



QUAKER COUNCIL FOR EUROPEAN AFFAIRS

The Right to Conscientious Objection in Europe: A Review of the Current Situation

Country Report: UNITED KINGDOM

Conscription

Conscription was abolished in 1960 and the last conscripts were released from military service in 1963.

Conscientious objection

There is a procedure for professional soldiers who wish to be discharged from the armed forces for reasons of conscientious objection. The procedure is laid down in Instruction No. 6 (D/DM(A) 7/5/3(M1(A))) 'Retirement or discharge on the grounds of conscience'.¹ The Instruction applies to all serving members of the army, including part-time members and reservists.

The Ministry of Defence considers the Instruction as a confidential document and it is actually forbidden to publish the Instruction outside the army. There are believed to be similar instructions for the navy and the air force, but the content of these instructions is not known.²

According to the Instruction, religious, moral or political reasons of conscientious objection may qualify as reasons of conscientious objection and may lead to honourable discharge from the armed forces. This includes reasons of conscientious objection against particular campaigns, such as the involvement of the British armed forces in Iraq.

Procedure

Serving members of the armed forces must make a written application to their commanding officer. They may apply for discharge from the armed forces because of conscientious objection, or they may apply for an alternative posting if they wish to remain in the armed forces but object to participating in particular campaigns.

The commanding officer conducts an interview with the applicant. The applicant may be required to provide further evidence, which could be a statement about the sincerity of the applicant by (for example) a religious minister or someone else who knows the applicant well. The commanding officer usually consults the army chaplain about the sincerity of the application, regardless of whether the application is made on religious or non-religious grounds. The commanding officer will then submit a report to the division commander. The report includes a recommendation as to whether the application should be approved.

If the application is rejected, applicants have the right to forward their case to the Advisory Committee on Conscientious Objection (ACCO).³ This is an independent committee of civilians appointed by the Lord Chancellor and chaired by a lawyer. The Committee presently consists of a Chairman and Vice-Chairman who are both legally qualified and a number of lay members who are not required to have any formal qualifications.

The ACCO orders the applicant to attend a hearing, during which the Committee makes an assessment of the sincerity of the applicant. A hearing by the ACCO needs to be attended by the Chairman or the Vice-Chairman plus two lay members. The commanding officer is also

¹ Instruction No. 6: Retirement or discharge on the grounds of conscience, www.wri-irg.org/pdf/co_uk_army.pdf

² AT EASE: Information for members of the British armed forces, 2004, www.atease.org.uk

³ Annex A to Instruction No 6: Appearance before the Advisory Committee on Conscientious Objectors (ACCO), www.wri-irg.org/pdf/co_uk_army.pdf

represented at the hearing. The hearings are held in public and applicants are allowed to be accompanied by family members, friends or a solicitor. After the hearing, the ACCO makes a consultative decision, which needs to be confirmed by the Ministry of Defence.

Reservists may also apply for the procedure for conscientious objection. During the war in Iraq in 2003 and 2004, many reservists have actually been called up for service. Reservists receive a call-up order to report themselves to a military base on a particular date. Upon receiving the call-up order, reservists legally become a serving member of the armed forces.

Reservists should state their conscientious objection when responding to the call-up order. Written applications must be made to the military unit that has sent the call-up order. In their application, reservists should make clear if they wish to remain in the reservist forces and if they wish to be called up during times of national emergency. Applications are assessed by a military panel. As the panel does not decide on the same day, applicants usually get a deferment after which the application is further decided on at a later stage.

If the application is rejected, reservists also have the right to refer their case to the Advisory Committee on Conscientious Objection. The procedure with ACCO is the same as for serving members of the armed forces. Pending the procedure with ACCO, applicants should be granted a deferment.

Practice

It is difficult to assess how many members of the armed forces apply for a discharge from the armed forces for reasons of conscientious objection, as the Ministry of Defence does not provide detailed statistics. Discharge on grounds of conscientious objection is classified by the Ministry of Defence as a form of Compassionate Discharge. Consequently, the overall figures on discharge because of conscientious objection are merged with personal, medical, family or employment commitments (for reservists).

However, during the war in Iraq in 2003 and 2004 dozens of applications for conscientious objection have reportedly been made. It is believed that the Ministry of Defence is restrictive in granting professional soldiers honourable discharge because of conscientious objection. There are cases of soldiers being discharged for being "an unsuitable officer", for "service no longer required" or being medically or temporarily unfit for further service, when they actually asked for discharge because of conscientious objection.⁴

It is not known either what percentage of CO applications is granted. The Ministry of Defence does not publish detailed statistics. Moreover, the initial decision on applications is made by individual commanders and it is difficult to obtain an overview of these decisions. Serving members of the armed forces who make a CO application may be sentenced by their commander for refusing a lawful order to up to 60 days' confinement. As such sentences are given in closed trials, without legal representation, it is impossible to assess how many such trials take place. Only when such cases reach the court-martial phase, may they become publicly known.

The application procedure for conscientious objection is not widely known about. The Ministry of Defence considers Instruction 6 as a restricted confidential document and the military authorities do not provide accurate information about the application procedure. In fact, the High Court of Justice stated in a judgement in 2004 that "the call-out materials (...) do not mention conscientious objection expressly. In that respect, it would seem that the information provided to the recalled reservist could be improved".⁵

In addition, members of the British armed forces are limited in their right to free speech. It is a punishable offence to publicly speak about controversial issues "directly, indirectly or anonymously". This means that conscientious objectors are not inclined to openly speak about their cases in the media.

⁴ Information provided by AT EASE, October 2004.

⁵ 'Muslim who refused to fight in Iraq loses appeal', www.guardian.co.uk, 8 October 2004. www.courtservice.gov.uk/judgmentsfiles/j2822/khan-v_raf.htm.

Consequently, many members of the armed forces are not aware of the existence of the Instruction, the legal possibility of seeking discharge on grounds of conscientious objection or referring their case to ACCO in case the application is rejected by an individual commander. In fact, between 1970 and 2003 ACCO has only dealt with 36 cases. In 11 cases, the applicants were honourably discharged as conscientious objectors.⁶

Because of the lack of information about the application procedure for conscientious objection, many COs may turn to other ways of avoiding service. Serving members of the armed forces who go absent without leave to avoid a posting become liable for prosecution for desertion. In such cases, it is actually not possible to refer a case to ACCO. ACCO does not deal with cases of applicants who are "absent without leave or deserters, the subject of pending disciplinary action, undergoing a sentence of imprisonment or detention".⁷

Reservists who do not respond to their call-up order to report at a military base may also become liable for prosecution for desertion. It is believed that in many cases of reservists not responding to call-up orders, the Ministry of Defence refrains from prosecution because it wants to avoid the publicity that may accompany court-martialling them. In some other cases reservists have been sentenced for going absent without leave. The latest known case occurred in October 2004 when a reservist was sentenced to the loss of nine days' pay and seven days' privileges.⁸

⁶ Judy Kerr: Breaking ranks, in: The Big Issue, 26 May- 2 June 2003.

⁷ Annex A to Instruction No. 6.

⁸ Variant Issue 18, www.variant.org.uk 'Muslim who refused to fight in Iraq loses appeal', www.guardian.co.uk, 8 October 2004.