CONSCIENCE AND PEACE TAX INTERNATIONAL

UPR SUBMISSION SWITZERLAND 42nd SESSION (Jan/Feb 2023)

Executive Summary

1. This submission, prepared in July 2022, deals with the situation in Switzerland with regard to conscientious objection to military service and related issues.

2. The concerns to which it draws attention are:
a) The Law on Civilian Service sets a punitive duration for civilian service by comparison with that of military service; likewise other conditions of alternative service might be considered punitive.
b) Switzerland retains a "military exemption tax" imposed on male citizens who do not perform military service.
c) Revisions to the Asylum Law have seemingly debarred conscientious objectors and others who are seeking asylum in order to escape military service in countries where there is no provision for conscientious objection.

A. MILITARY AND CIVILIAN SERVICE

3, Militaey service is obligatory for male citizens

4.. All are required to attend an initial period of 18 to 23 weeks military training at around the age of 20, followed by service in the mobilisation reserve until the age of 34. Reserve service includes attendance at regular target practice and, at approximately two-yearly intervals, at refresher courses, typically of seventeen days' duration.

5. Conscripts traditionally kept their uniform and weapon at home. More than fifty military weapons are stolen each year, and such a weapon was used in the sole mass-shooting atrocity to date in Switzerland, in the cantonal Parliament of Zug in 2001.

6. In its concluding observations on Switzerland's Second Periodic Report under the ICCPR, the Human Rights Committee addressed this:
"The Committee is concerned at the high incidence of firearms-related suicides in the State party. In this regard, it is concerned that those serving in the army normally store their service weapons at home. It welcomes the recent decision to store all service ammunition at military sites.
The State party should review its legislation and practices in order to restrict the conditions of access to, and legitimate use of, firearms and should cease the storage of service firearms in the homes of those who serve in the armed forces. (...).[1]

7. The combined length of initial and reserve training required of each conscript is now 260 days; for commissioned and non-commissioned officers the cumulative requirement is greater, and in the case of commissioned officers continues until the age of 50. *It is not permitted* to refuse promotion

[1] CCPR/C/CHE/3, 3rd November 2009, Para 12

to a higher rank if offered. Fully-paid leave of absence from civilian employment is normal during reserve training.

8. Only some 3,100 training personnel and senior officers serve in the armed forces on a continuing basis. At any one time it is estimated that between 16,000 and 17,000 conscripts are in uniform, but around 100,000 are available for mobilisation.

9. Switzerland did not accept any right of conscientious objection to military service until 1991, when those who satisfied a military tribunal that their refusal to perform military service was the result of a "severe conflict of conscience were permitted to expunge the relevant criminal convictions by performing compulsory labour of a duration one-and-a-half times that of military service, [i]It was only with the passage of a Civilian Service Law[iv] which took effect at the beginning of 1996 that conscientious objection to military service was effectively decriminalised.

10. The Civilian Service Law of 1995 allowed those for whom military service would present a "severe conflict of conscience" to apply to a civilian Commission reporting to the Ministry of Economic Affairs for permission to perform a purely civilian alternative service. Those who had alreadyommenced their military service - including those who were subject to reserve obligationsm also qualoiiedm receiving credit for the proportion of their military ervice obligation which they had fulfilled. The duration of alternative service was set at 1.5 times that of the military service (or the unfulfillrd proportion of such service).

11. In that the civilian nature of the alternative service was guaranteed by placing all aspects of its administration outside the control of the military authorities, and also in that no artificial time limits were placed on application, this was an enlightened piece of legislation but the discrepancy in duration between military and civilian service would be regarded as punitive under international standards,as elaborated by the Human Rights Committee in *Foin v France,* and most recently in the 2021 case of *Petromilidis v Greece,*

12. Unfortunately when examining reports of Switzerland itself, the Committee has never addressed this issue.

15. In practice the discrepancy in duration is actually greater. All 390 days of civilian service *must* be performed by the age of 34 whereas ordinary military conscripts are discharged from all obligations on reaching that age, whether or not they have done the full quota of 260 days. It was estimated in 2010 that only some 71.8% of the nominal military service requirement was actually performed – it is believed that with the subsequent decline in the number of conscripts from some 22,000 to under 18,000 individuals are now serving a greater proportion of the regulation time.

16. An amendment to the Civilian Service Law which came into effect on 1st April 2009 abolished the role of the Commission in interviewing those who sought admission to civilian service on the grounds of conscientious objection. Article 16b stipulated that the applicant must state that he is unable to reconcile military service with his conscience and that he is prepared to undertake the civilian service prescribed in the law. No condition or reservation can be attached to this statement. This means that it is impossible for an objector to make it clear that he is performing the service under protest, prompting a small number each year to refuse outright.

