

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

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THE RIGHT TO CONSCIENTIOUS OBJECTION IN EUROPE: A Review of the Current Situation

This report gives an overview of conscription and the right to conscientious objection in Europe. The report contains country reports on 47 European countries and assesses how far legislation and practice comply with minimum standards on conscientious objection, as laid down by the Council of Europe and the United Nations.¹

The right to conscientious objection

Over the past decades, the right to conscientious objection to military service has developed as a human right. The Council of Europe, the United Nations and the European Parliament have all stressed on numerous occasions that the right to conscientious objection is a fundamental aspect of the freedom of thought, conscience and religion, as laid down in Article 18 of the Universal Declaration of Human Rights and Article 18 of the International Covenant on Civil and Political Rights (ICCPR). Since the 1980s there has been a further definition of the right to conscientious objection at both regional and international level.

The Council of Europe has dealt with the right to conscientious objection for almost 40 years. The Parliamentary Assembly adopted its first resolution supporting the right to conscientious objection in 1967 and it has addressed the issue regularly since then. In 1987, the Committee of Ministers issued Recommendation R(87)8, which invites governments of member states to bring their national legislation and practice in line with the following principle: "Anyone liable to conscription for military service who, for compelling reasons of conscience, refuses to be involved in the use of arms, shall have the right to be released from the obligation to perform such service, on the conditions set out in the Recommendation. Such persons may be liable to perform alternative service". The Recommendation set out minimum standards on conscientious objection, such as the right to be registered as a conscientious objector at any time, the right for all conscripts to receive information about conscientious objection, the need for a fair, non-discriminatory application procedure, and the need for a genuine civilian alternative service which is not punitive by its nature or duration.

In May 2001, the Parliamentary Assembly recalled these minimum standards by adopting Recommendation 1518/2001, in which member states were again invited to bring their legislation and practice in line with the basic principles laid down in Recommendation R(87)8. Although the right to conscientious objection is legally recognized in most European countries, legislation and practice often do not comply with the minimum standards set out in Recommendations R(87)8 and 1518/2001. This was, in fact, also concluded by a report issued by the Council of Europe Committee on Legal Affairs and Human Rights in 2001.²

Over the past decades, the European Parliament has also adopted a series of resolutions stating that the right to conscientious objection should be incorporated as a fundamental right in the legal systems of Member

¹ Belarus is included in this report, although it is not a member state of the Council of Europe. The five Central Asian states that were formerly part of the Soviet Union (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan) are not included.

² Exercise of the right of conscientious objection to military service in Council of Europe member states, Report Committee on Legal Affairs and Human Rights, Rapporteur: Dick Marty, Doc. 8809 Revised, 4 May 2001

States. In 2000, the right to conscientious objection was included in the Charter of Fundamental Rights of the European Union. According to Article 10.2: "The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right".

The representatives of the Organisation for Security and Cooperation in Europe (OSCE) at the Second Conference on the Human Dimension in 1990, agreed on the importance of introducing civilian non-punitive alternative service for conscientious objectors.

Within the United Nations, the right to conscientious objection has been addressed at various levels. In Resolution 1987/46, the United Nations Commission on Human Rights has explicitly recognized the right to conscientious objection as "a legitimate exercise of the freedom of thought, conscience and religion". This resolution has been reaffirmed in subsequent resolutions adopted by the Commission. In 1998, the Commission adopted Resolution 1998/77, in which minimum basic principles concerning the right to conscientious objection are set out, which are similar to the minimum standards that have been detailed by the Council of Europe. The Commission has most recently reaffirmed these minimum standards by adopting Resolution 2002/45. The Commission also called upon the High Commissioner for Human Rights to publish a report on 'best practices'. This report was eventually published in 2004.³

Apart from the Commission on Human Rights, the United Nations Human Rights Committee also regularly addresses the right to conscientious objection. The Committee regularly addresses the issue in its final recommendations of States parties' reports submitted under Article 40 of the International Covenant on Civil and Political Rights (ICCPR) and calls upon states to bring their legislation and practice on conscientious objection in line with international standards.

Conscription in Europe

As shown by TABLE 2 (page XIII), ten European countries have suspended conscription during the past decade. In recent years Belgium (1995), the Netherlands (1996), France (2001), Spain (2001), Slovenia (2003), Italy, Portugal, the Czech Republic and Hungary (2004) have suspended conscription. In Slovakia the last drafts of conscripts are currently performing military service and in 2005 the armed forces are expected to consist of professional soldiers only.

Some observers therefore claim that the recent trend of abolishing conscription will mean that conscription will soon be history altogether. The changing role of the armed forces following the end of the Cold War would mean that there would no longer be a need for large standing armies manned by mass conscription. This report does not aim to discuss circumstances that may lead to the end of conscription and the arguments given in favour or against conscription. However, it must be stressed that conscription is still enforced in 29 European countries and consequently most European male citizens are still liable to be called up for military service. In many of these countries, there are no indications that conscription will be ended in the near future. Some countries, particularly in the former Soviet Union, consider it too expensive to replace

³ United Nations Commission on Human Rights, Civil and Political Rights, including the question of conscientious objection to military service, Report of the Office of the High Commissioner for Human Rights, (E/CN.4/2004/55), 16 February 2004.

conscripts by professional soldiers. But also governments in other parts of Europe, such as Greece, Turkey, Cyprus and Scandinavia, have shown no intention of ending conscription.

By 'conscription' it is usually understood that all men of a certain age must perform compulsory military service. It is important to stress, however, that conscription is usually applied selectively, meaning that not all eligible men are actually called up for military service. In all European countries, the number of eligible conscripts is in fact larger than the number that is considered needed by the armed forces. Many young men are thus legally exempted from military service, for medical, social or other reasons. In many instances, the selection of conscripts does not necessarily take place by legal means. Particularly in countries of the former Soviet Union, conscription is mostly associated with corruption, young men obtaining false documents to obtain exemption for medical reasons or bribing draft officials to avoid being called up for military service.

There are actually striking differences between different European countries concerning the percentage of eligible conscripts that is actually called up for military service. In some countries the majority of eligible conscripts are recruited, for example in Turkey, Greece, Cyprus and Finland where between 70 and 80 per cent of conscripts are called up. By contrast, in the Baltic States, the Russian Federation and the Ukraine, only 10 to 30 per cent of eligible conscripts actually end up performing military service.

Legal recognition of the right to conscientious objection in Europe

By 2005, the right to conscientious objection is legally recognized in most European countries. In 26 out of 29 countries that are currently enforcing conscription, the right to conscientious objection is legally recognized.

Three European countries have not introduced any legislation on conscientious objection: Azerbaijan, Belarus and Turkey. Turkey, although being a member of the Council of Europe since 1949, has no legal provisions on conscientious objection. In Azerbaijan and Belarus, the right to conscientious objection was included in the constitution during the 1990s, but no further legislation on conscientious objection has ever been introduced, although in Azerbaijan, a draft law on conscientious objection is currently under preparation.⁴

In Georgia, the right to conscientious objection was legally recognized in 1997 when the Law on Alternative Service was adopted. However, the Georgian government has never proceeded with the implementation of the law. Consequently, there are no application procedures through which to claim the right to conscientious objection and there is no substitute service available in practice.

Although the right to conscientious objection is legally recognized in 26 countries, in none of these countries does CO legislation comply with **all** aspects of the relevant recommendations made by the Council of Europe. Moreover, in several other countries, existing legal provisions on conscientious objection have not been fully implemented, as will be further discussed in the respective paragraphs on application procedures and substitute service.

⁴ In Azerbaijan, a draft law on conscientious objection was prepared in 2004. The draft law was supposed to be discussed by the Azerbaijan Parliament during 2004, but so far it has not been put on the parliamentary agenda. By February 2005, it is still not known if and when the draft law will be discussed further.

TABLE 1: Recognition of the right to conscientious objection in European countries currently enforcing conscription

Countries where the right to conscientious objection is not legally recognized	Azerbaijan, Belarus, Turkey
Countries where only religious grounds for conscientious objection are legally recognized	Romania, Ukraine
Countries with concerns about discriminatory treatment of non-religious COs in practice	Armenia, Cyprus, Greece, Lithuania, Moldova

Scope of recognition: restriction of the right to conscientious objection to religious grounds

According to international standards on conscientious objection, the right to conscientious objection should not be restricted to religious reasons, but should include all pacifist and moral reasons against the use of violence. This is stressed in Council of Europe Recommendation R(87)8, which states that: "Anyone liable to conscription for military service who, for compelling reasons of conscience, refuses to be involved in the use of arms, shall have the right to be released from the obligation to perform such service". According to the United Nations Commission on Human Rights Resolution 1998/77: "Conscientious objection derives from principles and reasons of conscience, including profound convictions, arising from religious, ethical, humanitarian or similar motives" and the Resolution calls upon states "not to discriminate amongst conscientious objectors on the basis of their particular beliefs".

As shown by the small number of countries appearing in TABLE 1, in most European countries both religious and non-religious grounds for conscientious objection are legally recognized. In fact the recognition of non-religious grounds for conscientious objection has been common practice in many countries for several decades.

Nevertheless, several countries persist in restricting the right to conscientious objection to religious grounds:

- ◆ **Romania and Ukraine** are the clearest examples of discriminatory treatment of COs on the basis of their beliefs. According to the Romanian and Ukrainian CO laws, only members of religious denominations who forbid their members to bear arms may claim the right to conscientious objection. Non-religious COs thus have no legal means to claim their right to conscientious objection.
- ◆ **Armenia** recently adopted a law on conscientious objection in 2004, but the law is not clear on the recognition of non-religious grounds for conscientious objection. As the law entered into force recently, and so far CO applications have only been made on religious grounds, it will need to be monitored closely to see if non-religious grounds for conscientious objection may be recognized.
- ◆ In **Moldova**, legislation allows for the recognition of both religious and non-religious grounds for conscientious objection. In practice, however, COs are required to prove membership of a religious organization that forbids its members to bear arms.

- ◆ In **Cyprus and Lithuania**, legislation seems to allow for the recognition of non-religious COs. The only known CO applications have so far been made on religious grounds. As it is unclear to what extent a functioning application procedure has been set up in practice, it also remains unclear if non-religious grounds for conscientious objection may be accepted in practice.
- ◆ In **Greece**, it appears to be more difficult to obtain CO status on non-religious grounds. CO applications by members of religious COs, in particular Jehovah's Witnesses, are almost automatically accepted, but it appears to be much more difficult to obtain recognition as a CO for secular reasons.

Time limits for submitting CO applications

Council of Europe Recommendation 1518(2001) invites member states to introduce into their legislation "The right to be registered as a conscientious objector at any time before, during or after conscription, or performance of military service". This acknowledges that a conscientious objection may develop over time, also after a person may have participated in military training for some time, which has also been reaffirmed by United Nations Commission on Human Rights Resolution 1998/77.

Most European countries do not respect this and have legal time limits in place for submitting CO applications. As shown by TABLE 3 (page XIV), in 18 out of the 29 countries currently enforcing conscription, CO applications can only be made before starting military service.⁵ In only 7 countries can CO applications also be made by serving conscripts and reservists.

Application procedure

According to Council of Europe Recommendation 1518/2001: "The examination of applications shall include all the necessary guarantees for a fair procedure. An applicant shall have the right to appeal against the decision at first instance. The appeal authority shall be separate from the military administration and composed so as to ensure its independence". Similarly, the United Nations Commission on Human Rights has called upon states "to establish independent and impartial decision-making bodies with the task of determining whether a conscientious objection is genuinely held, taking into account the requirement not to discriminate between conscientious objectors on the basis of their particular beliefs" (Resolution 1998/77). Neither the Council of Europe nor the Commission on Human Rights set out further minimum standards on a fair procedure for deciding on CO applications.

In many countries, applications for CO status are individually examined and there may be a personal interview, in which the applicant has to "prove" his motives for conscientious objection. However, as is shown by TABLE 3, 11 countries choose not to conduct an individual examination of the motives of conscientious objectors or to conduct a personal interview with the applicant. In these countries, CO applications are almost automatically accepted, providing they are submitted within the time limits (if applicable). Although the Council of Europe has never addressed the desirability of an individual examination of CO applications, it

⁵ In Macedonia and Bosnia, there are legal time limits for submitting CO applications, but applications that are not submitted within the time limit may reportedly be taken into consideration in practice. The time limits are expected to be discussed soon.

is interesting to note that the United Nations Commission on Human Rights has in fact welcomed "the fact that some States accept claims of conscientious objection as valid without inquiry" (Resolution 1998/77).

It is questionable to what extent a fair application procedure and independent, impartial decision-making can be guaranteed if the Ministry of Defence is responsible for the application procedure. After all, the military authorities are primarily responsible for attracting sufficient recruits for the armed forces, so it appears questionable as to whether the Ministry of Defence can be responsible for the application procedure for CO applications.

As shown by TABLE 3, in 10 countries the responsibility for the application procedure does not lie with the Ministry of Defence, but with civilian ministries. Consequently, the military authorities have no significant role in the examination of CO applications. In the remaining 16 countries, the Ministry of Defence is responsible for the application procedure. It is interesting to note that in all countries for which there are concerns about discriminatory treatment of non-religious COs, the Ministry of Defence is responsible for the application procedure.

TABLE 3 also shows that the number of COs varies greatly between countries, from less than 10 annually in the Baltic States to over 150,000 in Germany. In some countries, the number of COs has been relatively stable for years, for example in the Scandinavian countries and Austria. In other countries, particularly Bosnia, Macedonia and Serbia & Montenegro, the number of COs has increased significantly in recent years.

This report does not aim to explain the factors that determine the number of COs in a particular country. Obviously though, the number of COs is connected with the availability of information about the application procedure. If the authorities do not inform conscripts about the application procedure for conscientious objection, and if there are no other peace or human rights organizations that campaign on the issue, it is logical that very few CO applications are made.

In this respect, another element of Recommendation 1518/2001 should be considered, in which states are called upon to ensure "the right for all conscripts to receive information on conscientious objection and the means of obtaining it". The means by which the authorities inform conscripts about conscientious objection has not been structurally discussed in all countries in this report. However, in several countries, such as Bulgaria and Greece, the authorities have been criticized for not informing conscripts about the application procedures for conscientious objection.

Duration of substitute service

The Parliamentary Assembly of the Council of Europe has called on member states to introduce a "genuine alternative service of a clearly civilian nature, which should be neither deterrent nor punitive in character" (Recommendation 1518/2001).

