

WORKING MATERIALS

“Evaluation of the needs for joined cooperation of the governmental institutions and civilian society in the process of developing the models concerning conscientious objection and civilian service - monitoring and evaluation”

**Regional conference on conscientious objection and civilian service
«To Europe Through Conscientious Objection and Civilian Service»
Sarajevo 20. - 22. 09. 2004**

© 2004 Regional network for conscientious objection
«Objection for Peace»

E-mail: konferencija@prigovorzamir.org
Web site: www.prigovorzamir.org

In cooperation with:



Supported by:



Transparency, monitoring and control over the process of application for conscientious objection and performance of civilian service

Conscientious objection and civilian service, being new concepts, are also new processes in the building of societies in countries of Southeastern Europe. Being new, they experience beginning problems and unclearness. Importance of proper implementation of this human right is shown in several fundamental aspects:

- Creation of quality suppositions for respect of human rights in the region
- Creation of good relations between civil society and governmental structure
- Bringing close the countries of the region to international integrations
- Creation of basis for demilitarization and pacification of entire region

Anyway, the necessity for proper implementation demands great transparency towards the public and interested groups, in first place towards those groups of civil society that deal with conscientious objection and protection of human rights.

Also, proper implementation means quality and sustainable models of control, monitoring and evaluation of the whole process from responsible governmental institutions, as well as from civil society and international organizations interested in the processes concerning conscientious objection and civilian service.

Because of all these, there is a great need for further steps concerning this matter in the implementation of the right to conscientious objection and civilian service:

1. Work of commissions that examine applications for conscientious objection must be transparent and public and that is why it is necessary to enable access and active participation of civil society in the work of commissions.

Commissions that examine applications for conscientious objection, if there are such commissions, have the most active role in the process of recognition of the right to conscientious objection and they have direct jurisdiction over legislative regulations related to this issue. Because of this reason, transparency of work and public work of these commissions is crucial for the success of process development of sustainable system of recognition of the right to conscientious objection freed from any possible misuses or violations of human rights. As there are non-governmental organizations in all countries of the region that deal with protection of the right to conscientious objection, it is necessary to enable their participation and monitoring of work of commissions that approve applications for conscientious objection. In this sense, government bodies must enable free access to information regarding applications for conscientious objection and other documents that might influence decisions of a commission. Commissions must also enable presence during their work of decision making about applications and possibility of active advisory participation in discussions.

2. Informing the recruits about the right to conscientious objection must be adequate and available to everyone. That is why it is necessary to enable regular evaluation of this process by civil society, as well as the permanent insight in the process of information giving.

After institutionalization of information for recruits about the right to conscientious objection by the state, the process of its implementation is just getting started. As the conscientious objection is rather new and relatively unknown topic in our counties, information the recruits get can be quite contradictory and incorrect. It is possible to encounter several different problems during this process, such as: insufficient education of people obliged to inform the recruits, insufficient sensibility of governmental services towards conscientious objection, insufficient accuracy and control of the process in all parts of the country, and also influence exertion on public's opinion and propaganda of one of two ways of service is possible. For these reasons, countries of the region should enable to civil society representatives, international organizations and institutions, to monitor and evaluate the process in order to achieve standardization and unification of information giving about the right to conscientious objection as soon as possible.

In order to get as better and quality information as possible, it is necessary to enable the access to documents that regard information giving to recruits, education of personnel involved in the process, access to information about recruits for information check, advisory role of civil society in elaboration of any informative materials for recruits, whether on self initiative, or on recruit's demand.

3. In the occasion of application for conscientious objection there must be no violation of applicants' rights and the State is obliged to enable transparent processes of application, as well as access to civil society representatives in the occasion of application and insight into evidence about applicants

Another problem in the process of implementation of the right to conscientious objection is the way and the time of application for conscientious objection- application submission. Depending on legislative solutions, things that are necessary to ensure in this case are complete disablement of any influence exertion on the applicant, violations of his rights, changes or not forwarded documents, not giving administrative- legal counseling to the applicant when necessary. For these reasons, it is crucial to involve interested civil society representatives, international organizations and institutions in order to achieve success and uncompromised process.