17 The more liberal aspects of these provisions have come under repeated political attack, being facilely accused of starving the army of recruits.

18. In recent years, between 43,000 and 44,000 Swiss men have annually reached the age of liability for military service. Approximately 60% are rejected or discharged on health or (most frequently) “psychological” grounds, and are not thereafter asked nor indeed permitted to perform any form of service, military or civilian. (Their tax bill is however increased, see next section.) The reforms of 2008/9 led to a considerable increase in the number of declared conscientious objectors; applications exceeded 7,000 in 2010; the numbers actually performing civilian service increased from 1,632 in 2008 to 4,670 in 2011 and subsequently climbed to 6,169 in 2016; and 6785 in 2017 Even so, this represented a mere 15% or so of the age cohort.

19. On 12th October 2010, the Federal Council approved a series of restrictive amendments, to the regulations under the Civilian Service La.

20. The changes, include
that, within the overall requirement, a period of alternative service of six consecutive months must be completed within three years of approval of the application. Those who fail to meet this deadline can face criminal prosecution.
a substantial (just under 50%) reduction in the subsistence allowances payable to those who enrol for alternative service before they are in full time employment. (Those who are released from employment in order to perform civilian service receive 80% of their salary during the period of service.)
a narrowing of the definition of organisations which can accept alternative service placements to those working in “social and environmental” fields – and increased administrative charges levied on those organisations which are accepted.

21. An amendment to Article 84 of the Military Penal Code, introduced on 1st July 2016 makes anyone who does not report for military service when summoned liable to a fine, even if an application to perform civilian service is under consideration at the time.

22, Further proposals mooted between 2017 and 2019 included
an extension of the duration of civilian service to a single period of at least 13 months,
that those performing the service would be housed in barrack-like conditions at the location of their placement., and, unlike those performing military service, would have no guarantee of returning to their previous employment position at the end of this period.
applications lodged after commencing military service (there was particular concern that these accounted for no less than 40% of the total) to be subject to a 12-month waiting period. And the practice of giving credit for time already served in the military to be abolished; the full duration of civilian service would have to be served by all applicants.
a reintroduction of the tribunals to examine applications for alternative service,
a transfer of responsibility for the “civilian” service system from the Ministry of the Economy to the ministry of Defence
Abolition of the system whereby the “civiliste” found his placement, and presented it to the authorities for approval, to be replaced by one of allocation to placements.
that those performing civilian service should be required to wear a symbolic distinctive armband – a suggestion which commentators compared to Nazi practices
An extension of conscription to women

23. Towards the end of 2019 both chambers of Parliament voted for a package of seven adaptions to the civilian alternative service law including less choice of placements, the armband requirement a cut in remuneration, and a further lengthening of the duration of alternative service Civiva (the Swiss Civilian Service Federation) amassed the necessary 50,000 signatures to put the proposals to a referendum before they could pass into law. but the proposed legislation was withdrawn in the Summer of 2020 without a referendum.

24. Nevertheless in 2021, a new proposal was made to rinstate tribunals and to completely bar those who had already commenced militars service from applying for transfer to alternative service. A national consultative process, producied an overwhelmingly negative response and no further action was taken.

B MILITARY EXEMPTION TAX

25 The military exemption tax (*Wehrpflichtersatzabgabe / taxe d'exemption du service militaire*) was brought into question in the case of *Glor v Switzerlandx* decided in 2009 before the European Court of Human Rights and more recently in the Court''s 2021 judgement in *J Ryser v Switzerland*

26. This tax applies to all male citizens of the age group eligible for military service, whether or not resident in Switzerland, who for more than six months of a given tax year have - for whatever reason - not been attached to a military or reserve unit, or who have failed to attend when summoned to perform their military service.xi

27. Revisions to the Law in 1994 exonerated the most severely handicapped persons, and stipulated that other recognised disabled persons benefit from a 50% reduction in the rate, which, with effect from 2004, was raised from 2% of taxable income, (or Fr.150 if greater), to 3% of taxable income, or Fr.200.

28. Following the creation of Civilian Service the Law was redrafted so as to exclude those who had completed this service, or had performed part of it in the year in question. (this included the dropping of the word "military" from its title in French – but not in German.) With this change, repeated imprisonment for non-payment of the military tax became less of a focus for the conscientious objection movement in Switzerland

29. Foreigners who become Swiss after the age of 25 are not permitted to perform military service, but they have no option but to pay thisnotorious tax. In the past the obligation lasted until the age of 30, but at the beginning of May 2019 a revision to the law extended the liability to the age of 37, with retrospective effect.