It appears most logical that a substitute service that is neither deterrent nor punitive in character is of the same duration as military service. However, as shown by TABLE 4 (page XV), in almost all European countries

substitute service lasts longer than military service. In only three European countries do substitute service and military service have the same duration (Denmark, Germany and Sweden).⁶

Recommendations and resolutions that have been made over the years suggest that, within the Council of Europe, the duration of substitute service is considered to be punitive if it lasts more than one and a half times the length of military service. In addition, the United Nations Human Rights Committee, in its consideration of state reports submitted under the International Covenant on Civil and Political Rights (ICCPR), usually considers a substitute service lasting more than one and a half times the length of military service to be a violation of Articles 18 and 26 of the Covenant. In addition, the European Committee of Social Rights has commented on several occasions that a substitute service lasting longer than one and a half times the length of military service is a violation of Article 1.2 of the European Social Charter as it amounts to a disproportionate violation of the "the right of the worker to earn his living in an occupation freely entered upon", as substitute service keeps COs away from the labour market for an amount of time which is disproportionately longer than conscripts in the armed forces.⁷

Nevertheless, as shown by TABLE 4, in 9 countries the duration of substitute service is more than one and a half times the length of military service:

- ◆ **Finland** has the most punitive length of substitute service of all European countries. Since 1999, the length of substitute service is more than twice the duration of military service. In fact there are many total objectors who refuse to perform substitute service as a protest against the punitive duration of substitute service.
- ◆ In **Greece**, substitute service lasts almost twice as long as military service.
- ◆ In **Russia** and **Armenia** substitute service lasts 1.75 times as long as military service (42 months compared to 24 months) and in Cyprus it is 42 months compared to 26 months' military service.
- ◆ In **Estonia** and **Latvia**, substitute service lasts twice as long as military service.

Non-civilian character of substitute service

According to Recommendation R(87)8: "Alternative service, if any, shall be in principle civilian and in the public interest". The United Nations Commission on Human Rights has called upon states to "provide for conscientious objectors various forms of alternative service which are compatible with the reasons for conscientious objection, of a non-combatant or civilian character, in the public interest and not of a punitive nature" (Resolution 1998/77).

As shown by TABLE 4, in 18 countries substitute service consists of civilian service outside the armed forces. In these countries, substitute service is mostly performed in health and social sector institutions. This has been

⁶ When conscription still applied in Italy and Slovenia, substitute service and military service were of equal duration as well.

⁷ The Committee made its comments on Greece and Cyprus. Council of Europe, Committee of Social Rights Conclusions XVI-Vol. 1, November 2002. European Committee on Social Rights, Decision on the merits, Complaint 8/2000.

actual practice in several countries for several decades. In some countries, substitute service may also be performed with non-governmental non-profit organizations and in Germany and Austria, the performance of voluntary work abroad may count as substitute service.

As shown by TABLE 4, in 14 countries the Ministry of Defence is responsible for the organization and administration of substitute service. This may be considered as in contradiction with respective Council of Europe recommendations, as substitute service can hardly be considered as civilian when it is organized by the Ministry of Defence and is consequently connected with the military authorities.

TABLE 4 also indicates that in several countries it remains unclear if a substitute service is available in practice. In some countries where the number of CO applications remains low, it is equally unclear if substitute service is organized in practice. In addition there are some countries where legislation provides for substitute service, but it has clearly not been organized:

- ◆ In **Lithuania**, substitute service is provided for by law since 1997. In practice, however, only an unarmed military service within the armed forces is available.
- ◆ Particular worries about the civilian nature of substitute service exist in the **Russian Federation**. The Law on Alternative Civilian Service entered into force in 2004 and provides for a substitute service outside the armed forces, but according to the law, COs may also be assigned to perform unarmed military service within the armed forces. So far, most COs are in practice assigned to perform substitute service with military institutions. This cannot be considered as a genuinely civilian substitute service, as the work performed is related to the military sector.
- ◆ In **Cyprus**, since 1992 legislation provides for an 'unarmed military service outside the armed forces'. This wording actually leaves ambiguity on the civilian nature of such service. By 2005, it appears that no civilian substitute service has been organized in practice yet.

Conscientious objection and draft evasion

Conscientious objection and draft evasion are interrelated. Draft evasion is usually considered as avoiding call-up for military service by simply not responding to call-up orders, bribing draft officials or (ultimately) fleeing abroad. Although draft evasion may well result from reasons of conscientious objection, a draft evader is usually not considered as a conscientious objector. Within the Council of Europe no minimum standards have been formulated for the treatment of draft evaders. However, it needs to be stressed that in countries where the right to conscientious objection is not or is restrictively recognized, COs are not able to claim their right to conscientious objection. In such cases, particular attention should be paid to the issue of draft evasion. Consequently:

- ◆ In countries where the right to conscientious objection is not legally recognized, draft evasion is the only means by which COs can avoid performing military service (**Azerbaijan, Belarus, Turkey**).

- ◆ In countries where only religious grounds for conscientious objection are legally recognized, draft evasion is the only means by which non-religious COs may avoid military service (**Romania, Ukraine**).
- ◆ Some countries without functioning CO legislation have made informal arrangements for COs, but these arrangements only apply to religious COs / members of religious organizations that forbid their members to bear arms. In recent years, in **Armenia, Azerbaijan and Georgia**, certain religious COs have not been called up for service pending the introduction of a CO law, but these informal provisions did not apply to non-religious COs.

Draft evasion is usually punishable under specific articles of conscription legislation and/or the Criminal Code by fines and imprisonment. Exact figures on prosecution of draft evasion and desertion are usually difficult to obtain. Although the sheer scale of draft evasion obviously makes it impossible for the authorities to monitor and prosecute all cases of draft evasion, evidence suggests that numerous draft evaders are prosecuted and imprisoned. For example, in Armenia, Azerbaijan, Belarus, Georgia, Turkey and the Ukraine, hundreds of draft evaders are believed to have been criminally prosecuted in recent years. These draft evaders mostly remain anonymous for human rights observers and other monitoring agencies. Consequently, it is difficult to assess how many imprisoned draft evaders may be considered as conscientious objectors.

Conscientious objection after conscription

Ten European countries have ended conscription during the past decade. It is important to stress that in most of these countries, conscription is in fact suspended. Consequently, conscripts may be called up for military service if this is considered to be necessary by the government. In most of these countries, legislation provides for the re-introduction of conscription during time of war or during time of emergency.

Such provisions also have consequences for the right to conscientious objection. The suspension of conscription usually means that both conscription legislation and legislation on conscientious objection do not apply. Consequently, young men do not have the possibility to claim the right to conscientious objection. However, in the case of conscription being reintroduced, they may be called up for military service, although they have never had the opportunity to become registered as conscientious objectors. In the case of conscription being reintroduced during peacetime, it may be argued that the problem will not become apparent, as the previous legislation on conscientious objection will then also enter into force again. However, in the case of conscription being reintroduced during wartime, there are likely to be fewer safeguards to guarantee the right to conscientious objection. In no country that has recently suspended conscription do there appear to be legal safeguards for this problem.⁸

In addition, analysis of national CO legislation actually shows that in many countries the legal protection of the right to conscientious objection seems to be insufficient during wartime. In many countries, CO laws do not specifically detail the position of COs during wartime or claim that COs may be called up for civil

⁸ In Belgium and the Netherlands, proposals have been discussed to ensure that men may claim the right to conscientious objection during peacetime, so their right is guaranteed in the case of conscription being reintroduced during wartime. However, neither the Dutch nor Belgian governments have been willing to set up such a register.

protection duties. In some countries, the right to conscientious objection is legally restricted to peacetime and does not apply in wartime. In Bulgaria, Cyprus, Finland and Greece, legislation specifically recalls that the right to perform substitute service may be suspended during wartime.

Right to conscientious objection for professional soldiers

Council of Europe Recommendation 1518/2001 invites member states to recognize "The right for permanent members of the armed forces to apply for the granting of conscientious objector status". This follows from the notion that conscientious objection may develop over time, also after having performed a period of military training. Consequently, just like serving conscripts and reservists, the right to conscientious objection should also apply to professional soldiers.

Although the Council of Europe has explicitly widened the right to conscientious objection to professional soldiers, it remains a complicated issue. Even in a recent study published by the Council of Europe Committee on Legal Affairs and Human Rights, the right to conscientious objection for professional soldiers appears to be confused with the right to conscientious objection for serving conscripts.⁹

For a better understanding of the right to conscientious objection for professional soldiers, it should be acknowledged that legislation on conscientious objection is usually drawn up within the context of conscription. Consequently, CO laws usually apply to conscripts only and provide no legal basis for the right to conscientious objection for professional soldiers. In addition, certain provisions in CO laws may practically exclude professional soldiers from claiming the right to conscientious objection, such as time limits which do not allow CO applications made by serving conscripts and the exclusion of CO status for those who have a gun licence or have borne arms in the past.

Obviously, the right to conscientious objection for professional soldiers is not explicitly recognized in most European countries. There are only two European countries that have application procedures for professional soldiers who seek discharge from the armed forces because of conscientious objection: Germany and the United Kingdom (although in the latter country the application procedure is not widely known about and is the subject of secrecy). If accepted as conscientious objectors, professional soldiers may be granted honourable discharge from the armed forces.

For other countries, it remains unknown how far the right to conscientious objection for professional soldiers is recognized and no further information on application procedures could be found. There are various factors as to why it is difficult to obtain information on this. Professional soldiers may have limitations on their right to free speech or may be limited in their right to form unions. Further research on the right to conscientious objection for professional soldiers seems needed.

⁹ According to the report issued by the Committee on Legal Affairs and Human Rights of the Council of Europe in 2001, Slovenia, Latvia and the Czech Republic are the only countries where "the regular servicemen's right of conscientious objection is recognized". This conclusion is based on information provided by the respective governments of these countries. The validity of this conclusion may be doubted as there is no further evidence that there are legal provisions on conscientious objection for professional soldiers in these countries (see respective country reports). Moreover, Germany and the United Kingdom do have application procedures for professional soldiers for claiming the right to conscientious objection, but this is not acknowledged in the report of the Committee. The 2004 'best practices' report of the United Nations High Commissioner for Human Rights does not specifically address the issue of conscientious objection for professional soldiers.

Conclusion

By 2005, the right to conscientious objection is legally recognized in most European countries enforcing conscription. This is definitely an improvement compared to the situation 20 years ago. Following the end of the Cold War, most Eastern European countries have recognized the right to conscientious objection. After the end of armed conflict in the former Yugoslavia, most countries in that region have also introduced provisions for conscientious objection in recent years.

However, there is still room for improvement. Many countries in the former Soviet Union are falling behind in implementing CO legislation. Some longstanding members of the Council of Europe, such as Greece, Cyprus and Turkey, persist in harsh treatment of COs. In no European country does legislation and practice comply with all the minimum standards on conscientious objection as laid down by the Council of Europe in its Recommendations R(87)8 and 1518/2001. In fact, the Council of Europe Directorate of Human Rights has stated itself in 2002 that: "Although encouraging progress has been made recently in certain Council of Europe member states, the fact remains that we still have a long way to go".¹⁰

As shown by this report, legislation and practice on conscientious objection often do not comply with minimum standards that have been laid down by the Council of Europe in Recommendations R(87)8 and Recommendation 1518/2001. Therefore, the Quaker Council of European Affairs calls upon all member states of the Council of Europe to bring their legislation and practice in line with the following principles:

- ◆ The right to conscientious objection should be legally recognized and should apply to all reasons of conscientious objection against the use of violence. Both religious and non-religious grounds for conscientious objection should be recognized, by law and in practice.
- ◆ The right to be registered as a conscientious objector at any time, before, during and after military service. No time limits for submitting CO applications should apply.
- ◆ The application procedure for assessing CO applications needs to be fair, without discriminatory treatment amongst COs. All conscripts have the right to receive information on conscientious objection and the means of obtaining it. The application procedure should be clear. As is already the case in 11 countries, this can be enhanced by CO applications being accepted without further examination or a personal interview in which the applicant needs to explain his reasons for conscientious objection. As is already the case in 10 countries, responsibility for the application procedure should **not** lie with the Ministry of Defence.
- ◆ Substitute service should be genuinely civilian, be performed outside the armed forces and not be punitive by its nature and duration. In three countries, the length of substitute service and military service is the same. Substitute service should not be organised by the Ministry of Defence (as is still the case in 14 countries), to ensure that substitute service is not connected with the military

¹⁰ Directorate General of Human Rights of the Council of Europe: Conscientious objection to military service, June 2002, February 2003 (with corrections).

authorities in any way.

- ◆ The right to conscientious objection should also apply to professional soldiers. There need to be clear application procedures for professional soldiers who wish to seek discharge from the armed forces because of conscientious objection, and in this case they should be allowed honourable discharge.

TABLE 2: Conscription in Europe

Albania	conscription	Liechtenstein	no conscription
Andorra	no conscription	Lithuania	conscription
Armenia	conscription	Luxembourg	no conscription since 1967
Austria	conscription	Macedonia	conscription
Azerbaijan	conscription	Malta	no conscription
Belarus	conscription	Moldova	conscription
Belgium	no conscription since 1995	Monaco	no conscription
Bosnia & Herzegovina	conscription	Netherlands	no conscription since 1996
Bulgaria	conscription	Norway	conscription
Croatia	conscription	Poland	conscription
Cyprus	conscription	Portugal	no conscription since 2004
Czech Republic	no conscription since 2004	Romania	conscription
Denmark	conscription	Russian Federation	conscription
Estonia	conscription	San Marino	no conscription
Finland	conscription	Serbia & Montenegro	no conscription since 2003
France	no conscription since 2001	Slovakia	conscription will end in 2005
Georgia	conscription	Slovenia	no conscription since 2004
Germany	conscription	Spain	no conscription since 2001
Greece	conscription	Sweden	conscription
Hungary	no conscription since 2004	Switzerland	conscription
Iceland	no conscription	Turkey	conscription
Ireland	no conscription	Ukraine	conscription
Italy	no conscription since 2004	United Kingdom	no conscription since 1960
Latvia	conscription		

TABLE 3: Application procedures

Member state	Legal time limits for applications	Personal interview	Responsible ministry	Number of COs per year (approx.)
Albania	not known	yes	Defence	4
Armenia	only before call-up	yes	Defence	20
Austria	only before call-up	no	Interior	6,000-10,000
Azerbaijan	N/A	N/A	N/A	N/A
Belarus	N/A	N/A	N/A	N/A
Bosnia Federation	only before call-up	no	Justice	3,000
Bosnia Rep. Srpska	only before call-up	no	Defence	20
Bulgaria	only before call- up	yes	Welfare	50
Croatia	no time limits	no	Justice	10,000
Cyprus	only before call- up	yes	Defence	10
Denmark	no time limits	no	Interior	600-900
Estonia	only before call- up	yes	Defence	less than 50
Finland	no time limits	no	Defence	2,000-2,500
Georgia	Law exists, but not being implemented		Defence	-
Germany	no time limits	no	Youth & Welfare	170,000
Greece	only before call- up	yes	Defence	150
Latvia	only before call- up	not known	Defence	0-10
Lithuania	only before call-up	not known	Defence	0-10
Macedonia	only before call-up	no	Defence	1,000
Moldova	only before call-up	yes	Defence	3,000
Norway	no time limits	no	Justice	2,000-2,500
Poland	only before call-up	yes	local government	4,000
Romania	only before call-up	no	Defence	not known
Russian Federation	only before call-up	yes	Defence	1,500
Serbia & Montenegro	only before call-up	no	Defence	9,000
Slovakia	only before call-up	not known	Defence	not known
Sweden	no time limits	no	Defence	1,500-2,000
Switzerland	no time limits	yes	Economic Affairs	2,400
Turkey	N/A	N/A	N/A	N/A
Ukraine	only before call-up	no	Labour	1,500

