarian, unprofitable organizations of general and public interest, and so on.

This part was very well worked out by the law, even though the priority is given to military institutions. In Federation the law states that "civilian service is performed in the Army of Federation on position that does not require carrying and using arms" and then in the following article it adds that "it can also be done in legal persons with residency on the territory of Federation, which are appointed by the Minister of Defense". The Minister of Defense of Federation BiH brings decision about assigning the status of organization to the organizer of the civilian service in accordance to recommendations of the commission that checks the fulfillment of set criteria for organizations that want to be organizers of the civilian service. The basic criteria are that these organizations are of public and humanitarian significance, so the unprofitable and youth organization can apply to obtain this status. We emphasize that other criteria are defined in



such a way that the majority of unprofitable and humanitarian organizations, due to lack of capacities which are required, cannot be organizers of civilian service, which we consider incorrect and unjustified. In the Republic of Srpska it stands that "civilian service is performed in military economy, health and general rescue organizations, organizations for rehabilitation of disabled persons and other organizations and institutions that deal with issues of public interest".

In F BiH, 46 conscientious objectors perform their civilian service through experimental phase of civilian service in F BiH, which should be the basis for further development of civilian service in this entity. There are 52 legal persons- organizers of the civilian service with their 20 branches, not including the Ministry of Defense which also has the right to organize the civilian service. In RS the civilian service is organized when necessary because the number of objectors is very small, so the government representatives do not recognize the necessity to deal with this issue systematically. So far, the civilian service in the RS was performed in the museum in Prijedor and in Caritas in Banja Luka.

The Minister of Defense of the RS appoints the institution and working place where individuals are to perform their civilian service. In Federation BiH the decision about organization where conscientious objectors are to perform their civilian service is brought by the Commission for civilian service within the Ministry of Justice of F BiH, and in the process of decision making the commission is guided by territorial principles, affinities and education of objectors and by number and type of organizations to which the Minister of Defense of F BiH has approved the status of organizer of civilian service.

Only few examples confirm the claim that the Republic of Srpska's practice is that the Minister of Defense appoints the place where civilian service is to be performed guided by territorial principles (serving in place where objector comes from).

However, the development of civilian service in both entities has just begun and it is still in the definition phase, but it is obvious that civilian service, even though less in F BiH, still depends on Ministry of Defense and there is a great necessity to assign the entire jurisdiction over civilian service to some other civilian ministry in order to enable its recommended civilian character.

#### 5. Civilian service cannot have a punitive feature in regard to work and length

In regard to length, the civilian service has definitely punitive feature: in Federation BiH the civilian service lasts 6 months and military service 4 months, while in the Republic of Srpska the civilian service lasts 10 and military one 4 months. As far as the rest is concerned, there are no regulations in legislations that prevent any potential future discrimination.

#### 6. The State must take over all the costs of civilian service, not the organization where the civilian service is performed.

In the Republic of Srpska the law states clearly that the civilian service is funded by the organization where the civilian service is performed. In Federation BiH there are no legal regulations that solve this issue, besides the document "Temporary instruction about performance of civilian service in a legal person and in units of the Federation BiH Army", which defines this in a way that the major part of expenses is funded by the organization where the civilian service is performed, but this should not be valid because of the new Defense law- which gives no an-

swers to this question.

In the Republic of Srpska the law is put into practice so that the organization bears all expenses for objector. In Federation BiH, the organization bears expenses of objectors' paycheck and transport and lodging in case the objectors do not perform their services in the city they come from (in spite of territorial principle by which objectors perform their civilian service in the cities they come from), while other expenses (insurance, taxes, and so on) are financed from the budget of Federation BiH as for any other soldier.

7. Organization where the service is performed supervises the objector

In the RS the supervision is done by the Ministry of Defense, while in Federation BiH the Ministry of Defense, the Ministry of Justice and responsible person of the legal person where the service is performed do the supervision (citing the discussable document "Temporary instruction about performance of civilian service in a legal person and in units of the Federation BiH Army"). In practice, supervision is organized this way.

