



# Conscience and Peace Tax International

Internacional de Conciencia e Impuestos para la Paz

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

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**UPR SUBMISSION**

**FINLAND**

**MAY 2012**

1. This submission was prepared in November 2011 on the basis of the latest information available to CPTI.

## **Executive summary:**

**2. This submission focusses on arrangements for conscientious objectors to military service in Finland. The concerns it raises are the excessive length of the alternative service required of conscientious objectors, discriminatory treatment of Jehovah's Witnesses by comparison with those whose objections are based on other grounds, and the imprisonment of conscientious objectors who refuse the alternative service available.**

## **Background**

3. Finland maintains a system of obligatory military service for male citizens. Since 1995, women may also opt to perform an equivalent service (as distinct from embarking on a professional military career, in which case they become subject to the same terms and conditions as male conscripts).

4. Arrangements for conscientious objectors to military service were addressed by the Human Rights Committee in its Concluding Observations on Finland's Fifth Periodic Report under the International Covenant on Civil and Political Rights (ICCPR), the most recent to have been considered:

“The Committee regrets that the right to conscientious objection is acknowledged only in peacetime, and that the civilian alternative to military service is punitively long. It reiterates its concern [raised during the consideration of Finland's Third and Fourth Periodic Reports, submitted in 1989 and 1995, respectively] at the fact that the preferential treatment accorded to Jehovah's Witnesses has not been extended to other groups of conscientious objectors.

“The State party should fully acknowledge the right to conscientious objection and, accordingly, guarantee it both in wartime and in peacetime; it should also end the

discrimination inherent in the duration of alternative civilian service and the categories that can benefit from it (arts. 18 and 26 of the Covenant).”<sup>1</sup>

5. Disturbingly, Finland does not seem to address this Concluding Observation at all in its Sixth Periodic Report under the ICCPR, submitted in August 2011<sup>2</sup>, which will still be awaiting consideration by the Human Rights Committee when Finland is reviewed in the second cycle of the UPR. Without quoting the Concluding Observation itself, Finland did however respond in reporting to the first cycle of the UPR.

6. Paragraph 76 of Finland's report to the first cycle<sup>3</sup> reads:  
“**The overall reform of the Non-Military Service Act** shortened the duration of nonmilitary service by one month, to 362 days, which is equal to the longest duration of the service referred to in the Military Services Act. Liability for non-military service now exists in a state of emergency, too. Centres for Non-Military Service are responsible for the placement of persons liable for non-military service during a state of emergency. The assisting tasks assigned to these persons in such situations are performed under the leadership of civil rescue authorities. Refusal to perform non-military service, on one hand, and non-military service offences punishable by disciplinary punishments, on the other hand, are defined by different elements of an offence. The duration of unconditional imprisonment imposed for refusal to perform non-military service is half of the remaining service period. The duration of unconditional imprisonment imposed for a non-military service offence is half of the remaining service period at the maximum, so that the court has discretion when imposing the punishment. A key objective during the preparation of the Non-Military Service Act was to ensure maximum equality with the rights and obligations of persons performing service under the Military Services Act. Furthermore, special attention was paid to the compliance of the regulation with the constitutional basic rights and liberties and the requirements of international human rights treaties.”

7. In the Working Group, the United Kingdom “welcomed the attempts to end discrimination against conscientious objectors through the reforms of the Non-Military Service Act. [but] encouraged Finland to go further in reducing the duration of non-military service and to establish parity between the length of non-military service and the average, rather than the longest possible, length of military service.”<sup>4</sup> Although it seems that this had been intended as a recommendation, the word “recommend” was not used, and it was not included in the list of recommendations., nor answered in the addendum to the adopted report. (Following such experiences during the first Working Group Session, States took care in subsequent sessions to frame their recommendations in explicit language.).

#### Duration of alternative service

8. Although the issue was not included among the formal responses to recommendations, the Finnish delegation did respond to the United Kingdom's

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<sup>1</sup> CCPR/CO/82/FIN of 2 December 2004), para.14

<sup>2</sup> CCPR/C/FIN/6, 12<sup>th</sup> September 2011.

