



Freedom of thought, conscience, and religion and Conscientious Objection in the Council of Europe

Introduction

This series of briefing papers looks at the QCEA proposals relating to the recognition of Conscientious Objection to taxation for military purposes which we are making to the Council of Europe and sets them in the context of the Council of Europe and its prior work on Conscientious Objection to Military Service.

This series of briefing papers will answer the following questions:

1. What is the Council of Europe?
2. What is the context for the discussion on freedom of thought, conscience, and religion and Conscientious Objection?
3. What is QCEA proposing as a resolution for the Peace Tax?
4. Peace Tax - Frequently Asked Questions

We see the right to Conscientious Objection to military taxation to be a logical consequence of the right to Conscientious Objection to military service. The latter has its legal foundation in the European Convention of Human Rights. In this briefing paper we will look at all these concepts and how they tie in with each other.

European Convention for the Protection of Human Rights and Fundamental Freedoms

Article 9 - Freedom of thought, conscience and religion

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

The European Convention on Human Rights is more than a declaration; it has legal status and implications. The interpretation of its text is therefore particularly important. The text given above is Article 9 of the Convention. It grants all citizens of Member States the right to freedom of thought, conscience and religion. Because this freedom can have very wide application, the Parliamentary Assembly of the Council of Europe has had to find ways to clarify what this really entails. It can do this through adopting Resolutions, which are then as binding as the Convention itself. Member States then have to adhere to the Convention, and respect the Resolutions.

One area in which there is such a Resolution relates to Conscientious Objection to military service. As you can see from the text above, Article 9 of the Convention does not mention military service at all. However, the Parliamentary Assembly has adopted

a Resolution¹ which clearly states that the right to Conscientious Objection to military service is a fundamental aspect of the right to freedom of thought, conscience and religion as enshrined in Article 9 of the Convention.

The history of the Council of Europe and Conscientious Objection

The Parliamentary Assembly of the Council of Europe was the first European Institution, indeed the first international organisation of states, to formally recognise conscientious objection to military service.

In September 1965 Amnesty International raised with the Council the question of conscientious objection in relation to Article 9 (freedom of conscience, thought and religion) of the European Convention on Human Rights. The Council asked the Max Planck Institute for Comparative Public Law and International Law in Germany, to prepare a study of the situation in the Member States, as a result of which the Consultative Assembly on 26 January 1967 adopted Resolution 337

Although most Council of Europe Member States gradually changed their national laws to respect the right of Conscientious Objection to military service the issue is still an ongoing concern. The position of Conscientious Objectors differs considerably from one country to another and differences in the law unfortunately result in varying levels of protection across Europe. The situation of conscientious objectors can therefore be wholly unsatisfactory in Member States which have recognised the right to conscientious objection².

In order to change this situation the Parliamentary Assembly issues recommendations on the topic, which suggest changes the non-complying countries should introduce in their laws.

A citizen of a Council of Europe Member State who believes her or his right to Conscientious Objection is not being respected by the government can bring this government before the European Court of Human Rights after s/he has exhausted process through the national courts of their country of citizenship.

A third way to approach the issue of Member States not complying with Article 9 and Resolution 337 is by making what is called a **collective complaint**.

¹ Resolution 337 (1967) available on the Council of Europe website at: <http://assembly.coe.int/Main.asp?link=http://assembly.coe.int/Documents/AdoptedText/ta67/BRES337.pdf>

² QCEA has undertaken a survey of the current situation with regard to Conscientious Objection to Military Service in the Member States of the Council of Europe, and this information will be available on QCEA's website from Spring 2005 onwards.

QCEA and the collective complaint against Greece

Conscientious Objection to military service is something that remains on the agenda of QCEA.

Although the European Convention on Human Rights is the largest Human Rights Treaty of the Council of Europe, it also has other treaties on human rights. One of these treaties is the **European Social Charter** which not only protects human rights, but also sets out a supervisory complaints mechanism. This allows NGOs enjoying participatory status with the Council of Europe to lodge complaints against Member States of the Council of Europe. QCEA has this status and lodged a complaint in 2000 with regard to Greece's treatment of conscientious objectors to military service. We claimed that Greece's practice was in conflict with the rights allowed in the European Social Charter.³ The claim was based on the fact that the nature of the alternative to military service was in fact so harsh that it broke the Greek government's obligation to respect the prohibition to forced labour, as given in Article 1 of the European Social Charter.

The European Social Charter, Part I, Article 1

The Contracting Parties accept as the aim of their policy, to be pursued by all appropriate means, both national and international in character, the attainment of conditions in which the following rights and principles may be effectively realised:

1 Everyone shall have the opportunity to earn his living in an occupation freely entered upon.

QCEA argued successfully that Greece was not respecting the right to conscientious objection as allowed in Article 9 in the European Convention on Human Rights as well as the provision in the European Social Charter. However, it was through the mechanism of the Social Charter that we could take action. The outcome of the complaint was that the Committee of Experts found Greece to be in breach of Article 1, paragraph 2 of the Social Charter. Following the complaint, the representative of the Greek government announced that they were considering a number of amendments and changes in the rules regarding Conscientious Objection to military service.

The fact that the Council of Europe has repeatedly demonstrated its commitment to the rights of Conscientious Objectors to military service shows how highly it regards the right to freedom of thought, conscience and religion. With this high regard in mind, QCEA is asking the Council of Europe to see the close connection between the right to conscientious objection to military service and the right to conscientious objection to military taxation. The next briefing paper in this series will address this.

³ Greece was forcing conscientious objectors to serve for up to 39 months. Military service varied from 18 to 21 months depending on which of the services it was served in and there was a possibility of reduced military service of between 3 and 12 months. As at 2005, alternative service is 23 months compared to 12 months military service for ordinary soldiers and 17 months for officers.