



QUAKER COUNCIL FOR EUROPEAN AFFAIRS

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

Country Report: BOSNIA & HERZEGOVINA (BiH)

The 1995 Dayton Peace Agreements divided the country into two constituent entities: the Federation of Bosnia and Herzegovina and the Republika Srpska. Defence is a complicated issue in Bosnia & Herzegovina. The armed forces consist of the Army of the Federation of BH and the Army of the Republika Srpska. The BiH Presidency has supreme command authority over the armed forces of the BiH. However the two entities maintain control over their armed forces through their own ministry of defence. Consequently, regulations on conscription and conscientious objection are different in both entities.

Throughout 2003 and 2004 fundamental constitutional and defence law reforms took place. In December 2003, the BiH Parliament's House of Representatives approved a State Law on Defence of Bosnia & Herzegovina. The State Law entered into force in January 2004 and aims to further integrate both entities' armed forces. In 2004, a single Ministry of Defence was created.

Upon accession to the Council of Europe in 2002, Bosnia & Herzegovina committed itself to adopt legislation on conscientious objection within three years: by April 2005. Previously, the Sarajevo Declaration of 1998 also committed both entity governments to introduce legislation on conscientious objection and substitute service. However, neither the BiH nor either entity has so far adopted a law on conscientious objection. In practice both entities do have regulations on conscientious objection and substitute service (see separate entries on The Federation and Republika Srpska).

The State Law on Defence also addresses the right to conscientious objection. According to Article 5: "The right to conscientious objection shall be secured to all persons who are subject to the common conscription policy. The process of confirming conscientious objector status and the administration of alternative service shall be regulated by a separate law".¹

By February 2005, no state law on conscientious objection has been adopted. The implementation of such a state law will have consequences for both entities, because entity regulations need to comply with state law.

Statistics

The armed forces comprise 24,600 troops: 16,400 including 8,400 conscripts (Federation) and 8,200 including 4,200 conscripts (Republika Srpska).² Every year, approx. 30,000 young men reach conscription age.

Background

Since the end of the war in 1995, the size of the armed forces has been reduced significantly. By comparison, in 1995 the armed forces of the Federation and the Republika Srpska still comprised a total of 430,000 troops.

During the wars in the region in the 1990s, thousands of men evaded the draft or deserted from the armed forces. Following the Dayton Peace Agreements, both entities adopted amnesty laws, granting amnesty to draft evaders and deserters until 1995. In addition, the 1998

¹ Council of Europe, Monitoring Committee on the Honouring of Obligations and Commitments by member states of the Council of Europe: Honouring of obligations and commitments by Bosnia & Herzegovina, Doc. 10200, 4 June 2004.

² Institute for Strategic Studies: Military Balance 2004/2005.

Sarajevo Declaration committed both entity governments to free all returnees from any form of conscription for a period of five years following return.³

THE FEDERATION

Conscription

Conscription is regulated by the 2004 Defence Law, which entered into force in May 2004. It replaced the previous 1996 Defence Law (15/1996).

The length of military service is four months.⁴

All men between the ages of 18 and 27 are liable for military service. Inhabitants of the Brcko district are exempt from military service.⁵

Conscientious objection

Legal basis

Legal provisions on conscientious objection are laid down in the new 2004 Defence Law. The Defence Law calls for the introduction of a separate law on conscientious objection. By February 2005, no separate law on conscientious objection had been introduced. A future law on conscientious objection needs to comply with the state law on conscientious objection that is also under preparation.

The previous 1996 Defence Law also contained legal provisions on conscientious objection. Since 1996 this law was amended regularly and several government instructions were issued. In particular, the "Temporary instruction on performance of civilian service in legal persons and Federation BiH Army units" which entered into force in October 2003. This regulation became void again when the new Defence Law entered into force in May 2004. Consequently, the current legal basis for conscientious objection is unclear.

Scope

The Defence Law recognizes both religious and non-religious grounds for conscientious objection. The right to conscientious objection applies to those who "for reasons of conscientious objection or religious or moral principles, are not prepared to participate in the performance of military duties in the armed forces".