4. Experts in human rights, as well as civil society representatives who deal with this issue, must be involved in any process of elaboration or change of legislation regarding these issues, and they must be consulted regarding the issues of concretization and implementation of legislative regulations

All countries of the region are to enter international integrations in near future and to experience stabilization and democratization of civil structure. Considering this aim, from the point of view of recognition of the right to conscientious objection, it is necessary that all the countries of the region incorporate into their legislations international standards that guarantee a democratic implementation of this human right. So, in order to achieve transparency, accumulation of knowledge and experience regarding this issue, it is necessary that civil society representatives that deal with conscientious objection and experts in legislations regarding human rights, take part in the process of bringing and/or changing legislations in regard to conscientious objection and civilian service, so that all aforementioned conditions could be adequately satisfied.

5. In the process of performance of civilian service, there must be permanent control by government institutions in charge of implementation of it, as well as by civil society representatives and national institutions in charge of protection of human rights.

Civilian service is also very important aspect of implementation of conscientious objection and its social benefit can contribute in great manner to the popularization of the right to conscientious objection and to equalization of the right of military and civilian servants. That is why it is necessary to pay attention also to this part of the process from the aspect of civil control and evaluation. Possibilities of manipulation with civilian service, by violating objectors' rights, demotions, occupation of someone else's paid work, and many other problems in relation between objector-organization, organization-governmental institution or objector- governmental institution, create enormous necessity for cooperation of governmental bodies and nongovernmental organization on these issues. In that sense, besides creation of quality control models by national institutions, it is necessary to enable permanent contact between civil society, international and national institutions in charge of protection of human rights and organizations where conscientious objectors serve civilian service and with conscientious objectors. It is also necessary to enable adequate reports about these models of monitoring of civilian service implementation.

6. It is necessary to enable the civil society representatives to be present and make reports about work of commissions that appoint legal persons where civilian service is to be performed, as well as of commissions and bodies that work on assigning objectors to civilian service, in order to avoid any possible mistakes, which might compromise the process.

In previous legislative practices of regional countries, two more commissions involved in processes regarding the right to conscientious objection and civilian service have been identified: commissions that appoint legal subjects where civilian service can be performed and commission that assigns objectors to civilian service. These commissions are or independent or just represent a role of already existing ones. Anyhow, due to possibility for problems to arise, such as manipulation with choice of organization, assignment of objectors to works they are not educated for or that are degrading, choice of organizations that do not fulfill conditions to be organizers of civilian service and so on, it is necessary to introduce a possibility of monitoring of these commission by civil society. The state must enable presence and reporting about the work of these commissions by representatives of civil society, as well as supervision over their work in the field. Besides that, participation in elaboration of administrative acts and attached documents (decisions, contracts and so on) could be of great importance for adequate establishment of the model.

7. It is necessary to enable to civil society representatives to be in a permanent contact with conscientious objectors that perform civilian service, as well as with organizations where civilian service is performed, in order to enable better implementation of performance of civilian service and promotion of social benefits of the process.

Civilian service, besides enabling recognition of this very important human right, also enables public recognition and creation of social benefits from this entire process. For this reason, and in order to avoid any violations of human rights in this process, it is necessary to enable better communication between national institutions, and between organizations of civil society and conscientious objectors that serve their civilian service and organizations where they serve it.

Necessity to introduce civil control:

1. Work of commissions that examine applications for conscientious objection must be transparent and public and that is why it is necessary to enable access and active participation of civil society in the work of commissions.

2. Informing the recruits about the right to conscientious objection must be adequate and available to everyone. That is why it is necessary to enable regular evaluation of this process by civil society, as well as the permanent insight in the process of informing.