TABLE 4: Substitute service

Member state	Length of military service (Months)	Length of substitute service (Months)	Ministry responsible for substitute service	Substitute service outside the armed forces available in practice
Albania	12	12	Defence and Labour & Social Affairs	Unclear if available
Armenia	24	42	Defence	Unclear if available
Austria	8	12	Interior	Yes
Azerbaijan	18	N/A	N/A	No substitute service
Belarus	18	N/A	N/A	No substitute service
Bosnia Federation	4	6	Defence and Justice	Yes
Bosnia Rep. Srpska	4	10	Defence	Yes
Bulgaria	9	13.5	Welfare & Labour	Yes
Croatia	6	8	Labour & Social Affairs	Yes
Cyprus	26	42	Defence	Unclear if available
Denmark	9	9	Interior	Yes
Estonia	8	16	Not known	Not available in practice
Finland	6	13	Labour	Yes
Georgia	18	N/A	N/A	No substitute service
Germany	9	9	Social Affairs	Yes
Greece	12	23	Defence	Yes
Latvia	12	24	Defence	Unclear if available
Lithuania	12	18	Defence	Not available in practice
Macedonia	6	10	Defence	Yes
Moldova	12	Unclear	Not known	Unclear if available
Norway	12	13	Justice	Yes
Poland	11	18	Labour	Yes
Romania	8	12	Defence	Yes
Russian Federation	24	42	Defence	Not necessarily civilian
Serbia & Montenegro	9	13	Defence	Yes
Slovakia	6	9	Defence	Yes
Sweden	7.5	7.5	Defence	Yes
Switzerland	260 days	390 days	Economic Affairs	Yes
Turkey	15	N/A	N/A	No substitute service
Ukraine	18	27	Labour & Social Policy	Yes

ALBANIA

Conscription

Conscription is included in Article 166 of the 1998 Constitution. It is further regulated by the Law on Military Service in the Armed Forces (7526/1991), Law 7978/1995 and the Law on Military Service (9047/2003).¹

The length of military service is 12 months, and 6 months for university graduates.²

All men between the ages of 19 and 32 are liable for military service. Reservist obligations apply up to the age of 55.³

It is possible to buy oneself out of military service by paying a sum of money, the amount of which is to be determined by the government (Law 7987/1995, Article 15). At present the sum is set at 300,000 lek⁴, the equivalent of approx. 2,400 Euros. As such a sum is well beyond the means of most young men, buying oneself out of military service is not a realistic option for most men.

Statistics

The armed forces comprise 22,000 troops. The number of conscripts in the armed forces is not known. Every year approx. 37,000 young men reach conscription age.

Conscientious objection

Legal basis

In 1998, the right to conscientious objection was included in the new Constitution. According to Article 166 of the 1998 Constitution: "The citizen who for reasons of conscience refuses to serve with weapons in the armed forces, is obliged to perform an alternative service, as provided by law". Article 167 further stipulates that citizens performing alternative service "enjoy all the constitutional rights and freedoms, apart from cases when the law provides otherwise".

Provisions on conscientious objection are included in the 2003 Law on Military Service (Law 9047/2003), but it is not clear to what extent these provisions have been implemented.

Consequently, it is not clear if there are application procedures for claiming the right to conscientious objection and if substitute service has been organised in practice.

Before 2003 there were no legal provisions for conscientious objection.

Scope

According to the Constitution and the Law on Military Service, both religious and non-religious grounds for conscientious objection are legally recognized. According to the Albanian government in 2004, the Law on Military Service ensures that citizens "who for religious or conscience reasons may not serve armed in the military forces" may fulfil substitute service.⁵

Time limits

It is not known if there are any legal time limits for submitting CO applications.

Procedure

According to the Law on Military Service, CO applications are decided on by a commission of the Ministry of Defence.⁶

According to a media report of August 2003, CO applications are to be decided on by a commission consisting of representatives of several ministries, including the Ministry of Defence, and representatives of religious organisations.⁷ The inclusion of representatives of religious organisations in the commission seems to suggest that religious grounds for conscientious objection may be treated favourably. However, it is not known if this commission has actually been set up nor is it known how the grounds for recognition are interpreted in practice.

Substitute service

According to the Law on Military Service, the length of substitute service is 12 months, which is the same length as military service.⁸

According to the Law on Military Service, substitute service is administered by the Ministry of Defence and the Ministry of Labour & Social Affairs and it may be performed in hospitals, social work, humanitarian organisations, environmental protection or fire-fighting.⁹

Practice

¹ United Nations Human Rights Committee, Consideration of reports submitted by states parties under Article 40 of the Covenant: Initial report Albania (CCPR/C/ALB/2004/1), 16 February 2004.

² According to the website of the Ministry of Defence, university graduates may perform a six months' military service ('Recruitment for the completion of military service'), www.mod.gov.al. According to another source, the Albanian Parliament decided in 2003 that university graduates need to complete one month of military service. ('Albanian Parliament approves amended law on military service', Albanian Radio, 10 July 2003, BBC Monitoring Service)

³ www.mod.gov.al

⁴ www.mod.gov.al

⁵ United Nations Human Rights Committee (CCPR/C/ALB/2004/1).

⁶ 'Conscientious objection in Albania', in: European Bureau for Conscientious Objection, The Right to Refuse to Kill, December 2004.

⁷ Amnesty International: Concerns in Europe and Central Asia July-December 2003 (EUR 01/001/2004).

⁸ European Bureau for Conscientious Objection (2004).

⁹ European Bureau for Conscientious Objection (2004). United Nations Human Rights Committee, Consideration of Reports submitted by states parties under Article 40 of the Covenant: Initial Report Albania, Summary record of the 2230th meeting (CCPR/C/SR.2230), 25 October 2004.

As outlined above, it is not clear how far the application procedure is actually functioning. Substitute service does not seem organised in practice yet.¹⁰

The right to conscientious objection does not seem widely known about in Albania. Since the legal provisions on conscientious objection were introduced in 2003, not many CO applications have been made. The first four CO applications were reportedly made in June 2004.¹¹ It is not known if these applications have been accepted and it is not known if these COs have been called up to perform substitute service.

During the 1990s there were several cases of Jehovah's Witnesses who refused to perform military service. Some were sentenced for failure to respond to call-up for military service, which is punishable under Article 16 of the 1995 Military Criminal Code with a fine or up to two years' imprisonment. By 2000, there were 14 known cases of Jehovah's Witnesses who had refused to perform military service. Three of them were sentenced to six months' imprisonment for draft evasion. On release, they were called up again and again refused to serve.¹²

Since 2000, there have been no known cases of Jehovah's Witnesses being imprisoned for refusing military service.¹³

ANDORRA

Andorra has no armed forces. France and Spain are responsible for the external security of Andorra. The national police force is responsible for internal security.

According to Article 38 of the Constitution: "The state may create by law types of community service to pursue tasks of general interest".¹⁴ In practice, the government has never introduced forms of compulsory (military) service.

¹⁰ During the United Nations Human Rights Committee discussion on Albania's state report in October 2004, the Albanian delegation did not clarify if substitute service was available in practice, but only mentioned that the Constitution allowed COs to perform substitute service (United Nations Human Rights Committee CCPR/C/SR.2230).

¹¹ European Bureau for Conscientious Objection (2004).

¹² Exercise of the right of conscientious objection to military service in Council of Europe member states, Report Committee on Legal Affairs and Human Rights, Doc. 8809 (Revised), 4 May 2001.

¹³ During the United Nations Human Rights Committee's discussion on Albania's state report in 2004, one committee member asked if certain COs, such as Jehovah's Witnesses, had been sentenced to prison terms. This question was, in fact, not answered by the Albanian delegation. (United Nations Human Rights Committee CCPR/C/SR.2230)

¹⁴ Coalition to Stop the Use of Child Soldiers: Child Soldiers Global Report 2004.

ARMENIA

Conscription

Conscription is enshrined in Article 47 of the 1995 Constitution and is further regulated by the 1998 Law on Military Service.

The length of military service is 24 months.

All men between the ages of 18 and 27 are liable for military service. Men who have the officer level and possess specific skills may be called up for service up to the age of 35.

Young men receive pre-draft instructions at the age of 16, according to which they are registered on the call-up list and must undergo medical examination. Call-up for military service takes place at the age of 18. There are two call-up periods per year, one during spring and one during autumn.

Since 2004, students can no longer postpone their military service. Consequently, young men have first to complete military service before they can start their university studies.¹⁵

The Law on Military Service provides for reservist obligations up to the age of 55. However, since 1995 reservists have seldom been called up in practice.¹⁶

Since 1988, Armenia has been in conflict with Azerbaijan over the territory of Nagorny Karabakh. Since 1994 there has been a ceasefire and Nagorny Karabakh is de facto, an independent territory, maintaining close contacts with Armenia. However, the situation has remained tense ever since. Armenian conscripts may be deployed in Nagorny Karabakh and adjacent occupied territories in Azerbaijan.¹⁷

Statistics

The armed forces comprise 46,000 troops, including 34,900 conscripts. Every year, approx. 32,000 young men reach conscription age; approx. 60 per cent are recruited.

Conscientious objection

Legal basis

The right to conscientious objection is legally recognized with the Armenian Law on Alternative Service. The law was adopted by the Armenian Parliament in December 2003 and entered into force on 1 July 2004.

Before 2004, the right to conscientious objection was not legally recognized. Upon accession to the

Council of Europe in 2001 the Armenian government committed itself to adopt legislation on conscientious objection within three years. Although the Armenian government has managed to introduce such legislation within this deadline, the Law on Alternative Service does not comply with international standards on conscientious objection.

Scope

The Law on Alternative Service does not clearly specify which grounds for conscientious objection are legally recognized. According to Article 3: "A citizen subject to compulsory military conscription has the right to do alternative service, if the bearing, keeping, maintaining, and using of arms contradict his religious belief or convictions."

This wording suggests that only religious grounds for conscientious objection are legally recognized. The Head of the Armenian Delegation to the Council of Europe has, however, stated that civilian service will be open to COs who refuse military service for both religious beliefs and other convictions.¹⁸

As the Law on Alternative Service entered into force recently (1 July 2004), it remains to be monitored how the Armenian authorities will interpret the grounds for recognition in practice.¹⁹

Time limits

There is a strict time limit for submitting CO applications. According to Article 4 of the Law on Alternative Service, applications must be made prior to 1 March or 1 September preceding the date of the next draft. Applications can thus not be made by serving conscripts or reservists.

There are no legal provisions for the right to conscientious objection for professional soldiers.

Procedure

According to the Law on Alternative Service, applications must be made to the local military conscription committee (Ministry of Defence). The committee conducts a personal interview with the applicant, after which it makes a decision. If the application is rejected, the committee needs to inform the applicant of its decision within ten days (Article 10).

In October 2004, the Armenian government announced that it plans to create a special committee within the central army committee that will be responsible for deciding on CO applications. According to the Ministry, local conscription

¹⁵ Until 1998 university graduates could perform a reduced military service of 18 months.

¹⁶ Netherlands Ministry of Foreign Affairs: *Algemeen Ambtsbericht Armenie* (country report), July 2004.

¹⁷ UNHCR Department of International Protection: *International Protection Considerations Regarding Armenian Asylum-seekers and Refugees*, Geneva, September 2003.

¹⁸ Friedhelm Schneider: Armenian CO law slightly improved and passed - CoE reacts ambivalently, in: *European Bureau for Conscientious Objection: The Right to Refuse to Kill*, March 2004.

¹⁹ The actual wording of Article 3 is actually different from the draft law that was previously discussed in 2003. Under this draft law the right to conscientious objection only applied to members of registered religious organisations who forbid their members to bear arms.

committees turn out to have insufficient expertise to decide on CO applications.²⁰

If the application is rejected, there is a right to appeal to the republican military conscription committee (Ministry of Defence) within ten days of receiving the rejection. Afterwards, there is a right to appeal to the court within one month (Article 11).

Substitute service

The length of substitute service is 42 months. This is more than one and a half times the length of military service.²¹

Substitute service is administered by the Ministry of Defence. The Law on Alternative Service refers to substitute service as 'alternative labour service' that is to be performed outside the armed forces (Article 2). In addition, Article 16 stipulates that COs "cannot be appointed to posts designated for compulsory or contractual servants of the armed forces or other troops of the Republic of Armenia". However, the same Article states that COs "shall wear a uniform, the design and wearing procedure of which shall be defined by the Republic of Armenia government".²²

The Law on Alternative Service does not specify exactly where substitute service may be performed. According to Article 14, the list of workplaces for substitute service is to be defined by the government. In October 2004, the government adopted Decree No. 940 on "Locations for alternative military service and alternative service uniform". According to this decree, substitute service may be performed in psychiatric hospitals, orphanages and clinics in the regions of Syunik, Gegharkunik and Tavush.²³

The Law on Alternative Service does not contain provisions on reservist duties for COs, nor does it contain specific provisions on the right to conscientious objection during wartime.

Practice

The Law on Alternative Service entered into force on 1 July 2004. So far, not many CO applications have been made. According to the Ministry of Defence, 20 CO applications were made during the autumn draft of 2004.²⁴

So far, all CO applications have apparently been made by religious COs, in particular members of the Jehovah's Witnesses. At present, there are no known cases of non-religious COs applying for substitute service. Consequently, it remains

unclear if CO applications that are made on non-religious grounds may be granted.

It is unclear to what extent substitute service has been organized in practice yet. By the end of 2004, all legal requirements to implement the Law on Alternative Service were reportedly in place.²⁵

No COs actually started performing substitute service during 2004. Following the introduction of Decree 940 in October 2004, some workplaces in civilian institutions are apparently available. According to the Armenian government, the first 20 COs will start their substitute service in the spring of 2005.²⁶

Although the adoption of Decree 940 allows for a substitute service outside the armed forces, it remains to be monitored to what extent substitute service will be available in practice. The Ministry of Defence has regularly stated on several occasions that the model of civilian substitute service is not applicable in Armenia. The Ministry of Defence has previously stated that COs will serve in unarmed detachments within the armed forces, suggesting that members of religious denominations will serve together in specific units.²⁷

Other sources have also expressed concern about the civilian nature of substitute service. According to the head of the Armenian branch of the Jehovah's Witnesses in October 2004, it is unclear what substitute service consists of and the authorities fail to inform COs about the content of substitute service. Some Jehovah's Witnesses have reportedly refused to perform substitute service for this reason.²⁸

Consequently, it will need to be monitored closely to what extent substitute service will be available in practice for all COs.

