

**Information on new developments,
best practices and remaining challenges
regarding conscientious objection to military service
since 2019**

Switzerland

*Report provided to the Office of the United Nations
High Commissioner for Human Rights
Pursuant to Resolution 41/23 of
The Human Rights Council*

Introduction

1° The present submission is made by Infodroit.ch, a legal consultancy for persons doing civil service instead of military service¹. This submission, our second one, follows or repeats our 2019 report pursuant to resolution 36/18.

Repeated or similar paragraphs appear in italic.

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

3° *Local Swiss peace and support organizations such as CIVIVA⁴ (an organization representing the persons doing civil service), the Center for Non-violent Action (CENAC⁵ who for a long time brought support to conscientious objectors) and the Group for a Switzerland without Army⁶ (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 service⁷ and as accurate through other governmental services.*

5° *The clinic neutrally serves soldiers and conscientious objectors alike, providing information and counsel regarding their conscription obligations and the way they chose to face them, by either serving in the army or the civil service, or if unfit for neither, serving in the civil protection corps. Those not serving or not serving fully must pay a compensation tax and those serving are paid a compensation, issues with help with as well.*

6° *The consultancy maintains a website and receives demands either through a phone line or by e-mail, more rarely through physical or online interviews. It provides neutral and direct orientation on the options given, as well as legal and psychological counsel on average to 300 persons yearly, most of them coming from the French speaking part of Switzerland.*

General information regarding military service and conscientious objection

7° *There is in Switzerland a mandatory draft for all males fit for service⁸.*

8° *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.*

9° *Military service totals 245 days of service for soldiers. Officers and sub-officers cannot refuse advancement and most of them are required to serve longer⁹.*

10° *Civil service was demanded for conscientious objectors for more than a century in Switzerland¹⁰ before it was finally granted to conscientious objectors by a popular constitutional vote in 1992¹¹, and then by the law in 1996¹².*

11° *The civil service is by now well accepted by the population. They are presently around 44,000 persons enlisted in the civil service¹³, while 167,000 are assigned to military service¹⁴.*

These figures are not updated due to time constraints. The army is lessening its manpower, the number of persons doing the civil service as therefore slightly lower, though not as much as the army.

12° *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 service¹⁵.*

13° *Until 2009, conscientiousness motives were examined by a special commission¹⁶. 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 motives¹⁷.*

New developments:

14° *After the suppression of the consciousness exam in 2009, a sharp augmentation of persons demanding the civil service occurred, from around 1,700 up to 6,000 yearly. The figure then receded to an average of 4'500 demands, yet slowly growing to more than 6,000 presently.*

15° *Since then, 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 legal change that would have clearly made access more restrictive¹⁸.*

16° *The project, which violated international Conscientious Objection norms and rights, was defeated in Parliament in 2020¹⁹.*

17° *Infodroit.ch issued a legal opinion regarding the proposal, annexed in French.*

18° *They are talks anew about reforms, some looking more broadly at a universal service, women included, service being mandatory or not; nothing is tabled yet. However, a popular vote on a mandatory service might occur in coming years, a group of citizens is collecting signatures calling for a constitutional referendum on the issue²⁰.*

19° *As this proposal would imply a mandatory service, it has not gained the support of the Conscientious Objector's national organization CIVIVA²¹, nor from most peace-oriented organizations, or our legal clinic.*

Best practices:

Access to civil service

20° *Civil service can be asked for at any time, both from civilian life or while serving in the army²².*

21° *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 periods²³.*

22° *The procedure is rather simple²⁴.*

- *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 do 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 once the decision is delivered.*

However, as leave from the army is not granted until the admission is completed, usually between three and five weeks later, this can be a problem for some persons asking for the civil service from the army: Such a leave then to be demanded and granted on other merits, health reasons or an administrative grant to leave by the commanding officer.

- *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.*

23° *Legally, the demand for the conscientious objection 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 bare too much consequences.*

24° All in all, the procedure is rather simple and efficient, though timely. If it is not worsened, it could be a good model. Nevertheless, a few major problems remain.

Autonomy of the person doing the civil service

25° One of the best practices, in our opinion, is that persons doing the civil service are responsible for the organization of their service. They are few constrains: the mandatory duty to do a long period equivalent (+x1.5 days) to the initial military training. Six months of civil service instead of 4 of military service, to be done at once within three years after the admission – or two months at once within the next three years if the military training is done. And at least 26 days yearly. But then within the legal frame, civilists do their periods whenever they want to and they can chose where they want to serve within the large database of possibilities. The advantage is the empowerment for the organization of one's own service and a much higher motivation as they chose what they want to do. They are inconvenient if they get late about their duties, as the civil service will call to a mandatory designated service, charge costs to do so and if need be, are denounce to the civil tribunal for failing to do their duties²⁵.