3. In the occasion of application for conscientious objection there must be no violation of applicants' rights and the State is obliged to enable transparent processes of application, as well as access to civil society's representatives in the occasion of application and insight into evidence about applicants

4. Experts in human rights, as well as civil society representatives who deal with this issue, must be involved in any process of elaboration or change of legislation regarding these issues, and they must be consulted regarding the issues of concretization and implementation of legislative regulations.

5. In the process of performance of civilian service, there must be permanent control by government institutions in charge of implementation of the civilian service as well as by civil society representatives and international and national institutions in charge of protection of human rights.

6. It is necessary to enable the civil society representatives to be present and make reports about work of commissions that appoint legal persons where civilian service is to be performed, as well as of commissions and bodies that work on assigning objectors to civilian service, in order to avoid any possible mistakes, which might compromise the process.

7. It is necessary to enable the civil society representatives to be in a permanent contact with conscientious objectors that perform civilian service, as well as with organizations where civilian service is performed, in order to enable better implementation of performance of civilian service and promotion of social benefits of the process.

BOSNIA & HERCEGOVINA

Necessity to introduce civil control

1. Work of commissions that examine applications for conscientious objection must be transparent and public and that is why it is necessary to enable access and active participation of civil society in the work of commissions.

The Commission for civilian service in Federation BiH (FBIH) has enabled the presence and participation in its work of the Campaign for conscientious objection and other interested parties, which made its work transparent and public, while in the Republic of Srpska, the representatives of non governmental sector have not yet publicly witnessed the work of recruit commissions. This issue has not been regulated yet by any document or decisions.

2. Informing the recruits about the right to conscientious objection must be adequate and available to everyone. That is why it is necessary to enable regular evaluation of this process by civil society, as well as the permanent insight in the process of informing.

For the time being, there are no adequate models informing recruits in Bosnia and Herzegovina, beside those which were valid in the document "Temporary instruction about performance of civilian service in legal persons and Federation BiH Army units", but in Federation BiH the Campaign for conscientious objection has signed the Protocol about cooperation with the Ministry of Defense of F BiH, according to which the Campaign has the right to attend and to have insight into documentation in the occasion of informing about conscientious objection.

3. In the occasion of application for conscientious objection there must be no violation of applicants' rights and the State is obliged to enable transparent processes of application, as well as access to civil society's representatives in the occasion of application and insight into evidence about applicants

For the time being, according to the Protocol about cooperation, the Campaign for conscientious objection has the right to be present in the occasion of applying for conscientious objection in Federation BiH. In regard to transparency, the process is transparent in Federation BiH due to existence of unique Commission to which the applications are made, while in the Republic of Srpska, the information is not centralized, which is why there are no possibilities of misuse of the process.

4. Experts in human rights, as well as civil society representatives who deal with this issue, must be involved in any process of elaboration or change of legislation regarding these issues, and they must be consulted regarding the issues of concretization and implementation of legislative regulations.

So far, the government institutions did not put this into practice, so the civil society representatives are mainly forced to act through the Parliament and amendments to legislative regulations or through media, as well as through representatives of International Community that deal with these issues.

5. In the process of performance of civilian service, there must be permanent control by government institutions in charge of implementation of the civilian service as well as by civil society representatives and international and national institutions in charge of protection of human rights.

Performance of civilian service is rather new process in BiH, so neither these principles are clearly and accurately defined, nor are the necessities for this accorded and examined. This will have to be elaborated in future.

6. It is necessary to enable the civil society representatives to be present and make reports about work of commissions that appoint legal persons where civilian service is to be performed, as well as of commissions and bodies that work on assigning objectors to civilian service, in order to avoid any possible mistakes, which might compromise the process.

The work of these commissions is transparent only in Federation BiH in case of the commission which assigns objectors to civilian service, as it is the same commission which approves applications for civilian service. As far as the commission in charge of appointing the legal person where civilian service is to be performed is concerned, its work is not transparent. In the Republic of Srpska, neither the function nor the work of these commissions is defined enough, so the transparency of their work is impossible.