The duration of substitute service (42 months) clearly does not comply with international standards on conscientious objection. In January 2004, the Parliamentary Assembly of the Council of Europe in fact denounced the length of substitute service as being "unacceptable and excessive" and called for a reduction of substitute service to 36 months. In October 2004, the Parliamentary Assembly again called upon the Armenian government to reduce the length of substitute service.²⁹

²⁰ Karine Mangasarian: Not many people desert from military service, YERKIR weekly, 29 October 2004, www.yerkir.am

²¹ The Law on Alternative Service also provides for a 36 months' unarmed military service within the armed forces.

²² The draft law that was previously discussed in 2003 did not clearly provide for a substitute service outside the armed forces.

²³ Mangasarian (2004).

²⁴ Embassy of the USA, Yerevan: Daily Media Reviews, 11 December 2004, www.usa.am/mediareviews.html

²⁵ US State Department Bureau of Democracy, Human Rights and Labor: Country report on human rights practices 2004, 28 February 2005.

²⁶ Aghvan Vardanian (Ministry of Labour), quoted in: 'Alternative military service in Armenia', www.panarmenian.net, 17 November 2004.

²⁷ Sedrak Sedrakyan (Head of the Legal Department of the Ministry of Defence), quoted in: Zhanna Alexanyan: Guns and God: State offers alternative to military service for those with religious objections, www.armenianow.com, 2 July 2004.

²⁸ Emil Danielyan: Armenia Legalizes Jehovah's Witnesses, www.hra.am (Human Rights in Armenia), 12 October 2004.

²⁹ Parliamentary Assembly of the Council of Europe, Resolution 1361, Honouring of obligations and commitments by Armenia,

However, the Armenian government has no intention of reducing the length of substitute service. The Armenian authorities have regularly defended their tough position on COs by claiming that Armenia cannot afford to introduce CO legislation that is more liberal than Azerbaijan, as long as the conflict over Nagorny Karabakh is not resolved.

Background

Ever since Armenia became an independent country in 1991, many COs have refused military service and applied for a substitute service outside the armed forces. They were mostly members of religious denominations who forbid their members to bear arms. Between 2000 and 2004, approx. 170 Jehovah's Witnesses have been imprisoned for refusing military service. In many cases they received the maximum sentence of two years' imprisonment for draft evasion.

Upon accession to the Council of Europe in 2001, the Parliamentary Council called upon the Armenian authorities to release all imprisoned COs. The Armenian government did release 37 Jehovah's Witnesses in June 2001, but it continued to imprison new Jehovah's Witnesses afterwards. In June 2004, the Deputy Speaker of Parliament, Tigran Torosyan, declared that all imprisoned COs would be released from prison once the Law on Alternative Service entered into force.³⁰ The Armenian government has, however, not done so. 10 COs remained imprisoned and 17 others were released to house arrest after serving one-third of their sentences.³¹

The Law on Alternative Civilian Service is not applied retroactively. Consequently, CO applications that are made by conscripts who have been called up before July 2004 are not taken into consideration. During 2004, several Jehovah's Witnesses were sentenced to imprisonment for refusing military service, most of them to 18 months' or two years' imprisonment under Articles 327 and 362 of the Criminal Code for draft evasion. By January 2005, 12 Jehovah's Witnesses are imprisoned and a further two are under arrest awaiting trial.³² They were actually called up for military service in May 2004 and all expressed their willingness to perform a substitute service outside the armed forces.³³

Several Jehovah's Witnesses, after their release from prison as conscientious objectors to military service, have been refused identity documents (internal passports) because they have not been given a document of registration by the military commissariat. The identity documents are necessary for such things as employment or marriage. Some Jehovah's Witnesses have been refused residency registration, a requirement in Armenia.³⁴

Besides Jehovah's Witnesses, members of other religious denominations who forbid their members to bear arms (such as Seventh Day Adventists and Pentecostals) have also refused military service. They were often allowed to do an unarmed military service within the armed forces. In fact in 2001 the Ministry of Defence issued an internal instruction that allowed members of these denominations to perform unarmed military service.³⁵

This internal instruction apparently did not apply to Jehovah's Witnesses. For years the Jehovah's Witnesses have, in fact, been denied official registration by the Armenian authorities. Their refusal to perform military service was believed to be one of the reasons for the denial of registration. In October 2004, Jehovah's Witnesses finally received state registration.

Before July 2004, there have been no known cases of non-religious COs demanding to perform a substitute service outside the armed forces. It is unlikely that they would have been allowed to perform unarmed military service, as the Armenian authorities have primarily treated the issue of conscientious objection in a religious context. Moreover, the internal instruction issued by the Ministry of Defence in 2001 only applied to members of certain religious organisations. Consequently, the only way in which non-religious COs could avoid military service was by bribing draft officials or by evading call-up.

As stated above, it remains unclear if the introduction of the Law on Alternative Service in 2004 has improved the position of non-religious COs, because it remains unclear if applications that are made on non-religious grounds are granted by the authorities.

Draft evasion

Draft evasion is widespread, which is due to several factors. Conscripts face the risk of being sent to serve in Nagorny Karabakh or adjacent

12 January 2004. Parliamentary Assembly of the Council of Europe, Resolution 1405, Implementation of Resolutions 1361 (2004) and 1374 (2004) on the honouring of obligations and commitments by Armenia, 7 October 2004.

³⁰ Felix Corley: Imprisonment, no registration and no identity documents for JW's, Forum 18 News Service, 3 August 2004.

³¹ US State Department Bureau of Democracy, Human Rights and Labor: Country report on human rights practices 2004, 28 February 2005.

³² 'Imprisonment of conscientious objectors to military service', www.jw-media.org, 19 January 2005.

³³ Corley (19 October 2004).

³⁴ Amnesty International: Europe and Central Asia. Summary of Amnesty International's Concerns in the Region, January-June 2004.

³⁵ Parliamentary Assembly of the Council of Europe, Report of the Committee on the Honouring of Obligations and Commitments by Member States, Doc. 10027, 12 January 2004.

territories. Poor conditions and human rights violations within the armed forces lead to many casualties. For example: approx. 100 conscripts are believed to die annually from malnutrition, bullying and accidents.³⁶

Draft evasion is punishable under Article 327 of the 2003 Criminal Code with a fine of 300 to 500 times the minimum salary, with detention for a term of up to two months, or with imprisonment for a term of up to two years. In case of aggravating circumstances, such as inflicting body injuries or forging documents, the maximum imprisonment is between one and five years. Desertion is punishable under Article 362 with up to five years' imprisonment.³⁷

Those who are sentenced to less than two years' imprisonment often serve their sentences in so-called disciplinary battalions within the armed forces. Upon release, draft evaders and deserters are still liable to complete their term of military service.³⁸

The Armenian authorities maintain a strict monitoring of draft evasion. Men who do not respond to a call-up usually receive two written warnings first. If they do not respond to these warnings, the police may arrest them.³⁹ The Military Commission reportedly visits the home addresses of men who do not respond to a written warning, although such house searches are actually not allowed by law.⁴⁰

The authorities maintain surveillance on draft age men to prevent them from leaving the country. In addition, the Armenian government has made an agreement with the Russian authorities on the extradition of Armenian draft evaders who are living in the Russian Federation.

Detailed figures on the prosecution of draft evaders are not available. The Ministry of Defence has however stated that 16,000 cases of draft evasion were registered between 1991 and 2000.⁴¹

According to the Ministry of Justice, between 2000 and July 2002, 207 young men were sentenced on the charge of avoiding conscription.⁴²

These figures indicate that the number of people who are prosecuted in connection with evading military service is, in fact, far larger than the known cases of imprisoned Jehovah's Witnesses.

In January 2004, the Parliamentary Assembly of the Council of Europe called upon the Armenian

government to release all imprisoned COs.⁴³ In October 2004, the Parliamentary Assembly again called for an amnesty for conscientious objectors who are serving prison sentences and for the release of all those who are imprisoned because they refused to perform military service.⁴⁴ The Armenian authorities have clearly not followed up these resolutions, as is exemplified by the cases of Jehovah's Witnesses who have remained imprisoned in 2004. Details on others who have been convicted for evading military service are not known.

In March 2004, the Armenian government announced a limited amnesty for draft evaders. The amnesty allows draft evaders to buy off criminal prosecution on the payment of a sum of 3,500 USD, which is the equivalent of one year's salary for the average Armenian. The amnesty only applies to those who fled from Armenia before 1995. Between 1988 and 1994, when the armed conflict in Nagorny Karabakh was at its height, an estimated 16,000 men fled Armenia, many of whom were draft evaders and deserters.⁴⁵

³⁶ ACCORD/UNHCR: 8th European country of origin seminar, Vienna, 28-29 June 2002 (final report).

³⁷ During wartime higher terms of imprisonment apply. Despite the intensity of the conflict with Azerbaijan, Armenia has never been in an official state of war. (UNHCR 2003).

³⁸ Netherlands Ministry of Foreign Affairs (2004).

³⁹ Netherlands Ministry of Foreign Affairs (2004).

⁴⁰ ACCORD/UNHCR (2002).

⁴¹ 'Armenian MP says draft dodgers to buy themselves out', Ayots Ashkar, 28 June 2001 (BBC Monitoring Service).

⁴² 'Jehovah's Witnesses continue to face imprisonment for religious beliefs', www.armenianow.com, 20 December 2002.

⁴³ Parliamentary Assembly of the Council of Europe, Resolution 1361.

⁴⁴ Parliamentary Assembly of the Council of Europe, Resolution 1405.

⁴⁵ Haroutiun Khachatryan: Amnesty for cash for diaspora draft dodgers, Eurasia Insight, www.eurasianet.org, 8 January 2004.

AUSTRIA

Conscription

Conscription is enshrined in Article 9(a) and 19(a) of the Constitution and is further regulated by the 1990 Defence Law (Wehrgesetz).

The length of military service is 8 months. Conscripts may also serve for 6 months and serve the remaining two months at a later stage in reservist units.

All men between the ages of 18 and 35 are liable for military service. Reservist duties apply for 15 years after completion of military service, and up to the age of 50 or 65 for officers.⁴⁶

In 2004, a government commission concluded a review of the future of the Austrian armed forces. The report of the commission includes several proposals, including a reduction of the duration of military service to six months, possibly by 2007. Chancellor Schüssel has proposed reducing it to 6 months by 2006 already. The reform commission has also discussed the possible abolition of conscription by 2010. As the report of the reform commission still needs to be discussed by the Austrian Parliament, no decisions have been made yet.⁴⁷

Statistics

The armed forces comprise 40,000 troops, including 17,000 conscripts. Every year approx. 49,000 young men reach conscription age. Approx. 75 per cent are recruited.

Conscientious objection

Legal basis

The right to conscientious objection has been legally recognized since 1974. The right to conscientious objection is included in Article 9(a) of the Constitution, which states that citizens who refuse to perform military service for reasons of conscience must perform an alternative service. Its further legal basis is laid down in the 1986 Law on Civilian Service (Zivildienstgesetz).⁴⁸

Scope

Both religious and non-religious grounds for conscientious objection are legally recognized. According to Article 2 of the Law on Civilian Service, the right to conscientious objection applies to "those who can't perform military service because they - except in cases of personal emergency - denounce for reasons of conscience to use armed violence against people and performing

military service may get them into conflict with their conscience".

Time limits

There are several time limits for submitting CO applications (Law on Civilian Service, Article 2.2). Applications must be made within six months of receiving the notification of fitness for military service, but at least two days before receiving call-up papers for military service.

Applications cannot be made by serving conscripts. Applications can be made after completion of military service, but in this case the application needs to be made within three years of the first day of military service. After this period, reservists can no longer make a CO application.

There are no legal provisions for the right to conscientious objection for professional soldiers.⁴⁹ The Law on Civilian Service only applies to conscripts and does not contain provisions for professional soldiers.

Procedure

Applications must be made to the Ministry of Interior. The Ministry has produced a standard form, which basically states that the applicant agrees with the wording of Article 2 of the Law on Civilian Service.

Since 1991, no personal interviews take place. Consequently, applications are almost automatically granted, provided they are submitted within the time limits. An application may be rejected if the applicant has been convicted for a criminal offence, if the applicant is employed by the state police, if the applicant has a gun licence, or if the applicant's objections to the use of violence are considered to be conditional and politically motivated (Law on Civilian Service, Article 5(a)).

If the application is rejected, there is a right of appeal to a civil court.

Substitute service

The length of substitute service is 12 months. This is one and a half times the length of military service.⁵⁰

Substitute service is administered by the Ministry of Interior. Substitute service may be performed in several institutions in the public sector, such as hospitals, social work and emergency relief. It may also be performed with non-governmental organisations, such as the Austrian Red Cross.

⁴⁶ www.bmlv.gv.at/rekrut (Ministry of Defence)

⁴⁷ 'Cuts proposed for Austrian Forces, Draft', www.defensenews.com, 14 February 2005.

⁴⁸ Law on Civilian Service, www.zivildienstverwaltung.at/material/zdg.pdf

⁴⁹ Exercise of the right of conscientious objection to military service in Council of Europe member states, Report Committee on Legal Affairs and Human Rights, Doc. 8809 (Revised), 4 May 2001.

⁵⁰ Before 1991, substitute service was of the same duration as military service. When the Austrian government abolished individual examinations of CO applications in 1991, it apparently wanted to make substitute service less attractive by increasing its duration. Consequently, substitute service was increased to 10 months in 1991, to 11 months in 1994 and to 12 months in 1996.

COs may also perform a 14 month voluntary service abroad. COs who have completed such service, which usually consists of peace work or social work, are exempt from substitute service.

After completion of substitute service, COs have reservist duties up to the age of 50. During time of war or emergency, COs may be called up for "extraordinary civilian service", which consists of several unarmed duties such as emergency aid (Law on Civilian Service, Article 21). So far, COs have never been called up for reservist duties in practice.

In 2000, the government greatly reduced the payment of COs. Before 2000, COs were paid by the government and received approximately the same payment as conscripts in the armed forces. Now, the salaries of COs have to be partially paid for by the employing organisations themselves. The government has set guidelines on appropriate payment, but as these are very low this effectively means that CO salaries have been cut by half. Austrian CO groups have lodged several complaints with the Constitutional Court, which has in fact ruled that the new payment regulations are a violation of the constitutional right of free choice between military and civilian service. As the Constitutional Court did not rule which body is to be responsible for increasing CO salaries, the issue has still not been settled. Consequently, in practice the payment of COs remains far below the payment of conscripts in the armed forces.⁵¹

Practice

The following table gives the number of granted CO applications in recent years:⁵²

1999	7,348
2000	6,326
2001	8,249
2002	8,932
2003	9,596
2004	10,335

Parallel to the review of the armed forces and the planned reduction of the length of military service, the future of substitute service is also the subject of political debate. In 2004 the government installed a commission, chaired by the president of the Austrian Red Cross, to draw up a proposal for the future of substitute service and its consequences for the Austrian health and social sector. The commission presented its final report in January 2005 and proposes reducing the length of substitute service to 9 months. The commission has also proposed models for the development of voluntary or compulsory service for young people,

in case conscription is abolished.⁵³ The report of the commission will be further discussed by the Austrian Parliament during 2005.