Exclusively serving the population

26° Another best practice is that the civil service is totally dedicated to the public good. In 2021, 1,7 million days of work have been done to help social services, medical care, older and disabled persons, education, environmental protection, agriculture and international cooperation and in urgent situation, including the pandemic²⁶.

Remaining challenges:

We here changed the order of our paragraphs and improved them to present the most salient ones first and to update them where needed.

A. Length of service in the civil service

27° The length of the civil service is excessive.

28° Presently it stands at x1.5 the length of military service: the number of days of military service still in need of being done at the time of the demand for the civil service²⁷.

29° There is a receding problem because so many soldiers never finish their days, while conscientious objectors were, after heavy pressure if not doing their days, criminalized for not doing them. Thus, the legal criterion was contradicted by the facts: the persons doing the civil service serving in practice more than x1.5 the number of days the soldiers effectively did. The problem partly remains, yet it is receding as a reform of the army serving system brings more soldiers to complete their duty²⁸.

30° However, if the length of service is excessive, it may be dissuasive and thus hamper the exercise of the right to freedom of conscience.

31° And whatsoever, services should be of equal length.

B. Impartiality at the 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 asked for once the recruitment is concluded as fit for the army.

33° A first problem arises because there is *no presence of the civil service authority at the recruitment*, thus leaving too great a margin for the military authorities to declare unfit persons directly demanding the civil service²⁹.

34° Our consultancy has two or three such cases yearly, sometimes won on appeal. Yet it forces us to advocate to never speak up, at the recruitment, about a will to do the civil service instead of the military service. We deplore having to ask people to be untrue.

35° This then leads to unnecessary administrative tasks and costs if an appeal is made, and moreover to discriminations against those who are not aware of the problem or not willing to appeal the decision.

36° It hinders the exercise of right of conscience, the right to a conscientious objection status.

37° We demand a change of law, an equal presence of civil and military authorities at the recruitment and the possibility to ask for the conscientious objector's status directly at the recruitment.

38° A second problem concerns *the replacement tax* due by those unfit to serve.

39° The European Court of Human Rights has recognized that those who are willing and able to serve despite being unfit for the army, be it in the army or in the civil service, should be able to do so to avoid the payment of the exemption tax, (judgments *Glor vs. Switzerland*³⁰, upheld in a new case in 2021 *J. Ryser v. Switzerland*³¹). The tax is 3% of the taxable income.

40° There is a best practice to be underlined here, as it entails that even the army must take in people with minor ailments or small disabilities. A major change regarding the integration of disabled people in the army.

41° The admission criterion allowing for such people to be integrated in the army, is that their service presents no danger for themselves and for others. They then serve unarmed in administrative positions, or they can ask for the civil service.

42° This jurisprudence has however led to a complicated situation for persons willing to serve instead of paying the tax. First, because this possibility is not clearly presented at the recruitment or to persons concerned. Secondly, because these persons to obtain that status must appeal against

the recruitment decision; an excessively complicated procedure, while the recruitment could inform properly about it and take the decision directly³².

43° Thus all the criteria used firsthand to be fit for military service should never exclude persons ready to serve, either directly in the civil service (more than not as physical and security requirements are lower for the civil service than for military service) or in the army, including for those who which to serve because they refuse to pay the tax.

44° Either, we see either no reasons why persons wanting to do the civil service instead of paying the tax should not be directly offered this possibility.

45° Here again, we mention a discrimination and a hinderance to the right to conscientious objection, as some of these persons may refuse to pay that tax for conscientious reasons, even if it goes to Federal Budget and not directly to the army as it used to, refusing to pay the part of the budget going to the army (see further conscientious objection to military budgets).

46° **Wage**

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

47° Persons doing civil service are awarded 80% of their previous salary as compensation³³. Yet, if they did not have such a salary, they will only receive a minimum allocation barely covering what is considered as the minimal living standard in Switzerland. The result is having persons serving the country and the community, but still in need of demanding social welfare.

48° Students doing their civil service (or the six months mandatory period) at the end of their studies, a frequent case, will often face such a situation. They will be paid the equivalent of what they would earn in their first job, but the procedure to get their situation recognized is cumbersome.

C. Criminalization if not entering military service while asking for the civil service

49° Until the 1st of July 2016, a soldier who asked for the civil service and did not yet receive is admission decision to the civil service and then 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 and show up. However, the military criminal code has been amended and such a person could now be heavily fined for failing to show for military service.