8. The State has the responsibility to inform properly the conscripts about the right to conscientious objection

In previous legislative regulation regarding the right to conscientious objection on the level of entities, the state did not take the responsibility to inform the conscripts about the right to conscientious objection, except in Federation BiH in the document "Temporary instruction about performance of civilian service in a legal person and in units of the Federation BiH Army".

The Ministry of Defense of BiH leaves open space for eventual future systematic informing about the right to conscientious objection through the Law about civilian service. Significant progress has been made in Federation BiH in the period when the document "Temporary instruction about performance of civilian service in a legal person and in units of the Federation BiH Army" was valid which clearly defines the obligation to inform- even surveys among the recruits about the choice of the way to serve their military service. This obligation or other similar ones, is not included in the new Defense law of F BiH.

9. Everyone has the right to inform freely about the right to conscientious objection

Both legislation and practice show that this right exists. There is nothing declarative in the legislation, but everyone in general has the right to inform about the right to conscientious objection. There are initiatives that work on public informing about the right to conscientious objection- the Campaign for conscientious objection in BiH and its partners.

## COMPARATIVE STUDY

### On level of implementation of the regional standards about the right to conscientious objection in legislation and practice – Serbia and Montenegro

1. The right to conscientious objection is the fundamental aspect of the right of freedom of speech, conscience and religion, established by the Universal Declaration of Human Rights and European Convention on Human Rights and Fundamental Freedoms (based on the Recommendation 337 (1967) of the Council of Europe Committee of Ministers and the Resolution 1518 (2001) of the General Assembly of European Council);

The conscientious objection is recognized in the Constitutional Charter of Serbia and Montenegro (SCG) in the part which regards the Army of SCG, and also in the Charter of human and minority rights and civil freedoms. The Law on SCG Army in the article 296 states: "For the recruit who does not want to serve his military service carrying arms or wants to serve civilian service because of his religious or other conscientious reasons, the military service lasts 13 months." In August 2003 the Regulation about changes and additions to the Regulation about military service, which brings this right into practice, was adopted. This Regulation went into effect on October 15th 2003 and on its basis the first generation of conscientious objectors started to perform their civilian service on December 22nd 2003. Detailed explanations about conduction of civilian service are issued in the Instructions about application of the Regulation about military service, which regard serving military service in civilian service. This Regulation was issued in Official Military Register on November 3rd 2003. The Regulation also predicts an existence of serving the military service without carrying arms in military institutions.

2. The conscientious objection can be declared at any time: before, during and after serving the military service (it is not logical to put any time limits to someone's conscience, free opinion or religion, meaning that once the choice has been made, it cannot be changed anymore) and the declaration of Demand for conscientious objection must immediately stop any possibility to recruit this person until his demand is solved (based on Resolution 1518 (2001) of the General Assembly of European Council, De Gucht Resolution of European Parliament, Recommendation no. 87(8) and Recommendation 337 (1967) of the Council of Europe Committee of Ministers)

According to the Law on SCG Army, the conscientious objection can be declared within 15 days from the day of recruitment. As the recruitment is usually done in high school in practice the demand can be made until receiving the recruitment letter. Once the conscientious objection is declared, it stops any possibility to recruit this person until the demand is solved. Since last year, it is possible to declare conscientious objection even when the military service has already begun but only if less than three thirds of serving time has passed (now the military service lasts 9 months) and the "military officer in charge forwards that demand to military section within 48

hours". However, it is still not possible to declare conscientious objection after served military service in case of re-call on military exercise in reserve structure. The Regulation also predicts the possibility to enable conscientious objector "to terminate the civilian service or a service without carrying arms if during the time of service he commits any act contrary to reasons for which he was sent to that service (fight; use of cold or fire weapons; violent behavior, etc.), as well as in case of neglecting the working duties." That person, in case he was performing civilian service, is sent to perform military service without carrying arms, and in case this person was serving military service without carrying arms, he will be sent in regular military service.