Background

During the 1990s there were several cases of COs whose applications had been rejected because they were not submitted within the time limit. They continued to refuse military service and were consequently sentenced to up to one year's imprisonment under the Military Penal Code for "failure to comply with call-up orders". Around 1997 this attracted considerable international attention and some of the COs concerned were in fact adopted as prisoners of conscience by Amnesty International. In 1997, Schwechat District Court acquitted a CO of these charges and ruled that he could not be reproached for not knowing about the time limits, especially because the authorities had made no particular efforts to inform the public about the introduction of the time limits.

Since 1998, there have been no known cases of COs being imprisoned after not submitting their CO applications within the time limit.⁵⁴

⁵¹www.zivildienst.at (Austrian Union of Conscientious Objectors).

⁵² '2004 Wieder ein neuer Zuweisungsrekord', www.zivildienstverwaltung.at (Ministry of Interior).

⁵³ Zivildienstreformkommission: Endbericht, www.zivildienstreform.at

⁵⁴ Amnesty International: Conscientious objection to military service: A summary of current concerns (EUR 13/001/1997).

AZERBAIJAN

Conscription

Conscription is enshrined in Article 76 of the 1995 Constitution and is further regulated by the 1992 Law on the Armed Forces.

The length of military service is 18 months, and 12 months for university graduates.

All men between the ages of 18 and 35 are liable for military service. Young men are usually called up for medical examination at the age of 16, after which they are called up for military service at 18. There are four call-up periods per year.⁵⁵

According to the Law on the Armed Forces, reservist obligations apply during wartime up to the age of 50. During peacetime, men are not called up for reservist duties.⁵⁶

Ever since 1988 Azerbaijan has been in an undeclared state of war with Armenia about the territory of Nagorny Karabakh. Nagorny Karabakh is on Azerbaijan territory, but it is claimed by Armenia. Since 1994 there is a ceasefire and Nagorny Karabakh is de facto independent, maintaining close contacts with Armenia. However, the situation has remained tense ever since and Azerbaijan conscripts may be deployed to serve in areas near Nagorny Karabakh.

Statistics

The armed forces comprise 67,000 troops. The number of conscripts is not known. Every year, approx. 80,000 young men reach conscription age.

Conscientious objection

Legal basis

The right to conscientious objection is enshrined in Article 76 of the 1995 Constitution. The Article reads (as amended in 2002): "If serving in the armed forces runs counter to a person's convictions, then active military service can be replaced by an alternative service done in the cases specified by law."

The wording of this Article was actually changed during a referendum that was held about the Constitution in 2002. Amongst several changes, Article 76 was changed as well. Previously, the Article read that military service could be replaced by alternative *military* service. The change in the wording at least allows for the option of an alternative civilian service outside the armed forces.⁵⁷

The right to conscientious objection is also included in the 1992 Law on the Armed Forces. According to Article 2: "in the cases defined by law, citizens who cannot accept an active military service because of their beliefs or other reasons must serve 24 months' alternative service".

However, no further legislation on conscientious objection has ever been introduced. In 1991, when still part of the former Soviet Union, the Azerbaijan Parliament adopted a law on alternative service, but this law was never officially published and it never applied. In 1998, a draft CO law was rejected by Parliament.

Both government and Parliament members have repeatedly taken the position that Azerbaijan cannot afford to introduce a substitute service for COs as long as the situation in Nagorny Karabakh is not resolved and adjacent Azerbaijan territory is not liberated.

Upon accession to the Council of Europe in 2000, Azerbaijan committed itself to introducing legislation on conscientious objection within two years: by January 2003.⁵⁸ The government has failed to meet this deadline. Furthermore, the United Nations Human Rights Committee called upon the Azerbaijan government in 2001 "to ensure that persons liable for military service may claim the status of conscientious objector and perform alternative service without discrimination".⁵⁹

In 2004, the Parliamentary Defence Committee was preparing a draft law on alternative service. Parliament was in fact supposed to discuss the draft law during the spring and summer of 2004, but it has failed to do so.⁶⁰ By February 2005, it has become clear that the draft law has still not been finalized and very little progress has been made since the first reading of the draft law in the beginning of 2004. No specific date has been set when the law will be further discussed by Parliament.⁶¹

Meanwhile, in October 2004 the Parliamentary Assembly of the Council Europe adopted a resolution in which it (again) requested the

Europe. Report to the OSCE Supplementary Meeting on Freedom of Religion or Belief 17-18 July 2003, Hofburg, Vienna.

⁵⁸ Council of Europe, Parliamentary Assembly, Opinion No. 222 (2000), Azerbaijan's application for membership of the Council of Europe.

⁵⁹ United Nations Human Rights Committee: Concluding observations on the periodic report of Azerbaijan (CCPR/CO/73/AZE), 2001.

⁶⁰ 'Draft law on alternative military service under consideration', www.azernews.net 15 January 2004. 'Parliament News', www.azernews.net 13 May 2004.

⁶¹ Spokesman of the Azerbaijani Parliament, quoted in: Felix Corley: Jehovah's Witness seeks right to alternative service, Forum 18 News Service, 6 October 2004. Spokesman of the Azerbaijani Parliament, quoted in: Felix Corley: Supreme Court claims constitutional right doesn't exist, Forum 18 News Service, 10 February 2005.

⁵⁵ Until 2001, men could be called up for military service up to the age of 27.

⁵⁶ Netherlands Ministry of Foreign Affairs: Algemeen ambtsbericht Azerbaijan (country report), June 2004.

⁵⁷ War Resisters' International (2003): The Right to Conscientious Objection to Military Service in selected member states of the Organisation for Security and Cooperation in

Azerbaijani authorities to introduce an alternative to military service.⁶²

Practice

Pending the introduction of a law on conscientious objection, the legal position of COs remains unclear. There is no application procedure whereby one can claim the right to conscientious objection and there is no possibility of performing substitute service.

Over the years, numerous COs have, for religious reasons, refused military service and have applied for an alternative service outside the armed forces. They are mostly members of the Jehovah's Witnesses and other religious organisations who forbid their members to bear arms.

Pending the introduction of a CO law, most of these religious COs are apparently not called up for military service. According to a spokesman of the Government Committee for Religious Structures in November 2002, approx. 2,000 religious COs had not been called up for service in previous years.⁶³

According to the Azerbaijan Ombudsman in 2004, religious COs who refuse military service for reasons of conscience should state this to the military authorities. Consequently, they would usually not be called up for service.⁶⁴

Nevertheless, the legal position of COs remains unclear. In 2002 the Azerbaijan authorities were actually preparing to start criminal proceedings against religious COs who had refused military service in previous years.⁶⁵ In 2002, the military authorities actually lodged criminal proceedings against two Jehovah's Witnesses who had refused military service. Their cases were eventually dropped, which was apparently due to the constitutional changes made in 2002.⁶⁶

In 2004 there is a new case of a Jehovah's Witness who is being prosecuted for refusing military service. Mahir Bagirov was called up for service in May 2004, but he refused and applied for a substitute service. He made an appeal against his call-up to Baku Khatai district court and to the Constitutional Court, but his appeal was rejected on both occasions. After that, he made an appeal to the Supreme Court. In February 2005, the Supreme Court turned down his appeal and ruled that the constitutional right to conscientious objection does not apply as long as no law on

alternative service has been introduced. Consequently, Bagirov may now be arrested by the military and be forced to perform military service.⁶⁷

There are no known cases of COs who have applied for an alternative service on non-religious grounds. As the Azerbaijan authorities have so far treated the issue of conscientious objection primarily in a religious context, it seems unlikely that their applications would be treated liberally. Consequently, the only way in which non-religious COs can avoid military service is by bribing draft officials or by evading call-up.

Draft evasion

Evading military service is punishable under Article 321 of the Criminal Code with up to 2 years' imprisonment during peacetime. Desertion is punishable under Article 334 with 3 to 7 years' imprisonment during peacetime. First time offenders may be freed from criminal liability. During wartime, higher sentences apply.⁶⁸

Draft evasion is widespread in Azerbaijan. Military service is unpopular as the armed forces are known for their poor conditions and human rights violations. Since 1994 more than 5,000 soldiers have reportedly died from bullying, accidents, disease and malnutrition.⁶⁹

Detailed figures on prosecution and imprisonment of draft evaders and deserters are hard to obtain. Available figures, however, suggest that draft evaders are prosecuted regularly. The Azerbaijan Ministry of Justice stated in 2002 that there were 2,611 draft evaders and deserters in prison.⁷⁰ According to the UNHCR, draft evaders and deserters are prosecuted at random and proceedings often depend on individual commanders in charge.⁷¹

In 2000, the Parliamentary Assembly of the Council of Europe called upon the Azerbaijan government to "pardon all conscientious objectors presently serving prison terms or serving in disciplinary battalions".⁷²

It remains unclear if the government has taken such steps. In recent years there are no known cases of Jehovah's Witnesses or members of other religious organisations being imprisoned for refusing military service. However, some of the draft evaders that have been prosecuted and imprisoned may be considered to be COs.

⁶² Council of Europe, Parliamentary Assembly, Resolution 1398 (2004), Implementation of Recommendation 1358 (2004) on the functioning of democratic institutions of Azerbaijan, 5 October 2004.

⁶³ Rafiq Aliyev (Head of the Government Committee for Religious Structures), quoted in: 'Azeri religious official says youths evading army on religious grounds', ANS TV, Baku, 2 November 2002 (BBC Monitoring Service). Aliyev was referring to members of the Jehovah's Witnesses, Hare Krishna and Protestant groups.

⁶⁴ Corley (6 October 2004).

⁶⁵ ANS TV (2002).

⁶⁶ War Resisters' International (2003). International Helsinki Federation for Human Rights: Annual Report 2003.

⁶⁷ Corley (10 February 2005) and Corley (6 October 2004).

⁶⁸ UNHCR: International Protection Considerations Regarding Azerbaijani Asylum-Seekers and Refugees, Geneva, September 2003.

⁶⁹ Human Rights Watch: Annual Report 2002.

⁷⁰ International Helsinki Federation for Human Rights: Annual Report 2003.

⁷¹ UNHCR (2003).

⁷² Council of Europe, Parliamentary Assembly, Opinion No. 222 (2000), Azerbaijan's application for membership of the Council of Europe.

In fact, the Monitoring Committee of the Council of Europe stated in 2002 that “no available information enables the rapporteurs to believe that steps were taken towards the pardoning of conscientious objectors”.⁷³ In addition, according to a report issued by the Council of Europe in 2001, COs serve prison sentences or serve in disciplinary battalions.⁷⁴

NAGORNY KARABAKH

The self-proclaimed republic of Nagorny Karabakh is closely linked to Armenia and has its own armed forces, which are believed to comprise 18,000 troops. Nagorny Karabakh runs a conscription system.

In February 2002, a new conscription law was introduced. The law is believed to be similar to Armenia’s conscription law. All men between the ages of 18 and 27 are liable for military service, which lasts for two years. During wartime or time of emergency, the Ministry of Defence may invoke total mobilization.⁷⁵ Reservist obligations apply and reservists are called up periodically: 30 to 40 thousand reservists reportedly receive periodic training.⁷⁶

There are no legal provisions for conscientious objection and there are no possibilities of doing a substitute service outside the armed forces.⁷⁷

COs may be prosecuted for refusing military service, which is punishable under Article 327 of the Criminal Code. Nagorny Karabakh in fact adopted the new Criminal Code of Armenia of 2003.

Treatment of COs can be harsh, as is exemplified by the case of a Jehovah’s Witness who was sentenced to four years’ imprisonment in February 2005, even though he expressed his willingness to perform substitute service outside the armed forces. The sentence was particularly high because of a recent presidential decree extending the state of emergency until 1 January 2006.⁷⁸

In previous years, COs have also been sentenced to imprisonment. In 2001, three Jehovah’s Witnesses were charged with “evasion of military development call-up”. Shusvinsky District Court sentenced two of them to custodial sentences of 6

and 8 months, and one to a one year suspended sentence. The court did not take into account that two of them had serious health problems and that, having performed military service in the past, they were refusing only to attend a one-day military refresher course. Two of these COs were reportedly released at the end of the year.⁷⁹

According to the Minister of Defence, members of other religious groups who forbid their members to bear arms may sometimes be allowed to perform unarmed military service within the armed forces.⁸⁰

⁷³ Council of Europe, Parliamentary Assembly, Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, Document 9545 Revised, 18 September 2002.

⁷⁴ Exercise of the right of conscientious objection to military service in Council of Europe member states, Report Committee on Legal Affairs and Human Rights, Doc. 8809 (Revised), 4 May 2001.

⁷⁵ The length of military service was reportedly reduced in 2002 (Netherlands Ministry of Foreign Affairs 2004).

⁷⁶ Coalition to Stop the Use of Child Soldiers: Child Soldiers Global Report 2004.

⁷⁷ Netherlands Ministry of Foreign Affairs (2004). Defence Minister Ohanyan, quoted in: Felix Corley: “Inhuman” sentence on religious conscientious objector, Forum 18 News Service, 22 February 2005.

⁷⁸ Corley (22 February 2005).

⁷⁹ Amnesty International: Concerns in Europe January-June 2001 (EUR 01/003/2001).

⁸⁰ Corley (22 February 2005)

BELARUS

Conscription

Conscription is enshrined in Article 57 of the 1994 Constitution and further regulated by the 1992 Law on Universal Military Duty and Military Service.

The length of military service is 18 months, and 12 months for university and college graduates.

All men between the ages of 18 and 27 are liable for military service. There are two call-up periods per year, one during spring and one during autumn.

Reservist obligations apply. According to a new Law on Reserve Service of January 2004, reservists may be obliged to undertake military training of up to 800 hours over a three-year period (two years for college graduates) and 250 hours a year subsequently.⁸¹

In 2003, Minister of Defence Maltsov announced a possible reduction of military service to one year in the near future. Abolition of conscription is not foreseen.⁸²

Statistics

The armed forces comprise 83,000 troops, including 30,000 conscripts. Every year, approx. 87,000 young men reach conscription age; approx. 35 per cent are recruited.

Conscientious objection

Legal basis

The right to conscientious objection is enshrined in Article 57 of the 1994 Constitution, according to which: "Procedures regulating military service, and the grounds or conditions for exemption from military service or its replacement by alternative service, shall be further regulated by law".

In addition, the 1992 military service law stipulates in Article 5.1 and 14.3 that "universal military duty" may consist of either military service or alternative service.⁸³

According to the Constitution, a law on alternative service should have been adopted two years after the adoption of the Constitution in 1994, which means before 30 March 1996.⁸⁴ However, no further legislation on conscientious objection has ever been introduced.