Time limits

There is a time limit for submitting CO applications. According to the Defence Law, applications must be made within seven days of receiving call-up papers for military service. Applications can thus not be made by serving conscripts or reservists.⁶

In practice, applications that are made by serving conscripts may be taken into consideration by the Commission for Civilian Service. In many cases such applications have eventually been granted after an appeal was made against the initial rejection.⁷

³ UNHCR: UNHCR's position on categories of persons from Bosnia and Herzegovina in continued need of international protection, September 2001.

⁴ The length of military service was reduced from 12 months in 2002 and from 6 months in 2004.

⁵ The Brcko District has a special status and is under direct supervision of the International Supervisor. According to Article 14 of the Statute of the Brcko District, Brcko residents may only be required to perform alternative service in accordance with the Brcko District Law. No regulations on alternative service have been introduced in Brcko District Law. (Council of Europe 2004)

⁶ The 'Temporary instruction on performance of civilian service in legal persons and Federation BiH Army units' that entered into force in October 2003 did not contain time limits for submitting CO applications. As this instruction became void when the new Defence Law entered into force, time limits legally apply again since May 2004.

⁷ In the past, the OSCE mission has regularly expressed its concern that many potential COs may have missed the deadline for submitting an application, and may consequently face criminal prosecution. In practice there have been no known cases of COs being prosecuted for this reason. (Information provided by Prigovorbih Campaign for Conscientious Objection in Bosnia, July 2004)

Procedure

Applications must be made to the Commission for Civilian Service (Ministry of Justice). Applicants must explain their reasons of conscience in their application but no thorough individual examination of applications takes place. The Commission reportedly takes the position that it cannot examine someone's conscience. The Commission meets regularly and decides on 50 to 100 applications per session. The Commission may order the applicant for a personal interview, but in practice this rarely happens.⁸

Substitute service

The length of substitute service is six months. This is one and a half times the length of military service.

Substitute service is administered by the Commission for Civilian Service (Ministry of Justice). Substitute service can be performed in medical and social institutions, cultural organisations and schools, but also with non-governmental organisations with public and humanitarian significance. The Commission for Civilian Service (Ministry of Justice) is responsible for finding workplaces and the assignment of COs. Workplaces for substitute service need to be approved by the Ministry of Defence.⁹

After completing substitute service, COs are liable for reservist duties within civilian protection.¹⁰

Practice

Although legal provisions on conscientious objection have been in place since 1996, the authorities did not manage to set up a functioning application procedure until 2003. Consequently, very few CO applications were made between 1996 and 2003.

Since 2003 the Commission for Civilian Service meets regularly and the application procedure is functioning more effectively. Since then, the number of applications has increased significantly. Between November 2002 and March 2003, 219 CO applications were made.¹¹ By July 2004, approx. 1,500 CO applications had been made. More recent figures are not available, but the number of CO applications is believed to be still increasing.¹²

There are no detailed figures available about the percentage of granted applications. According to CO groups, most applications are apparently granted.¹³

Until 2004, substitute service was not available in practice. The government has in fact been regularly criticized for not providing the Ministry of Justice with sufficient resources to set up substitute service. In May 2004, the first group of 46 COs started substitute service. By September 2004, 72 institutions were approved as workplaces for substitute service.¹⁴ As the number of COs by far exceeds the number of available workplaces, by October 2004, most COs had not been called up for substitute service.

REPUBLIKA SRPSKA

Conscription

Conscription is regulated by the 2004 Defence Law, which replaced the previous Defence Law of 1996.

⁸ Regional Network for Conscientious Objection (2004).

⁹ Regional Network for Conscientious Objection (2004).

¹⁰ Regional Network for Conscientious Objection (2004).

¹¹ United Nations Volunteers: Conscientious Objection in BiH, 2003.

¹² Prigovorbih (2004).

¹³ Prigovorbih (2004).

¹⁴ OSCE Mission to Bosnia and Herzegovina: FBiH Commission on alternative service needs administrative support, Sarajevo, 6 May 2004.