50° The military criminal code now 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.³⁴”

51° We admit that our consultancy, quite worried by the new law, received much less cases than expected, which means either that prevention works; that the authorities have avoided heavy fining or that, as stated in §3 above, as we encouraged, persons concerned have affirmed that their conscience motives made them unable to enter into military service.

52° Nevertheless, this is clearly a form of punishment set upon some of the persons asking (late yet on legitimate ground), for the civil service.

D. Social support

53° It must be noted that soldiers encountering social or economic difficulties because of their military service can ask for help from the social service of the army, while there is no such social institution for persons doing civil service.

54° 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.

E. Conscience refusal to participate in the military budget

55° They are persons (me included) who object to paying for military budgets, demanding instead that their taxes be allocated to funds or governmental projects building peace by peaceful means.

56° We mean to underline that paying for war is a way to prepare for war, an act hurting our conscience. We know of such persons in at least the following countries: Belgium³⁵, Germany³⁶, Great Britain³⁷, Spain³⁸, Switzerland and the United States³⁹.

57° It must be stated we have not yet seen our right of conscience recognized in such circumstances.

F. Rehabilitation of past time convicted conscientious objectors

58° Until 1992, all conscientious objectors regularly served rather heavy prison sentences (between six months and a year and half, very rarely on parole, sometimes without being excluded of the army, thus being condemned again fi again refusing). Because of that, they had a criminal record. All the inscriptions in these records have by now been taken out due to the passage of time⁴⁰. 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, forgiven for the past.

59° Such a demand for rehabilitation was pending in Switzerland⁴¹ while we made our first report; sadly, it has been rejected since⁴².

Conclusion

In the period under review, there has been no major improvements for the situation of Conscientious Objectors or the accomplishment of the civil service. However, a major worsening has been avoided.

Regarding best practices, the application procedure for obtaining the status of conscientious objector is at large good or very good and the self-organization of their service by the persons doing it brings motivation and high quality to the service done in favor of the population.

The service still suffers from a few major flaws: mainly the length of the service, the absence of civil control over the recruitment procedure and a low pay in absence of previous work earnings.

Conscientious objectors are peacemakers, human rights defenders.

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

² www.cpti.ws

³ www.nonkilling.org

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

⁵ <http://www.non-violence.ch>

⁶ <http://gsoa.ch/english>

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

⁸ 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>.

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

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

¹¹ 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.

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

¹³ Idem

¹⁴ 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).

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

¹⁶ 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>

¹⁷ 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>

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

¹⁹ <https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaefte?AffairId=20190020>

²⁰ <https://www.servicecitoyen.ch>

²¹ www.civiva.ch <https://www.servicecivil.ch/servicecivil/politique> Third news down at the date of writing.

²² Law on the civil service Article 16. <https://www.admin.ch/opc/fr/classified-compilation/19950281/index.html#a16>

²³ 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 as the admission is approved, the person is liberated from all military duties.

²⁴ 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>

²⁵ <https://www.zivi.admin.ch/zivi/fr/home.html>

²⁶ <https://www.zivi.admin.ch/zivi/fr/home/dokumentation/medienecke/kennzahlen.html>

²⁷ Starting at a certain grade, officers and sub-officers who already served more than the average have a x1.1 multiplier.

²⁸ Details from our previous report:

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.

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.

In practice, many soldiers because of their studies will do their initial military training period (4 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.

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.

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. Days of service in the army, 260×1.5 (days in civil service) – 4% = 385 Days done in the army $260 \times 71.8\% = 186.7$. $385 / 186.7 = 2.061$.

<http://www.infodroit.ch/spip.php?article44>

²⁹ 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>.

³⁰

<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>

³¹ <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-207113%22%7D>

³² Even the law hides the possibility, as it is described only in annex, § 4:

https://www.fedlex.admin.ch/eli/cc/2004/748/fr#annex_1

³³ <https://www.admin.ch/opc/fr/classified-compilation/19520192/index.html> (more details on demand).

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

³⁴ <https://www.admin.ch/opc/fr/classified-compilation/19270018/index.html#a84>

³⁵ <http://www.vredesbelasting.be/>

³⁶ <http://www.netzwerk-friedenssteuer.de>

³⁷ <http://www.conscienceonline.org.uk>

³⁸ <http://www.sinkuartel.org/es/kemmoc/acciones/867-2015-12-30-19-50-05.html>

³⁹ <http://nwtcc.org>, <http://www.peacetaxfund.org>

⁴⁰ <https://www.admin.ch/opc/fr/classified-compilation/19370083/index.html#a369>

⁴¹ <https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20180462>

⁴² <https://www.parlament.ch/en/ratsbetrieb/amtliches-bulletin/amtliches-bulletin-die-verhandlungen?SubjectId=47388>