

Flendruz, the 11th of December 2018

**Application procedures for obtaining the  
status of conscientious objector**

**Switzerland**

*Report provided to the Office of the United Nations  
High Commissioner for Human Rights  
Pursuant to Resolution 36/18 of  
The Human Rights Council*

**Introduction**

1° The present submission is made by Infodroit.ch's legal clinic for persons doing civil service instead of military service<sup>1</sup>. The clinic serves soldiers and conscientious objectors alike providing to all information by maintaining a website as well as through a phone and e-mail consultancy. It provides neutral and direct orientation on the options given, as well as legal and psychological counsel to more than 300 persons a year.

2° This submission is supported by "Conscience and Peace Tax International"<sup>2</sup> and the "Center for Global Nonkilling"<sup>3</sup>. These two international organizations have ECOSOC special consultative status.

3° Local Swiss peace and support organizations such as CIVIVA<sup>4</sup> (an organization representing the persons doing civil service), the Center for Non-violent Action (CENAC<sup>5</sup> who for a long time brought support to conscientious objectors) and the Group for a Switzerland without Army<sup>6</sup> (who did so as well) and various other grass-root peace organizations are made aware of this submission and may bring their support later.

4° The Swiss government is also made aware of this submission through the office running the civil service<sup>7</sup> and as accurate through other governmental services.

**General information regarding military service and conscientious objection**

5° There is in Switzerland a mandatory draft for all males fit for service<sup>8</sup>.

6° Military service is usually done through an initial training period of 124 days and then by serving between 5 to 7 recall periods of three or four weeks to be done on call, usually yearly and during the ten years following the initial period.

7° Military service totals 245 days of service for soldiers. Officers and sub-officers cannot refuse advancement and most of them are required to serve longer<sup>9</sup>.

8° Civil service was demanded for conscientious objectors for more than a century in Switzerland<sup>10</sup> before it was finally granted to conscientious objectors by a popular constitutional vote in 1992<sup>11</sup> and then by the law in 1996<sup>12</sup>.

9° The civil service is by now well accepted by the population. They are presently around 44,000 persons enlisted in the civil service<sup>13</sup>, while 167,000 are assigned to military service<sup>14</sup>.

10° They are more than 5,000 positions available for civil service at any time, all serving public interests mostly in health, social work, educational and emergency services as well as in agricultural and environmental, cultural and international cooperation programs. Various short trainings are mandatory or available for persons doing the civil service<sup>15</sup>.

11° Until 2009, conscientiousness motives were examined by a special commission<sup>16</sup>. Since then, doing a civil service for half longer than the time they still have to serve in the army at the moment of their demand of admission to the civil service is considered a sufficient “proof by the facts” of their motives<sup>17</sup>.

12° However, after the suppression of the consciousness exam a sharp augmentation of persons demanding the civil service occurred, from around 1,700 in 2009 to 6,000 yearly by now. Since, there have been fierce debates in the executive and the parliament, including proposals to augment the length of the civil service or to make admission more difficult. The Federal Council has again put a project in consultation, a law change that could clearly make access more restrictive<sup>18</sup>.

### **Access to civil service**

13° Civil service can be asked for at any time, both from civilian life or while serving in the army<sup>19</sup>.

14° However, there is a few weeks delay before the admission process service is completed, therefore making it hard to ask for it from military recall periods<sup>20</sup>.

15° The procedure is rather simple<sup>21</sup>.

- The candidate for civil service must create a personal account on the civil service’s web site, provide an internet copy of an identification document and will receive by post mail a personal code. The delay to open such an account is usually from one to three days.
- From one’s personal space on the website, he must choose a date to participate in the information day. The delay to have a place available therein ranges from 5 to 10 days in normal times and up to 3 to 5 weeks in busy periods.
- Participation in the information day is mandatory. Failure to so within three months will cancel the procedure. However, it is not a big damage as it can be started again anytime, unless there is a military period to be done, which will need to be served.
- Once the information day is done, upon written confirmation by the candidate of the existence for him of consciousness motives (which are not controlled and do not need to be exposed) and of the will to do the civil service according to the law, the admission decision is automatically given.
- This decision is usually received around ten days after the confirmation is done. In urgent cases, i.e. if the person is presently serving a military period or if there is a summoning to do one shortly, the decision can be delivered within 24 hours.
- If the person is serving in the army at the time of the decision, the army must liberate her within 24 hours after the decision is delivered.
- The admission is irrevocable and puts an end to all military obligations, except the exemption tax for the years when no civil service is done.