The length of military service is 4 months.¹⁵
All men between the ages of 18 and 27 are liable for military service.

Conscientious objection

Legal basis

The new entity Defence Law that was adopted in 2004 contains no provisions on conscientious objection, but calls for the introduction of separate legislation on conscientious objection. By February 2004, a separate law on conscientious objection had yet to be introduced. A future law on conscientious objection needs to comply with the state law on conscientious objection that is also under preparation.

Pending the introduction of a law on conscientious objection, the legal position of COs remains unclear. Some provisions for conscientious objection are laid down in a 2001 byelaw and the 'Regulation Book About Performance of Military Service Without Carrying Arms and In Civilian Service'.

Previously the right to conscientious objection was legally recognized by Articles 215-219 of the 1996 Defence Law.

Scope

Both religious and non-religious grounds for conscientious objection are legally recognized.

Time limits

There is a strict legal time limit for submitting CO applications. Applications need to be made within 15 days of receiving the call-up for military service. Applications can thus not be made by serving conscripts or reservists.

There is no clear policy on applications that are not submitted within the legal time limits. In some cases, such applications are automatically rejected. In other cases, such applications are eventually taken into consideration by the Ministry of Defence after an appeal has been made against the initial rejection.¹⁶

Procedure

CO applications must to be made to the local recruitment commission at the local department of the Ministry of Defence. No personal interview takes place with the applicant. If the application is rejected, there is a right of appeal to the Ministry of Defence.

Substitute service

The length of substitute service is 10 months. This is more than twice the length of military service.¹⁷

Substitute service is administered by the Ministry of Defence. According to the Defence Law, substitute service can be performed in "military economy, health and general rescue organisations, organisations for disabled persons and other organisations and institutions that deal with issues of public interest".

After completing substitute service, COs are assigned to the reserves or to civilian protection or other duties which do not include the use of arms.¹⁸

Practice

Although legal provisions on conscientious objection were introduced in 1996, an application procedure was only introduced in 2001. However, the application procedure does not seem to

¹⁵ The length of military service was reduced from 9 months in 2001 and from 6 months in 2004.

¹⁶ Regional Network for Conscientious Objection (2004).

¹⁷ In fact, in 2004 the length of military service was reduced from 6 to 4 months, but substitute service was only reduced from 12 to 10 months. The length of substitute service thus became more punitive. Media reports suggest that the duration of substitute service is to be reduced to 8 months, but it is not known if this has actually happened. ('Military conscription term two months shorter', Operation Joint Force: Tuzla Night Owl, Vol 9 No 249, 5 September 2004).

¹⁸ Regional Network for Conscientious Objection (2004).

be widely known about. Consequently, in the Republika Srpska far fewer CO applications are made in comparison with the Federation. Between 2001 and July 2004, approx. 50 CO applications have reportedly been made.¹⁹

The Ministry of Defence does not inform new conscripts about the possibility of applying for substitute service. Neither the Defence Law nor the 'Regulation Book About Performance of Military Service Without Carrying Arms and In Civilian Service' actually obliges the Ministry to inform conscripts about the right to conscientious objection.²⁰

There are no detailed figures available about the percentage of CO applications that is rejected. However, applications seem to get rejected more often in comparison with the Federation. About half of the applications are initially rejected by the Ministry of Defence.²¹ In many cases, CO applications are eventually approved after an appeal is made against the initial rejection.²²

The Ministry of Defence has not organised substitute service effectively and not many workplaces are available. The first CO performed his substitute service in 2002. By October 2004, only five COs had actually performed substitute service, all of them in the museum at Prijedor and at Caritas in Banja Luka.²³

¹⁹ Prigovorbih (2004).

²⁰ Regional Network for Conscientious Objection (2004).

²¹ Netherlands Ministry of Foreign Affairs: Algemeen ambtsbericht Bosnië-Herzegovina, October 2003.

²² Prigovorbih (2004).

²³ Operation Joint Force (2004).