



International Fellowship of Reconciliation  
Internationaler Versöhnungsbund  
Mouvement International de la Réconciliation  
Movimiento Internacional de la Reconciliación

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*The International Fellowship of Reconciliation (IFOR) is an international, spiritually-based movement composed of people who commit themselves to active nonviolence as a way of life and as a means of transformation ---- personal, social, economic and political. IFOR has special consultative status with the United Nations (ECOSOC) and representation at UNESCO.*

## Response to questionnaire on the role of prevention in the promotion and protection of human rights.

The International Fellowship of Reconciliation (IFOR) is a non-governmental organisation(ngo) in Special Consultative Status with the Economic and Social Council since 1979.

In the human rights field we are involved as an international ngo in assisting local ngos, whether or not included in the Fellowship of Reconciliation network, and other human rights defenders, to access UN and other international human rights mechanisms, particularly with regard to conscientious objection and other issues related to military service.

Our input to this study therefore relates specifically to question 8 in the questionnaire, concerning the role of international and regional organisations.

The role of treaty bodies, regional human rights courts etc. in identifying rights violations, obtaining redress for victims and calling for non-repetition is well known. All too often, however, the political will to ratify the relevant instruments does not extend to respecting and implementing the decisions of the competent international bodies. For protection to be effective it is therefore essential that ratified international human rights implements are incorporated in national legislation and that the relevant international jurisprudence is known and directly applicable in domestic courts.

Good examples of the preventive power of such provisions can be found in Colombia and Turkey.

Colombia ignored concluding observations of the Human Rights Committee<sup>1</sup> that it should make provision for conscientious objectors to military service, and rejected similar recommendations in the first cycle of the Universal Periodic Review<sup>2</sup>, quoting a majority decision of its Constitutional Court from 1994 that the duty to perform military service set out in the Constitution took precedence over the constitutional guarantees of freedom of conscience. The same Constitutional Court however reconsidered the question in 2009, as a result of a petition from members of our partner organisation in Bogota regarding the constitutionality of the Military Service Act. Article 93 of the Colombian Constitution incorporates ratified international human rights standards in domestic law, and the Court was able to consult the recent developments in the interpretation of Article 18 (freedom of thought, conscience, and religion) in the jurisprudence of the Human Rights

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1 CCPR/CO/80/COL, 26<sup>th</sup> May 2004, para 17.

2 (A/HRC/10/82/Add.1, page 4 – reply to recommendation 37(a) by Slovenia).

Committee<sup>3</sup>. In its decision<sup>4</sup> it invoked Colombia's international treaty obligations in explicitly departing from its own past contrary jurisprudence to rule that it was incumbent on Colombia to make legislative provision for conscientious objection to military service. Pending the promulgation of legislation (and more than five years later the legislature is still dragging its heels in this respect) individual conscientious objectors could be protected against military recruitment by *tutela* actions in the Courts. Subsequent Court decisions have recognised individuals as conscientious objectors<sup>5</sup> and on occasion have secured the release of conscientious objectors who had been forcibly recruited.<sup>6</sup>

Turkey has no legislative provision for conscientious objection to military service. It has failed to implement a series of judgements of the European Court of Human Rights (ECtHR) which found that the imprisonment and repeated imprisonment of conscientious objectors for their refusal to perform military service were a violation of Article 9 of the European Covenant on Human Rights (freedom of thought, conscience, and religion).<sup>7</sup> Nevertheless, Article 90 of the Turkish Constitution makes international treaty obligations applicable in domestic courts. In line with this Article, on 16<sup>th</sup> March 2012 Isparta Military Court took into account the judgements of the ECtHR in the cases of *Bayatyan v Armenia*<sup>8</sup> and *Erçep v Turkey*.<sup>9</sup> Jehovah's Witness Baris Görmaz, who had served a number of sentences of imprisonment as a result of his refusal, on grounds of conscience, to obey repeated call-ups to military service was, faced with a fresh charge of the same nature, finally and definitively acquitted.<sup>10</sup> Meanwhile, the most recent of the unimplemented ECtHR judgements relates, among other linked cases to the earlier imprisonments of Görmaz.

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3 Notably *Yeo-Bum Yoon and Myung-Jin Choi v Republic of Korea* (CCPR/C/88/D/1321-1322/2004 of 23 January 2007). The Committee's jurisprudence has since developed in a number of further cases from the Republic of Korea and from Turkey.

4 *Comunicado No.43 – Expediente D7685 Sentencia C-728/09, 14<sup>th</sup> October 2009.*

5 The earliest successful cases concerned persons with explicitly religious grounds for their objection, but in June 2014 Mario Andrés Hurtado Cardozo became the first person quoting objections of a secular pacifist nature to be awarded a *tutela*.

6 For instance Jhonathan David Vargas Becerra on 16<sup>th</sup> September 2014.

7 European Court of Human Rights, Deuxième Section, *Affaire Ercep v Turquie (Requête n° 43965/04)*, Arrêt, 22 novembre 2011 (full text available in French only); *Feti Demirtas v Turkey*, Application No. 5260/07, Chamber Judgment of 17 January, 2012; *Savda v Turkey*, Application no.5260/07, Chamber judgement of 12<sup>th</sup> June 2012; *Tarhan v Turkey*, Application No. 9078/06, Chamber judgment of 17<sup>th</sup> July 2012, *Buldu et autres c Turquie*, Requête no. 14017/08, Arrêt 3 juin 2014 (full text available in French only).

8 European Court of Human Rights, Grand Chamber, Case of *Bayatyan v Armenia (Application no. 23459/03)*, Judgment issued on 7<sup>th</sup> July 2011

9 See note 7. This was the first judgement in the series.

10 Yildirim, M., "Turkey: selective progress on conscientious objection", *Forum 18 News Service*, ([www.forum18.org](http://www.forum18.org)), 1<sup>st</sup> May, 2012.