16° Legally, the demand for the conscientious objectors status should be done three months prior to any required military period. However, this is an administrative delay as in practice and as seen, once the admission is given all military obligations are terminated and the procedure usually takes less than three months. Being a little late does not therefore have consequences.

## Problems with the procedure

17° All in all, the procedure is rather simple and efficient. If it is not worsened, it could be a good model. Nevertheless, a few problems remain.

### Criminalization if not entering into military service while asking for the civil service

18° Our consultancy still knows of cases of conscientious objectors making their demand later than what the procedure allows before a military period and being therefore forced to either obtain – which is rarely easy – a postponing of their military period or to forsake the call, fail to show up at the due time, thus eventually facing military trials and sometimes heavy criminal charges.

19° Until the 1<sup>st</sup> of July 2016, a soldier who asked for the civil service and did not yet receive an admission decision and did not show up to serve in the army while he still legally should, would have benefited of an amnesty for its refusal to serve. However, the military criminal code has been amended at that date and such a person could now be heavily fined for failing to show for military service.

20° The military criminal code reads (translation by the author of this submission):

“Art. 84. Failure to serve in case of admission to civilian service, duty without weapon and inability to serve.

1. Are liable to a fine the person who commits one of the offenses set out in article 81 to 83, if they are:

- A. Persons admitted to the civil service;
- B. Persons assigned to the unarmed service;
- C. Persons who were declared unfit for military service and who were already unfit for committing the offense.

2. In minor cases, the offender is disciplined.

3. If the author was unable to enter service at the time of the offense, he shall not incur any punishment.<sup>22</sup>”

21° Our legal consultancy receives more or less a dozen demands yearly of persons who take their decision to ask for the civil service too late to have the admission decision taken before they should enter military service. Usually, we manage to obtain either a report of the military service date, sometimes with the help of a medical certificate as this procedure can be highly innervating or destabilizing. The first cases received where such a possibility was not used show that fining can be very consequent, more or less a thousand Swiss francs, partially on respite and if so with an inscription in the criminal record during the respite time.

22° The options left to demonstrate that the person is unable to enter into service at the time the offense is committed – because of her motives of conscientiousness! – has not yet been confirmed by cases (§ 3 of the military criminal code’s article above).

23° In our opinion, this is clearly a form of punishment upon some of the persons asking for the civil service on legitimate ground. Worse, should they have to serve anyhow despite their conscientiousness motives it is also a major infringement on their freedom of conscience.

24° This is also a pernicious legal move, as the legal costs of contesting such fines with the help of a lawyer would soon equal the amount of the fine. It would therefore take a very dedicated (or quite rich) person to contest the fine or the new law altogether.

*Therefore, we recommend to such persons to announce their absence and warn the army of it by mail or phone stating a moral impossibility – conscientious objection motives – impeaching to show up.*

*And to the legal authorities, we recommend considering that the refusal to serve because of conscientiousness motives should be considered legitimate, including for an absence at military service.*

### Length of service in the civil service

25° The length of the civil service should not directly affect the admission procedure. However, if the length of service is excessive it may be dissuasive and thus hamper the exercise of the right to freedom of conscience.

26° International jurisprudence considers that the length of the civil service should not be of punitive nature and should not exceed twice as much as the military service. Switzerland has a 1.5 ratio in the law, but the facts differ from law<sup>23</sup>.

27° In practice, many soldiers because of their studies will do their initial military training period (5 months) around the age of 23 or 24. Then they will often miss recall periods for various reasons, therefore never finishing the total amount of days they are assigned to do before reaching the age limit and thus never having to do the leftover days. The army does not publish the number of days never accomplished or the number of soldiers who have days dropped when they reach the age limit.