7. It is necessary to enable the civil society representatives to be in a permanent contact with conscientious objectors that perform civilian service, as well as with organizations where civilian service is performed, in order to enable better implementation of performance of civilian service and promotion of social benefits of the process.

Neither in Federation BiH nor in the Republic of Srpska exist a clear prohibition of this contact; however, there are no documents that allow it. That is why this work is for the time being mainly based on a good will of conscientious objectors and organizations where the service is performed.

CROATIA

Necessity to introduce civil control

1. Work of commissions that examine applications for conscientious objection must be transparent and public and that is why it is necessary to enable access and active participation of civil society in the work of commissions.

In the Republic of Croatia there is a legislative basis for accessing information (Law on right to access information – NN 172/03). Antiwar campaign of Croatia did not find necessary so far an insight into way of work of the Commission because of its way of solving demands for civilian service for more than 99% of demands were solved positively. The only reasons for the Commission to bring negative decisions are the following (according to article 13, Law on civilian service- NN 25/03):

- If court legally established that the claim applicant has committed criminal acts using weapons or force
- If the claim applicant possesses weapons, except people who have the license to keep the weapons as a souvenir
- If the claim applicant has not stated whether he asks for civilian service due to his religious or moral beliefs, and he has not done this in the period when called by the commission to complete his application
- If the application for civilian service has not been submitted due to religious or moral reasons.

2. Informing the recruits about the right to conscientious objection must be adequate and available to everyone. That is why it is necessary to enable regular evaluation of this process by civil society, as well as the permanent insight in the process of information giving.

The only formal information giving to recruits about the right to conscientious objection is done by authorized offices for defense in the occasion of conscription in military evidence (Law on civilian service, article 5). An objective insight into current state of informing is impossible. Surveys among defense offices about informing in the occasion of conscription into military evidence do not show the real situation because of the possibility of insincere answers. The only way to assure a proper information giving would be the presence of supervisors which would monitor the conscriptions into military evidence which is physically and legally impracticable. However, through everyday contacts with conscientious objectors we gather a lot of information about how the conscript actually have found out about the right to conscientious objection and ways to obtain it in offices for defense. This shows that the situation about information giving has approved and civilian service is no more considered negative and antinational.

3. In the occasion of application for conscientious objection there must be no violation of applicants' rights and the State is obliged to enable transparent processes of application, as well as access to civil society representatives in the occasion of application and insight into evidence about applicants

With Law on civilian service in effect, demands are not anymore delivered directly to the Commission but to authorized office for defense which is obliged to deliver the demand within 8 days to the Commission. So far, we do not have any knowledge about violations of someone's rights in the occasion of demand deliveries, which was pretty much the case at the beginning of civilian service when objectors were often offended, given incorrect information and pursued to change their minds about conscientious objection. Credit must be given to a great number of applications and influence exertion on public's opinion and on bodies of the Ministry of defense about civilian service and acceptance of civilian service as the fundamental human right.

4. Experts in human rights, as well as civil society representatives who deal with this issue, must be involved in any process of elaboration or change of legislation regarding these issues, and they must be consulted regarding the issues of concretization and implementation of legislative regulations.

During elaboration of draft of the Law on civilian service, the group of persons who worked on it followed the international and other legal acts related to human rights. However, even thou the Antiwar campaign of Croatia along with Amnesty International of Croatia elaborated a draft of proposal of the Law on civilian service and some points were taken from our draft the group that worked on elaboration of law proposal did not find it appropriate to contact us about it. However, after elaboration of draft, some of our suggestions and remarks were finally acknowledged.

5. In the process of performance of civilian service, there must be permanent control by government institutions in charge of implementation of it, as well as by civil society representatives and national institutions in charge of protection of human rights.

The control over civilian service is under jurisdiction of the Commission which creates an inspectional body. However, due to overload of the Commission with demands, not even one inspection has been done yet.

6. It is necessary to enable the civil society representatives to be present and make reports about work of commissions that appoint legal persons where civilian service is to be performed, as well as of commissions and bodies that work on assigning objectors to civilian service, in order to avoid any possible mistakes, which might compromise the process.