3. Basis to obtain the status of conscientious objector is solely the free statement of conscientious objector and any further analysis of someone's reasons of conscience by any commission, is not acceptable (based on Schmidbauer and Machiocci Resolutions of the European Parliament)

The conscientious objector in its demand states the "reasons for performance of a civilian service and for working places in organizations and institutions outside the Army and the Ministry of Defense where he wants to perform his military service, according to his education, tendencies and choices". The demand is written in a free form and submitted to a special Commission of a Military sector in charge. There are 52 sectors now in SCG. Commissions are "formed by the Minister of Defense who also appoints members of a commission on a suggestion of the officer of the Military sector. The Commission is constituted by: psychologist, theologian, medic and two representatives of the military sector, among which one is a solicitor and other is a defense expert. The president of the commission is a representative of the military sector." They examine if all technical conditions for someone to declare conscientious objection have been fulfilled ("the right to serve a military service without carrying arms or in a civilian service cannot be obtained by: a person who owns a license to carry or keep weapons; a person who has been legally sentenced in last three years for a felony or violations with elements of violence; a person who submitted a demand for keeping weapons; a member of hunters' and archery association and a person who deals with selling or repairing arms and ammunition. The right to serve civilian service cannot be obtained by a person who works in a military industry or on research projects for Army needs. To this person the right to serve military service without carrying arms can be allowed"), but they do not examine the reasons why the conscientious objection has been declared. If the Commission rejects the demand, "the recruit can submit a complaint within 15 days from the day of receipt of the decision. The decision about complaint is brought by the Minister of Defense".

4. Civilian service must have a clear civilian feature and the entire process of application and performance of civilian service must be under jurisdiction of a civilian ministry. Ministry of Defense cannot be considered as civilian ministry (based on the Recommendation no. 87(8) and the recommendation 337 (1967) of the Council of Europe Committee of Ministers)

The civilian service is not only under jurisdiction of the Ministry of defense, but also under direct jurisdiction of the SCG Army, i.e. military sectors in charge through special commissions. The entire procedure regarding applications for civilian service, performance of the service, as well as the supervision over the work of objectors, are under direct jurisdiction of these commissions. The civilian service itself is represented as a civilian military service, even though it has clearly civilian features. Services are performed in civilian institutions, such as: "health, general rescue organizations, and organizations for rehabilitation of disabled persons and other organi-

zations and institutions of public interest, which are appointed by the minister of defense in the city of residence of a recruit.” When the Regulation went into effect, sending a conscientious objector to perform his service without carrying arms in a military institution stopped happening, even though this possibility was left opened for those who would like to do so, but this type of service has no civilian character.

5. Civilian service cannot have a punitive feature in regard to work and length in comparison to military service (based on Schmidbauer, de Gucht, Banders-Molet and Bindi and Machioggi Resolutions of the European Parliament)

In regard to length, the civilian service definitely has a punitive feature for it lasts 13 months (4 months longer than military service). The most frequently used arguments for longer duration are that soldiers are 24 hours a day, 7 days a week in military barracks, while conscientious objectors are 8 hours a day, 5 days a week on civilian service. However, it is necessary to mention that it is about 8 hours of effective work. Soldiers in military barracks do not work 24 hours a day, and in contrast to objectors, they have breakfast, lunch, dinner, rest and sleep, and so on. In regard to work, a conscientious objector states in his demand “the reasons for performance of the civilian service and also on which positions in organizations or institutions outside the Army and the Ministry of Defense he wants to perform his service, according to his education, tendencies and choices” but institutions are the ones who decide where will objectors be placed, i.e. the ones who have not developed programs and job descriptions for conscientious objectors.

6. The State must take over all the costs of civilian service, not the organization where the civilian service is performed (based on the Recommendation 337 (1967) of the Council of Europe Committee of Ministers and practice in countries of European Union)

The State must take over all expenses which consist in monthly compensation (which is equal for all regular military servants) and travel expenses for conscientious objectors. This is carried out in practice but with delays of several months. However, it is necessary to mention that objectors themselves are obliged to pay to the State certain taxes when they make Demand for civilian service.

7. Work of conscientious objectors in civilian service must be supervised by civilian institution (based on the Recommendation no. 87(8) and the Recommendation 337 (1967) of the Council of Europe Committee of Ministers)

This regulation is partially respected because person in charge of conscientious objectors in the institution also works as a supervisor, but this person is also in charge to submit a monthly report to a Commission in charge (Military sector).