28° Conversely, the law on the civil service is totally strict. Persons doing the civil service must at the age of 27 have no more than one period of 26 days to do in every remaining year until the end of the allocated period (usually 10 years after their admission), otherwise they must do the excess number of days at once. As a result, 96% of the persons doing civil service have accomplished all their days when being liberated from the civil service<sup>24</sup>.

29° Yet, it is not unusual to see some of them face criminal charges for being late on their duties, while there is no such offence for soldiers late on theirs.

*This differing incrimination for failing to serve in time or to accomplish all the days required clearly amounts to a discrimination against conscientious objectors and should be redressed.*

30° The latest figure we have from the army dates back to 2010 and at that time only 71.8% of the days required by soldiers were effectively done. The figure is based on the percentage of soldiers late in their duties at any given time and not on how many days were left unaccomplished when the soldiers were liberated, the only figures we have, so it is only partially accurate. However indicative the figure is, once deducted the number of days undone at the civil service, it still gives a 2.061 ratio of days done by persons doing the civil service: more than twice as many days as the ones done by soldiers<sup>25</sup>.

31° So far, our clarification demands have not been met.

*Therefore we consider that such a length of service, as calculated in practice, to be partly disguised and clearly excessive.*

### Recruitment

32° Prior to obtaining a conscientious objector's status, one needs to be considered fit for military service and therefore to be incorporated in the army. The demand for the civil service can only be done once the recruitment is concluded.

33° However, it should also be considered that if one is not fit for service, he will have to pay the exemption tax. Therefore he who is willing to serve, in the army or in the civil service to avoid the payment of the exemption tax, should be able to do so.

34° Henceforth, the criteria used to be fit for military service should not exclude persons ready and fit to serve in the civil service. More than not as physical and security requirements are higher for military service than for civil service. But also because since the judgment of European Court of Human Rights *Glor vs. Switzerland*<sup>26</sup> persons with a light handicap have the possibility to serve in the army instead of paying the tax. We see no reasons why persons wanting to do the civil service instead of paying the tax should not be offered a similar possibility.

35° Further, the recruitment period, two days, is entirely and almost solely under the supervision of the army<sup>27</sup>. Presently, the army takes yearly around 65% of the men in age of serving<sup>28</sup>. Half of the ones it does not take are left out for psychiatric reasons, which is much more than the proportion of persons suffering from such types of illness in civil life<sup>29</sup>. This leaves

to the army too large a margin to leave out persons that could be fit for service but that are either claiming outright that they want to do the civil service or that would want to serve, but in the civil service, instead of paying the tax as described above.

*A greater tolerance is needed for participation of civilians and for a civil overview of the recruitment procedure. A civilian presence at the recruitment will guarantee a better access to the civil service to those who are fit for service and willing to serve. The possibility to ask for the civil service directly at the recruitment should also be introduced.*

#### Wage

36° Similarly, as an excessive length for the civil service, a low pay for it may be dissuasive and hinder the right of access to the status of conscientious objector or influence the admission procedure.

37° Persons doing civil service are awarded 80% of their salary as compensation<sup>30</sup>. Yet, if they did not have a previous salary (it is so for many persons doing their civil service at the end of their studies often to avoid being late on their civil service duties), unless they prove they would have worked if they did not have the service to do, they will only receive a minimum allocation that barely covers what is considered as the minimal living standard in Switzerland. The result is having persons serving the country and the community at large, but still being in need of demanding social welfare.

38° It must also be noted that soldiers encountering economical difficulties can ask for help from the social service of the army, while there is no such institution for persons doing the civil service.

*Having a count of how many of these persons face such a situation should be done and accordingly, either provide for help directly from the organization of the civil service or give a general raise of the minimum compensation awarded.*

#### Refusal to participate in the military budget

39° It must also be considered that there exists persons, though nobody we are aware of in Switzerland yet, who object to military budgets; persons who consider that paying for war is also a way to prepare for war, an act hurting their conscience and thus wanting and being ready to pay an equivalent amount of their taxes for fully peaceful purposes. We know of such persons in at least the following countries: Belgium<sup>31</sup>, Germany<sup>32</sup>, Great Britain<sup>33</sup>, Spain<sup>34</sup> and United States<sup>35</sup>.