In the Republic of Croatia the Commission for civilian service solves demands and assigns objectors to civilian service. Transparency of Commission's work is regulated by the Law on the right to access information. The Law on civilian service with administrative acts clearly defines to which places the objectors are to be assigned and what conditions must the institution fulfill in order to become a civilian service organizer.

7. It is necessary to enable to civil society representatives to be in a permanent contact with conscientious objectors that perform civilian service, as well as with organizations where civilian service is performed, in order to enable better implementation of performance of civilian service and promotion of social benefits of the process.

In the Republic of Croatia there is no legislative regulation which would prohibit this type of contact for it would be contrary to the Constitution of the Republic of Croatia. However, it would be definitely positive if such a contact would be promoted in civil bodies (Commission for civilian service, defense offices and so on).

SERBIA & MONTENEGRO

Necessity to introduce civil control

1. Work of commissions that examine applications for conscientious objection must be transparent and public and that is why it is necessary to enable access and active participation of civil society in the work of commissions.

There are 52 commissions for civilian service in Serbia and Montenegro (at every local military section) and there is no a document about publicity of commissions' work. Even deprivation of information is possible, which is justified by military secrecy for the military bodies follow the regulations of Serbia and Montenegro's Army.

2. Informing the recruits about the right to conscientious objection must be adequate and available to everyone. That is why it is necessary to enable regular evaluation of this process by civil society, as well as the permanent insight in the process of information giving.

In Serbia and Montenegro recruits are usually informed in the Army's recruitment letter; however, the right to inform the rights and duties during the applying procedure and serving the civil service are non-existent and greatly violated.

The right to information and access to information is international standard and can be restricted by law only in particular cases (security, health, protection of individual's private details etc.) and can be rejected with the explanation (gram article 19 of UN's Universal declaration about human rights, Reference R(81)19 of the Committee of Ministers of Europe's Council, Concluding act of the Conference OEBS from 1991).

We remind that Croatia is the only country with the law about accessibility of information, while the entire constitutions guarantee public work of national authorities.

3. In the occasion of application for conscientious objection there must be no violation of applicants' rights and the State is obliged to enable transparent processes of application, as well as access to civil society representatives in the occasion of application and insight into evidence about applicants

In Serbia and Montenegro decentralized process complicates access to information about violation of right to conscientious objection and in individual cases it has happened that interested individuals were directed to different institutions (Supreme Headquarters, Ministry of Defense, Other Army Departments and Army Commands) without access to their demands.

This right is also guaranteed by the above mentioned international documents and by the Reference R(2002) of the 2nd Committee of Ministers of Europe's Council, as well as by the principles about privacy of OECD.

4. Experts in human rights, as well as civil society representatives who deal with this issue, must be involved in any process of elaboration or change of legislation regarding these issues, and they must be consulted regarding the issues of concretization and implementation of legislative regulations.

In Serbia and Montenegro, the representative of non-government sector has participated in the elaboration of the modification and amendments of Regulation about performing the military service (whose part is related to the civil service), however, there are indications of the change of regulations where the public dispute is nonexistent.

5. In the process of performance of civilian service, there must be permanent control by government institutions in charge of implementation of it, as well as by civil society representatives and national institutions in charge of protection of human rights.

In Serbia and Montenegro, there is no regulation according to which civil society representatives could be involved in the process of civilian service, nor there are national institutions (such as Ombudsman on national level), except for parliamentary committees that might exercise this role.

International standards that allow the access to procedures and right to access Institutions where violations of human and civil rights are possible: UN Convention against torture, other inhuman, cruel and degrading treatments, as well as the optional protocol attached, then European Convention for prevention of torture, other inhuman, cruel and degrading treatments. These documents emphasize the significance of visitation to institutions by local and foreign experts.

6. It is necessary to enable the civil society representatives to be present and make reports about work of commissions that appoint legal persons where civilian service is to be performed, as well as of commissions and bodies that work on assigning objectors to civilian service, in order to avoid any possible mistakes, which might compromise the process.