<sup>3</sup> A/HRC/WG.6/1/FIN/1, 18<sup>th</sup> March 2008, para 76.

<sup>4</sup> 9<sup>th</sup> April 2008, reported in A/HRC/8/24, para 36..

comments during the Working Group dialogue itself, stating that “On the important question on the length of the Finnish non-military service that has recently been shortened and is now equal to the longest duration of military service, under the Military Services Act, [...] the Finnish Constitutional Committee of Parliament [had] compared the burden of non-military and military services and the overall burden irrespective of the length was assessed to be more or less equal between the two forms of services and this is the reasoning behind the length of non-military service.”<sup>5</sup>

9. No amendments to the Non-Military Service Act have been reported since the first cycle of the UPR, and the situation therefore remains unchanged.

10. First, it is a welcome development that the Non-Military Service Act referred to<sup>6</sup> at last removed one paradox which had exercised the Human Rights Committee, namely that arrangements for conscientious objectors to military service did not apply at the times when, logically, they were most necessary, namely during national emergencies, including war.

11 The Act prescribes different application procedures for times of national emergency, when a board will be specially constituted for the purpose of reviewing applications; this board will include a representative of the armed forces and reporting to the Ministry of Defence. It is unfortunate that Finland, which as long ago as 1987 dispensed with a personal interview of proclaimed conscientious objectors and in practice accepted claims as valid without enquiry (an approach subsequently welcomed by the Commission on Human Rights in OP2 of Resolution 1998/77) should find it necessary to provide for a departure from this best practice. It is disturbing that the procedures outlined for times of emergency should incorporate such a strong military influence, should not be clearly out of the control of the military authorities, and thus are not “independent and impartial” as recommended in OP3 of Resolution 1998/77).

13 The assertion that “the overall burden irrespective of the length” is “more or less equal” between military and non-military service is not convincing. The 362 days of non-military service is equivalent to the military service required of those who will become officers in the reserves, liable until the age of 60 to reservist training aggregating no more than 100 days. Conscripts using special or professional skills perform 270 days of military service. The period of service for the rank and file, over 50% of conscripts, is 180 days, marginally less than half the period of alternative service required of *all* conscientious objectors. To that is nominally added between 40 and 100 days of reserve training, but War Resisters International<sup>7</sup> quote local sources as indicating that in practice reservists are called up for much less. Even at the possible maximum, for rank and file conscripts the aggregate of initial service and reservist duties is substantially less than the duration of alternative service.

14. The duration of alternative service in Finland clearly does not meet the criterion established by the Human Rights Committee in *Foin v France* that any discrepancy with the length of military service must “in a particular case” be based on

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<sup>5</sup> A/HRC/8/24, para 37.

<sup>6</sup> *Siviilipalveluslaki*, Act No. 1446 of 28<sup>th</sup> December, 2007

<sup>7</sup> [http://wri-irg.org/programmes/world\\_survey/country\\_report/en/Finland](http://wri-irg.org/programmes/world_survey/country_report/en/Finland)

“reasonable and objective criteria”<sup>8</sup> This implies that for any individual, the duration of alternative service must be compared with the duration of military service which he personally would otherwise face, not with some theoretical maximum, or even with “the average”. Likewise, when comparing the restrictions of military life with the performance of a civilian service (which was presumably part of the assessment by a Parliamentary Committee of the relative “burdens” of the two forms of service), it is the actual conditions of the placement concerned and the effective extra amount (if any) of free time which should be considered. And even if the hours of duty are equalised, it must be recognised that a service of substantially longer duration inevitably involves a greater interruption to the life and normal career of the person concerned.