40° In a report on the application procedures for obtaining the status of conscientious objector, it must be said that as such persons have not seen their right of conscience recognized yet and as such, they have therefore no application procedure available.

#### Rehabilitation of past time convicted conscientious objectors

41° Until 1992, all conscientious objectors regularly served rather heavy prison sentences (between six months and a year and half, very rarely on parole) and because of it, they had a criminal record. All the inscriptions in these records have by now been taken out due to the passage of time<sup>36</sup>. Nevertheless there is something outrageous in the fact that what is presently commonly accepted, conscientious objection and civil service, has not yet been accounted for and forgiven for the past.

42° Such recognition, which is presently being demanded in Switzerland<sup>37</sup>, would also give full meaning and legitimacy, and thus help the application procedures, to the conscientious objector's status.

*Conscientious objectors are peacemakers, human rights defenders.  
A moral recognition of these persons is long overdue.*

## Conclusion

If the application procedure for obtaining the status of conscientious objector is at large good or very good in Switzerland it still suffers from a few flaws, mainly in the context in which the procedure occurs, namely: the criminalization of persons late in their demand for the status or discriminately criminalizing the accomplishment of the service civil because of the length of the service or sometimes of its low pay.

Finally, to guarantee a fair access to the admission procedure at the recruitment, it should be possible to ask for the service directly during the recruitment and civilians should be present to oversee and accompany the process.

The present lack of political will and support for the civil service and conscientious objectors, for its possible constructive developments could also be factors hindering the good accomplishment of the admission procedure.

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<sup>1</sup> <http://www.infodroit.ch/spip.php?rubrique13>

<sup>2</sup> [www.cpti.ws](http://www.cpti.ws)

<sup>3</sup> [www.nonkilling.org](http://www.nonkilling.org)

<sup>4</sup> <http://www.civiva.ch/index.php?id=20&L=2>

<sup>5</sup> <http://www.non-violence.ch>

<sup>6</sup> <http://gsoa.ch/english>

<sup>7</sup> <https://www.zivi.admin.ch/zivi/fr/home.html> (In French, Italian or German).

<sup>8</sup> Constitution, article 59 covers both form of service, as well as the exemption tax and other issues. It is available in English here (unofficial) or in all national languages (in the right upper corner of the page): French, German, Italian and Retho-Romanche: <https://www.admin.ch/opc/en/classified-compilation/19995395/index.html#a59>.

<sup>9</sup> Age limits are in the law, numerous articles. Number of days to be done and military ranks are also described in ordinances.

<sup>10</sup> Jean-Luc Portmann. «*Histoire de l'objection de conscience en Suisse au XX<sup>ème</sup> siècle, aspects historiques, politiques et juridiques*», Neuchâtel, 2017.

<sup>11</sup> Popular vote on a change of the constitution accepting an alternative service to military service, result of the vote: <https://www.admin.ch/ch/f/pore/va/19920517/det379.html>. The text voted (art. 59) has been slightly changed and improved when the full revision of the constitution occurred in 1999.

<sup>12</sup> The law on the civil service (in the three official languages, here French): <https://www.admin.ch/opc/fr/classified-compilation/19950281/index.html>

<sup>13</sup> Idem

<sup>14</sup> [http://www.vtg.admin.ch/content/vtg-internet/fr/media/publikationen/download/vtg-internet/fr/publications/verwaltung/organisation/fsta/Kurzfassung\\_ARMA\\_2016-f.pdf](http://www.vtg.admin.ch/content/vtg-internet/fr/media/publikationen/download/vtg-internet/fr/publications/verwaltung/organisation/fsta/Kurzfassung_ARMA_2016-f.pdf), p. 3 (2016).