In Serbia and Montenegro insight into conditions of rights and obligations of conscientious objectors is not guaranteed in any phase of the process.

7. It is necessary to enable to civil society representatives to be in a permanent contact with conscientious objectors that perform civilian service, as well as with organizations where civilian service is performed, in order to enable better implementation of performance of civilian service and promotion of social benefits of the process.

Surveys in Serbia and Montenegro made by NGOs that deal with these issues are based on a good will of interviewed persons, so there is no possibility to check these information nor there is any help or authorization by the governmental bodies to do so.

MACEDONIA

Necessity to introduce civil control

1. Work of commissions that examine applications for conscientious objection must be transparent and public and that is why it is necessary to enable access and active participation of civil society in the work of commissions.

In the Republic of Macedonia the presence in commission assemblies is not allowed.

2. Informing the recruits about the right to conscientious objection must be adequate and available to everyone. That is why it is necessary to enable regular evaluation of this process by civil society, as well as the permanent insight in the process of information giving.

So far, there are no adequate models for information giving to recruits.

3. In the occasion of application for conscientious objection there must be no violation of applicants' rights and the State is obliged to enable transparent processes of application, as well as access to civil society representatives in the occasion of application and insight into evidence about applicants

An insight into evidence can be allowed by the sector of civil defense and crisis management which administrates the process of civilian service. Anyway, there is no rule that the insight has to be allowed. That depends on good will of the Sector to respond to a demand (that is a general problem of administration in Macedonia, mostly because of inexistence of Law on informing). Violations of law are often product of rather complex legal trap (Defense Law)

4. Experts in human rights, as well as civil society representatives who deal with this issue, must be involved in any process of elaboration or change of legislation regarding these issues, and they must be consulted regarding the issues of concretization and implementation of legislative regulations.

Experts in human rights are involved in law elaboration. The question is whether the right persons have been consulted about the issue of conscientious objection.

5. In the process of performance of civilian service, there must be permanent control by government institutions in charge of implementation of it, as well as by civil society representatives and national institutions in charge of protection of human rights.

Control over civilian service is done by the organization the civilian service is being performed.

6. It is necessary to enable the civil society representatives to be present and make reports about work of commissions that appoint legal persons where civilian service is to be performed, as well as of commissions and bodies that work on assigning objectors to civilian service, in order to avoid any possible mistakes, which might compromise the process.

The work of these commissions is not public. Anyway, they follow the law which has already defined the conditions.

7. It is necessary to enable civil society representatives to be in a permanent contact with conscientious objectors that perform civilian service, as well as with organizations where civilian service is performed, in order to enable better implementation of performance of civilian service and promotion of social benefits of the process.

Contact between civil society representatives and conscientious objector is not forbidden. There are no signs of obstruction of the contact as far as we know from experience.



Regional network for conscientious objection «Objection for Peace»

www.prigovorzamir.org

E-mail: konferencija@prigovorzamir.org



Peace Action-Macedonia

Točila 1 A3/23, 75000 Prilep – Macedonia

++389 48 401 888, gamanet@mt.net.mk



EBCO Balkan

Makednoska 22/II, Belgrade, Serbia

++381 (0) 11 3340 359,

office@ebcobalkan.org www.ebcobalkan.org



Antiwar Campaign Croatia

Medulićeva 17/II, 10000 Zagreb, Croatia

Tel./fax: ++385 1 48 48 720, e-mail: ark@zamir.net



Nansen dialogue centre - Montenegro

Vukice Mitrović 881 000 Podgorica

Tel: 081 / 230 681, 081/ 230 646, Fax: 081 / 231 105

info@ndcmn.org, www.nansen-dialogue.net



Campaign for Conscientious objection in

BiH – Central Office Sarajevo

Muse Ćazima Ćatića 25, 71000 Sarajevo, BiH

Tel/fax: (++387) 33 239 201

info@prigovorbih.org www.prigovorbih.org