In 1994, the Belarusian Parliament discussed a draft law but it did not proceed with its implementation. In 1997, the Belarusian government stated to the United Nations Human Rights Committee that legislation on conscientious objection was envisaged. The Human Rights Committee in fact called upon the Belarusian government to pass such a law, providing for a civilian alternative service of equivalent length to military service, at an early date.⁸⁵

In 2001, the Belarusian Parliament again discussed a draft law, which envisaged 27 months' alternative service, to be performed on collective farms, in factories or on building sites.⁸⁶ The draft law was under preparation in Parliament for several years, but in December 2004, it was eventually rejected by the Belarusian Parliament. The Ministry of Defence reportedly considered that the conditions of the draft law were too favourable for COs, a view which was apparently shared by a majority in Parliament. The Deputy Head of the National Security Commission stated that a different law on alternative service may be drafted in the future.⁸⁷

Pending the introduction of a CO law, the legal basis of conscientious objection remains unclear. There is no substitute service available, only an unarmed military service within the armed forces. Moreover, this option is only available for COs who refuse military service on religious grounds.⁸⁸

Practice

Every year, dozens of conscripts refuse military service and apply for an alternative service outside the armed forces. The exact number of applications is not known. According to the Ministry of Defence in May 2003, the number of applications for alternative service had dropped by 50 per cent.⁸⁹ More detailed figures are not available.

⁸⁵ United Nations Human Rights Committee: Concluding observations of the Human Rights Committee: Belarus (CCPR/C/79/Add.86.), 19 November 1997.

⁸⁶ Alies Harkun: I don't want to send my son in the army, in: The right to freedom 92(20), Human Rights Centre "Viasna", Minsk, October 2001.

⁸⁷ 'Belarusian Parliament turns down bill on alternative service', Interfax, 17 December 2004.

⁸⁸ The 2004 report of the United Nations High Commissioner for Human Rights concludes that "claims to be a conscientious objector are accepted without further inquiry" (Civil and Political Rights, including the question of conscientious objection to military service, Report of the Office of the High Commissioner for Human Rights, United Nations Commission on Human Rights, 60th session (E/CN.4/2004/55), 16 February 2004). This conclusion is based on information provided by the Belarusian government. As this information is not publicly available, it is not known which information was exactly submitted. However, the conclusion drawn in the report of the High Commissioner is not in line with the actual practice, as described by several sources.

⁸⁹ 'About One Third of Recruits Unfit for Military Service', BASA-Press, 12 May 2003 (WPS Monitoring Agency).

⁸¹ Information provided by the Belarusian Defence Attaché to the USA, quoted in: Coalition to Stop the Use of Child Soldiers: Child Soldiers Global Report 2004.

⁸² 'Defence Minister pledges reduced conscription term', Minsk Belarus Television, 17 February 2003 (WPS Monitoring Agency).

⁸³ Decision of the Constitutional Court of the Republic of Belarus of 26 May, Minsk No. D-98/2000, <http://ncpi.gov.by/constsud/eng/d98.htm>

⁸⁴ In accordance with Article 4 of the 1994 Law "On the Procedure Governing the Entry into Force of the Constitution of the Republic of Belarus" (Decision of the Constitutional Court D-98/2000).

In some cases, COs are apparently allowed to serve in unarmed units of the armed forces, such as the construction battalions and railway troops.⁹⁰ Decisions on assignment to unarmed units are probably made by individual military commanders or conscription officers. It is not known which criteria are used to decide on such applications. However, all available sources suggest that only COs who refuse military service on religious grounds are allowed to do unarmed service. The Belarusian Constitutional Court in fact stated in 2000 that there are dozens of conscripts annually who "with their religious beliefs taken into account, are being sent to railway troops".⁹¹

In 2000, the case of Valentin Guhai attracted considerable attention. Guhai, a member of the Jehovah's Witnesses, asked to perform a civilian service outside the armed forces. His request was denied and he was sentenced by Rechitsa Regional Court to a conditional 18 months' prison sentence, on the condition that he would work for 18 months on a state construction project. However, in May 2000 the Belarusian Constitutional Court ruled that the constitution guarantees COs the right to a civilian alternative to military service, and it recommended to the government to take steps to ensure this right. Subsequently, Gomel Regional Court overruled Guhai's original sentence and reduced it to a one year suspended sentence.⁹² Since 2000, there have been no known cases of COs who have refused to perform unarmed military service and who were consequently prosecuted.

All known cases of COs are members of religious groups who forbid their members to bear arms. It is not known how applications that are made on secular pacifist grounds would be treated by the authorities. However, it seems unlikely that non-religious COs would be allowed to perform unarmed military service. Even the Constitutional Court, although repeatedly calling for legislation on conscientious objection, restricts the constitutional right to conscientious objection to religious grounds. According to its 2000 decision, citizens "shall have the right, in particular under religious beliefs, to substitute military service for an alternative one".⁹³

The absence of clear legal provisions for conscientious objection means that the only way in which non-religious COs can avoid military service is by bribing draft officials or evading call-up.

Draft evasion

Draft evasion and desertion are punishable under Articles 435, 437, 445, 446 and 447 of the Criminal Code. Evasion of military registration is punishable by a fine or up to three months' arrest. Draft evasion is punishable by a fine or up to two years' imprisonment, if committed after administrative punishment was imposed. Desertion and evasion of military duties by mutilation or other means is punishable by up to seven years' imprisonment.⁹⁴

Officially there are few draft evaders, the official number of 120 per year remaining unchanged for some years.⁹⁵ However, in 1998 and 1999 according to the Ministry of Defence, there were believed to be between 1,200 and 1,500 cases per year.⁹⁶

There are no detailed figures available about the scale of criminal prosecution of draft evasion. According to several sources, COs face administrative sanctions or criminal prosecution for evading call-up for military service.⁹⁷

⁹⁰ Decision of the Constitutional Court D-98/2000. US State Department Bureau for Human Rights, Democracy and Labor: International Religious Freedom report 2003.

⁹¹ Decision of the Constitutional Court D-98/2000.

⁹² Amnesty International: Conscientious Objector Valentin Gulai (EUR 49/12/00), Concerns in Europe January-June 2000 (EUR/01/03/00).

⁹³ Decision of the Constitutional Court D-98/2000.

⁹⁴ UNHCR: Basis of Claims and Background Information on Asylum Seekers and Refugees from the Republic of Belarus, October 2004.

⁹⁵ UNHCR (2004).

⁹⁶ '1,500 deserters', *Belorusskya Delovaya Gazeta*, Minsk, 3 September 1999.

⁹⁷ Representative of a NATO country's embassy, quoted in: Danish Immigration Service: Fact Finding Mission to Belarus, 30 January-7 February 2000, Copenhagen, 2000. International Helsinki Federation for Human Rights: Problems of Religious Freedom and Tolerance in Selected OSCE States, Report to the OSCE Supplementary Meeting on Freedom of Religion or Belief, Vienna 17-18 July 2003.

BELGIUM

Conscription

Belgium was one of the first Western European countries to end conscription. In December 1992 the Law on Conscription was amended and became applicable only to conscripts drafted in 1993 and earlier. The last conscripts were called up for military service in 1993. Since March 1995 the Belgian armed forces consist of professional soldiers only.

Conscription is, in fact, suspended. It may be reinforced during time of war or time of emergency by a government decision.

Conscientious objection

Belgium was one of the last Western European countries to legally recognize the right to conscientious objection in 1965. During the 1990s approx. 2,500 CO applications were made per year, about 98 per cent of which were granted.

In 1992 the Law on Conscientious Objection was amended and only became applicable to men who were born before 1975. Consequently, men who are born after 1975 have no opportunity to claim the right to conscientious objection to military service.

The right to conscientious objection is not included in the Belgian Constitution. In 1995, Belgian peace organisations proposed amending the Constitution to include the right to conscientious objection in it. This proposal was, however, rejected by the Belgian government. Belgian peace organisations have also proposed creating a register of those who want to guarantee their right to conscientious objection in case conscription is reinforced by a government decision. However, the government has not been willing to set up such a register.⁹⁸ Consequently, no legal provisions on conscientious objection exist.

There are no legal provisions for the right to conscientious objection for professional soldiers.⁹⁹

⁹⁸ European Bureau for Conscientious Objection/Heinrich Böll Foundation: European Union without Compulsory Military Service - Consequences for Alternative Service, 2000.

⁹⁹ European Bureau for Conscientious Objection/Heinrich Böll Foundation (2000).

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".¹⁰⁰

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).¹⁰¹

¹⁰⁰ 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.

¹⁰¹ Institute for Strategic Studies: Military Balance 2004/2005.

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 Sarajevo Declaration committed both entity governments to free all returnees from any form of conscription for a period of five years following return.¹⁰²

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.¹⁰³

All men between the ages of 18 and 27 are liable for military service. Inhabitants of the Brcko district are exempt from military service.¹⁰⁴

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.¹⁰⁵

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.¹⁰⁶

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.¹⁰⁷

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).

¹⁰² UNHCR: UNHCR's position on categories of persons from Bosnia and Herzegovina in continued need of international protection, September 2001.

¹⁰³ The length of military service was reduced from 12 months in 2002 and from 6 months in 2004.

¹⁰⁴ 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)

¹⁰⁵ 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.

¹⁰⁶ 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)

¹⁰⁷ Regional Network for Conscientious Objection (2004).

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.¹⁰⁸

After completing substitute service, COs are liable for reservist duties within civilian protection.¹⁰⁹

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.¹¹⁰ 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.¹¹¹

There are no detailed figures available about the percentage of granted applications. According to CO groups, most applications are apparently granted.¹¹²

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.¹¹³ 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.

The length of military service is 4 months.¹¹⁴

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.¹¹⁵

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.¹¹⁶

¹⁰⁸ Regional Network for Conscientious Objection (2004).

¹⁰⁹ Regional Network for Conscientious Objection (2004).

¹¹⁰ United Nations Volunteers: Conscientious Objection in BiH, 2003.

¹¹¹ Prigovorbih (2004).

¹¹² Prigovorbih (2004).

¹¹³ OSCE Mission to Bosnia and Herzegovina: FBiH Commission on alternative service needs administrative support, Sarajevo, 6 May 2004.

¹¹⁴ The length of military service was reduced from 9 months in 2001 and from 6 months in 2004.

¹¹⁵ Regional Network for Conscientious Objection (2004).

¹¹⁶ 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

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.¹¹⁷

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 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.¹¹⁸

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.¹¹⁹

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.¹²⁰ In many cases, CO applications are eventually approved after an appeal is made against the initial rejection.¹²¹

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.¹²²

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).

¹¹⁷ Regional Network for Conscientious Objection (2004).

¹¹⁸ Prigovorbih (2004).

¹¹⁹ Regional Network for Conscientious Objection (2004).

¹²⁰ Netherlands Ministry of Foreign Affairs: Algemeen ambtsbericht Bosnië-Herzegovina, October 2003.

¹²¹ Prigovorbih (2004).

¹²² Operation Joint Force (2004).

BULGARIA

Conscription

Conscription is enshrined in Article 59.1 of the 1991 Constitution. It is further regulated by the 1995 Law on Defence and Armed Forces.

The length of military service is 9 months, and 6 months for university graduates.¹²³

All men between the ages of 18 and 30 are liable for military service. Reservist obligations apply up to the age of 55.

During the last decade, the Bulgarian armed forces are being reformed and transformed to comply with NATO standards. No decision has been made on the abolition of conscription, but the government has announced a reduction of the length of military service to just 45 days by 2010. According to the Ministry of Defence, there is even a chance that a 45 day military service will be introduced before 2010.¹²⁴

Statistics

The armed forces comprise 51,000 troops, including conscripts. Every year, approx. 53,000 young men reach conscription age.

Conscientious objection

Legal basis

The right to conscientious objection is included in Article 59.2 of the 1991 Constitution, according to which: "The carrying out of military obligations, and the conditions and procedure for exemption there from or replacing them with alternative service, shall be established by law."

Further provisions on conscientious objection are laid down in the 1998 Law for Replacement of Military Obligations with Alternative Service. The Law has been amended several times.

Scope

Both religious and non-religious grounds for conscientious objection are legally recognized. According to Article 3 of the 1998 Law: "All Bulgarian male citizens, liable to conscription for military service, have the right to apply for replacement of their military obligations with an alternative service as a practice of their constitutional right of freedom of conscience, freedom of thought and free choice of religion if they do not want to serve with arms."

¹²³ The length of military service was reduced from 18 months in 1997 and from 12 months in 2000.

¹²⁴ 'Military service will be just 45 days in 2010', The Sofia Independent, 28 July 2004.

Time limits

There is a time limit for submitting CO applications, as applications can only be made before starting military service. Applications can thus not be made by serving conscripts and reservists.

There are no legal provisions for the right to conscientious objection for professional soldiers.¹²⁵ The 1998 Law only applies to conscripts and does not contain any provisions for professional soldiers.

Procedure

Applications must be made to the local military commander who forwards it to the Alternative Service Commission (Ministry of Welfare & Labour). This Commission consists of representatives of the Ministry of Defence, the Ministry of Religious Affairs and a medic, and is chaired by a lawyer. A personal interview may be part of the procedure, but this is not necessarily the case. The Commission takes its decisions by an open vote ballot with a two thirds majority. If the application is rejected, there is a right of appeal to an administrative court.¹²⁶

Substitute service

The length of substitute service is 13.5 months, and 9 months for university graduates. This is one and a half times the length of military service.

Substitute service is administered by the Ministry of Welfare & Labour. It can only be performed in state institutions, more specifically "in state and municipal institutions, welfare organisations, state and municipal health service, environment protection, public utilities, civil defence, the armed forces and other sectors of the national economy which do not require the use of arms" (Article 5.1).

Substitute service cannot be performed in "trade companies, associations and foundations with idealistic or political purposes or trade unions" (Article 6.2).

The 1998 Law allows the Ministry of Defence to set an annual quota for the number of people who are allowed to do substitute service (Article 6.4).

After completing substitute service, COs are included in the reserves. In case of mobilization or war, COs may be called up to serve in the armed forces, but they may not be given "work connected to the use or carrying of arms" (Article 49.2).

Practice

Since the law on alternative service entered into force on 1 January 1999, not many applications have been made. Exact figures are not available,

¹²⁵ Exercise of the right of conscientious objection to military service in Council of Europe member states, Report Committee on Legal Affairs and Human Rights, Doc. 8809 (Revised), 4 May 2001.