8. The State is obliged to inform properly the conscripts about the right to conscientious objection (based on the Recommendation no. 87(8) and the Recommendation 337 (1967) of the Council of Europe Committee of Ministers, the Resolution 1518 (2001) of the General Assembly of European Council)

It is predicted by the regulation that the “military section in charge is obliged to deliver, along with recruitment letter, a notice about civil right to conscientious objection and about legislative decisions for its realization.” However, this is still not put in practice. We expect it to happen

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during the next recruitment, which is usually in January.

9. Everyone has the right to inform freely about the right to conscientious objection (based on the Recommendation no. 87(8) of the Council of Europe Committee of Ministers)

There is no legislative regulation which would forbid the informing; Existence of such a regulation would definitely be unconstitutional for it would mean the violation of freedom of speech. But persuasion to reject the military service is considered a felony. Also, there is no adequate collaboration with commissions that do not want to forward relevant information. This leaves open space for incorrect information and persuasions to reject civilian service. There were cases when some persons who declared conscientious objection were invited for a conversation by some officers from military sectors, where their points of view about civilian service were given to objectors, i.e. persuasion and offer of better positions in a regular military service if they changed their minds, and there were also some threats.

## COMPARATIVE STUDY

### On level of implementation of the regional standards about the right to conscientious objection in legislation and practice – Macedonia

- (Regional standard for conscientious objection was developed on the seminar held in Sarajevo in March 2003, by the organization founder of the Regional network for conscientious objection- Objection for Peace: Peace Action- Macedonia, EBCO Balkan- Montenegro and the Campaign for conscientious objection- BiH. The standard was developed after a process of years long work on issues regarding implementation of this right through different practices and specificities in the region, exchange of experiences with a great number of organizations in EU, as well as through better studying of international documents that treat the right to conscientious objection: Universal Declaration of Human Rights, European Convention on Human rights and fundamental freedoms, Resolution 337 (1967) of the European Council and Recommendation 816 (1977), Recommendation no. R(87)8 of the Committee of Ministers of the Council of Europe and Recommendation 1518 (2001) of the European Council. With this standard we are trying to support the process of adoption of European practice by countries of Southeastern Europe. In continuation there is the text of the Regional standard with explanations and comparison with real situation in the Republic of Macedonia.

#### Regional standard for conscientious objection

In all countries of Southeast Europe, the military service is still obligatory. In all of the countries of the region of Southeast Europe there are people which refuse to serve such service for the reasons of conscience. Those people are conscientious objectors. Conscientious objectors express their efforts for a future without war and violence through their refusal to be trained to kill. In almost all of the countries of EU there's a right for an alternative - civilian service. With these standards we would like to contribute in the process of implementation of civilian service and improvement of the position of pacifists in this area. After the years of war that kept the region of Southeast Europe in darkness, it seems very important to empower the conscientious objectors as people that were during all this period in the past promoting, with their personal example, that violence has an alternative. A true civilian service could be a pawn for the future.

1. The right to conscientious objection is the fundamental aspect of the right of freedom of speech, conscience and religion, established by the Universal Declaration of Human Rights and European Convention on Human Rights and Fundamental Freedoms;

- The right to conscientious objection to compulsory military service has been legally acknowledged in Macedonia for the first time in the Law on Defense from 2001. A real accomplishment represents the fact that the right to conscientious objection has been introduced in the legislation in the time when there was a raging war conflict in Macedonia. However, the fact remains that its practical recognition has not begun before the end of 2002. as well as the fact that the right to CO has not entered the Constitution of Republic of Macedonia in an imperative way and that it is defined by only few articles inside the Law on Defense.