30 The applicant in the Glor case was a lorry-driver who suffered from diabetes and had therefore been ruled unfit for military service, although he maintained his willingness to perform such service. "The Court considered that the Swiss authorities had treatedpersons in similar situations differently in two respects: firstly, the applicant was liable to the exemption tax, unlike persons with more severe disabilities, and secondly, he was unable to perform alternative civilian service, which by Swiss law was reserved for conscientious objectors. The Court found that this constituted a violation of Article 14 (prohibition of

discrimination), taken in conjunction with Article 8 (right to respect for private and family life), of the European Convention on Human Rights.

31 The possibility was subsequently introduced for those found unfit to serve to appeal against this decision, but only within a narrow time window, In 2016, in one such case, it was finally decided that a young man could present himself for military service despite being vegan and refusing to wear leather.

32. Even though, periods performing alternative civilian service are treated as the equivalent of military service, the rax impinges^more heavily on those who perform alternative service. Whereas military reserve service is typically spread throughout the years of liability, the alternative service requirement is usually discharged in fewer instalments, sometimes a single longer placement. Those who have not completed their alternative service liability are taxed for any year in which they do not perform such service.

33. The tax also impinges on two specific groups on conscientious objectors. One is those who are precluded from undertaking alternative civilian service. The Civilian Service Law stipulates that only those who have been declared fit for military service and do not qualify for any exemption are allowed to apply for recognition as conscientious objectors. In fact many of those who in practice are not being called into the army would have a conscientious objection to military service and for some this extends to paying what is seen as a “military tax”. There is also a small number of objectors each year who are imprisoned for their refusal even to perform the alternative service, whether because they see it as too closely related to the system of military service, or in protest against its punitive and discriminatory duration and other conditions. For these, the extra fiscal burden is a further source of grievance.

C THE ASYLUM LAW

34 Un 2005[xvii], the Swiss Asylum Appeals Commission ruled in favour of an Eritrean appellant who had shown that he would face the death penalty as a deserter if repatriated - a punishment which was (reasonably) held to be disproportionate. Moreover, the Commission took into account the findings by the European Court of Human Rights[xviii] and by Immigration Appeals Tribunals in the UK and elsewhere that the treatment of deserters and military service evaders in Eritrea constituted inhuman and degrading punishment contrary to Article 3 of the European Convention on Human Rights.

35. This ruling was blamed by politicians for the subsequent increase in the number of asylum applications lodged in Switzerland by Eritreans - from 181 in 2005 to 1,207 in 2006, 1,661 in 2007, and 2849 in 2008. There is in fact no evidence that this increase was any steeper in Switzerland than elsewhere in Europe.. However, with the explicit purpose of countering this increase, in October 2007 the Federal Justice and Police Department (EJPD[xx]) was instructed to begin work on a redraft of the Asylum Law with one of the proposed changes being “Refusal to recognise conscientious objectors and deserters as refugees”.

36. In June 2012, the Parliament agreed on urgent chan ges to Article 3.3 of the Asylum Act, and the Federal Council agreed on a fast-track process which led to them being confirmed by a vote of 78.5% in a referendum on 9th June 2013, and thus passing into law.

37 Many^aspects of these changes have been criticised as potentially contrary to Switzerland's obligations under the 1951 Convention relating to the Status of Refugees. Essentially the guidance regarding those who have deserted or avoided military service, for whatever reason, was reversed. Instead of stating that they may qualify for asylum subject to the cirof the individual case meeting the other requirements of the 1951 Convention, an explicit statement is made that conscientious objectors may *not* receive asylum unless they qualify on other grounds.

C Previous UPR cycles

38. The issues of conscientious objection to military service and of military taxation have not been raised in

previous reviews of Switzerland, even though covered in stakeholder yubmissions to both the Second and the Third Cycle.

39. In the first Cycle in 2008 Switzerland accepted a recommendation from Brazil “to foster internal analysis on the recently adopted law on asylum and its compatibility with international human rights law” . There was however no follow-up on this recommendation in subsequent cycles.

Suggested recommendations

40 that Switzerland shoud end all discriminatory treatment of conscientious objectors who opt for alternative civilian service, including in the duration and conditions and remuneration of the service

41 that Switzerland should abolish the discriminatory and inequitable Military Exemption Tax

42 that Switzerland should carefully examinne whether the provisions of its Asylum Law are in complete compliance with the 1951 Convention.

43 that if it has not already done so, Switzerland should implement the recommendation of the Human Rights Committee that all military firearms should be stored in communal facilities.