¹²⁶ Youth Society for Peace and Development of the Balkans (YSPDB): Situation in the field of Conscientious Objection in the Republic of Bulgaria. Plovdiv, 2003.

but the number of applications is estimated to be at most 50 per year.¹²⁷

The right to conscientious objection is not widely known about in Bulgaria. The Bulgarian government has been criticized regularly for not fully informing conscripts about the possibility of substitute service. Most conscripts are apparently not aware about the application procedure for substitute service.¹²⁸ Moreover, human rights observers have claimed that the application procedure is unclear.¹²⁹

There are no figures available about the percentage of applications that is granted. In the past, CO groups have expressed concern that the inclusion of a member of the Ministry of Religious Affairs in the Alternative Service Commission might mean that religious grounds would primarily be recognized. Moreover, the Alternative Service Commission annually requires a list of religious organisations who forbid their members to bear arms. It is, however, difficult to assess to what extent applications on non-religious grounds are granted as no such applications are known to have been made.¹³⁰

Although substitute service was introduced in 1999, it is still not organised effectively. The Ministry has not managed to find sufficient workplaces where substitute service can be performed. Consequently, COs may have to wait for several years before they can actually start their substitute service. Until now, most COs have served in hospitals and as construction workers outside the armed forces.¹³¹

Background

Although the right to conscientious objection was included in the Bulgarian Constitution in 1991, further legislation was only introduced in 1998. Between 1991 and 1998, COs could only perform an unarmed military service within the armed forces in the so-called 'construction battalions'. During this period, 12 COs (all of them Jehovah's Witnesses) who refused to perform unarmed service, were sentenced to between 10 and 18 months' imprisonment under Article 361 of the Criminal Code for "failing to respond to call-up for military service".

Four of them made a complaint to the European Court of Human Rights, accusing the Bulgarian government of violating their constitutional right

¹²⁷ Information provided by Youth Society for Peace and Development of the Balkans, June 2004.

¹²⁸ Youth Society for Peace and Development of the Balkans (2003).

¹²⁹ US State Department Bureau of Democracy, Human Rights and Labor: International Religious Freedom Report 2003.

¹³⁰ Youth Society for Peace and Development of the Balkans (2004). European Bureau for Conscientious Objection: Conscription and CO in Bulgaria, 2001 www.terra.es/personal/beoc.ebco/COoverview

¹³¹ European Bureau for Conscientious Objection (2001). Youth Society for Peace and Development in the Balkans (2004).

to freedom of conscience of religion by failing to adopt legislation on conscientious objection. In 2001, the European Court and the Bulgarian government agreed on a friendly settlement. According to the settlement, all criminal proceedings against COs in the 1991-1998 period have to be dismissed, substitute service will have to be of equal length as compared to military service, and substitute service needs to be civilian without military involvement.¹³²

The Bulgarian government has only partially implemented the friendly settlement. In 2002 the government announced an amnesty for all persons who had been convicted under Article 361 of the Criminal Code between 13 July 1991 and 31 December 1998.¹³³ In 2003, the length of substitute service was reduced from twice to one and a half times the length of military service. This is still not in line with the friendly settlement, because its Article 14(b) clearly states that: "such service shall be similar in duration to that required by the law on military service then in force".

CROATIA

Conscription

Conscription is enshrined in Article 47.1 of the 1990 Constitution and is further regulated by the 2002 Defence Law.

The length of military service is 6 months.¹³⁴

All men between the ages of 18 and 27 are liable for military service. Reservist obligations apply up to the age of 55 during wartime.

In recent years, the future of conscription has been discussed regularly and several leading politicians have called for a gradual abolition of conscription. However, the Ministry of Defence has published a report, which concluded that the transformation into fully professionalized armed forces would be too expensive.¹³⁵ At present there are no known plans to abolish conscription. In November 2004, the government announced that a decision on the future of conscription will be made by 2007.¹³⁶

Statistics

The armed forces comprise 58,000 troops, including 20,000 conscripts. Every year, approx. 30,000 young men reach conscription age.

Conscientious objection

Legal basis

The right to conscientious objection is enshrined in Article 47.2 of the 1990 Constitution, according to which: "Conscientious objection shall be allowed to all those who, for religious or moral beliefs, are not willing to participate in the performance of military duties in the armed forces. Such persons shall be obliged to perform other duties specified by law."

Further legal provisions on conscientious objection are laid down in the Law on Civilian Service, which was passed by the Croatian Parliament in February 2003 and entered into force in May 2003.

The Law on Civilian Service replaced the provisions on conscientious objection that were laid down in the 1991 Defence Law (as amended in 1993 and 1996).

¹³² European Court of Human Rights Judgments. Case of Stefanov v. Bulgaria. Application no. 32438/96. Judgment (Friendly settlement). Strasbourg, 3 May 2001. The case was originally lodged with the European Commission on Human Rights, but was transferred to the European Court of Human Rights in 1998.

¹³³ Weekly government bulletin, March 25-31, 2002. www.government.bg

¹³⁴ The length of military service was reduced from 10 months in 2001.

¹³⁵ Regional Network for Conscientious Objection 'Objection for Peace': To Europe Through Conscientious Objection and Civilian Service, Sarajevo September 2004 (Report Regional Conference).

¹³⁶ 'Croatian Defence Ministry to get more money from 2005 budget', www.csees.net (South East Europe Security Monitor), 15 November 2004.

Scope

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

Time limits

There are no time limits for submitting CO applications. Applications can thus be made before, during and after military service, by both serving conscripts and reservists.¹³⁷

There are no legal provisions for the right to conscientious objection for professional soldiers.¹³⁸

Procedure

Applications must be made to the Civil Service Commission (Ministry of Justice). Since the introduction of the Law on Civilian Service in 2003, applications are not individually examined and there is no personal interview with the applicant. The applicant must state in his written application that he has religious or moral reasons for conscientious objection, but he does not need to explain his reasons in detail. Consequently, almost all applications are automatically granted.

Applications may be rejected if the applicant does not clearly state he refuses military service for moral or religious reasons, if he has been convicted for a criminal offence or if he possesses weapons (Law on Civilian Service, Article 13).¹³⁹

Substitute service

The length of substitute service is 8 months, which is two months longer than military service.

Substitute service is administered by the Ministry of Labour & Social Affairs. Substitute service can be performed in various educational, medical, humanitarian and cultural institutions. Since the introduction of the Law on Civilian Service in 2003, there are more opportunities to do substitute service with non-governmental organisations.

After completing substitute service, COs are liable for reservist duties in civilian protection. COs have not been called up for reservist duties in practice, but they may be called up for civilian duties during wartime or time of emergency.¹⁴⁰ According to the Croatian government, during wartime, COs may be called up for civil protection duties or other duties

which do not require carrying and using weapons.¹⁴¹

Practice

The following table gives the number of CO applications in recent years:¹⁴²

1999	260
2000	680
2001	4,009
2002	approx. 10,000
2003	approx. 10,000

These figures indicate that in recent years approx. 50 per cent of the conscripts who are called up for military service apply for substitute service.¹⁴³

Most applications are apparently granted. According to the Croatian government, 97 per cent of the applications that were made in 2000 were granted.¹⁴⁴

Detailed figures for recent years are not available, but it is believed that, particularly since 2003, when CO applications have been no longer individually examined, approx. 99 per cent of applications are granted.¹⁴⁵

Since 2000, the number of CO applications has increased significantly. In that year substitute service outside the armed forces became available for the first time. Before 2000, COs could only perform unarmed military service within the armed forces. The increasing number of COs has led to a shortage of workplaces where substitute service can be performed. In fact the Ministry of Justice has been criticized for not adding more workplaces for substitute service. Consequently, COs may have to wait for several years before they can actually start substitute service.¹⁴⁶

¹³⁷ Until 1998, there was a strict time limit for submitting CO applications and applications could only be made within 90 days of being registered for military service. However, in 1998 the Constitutional Court ruled that this time limit was a violation of the Constitution and that "the constitutional right to conscientious objection means freedom to change conviction and it cannot be restricted with time limits for distinguished behaviour".

¹³⁸ Exercise of the right of conscientious objection to military service in Council of Europe member states, Report Committee on Legal Affairs and Human Rights, Doc. 8809 (Revised), 4 May 2001.

¹³⁹ Regional Network for Conscientious Objection (2004).

¹⁴⁰ Regional Network for Conscientious Objection (2004).

¹⁴¹ United Nations Human Rights Committee: Consideration of reports submitted by states parties under Article 40 of the Covenant: Croatia (CCPR/C/HRV/99/1), 7 March 2000.

¹⁴² Regional Network for Conscientious Objection (2004). Natalie Sipak: Conscientious objection in Croatia April/May 2002, in: War Resisters' International: Broken Rifle No.55, May 2002.

¹⁴³ Regional Network for Conscientious Objection (2004).

¹⁴⁴ Netherlands Ministry of Foreign Affairs: Algemeen Ambtsbericht Kroatië (country report), 27 July 2000.

¹⁴⁵ Regional Network for Conscientious Objection (2004).

¹⁴⁶ Sipak (2002).

CYPRUS

Conscription

Conscription is regulated by the National Guard Law (20/1964).

Conscription is also enshrined in Article 129 of the 1960 Constitution, according to which "(1) The Republic shall have an army of two thousand men of whom sixty per cent shall be Greeks and forty per cent shall be Turks. (2) Compulsory military service shall not be instituted except by common agreement of the President and the Vice-President of the Republic."¹⁴⁷

Since the Turkish army invaded the northern part of Cyprus in 1974, Cyprus is divided and the northern part of Cyprus is governed by a Turkish Cypriot administration. Actual conscription practice is thus not in line with the Constitution, as the armed forces comprise more than 2,600 troops and the 60/40 per cent ratio between Greek and Turkish members is not adhered to.

The length of military service is 26 months. Young men who come from a large family (a minimum of four children) may perform a shorter 13 months' service. A reduced term of service is also possible for repatriated Cypriots who have lived abroad.¹⁴⁸ All men between the ages of 18 and 50 are liable for military service. After completing military service, reservist obligations apply up to the age of 50. Reservist units are called up periodically.

Statistics

The armed forces comprise 10,000 troops, including 8,700 conscripts. Every year, approx. 6,500 young men reach conscription age; approx. 70 per cent are recruited.

Conscientious objection

Legal basis

In 1992, provisions for conscientious objection were included in Section 5 of the National Guard Law (Law 2/1992). There is no separate law on conscientious objection.

Although Cyprus joined the Council of Europe in 1961, it did not introduce legal provisions for conscientious objection for several decades. The Cypriot government has always defended its repressive position towards conscientious objectors by referring to the Turkish occupation of the northern part of the island.

The right to conscientious objection is, in fact, enshrined in the Constitution. According to Article 10: "No person shall be required to perform forced

or compulsory labour" but this shall not include "any service of a military character if imposed or, in case of conscientious objectors, subject to their recognition by a law, service exacted instead of compulsory military service".¹⁴⁹

Scope

According to Section 5 of the National Guard Law, religious, ethical, moral, humanitarian, philosophical and political motives may be accepted for a transfer to unarmed service.¹⁵⁰

Time limits

CO applications can only be made before starting military service. Applications can thus not be made by serving conscripts or reservists.¹⁵¹

There are no legal provisions for conscientious objection for professional soldiers.

Procedure

Applications must be made to the Ministry of Defence, which makes a decision. No further details are known about the application procedure and the criteria that are used by the Ministry when deciding on applications.

Substitute service

Section 5 of the National Guard Law provides for a 36 months' unarmed military service within the armed forces, and a 42 months' 'unarmed military service outside the armed forces'.

It is not clear how far this 'unarmed military service outside the armed forces' can be considered to be a genuinely civilian substitute service. Although it is a non-uniformed service, the wording 'unarmed military service outside the armed forces' leaves some ambiguity concerning its non-military nature. A report issued by the Council of Europe in 2001 in fact concludes that Cyprus has no laws setting up a genuine alternative service.¹⁵²

It is not known where 'unarmed military service outside the armed forces' can be performed and what duties it entails. In fact the service does not seem to have been organised in practice yet and so far no COs seem to have been called up for it.

In any case, after completing 'unarmed military service outside the armed forces', COs are still obliged to participate in reservist training within the armed forces.¹⁵³

During wartime or time of mobilisation, provisions for 'unarmed military service outside the armed

¹⁴⁹ Constitution of the Republic of Cyprus, www.kypros.org/Constitution

¹⁵⁰ Amnesty International: Cyprus. Summary of Amnesty International's human rights concerns (EUR 17/10/1994).

¹⁵¹ Amnesty International: Cyprus. Conscientious objector status must be amended (EUR 17/001/2002).

¹⁵² Exercise of the right of conscientious objection to military service in Council of Europe member states, Report Committee on Legal Affairs and Human Rights, Doc. 8809 (Revised), 4 May 2001.

¹⁵³ Amnesty International (EUR 17/001/2002).

¹⁴⁷ Constitution of the Republic of Cyprus, www.kypros.org/Constitution

¹⁴⁸ 'Information for overseas and repatriated Cypriots', www.mfa.gov.cy (Ministry of Foreign Affairs)

forces' can be suspended by a decision of the Ministry of Defence (National Guard Law, Section 5A, Paragraph 10). COs would then be incorporated into unarmed military service within the armed forces.¹⁵⁴

Practice

It is not clear how far the application procedure functions in practice and how many CO applications have been made. According to the Minister of Defence in 2001, there are approx. 10 COs per year.¹⁵⁵ Until 1992 COs were only allowed to do an unarmed military service within the armed forces. During the 1980s and 1990s many COs were imprisoned because they refused to perform unarmed military service. They could be sentenced to between two and fifteen months' imprisonment. Upon release, they could be called up again and, if they continued to refuse service, they were sentenced again.¹⁵⁶

All known cases of COs are members of religious denominations who forbid their members to bear arms, in particular Jehovah's Witnesses. Since 1997 Jehovah's Witnesses have apparently not been called up for service, pending the introduction of a substitute service outside the armed forces. In 2001 the Ministry of Defence announced that it would start calling up COs for 'unarmed military service outside the armed forces'. According to the Ministry of Defence, COs who had not been called up during previous years were to be called up as well. According to the Ministry, a total number of 300 COs were to be called up for service.¹⁵⁷ However, it is not known if these 300 COs have been called up in practice, nor is it known for what kind of service they have been called up.

In 2002, the European Committee of Social Rights judged that the length of 'unarmed military service outside the armed forces', being more than one and a half times the length of military service, is a violation of Article 1.2 of the European Social Charter. According to the Committee, the length of substitute service is a violation of "the right of the worker to earn his living in an occupation freely entered upon".¹⁵⁸ Nevertheless, the Cypriot government has not showed any intention of reducing the length of 'unarmed military service

outside the armed forces'. In November 2002, there were five trials against five reservists who refused to participate in reservist military exercises and claimed their right to conscientious objection. The Ministry of Defence rejected their CO applications because the National Guard Law does not allow reservists to apply for CO status. Two of the COs on trial had actually been tried in the past for refusing military service. In November 2002, their cases were suspended pending a revision of the National Guard Law.¹⁵⁹ So far, the National Guard Law has not been revised. Pending a revision of the law, the legal position of reservist COs remains unclear.

Most COs are members of the Jehovah's Witnesses. It is not known how CO applications that are made on non-religious grounds would be treated by the authorities, although the National Guard Law does not specifically restrict the right to conscientious objection to religious grounds.