### Situation of Jehovah's Witnesses

15. There is no indication that Finland has responded to the repeated concerns expressed by the Human Rights Committee about the effects of Act No. 645/1985, “On the release of Jehovah's Witnesses from military service in certain cases” which on the basis of certification from the community exempts members from all military service obligations in peacetime. No amendments to this Act have been reported, so it is unsatisfactory in two opposite respects; that it discriminates in favour of Jehovah's Witnesses by comparison with other conscientious objectors, but that its provisions do not extend to cover the situation when they would be most urgently needed, namely in time of war..

16. Military service is undisputedly incompatible with the religious tenets of the Jehovah's Witnesses. There is no doubt that individual members of the movement should be recognised as conscientious objectors. The 1985 Act was a response to the experience that many Jehovah's Witnesses had found it incompatible with their convictions to respond to the call-up and to apply for and accept the alternative service placements available. However other States have been able to come to an accommodation with the Jehovah's Witnesses to enable voluntary work of an appropriate nature to be considered the equivalent of alternative service, in compliance with OP4 of Commission on Human Rights Resolution 1998/77, which recommends that States “provide for conscientious objectors various forms of alternative service which are compatible with the reasons for conscientious objection, of a noncombatant or civilian character, in the public interest and not of a punitive nature;” There is no good reason why Finland should not make equivalent arrangements.

### Imprisonment of conscientious objectors

17. OP5 of Commission on Human Rights Resolution 1998/77 “emphasizes that States should take the necessary measures to refrain from subjecting conscientious objectors to imprisonment and to repeated punishment for failure to perform military

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<sup>8</sup> Communication no. 666/1995, Views adopted 3<sup>rd</sup> November 1999. Report of the Human Rights Committee, Vol II, GAOR, Fifty-fifth Session, Supplement No. 40 (UN Document Ref. A/55/40), pp. 30-38., para10.

service”. In the case of a number of objectors (other than Jehovah's Witnesses) who have not accepted the alternative service available, or who have refused to co-operate with the conscription process, Finland has not adhered to this recommendation.

18. In the most notorious case, objector Antti Rautiainen was called up on twenty occasions between 1997 and 2007, and served at least three prison sentences before being – against his will – exempted from military service on supposed medical grounds. As recently as 2008, the Finnish conscientious objectors' organisation *Asiestakieltäytyjäliitto*, estimated that approximately 70 total objectors each year declared themselves and were free of their obligations only when they had served prison sentences of half the length of the alternative service requirement.<sup>9</sup> In 2009, the first case was reported of a woman who had opted to perform military service subsequently declaring a conscientious objection and running the risk of a prison sentence.<sup>10</sup>

19. It is encouraging that in August 2011 it was revealed that under a new scheme whereby “short-term convicts” would be put under house arrest, with electronic tagging, all or most conscientious objectors would no longer be subject to prison sentences.<sup>11</sup> Even so, it is neither logical nor appropriate to subject persons whose “offence” is based on conscience to treatment designed for criminals.

#### Release on grounds of conscience of professional members of the armed forces

20. Although Finland permits conscripts to apply for recognition as conscientious objectors at any stage – before enlistment, during service, or when listed as reserves – no parallel arrangements exist for “professional” members of the armed forces. Finland is however a member of the Council of Europe, whose Committee of Ministers recommended in 2010:

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

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

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

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

46. Members of the armed forces should be informed of the rights mentioned in paragraphs 41 to 45 above and the procedures available to exercise them.”<sup>12</sup>

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<sup>9</sup> Professional soldiers and the right to conscientious objection in the European Union (Information against war, repression, and for another society No. 5 – Documentation produced for Tobias Pflüger MEP (Vereinigte Europäische Linke / Nordische Grüne Linke (GUE/NGL) Parlamentsfaktion Europäische Parlament), Brussels, October 2008, p24.

<sup>10</sup> “Finland: first female total objector to go to prison?” War Resisters International, CO Update No.53, January 2010.

<sup>11</sup> “Finland: Total objectors in future under house arrest?” War Resisters International, CO Update No. 68, September 2011

<sup>12</sup> CM/Rec(2010)4, 24<sup>th</sup> February 2010