2. The conscientious objection can be declared at any time: before, during and after serving the military service (it is not logical to put any time limits to someone's conscience, free opinion or religion, meaning that once the choice has been made, it cannot be changed anymore) and the declaration of conscientious objection must immediately stop any possibility to recruit this person until his demand is solved;

- The decision to dismiss article 10 paragraph 1 from the Law on Defense made by the Constitutional Court of Republic of Macedonia dated 12.09.2002., is speaking about the spirit of this article of the Law. However, the changes made on the Law on Defense again made an attack to the freedom of expression of the right to conscientious objection in a way that the article 3 of this Law enables the expression of the right to CO before the call-up to military service and not after that. In practice, this would mean that one can declare conscientious objection at any time except in the period from receiving the call for military service until entering the barracks. We find this to be absurd, if talking in a sense that the freedom of conscience, thought and religion can not be limited in any way. Further more, it can be changed numerous times in a person's lifetime.

3. Basis to obtain the status of conscientious objector is solely the free statement of conscientious objector, and any further analysis of someone's reasons of conscience by any commission is not acceptable;

- Thought, conscience and religion are a part of person's basic intimacy. The mechanism of Commission evaluation we find discriminating. The same is not asked of the military servants for their service (medical exam for recruitment is obligatory for all). Based on the Law on Defense of the Republic of Macedonia the Commission for civilian service is the instance that has to make a decision for every single application within 30 days.

4. Civilian service must have a clear civilian feature and the entire process of application and performance of civilian service must be under jurisdiction of a civilian ministry. Ministry of Defense cannot be considered as civilian ministry;

- This principle is supported by the Council of Europe, suggesting the Ministry of Labor for jurisdiction on this matter. It is not the best solution that the Ministry in charge of war has a decision of the pacifists' service.

- Practice in Republic of Macedonia is that with the decision of the Government civilian service can be performed in organizations and institutions where medical centers are most included, and the profiles of working positions are: doctor, dentist, laboratory worker, nurse, psychologist, social worker, cleaner, qualified and non-qualified workers. This structure of CO's is questionable from the ethical point of view, because in such manner conscientious objectors become a sort of a competition to the workers. Practice tells us that the majority of conscientious objectors in Macedonia are on hygienic duties, regardless to their affinities and/or education. European practice (including the countries where compulsory military service is abolished) gives us the idea that the majority objectors do their civilian service in nonprofit and/or nongovernmental organizations. Most of them serves their civilian service in the missions of various nongovernmental organizations abroad (Spain – BiH, Italy – Kosovo, Macedonia, Germany – Macedonia, France, Spain,...) European Union societies have seen the importance for the objectors to spend their time in civilian service training for the variety of knowledge in the fields



of human rights, work with marginal groups and later on returning to the society with new knowledge and develop them into a better future.

5. Civilian service cannot have a punitive feature in regard to work and length in comparison to military service;

- In the Republic of Macedonia military service lasts 6 months, while the civilian service is 10 months. We consider the duration of civilian service is a punishment for "bad" choice of service. According to the Law on Defense, conscientious objectors have obligation until the age of 55. (Article 81 paragraph 2)

- Concerning the work objectors do, major issues have been raised (paragraph 4) and give the insight in the situation in Macedonia.

6. The State must take over all the costs of civilian service, not the organization where the civilian service is performed;

- This principle has a goal of stopping the implementation of the right to conscientious objection through forcing the organizations where objectors serve to pay expenses of objectors. In Macedonia, expenses are paid by the organizations where people serve, and they are refunded by the Ministry of Defense.

7. Work of conscientious objectors in civilian service must be supervised by civilian institution;

- Law on Defense states that the control of the process is done by the organization where the service is performed and it makes reports on it to the Ministry of Defense. The control is performed also by the Ministry of Defense.

8. The State is obliged to inform properly the conscripts about the right to conscientious objection;

- In every contact with the conscript on the issues connected with military obligation, the state should clearly and without doubt to show all the possibilities they have. Ministry of Defense of Republic of Macedonia is not informing the conscripts of the right to conscientious objection. However, Council of Europe recommendations from 1967 and then 1987 say that the Government should inform people of the right to conscientious objection or to assign this to another institution.

9. Everyone has the right to inform freely about the right to conscientious objection;

- In the Republic of Macedonia it is not forbidden to freely inform people of the right to conscientious objection.

\*We would like to stress out that we think that it is a problem that the state is requesting the minors to make decisions of such important matters such as serving the army. We think that this should be postponed until they become of legal age.

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