<sup>15</sup> <https://www.zivi.admin.ch/zivi/fr/home/dokumentation/nsb-news-msg-id-65365.html>

<sup>16</sup> Previous articles 16 to 18 of the law on the civil service, available here: <https://www.admin.ch/opc/fr/classified-compilation/19950281/200901010000/824.0.pdf>

<sup>17</sup> Article 8, law on the civil service, length: <https://www.admin.ch/opc/fr/classified-compilation/19950281/index.html#a8>.

Admission to the civil service, still articles 16 to 18: <https://www.admin.ch/opc/fr/classified-compilation/19950281/index.html#a16>

<sup>18</sup> See our annexes in French rejecting the proposal and contesting the figures proposed by the army, using a supposed lack of personal to justify restricting access to the civil service.

<sup>19</sup> Law on the civil service Article 16. <https://www.admin.ch/opc/fr/classified-compilation/19950281/index.html#a16>

<sup>20</sup> The law says the demand for civil service must be done three months before the next military period to be liberated from it <https://www.admin.ch/opc/fr/classified-compilation/19950281/index.html#a17>. However, the administration runs faster and as soon the admission is approved, the person is liberated from all military duties.

<sup>21</sup> The procedure is well described here (in French, German or Italian): <https://www.zivi.admin.ch/zivi/fr/home/zivi-werden/der-zulassungsverlauf.html>

Legal base are available from here:

<https://www.zivi.admin.ch/zivi/fr/home/dokumentation/rechtliche-grundlagen.html>

<sup>22</sup> <https://www.admin.ch/opc/fr/classified-compilation/19270018/index.html#a84>

<sup>23</sup> Human Rights Committee: Foin v France (Communication No. 666/1995), CCPR/C/D/666/1995, 9 November 1999, para. 10.3, among others. See also: Rachel Brett: International Standards on Conscientious Objection to Military Service. Quino 2011.

<sup>24</sup> <https://www.zivi.admin.ch/zivi/fr/home/dokumentation/nsb-news-msg-id-65365.html>

<sup>25</sup> Days of service in the army, 260 x 1.5 (days in civil service) – 4% = 385 Days done in the army 260 \* 71.8% = 186.7. 385 / 186.7 = 2.061. <http://www.infodroit.ch/spip.php?article44>

<sup>26</sup>

<https://hudoc.echr.coe.int/fre#%7B%22fulltext%22:%5B%22CASE%20OF%20GLOR%20v.%20SWITZERLAND%22%2C%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%2C%22CHAMBER%22%7D>

<sup>27</sup> In fact, the law only says it is the federal government, not the army who is in charge of the recruitment.

<https://www.admin.ch/opc/fr/classified-compilation/19950010/index.html#a11> and article 120. Then there is directly an ordinance by the ministry of defense <https://www.admin.ch/opc/fr/classified-compilation/20010419/index.html>.

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<sup>28</sup> <http://www.vbs.admin.ch/fr/ddps/faits-chiffres/armee.html> at the very end of the page.

<sup>29</sup> The army has not recently published statistics on the refusals at the recruitment (it used to do so) and none can still be found in the Internet. However, we hold this proportion to be true and at least one old article on the topic was found.

<http://www.amge.ch/2005/08/08/letat-psychique-des-jeunes-appelles-inquiete-letat-major-de>

<sup>30</sup> <https://www.admin.ch/opc/fr/classified-compilation/19520192/index.html> (more details on demand).

<http://www.infodroit.ch/spip.php?rubrique22>

<sup>31</sup> <http://www.vredesbelasting.be/>

<sup>32</sup> <http://www.netzwerk-friedenssteuer.de>

<sup>33</sup> <http://www.conscienceonline.org.uk>

<sup>34</sup> <http://www.sinkuartel.org/es/kemmoc/acciones/867-2015-12-30-19-50-05.html>

<sup>35</sup> <http://nwtrec.org>, <http://www.peacetaxfund.org>

<sup>36</sup> <https://www.admin.ch/opc/fr/classified-compilation/19370083/index.html#a369>

<sup>37</sup> <https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaefte?AffairId=20180462>