TURKISH REPUBLIC OF NORTHERN CYPRUS

Since the Turkish army invaded the northern part of Cyprus in 1974, the northern part of Cyprus is ruled by a Turkish Cypriot administration. In 1983, it proclaimed 'The Turkish Republic of Northern Cyprus' (TRNC). The entity has not been recognized by any country except Turkey. TRNC has its own armed forces and conscription system. Conscription is included in Article 74 of the Constitution and is regulated by the 2000 Military Service Law (59/2000).¹⁶⁰ All men between the ages of 19 and 30 are liable for military service. The length of military service is 15 months. A reduced term of service is possible for those who are considered as Turkish Cypriot citizens and who reside abroad.¹⁶¹

The right to conscientious objection is not legally recognized. In 1993, there was one known case of a conscientious objector. He was sentenced to 39 months' imprisonment, but he was released early.¹⁶² There are no known recent cases of COs.

¹⁵⁴ Amnesty International (EUR 17/001/2002).

¹⁵⁵ Defence Minister Socratis Hasikos, quoted in: 'Cyprus gets tough on conscientious objectors', Reuters, 28 June 2001.

¹⁵⁶ Exercise of the right of conscientious objection to military service in Council of Europe member states, Report Committee on Legal Affairs and Human Rights, Doc. 8809 (Revised), 4 May 2001.

¹⁵⁷ 'Defence Ministry to call up conscientious objectors', www.cyprus-mail.com, 29 September 2001; 'Government bows on conscientious objectors', www.cyprus-mail.com, 19 July 1998.

¹⁵⁸ Council of Europe, European Committee of Social Rights, Conclusions XVI - Vol. 1, November 2002.

¹⁵⁹ Amnesty International (EUR 17/001/2002). US State Department Bureau of Democracy, Human Rights and Labor: Country Report on Human Rights Practices 2003.

¹⁶⁰ Extracts of the law on military service of the TRNC, www.ebco-beoc.org/northern_cyprus.html

¹⁶¹ Coalition to Stop the Use of Child Soldiers: Child Soldiers Global Report 2004.

¹⁶² War Resisters' International: Refusing to bear arms - A world survey on conscription and conscientious objection to military service, 1998.

CZECH REPUBLIC

Conscription

In 2001, the Czech government decided to end conscription. The government initially intended to suspend conscription by 2007, but the transformation process into professional armed forces proceeded faster than was initially anticipated. In April 2004 the last 3,600 conscripts were called up for military service. Since 1 January 2005 the armed forces consist of professional soldiers only.

Conscription is suspended and it may be re-introduced if this is considered to be necessary by the government.¹⁶³

Conscientious objection

The right to conscientious objection was legally recognized shortly after the Velvet Revolution of 1989. During the 1990s the number of COs was in fact considerable. In 2003, 8,600 COs were performing substitute service, which was approximately the same as the number of conscripts serving in the armed forces.¹⁶⁴

The right to conscientious objection is still included in Article 15.3 of the Constitution, according to which "No individual may be forced to perform military duties if this is contrary to his or her conscience or religious faith or conviction." In case conscription is reintroduced, the Law on Civilian Service will apply again.

It is not known if there are legal provisions on the right to conscientious objection for professional soldiers. According to a study that was issued by the Council of Europe in 2001, the "regular servicemen's right to conscientious objection" is recognized.¹⁶⁵ The study does not give any further information about a possible application procedure for professional soldiers who wish to be discharged from the armed forces because of conscientious objection.

According to another source, there are no legal provisions for conscientious objection for professional soldiers.¹⁶⁶

When conscription applied, legal provisions on conscientious objection were laid down in the Law on Civilian Service. This law actually contains time limits for submitting CO applications, as applications may only be made within 30 days of receiving call-up for service and not by serving conscripts. This provision would practically exclude professional soldiers from claiming the right to conscientious objection. In addition, the law does allow reservists to claim the right to conscientious objection, but only before 31 January of the calendar year in which they have been called up.¹⁶⁷

¹⁶³ 'Czech Republic to end conscription', Radio Free Europe/Radio Liberty Newline, 20 February 2004.

¹⁶⁴ Peter Kononczuk: NGOs hit by the end of the draft, Prague Post, 17 June 2004.

¹⁶⁵ Exercise of the right of conscientious objection to military service in Council of Europe member states, Report Committee on Legal Affairs and Human Rights, Doc. 8809 (Revised), 4 May 2001. The conclusion is based on information provided by the Czech government in 1999. As the text of the Czech government response is not publicly available, it is unclear which information was exactly provided.

¹⁶⁶ European Council of Conscripts Organizations: Information on legal regulation for compulsory military service in the Czech Republic, 1996.

¹⁶⁷ War Resisters' International: Refusing to bear arms - A world survey on conscription and conscientious objection to military service, 1998.

DENMARK

Conscription

Conscription is enshrined in Article 81 of the 1953 Constitution and is further regulated by the 1980 National Service Law.

The length of military service is between 3 days and 14 months, depending on the branch of the armed forces and the rank attained. Most conscripts perform a 9 months' military service.

All men between the ages of 18 and 30 are liable for military service. The National Service Law does not cover the self-governing territories of the Faroe Islands and Greenland. If a young man moves to mainland Denmark after living in one of those territories for ten years or more, he is not liable for military service.¹⁶⁸

As in most European countries, the number of available conscripts is much higher than the number considered necessary by the armed forces. Denmark is, however, the only European country where the actual selection of conscripts takes place by balloting. Selection takes place by drawing lots during medical examination. Firstly, conscripts who have applied to serve voluntarily are drafted, whatever lot number they might have. (Most conscripts in the armed forces - approx. 60 percent - have actually volunteered to serve). From the remaining conscripts only those with the lowest number are drafted, until the necessary amount is reached. The lots are actually not drawn by the conscripts themselves, but by the military authorities. Apparently, this is because someone once ate his lot ticket, which meant the draft had to be suspended that day in order to find out which lot number had been eaten.¹⁶⁹

In 2004 the government and major opposition parties agreed on a reform of the armed forces, laid down in the 'The Danish Defence Agreement 2005-2009'. Conscription will remain in place, but the Agreement envisages a future reduction of military service to 4 months.¹⁷⁰

Statistics

The armed forces comprise 27,900 troops, including 5,750 conscripts. Every year, approx.

30,000 young men reach conscription age; approx. 30 per cent are recruited.

Conscientious objection

Legal basis

The right to conscientious objection has been legally recognized since 1917. Denmark was in fact the first European country to introduce a law on conscientious objection. At present, the right to conscientious objection is regulated by the 1987 Civilian Service Act (588/87), as amended in 1992 and 1998.

Scope

Both religious and non-religious grounds for conscientious objection are legally recognized. According to Article 1 of the Civilian Service Act: "Conscripts for whom military service in any form is judged, from available information, to be incompatible with the dictates of their conscience, may be exempted from military service on condition that they are engaged in other national work, which is not, however, serving any military purposes".

Time limits

Applications can be made before and during military service. Applications that are made by serving conscripts should be more elaborate and should include an explanation as to when and where the applicant's conflict of conscience started. Approx. 20 per cent of CO applications are actually believed to be made by serving conscripts.¹⁷¹

It is not known if there are legal provisions for the right to conscientious objection for professional soldiers.¹⁷²

Procedure

Applications must be made to the Conscientious Objections Administration Board (Ministry of Interior). Applications must be made with a standard form that is available at the Ministry. Since 1968 there is no personal interview during the application procedure and applications are not individually examined. Consequently, applications are almost automatically granted.

Substitute service

Since 1986, the length of substitute service is the same as military service: between 3 days and 14 months, depending on which part of the armed

¹⁶⁸ Coalition to Stop the Use of Child Soldiers: Child Soldiers Global Report 2004.

¹⁶⁹ War Resisters' International: Refusing to bear arms - A world survey on conscription and conscientious objection to military service, 1998. Henning Sørensen: National Service Arrangements in Denmark, Paper presented at the 5th Global Conference on National Youth Service in Jerusalem, 11-15 June 2000, www.acys.utas.edu.au/ianys/country/denmark-2000.html

¹⁷⁰ Danish Defence Command: The Danish Defence Agreement 2005-2009, www.forsvaret.dk. 'Paper: government to make defence concessions', Copenhagen Post, 9 June 2004.

¹⁷¹ War Resisters' International (1998).

¹⁷² The 2001 report by the Council of Europe does not conclude that the right to conscientious objection applies to professional soldiers (Exercise of the right of conscientious objection to military service in Council of Europe member states, Report Committee on Legal Affairs and Human Rights, Doc. 8809 (Revised), 4 May 2001). According to other sources, professional soldiers may apply for CO status (War Resisters' International 1998).

forces one would otherwise have served in. As most conscripts perform a 9 months' military service, most COs perform a 9 months' substitute service.

Substitute service is administered by the Ministry of Interior. It can be performed in government institutions like hospitals, social work and cultural institutions, but also with peace and environmental organisations.

Substitute service starts with a six days' introduction course, during which COs are informed about their rights and duties.

Practice

For the last fifteen years, the number of CO applications is relatively stable at between 600 and 900 per year.¹⁷³

Almost all applications are automatically granted. According to the Danish government, applications are rejected if they are considered to be solely based on political grounds.¹⁷⁴

Every year, approx. 25 COs refuse to perform both military service and substitute service. All of them are believed to be Jehovah's Witnesses.

Refusal to perform substitute service is punishable with a fine and a term of imprisonment equivalent to the length of time that someone should have served (Civilian Service Act, Article 6). Since 1996, Jehovah's Witnesses receive a suspended sentence that is replaced by a probationary term of one year under the provision that the committer does not commit an offence. During this year, they are under the supervision of the Probation Service and are obliged to carry out community service for a maximum of 240 hours.¹⁷⁵

ESTONIA

Conscription

Conscription is enshrined in Article 124 of the 1991 Constitution and is further regulated by the 2000 Defence Forces Service Act.¹⁷⁶

The length of military service is 8 months, and 11 months for officers and conscripts serving in some specialist positions.

All men between the ages of 19 and 27 are liable for military service. After completion of military service, conscripts may be called up for reservist duties every five years.¹⁷⁷

Statistics

The armed forces comprise 3,800 troops, including 1,500 conscripts. Every year, approx. 11,000 young men reach conscription age; approx. 15 per cent are recruited.

Conscientious objection

Legal basis

The right to conscientious objection is recognized in Article 124 of the 1991 Constitution, according to which: "Any person who refuses to serve in the Defence Forces for religious or ethical reasons shall be obligated to participate in alternative service, in accordance with procedures established by law".

The 2000 Defence Forces Service Act includes further provisions on conscientious objection and substitute service. The law requires the government to pass further legislation implementing the right to conscientious objection, but this has not happened.

The previous Military Service Act of 1994 contained similar provisions.

Scope

Both religious and non-religious grounds for conscientious objection are legally recognized. According to Article 4.1 of the Defence Forces Service Act: "A person eligible to be drafted who refuses to serve in the Defence Force for religious or moral reasons is required to perform alternative service pursuant to the procedure prescribed by law".¹⁷⁸

¹⁷³ War Resisters' International (1998). European Bureau for Conscientious Objection/Heinrich Böll Foundation: European Union without Compulsory Military Service - Consequences for Alternative Service, 2000.

¹⁷⁴ United Nations Commission on Human Rights, 56th session, Civil and political rights, including the question of conscientious objection to military service, Report of the Secretary-General submitted pursuant to Commission resolution 1998/77 (E/CN.4/2000/55), 17 December 1999.

¹⁷⁵ United Nations Commission on Human Rights (E/CN.4/2000/55).

¹⁷⁶ English translation of the Defence Forces Service Act, www.ensib.ee/toetused/Defence_Forces_Service_Act.html

¹⁷⁷ www.mil.ee (Ministry of Defence)

¹⁷⁸ The previous 1994 Military Service Act also recognized both religious and ethical grounds for conscientious objection. (Council of Europe, Directorate of Human Rights: Compatibility of Estonian Law with the requirements of the European Convention on Human Rights, April 1997)

Time limits

CO applications can only be made before starting military service.¹⁷⁹ Article 76 of the Defence Forces Service Act mentions the option of a transfer from military service to substitute service, but there are no provisions for a transfer vice versa. Applications can thus not be made by serving conscripts or reservists.

There are no legal provisions for the right to conscientious objection for professional soldiers.¹⁸⁰

Procedure

Written applications must be made to the national defence department (Ministry of Defence). The department may invite the applicant for a personal interview. If the application is rejected, there is a right to appeal with the Defence Forces Service commission or administrative court (Article 72).

Substitute service

The length of substitute service is 16 months. This is twice the length of military service.¹⁸¹

According to the Defence Forces Service Act, substitute service can be performed in "structural units in the area of government of the Ministry of Internal Affairs or the Ministry of Social Affairs and which are engaged in rescue, social care or emergency work" (Article 73). COs shall not against their will be required to handle weapons or other means of warfare (Article 76.1).

After completion of substitute service, COs "shall be registered in the register of persons liable to service in the Defence Forces" (Article 78). Consequently, COs may still have to serve in the armed forces as reservists. Article 78 states that reservist duties should not violate the guarantees that are laid down in Article 76.1, which suggests that reservist duties of COs entail unarmed duties within the armed forces.

Substitute service is not available in practice. The Defence Forces Service Act requires the government to implement further regulations on the organisation of substitute service, but the government has not managed to do so. In fact, the previous 1994 Law on Military Service also required the government to pass further regulations on substitute service, but this never happened either.

Practice

The number of CO applications is believed to be low. The Estonian government stated in 1999 that less than 50 CO applications were made per year.¹⁸² In previous years, the number was similarly low. Between 1993 and 1995, only nine CO applications were made.¹⁸³

Recent figures are not known, but the number is believed to be similarly low. There are no CO groups or human rights organisations campaigning on the issue. This may be explained by the fact that conscription is not enforced very strictly and only a small number of conscripts are actually needed by the armed forces.

It is not known how the application procedure functions in practice. Although the Defence Forces Service Act does not restrict the right to conscientious objection to religious grounds, the wording of Article 72.2 is confusing, as it states that the National Defence Department may make an inquiry to the religious organisation that is specified by the applicant. It is not known if this means that it is more difficult to obtain CO status on secular grounds.

As substitute service is not available in practice, most COs are in practice not called up to serve.¹⁸⁴ According to the Estonian government, only 11 COs have ever performed substitute service. They were called up in 1996 and performed substitute service with the Estonian Rescue Board.¹⁸⁵

¹⁷⁹ Rasmus Magi: The legal basis and practice of alternative service, *Juridica Abstract* 2001, no.5, Iuridum Foundation, Tartu, www.juridica.ee

¹⁸⁰ Exercise of the right of conscientious objection to military service in Council of Europe member states, Report Committee on Legal Affairs and Human Rights, Doc. 8809 (Revised), 4 May 2001.

¹⁸¹ Government Gazette 'Riigi teataja' I 2000, 63, 401. The length of substitute service was in fact increased in 2000. Before 2000, the length of substitute service was 15 months, compared to 12 months' military service. Article 74 of the Defence Forces Service Act envisages an even longer duration, stating that substitute service should be no longer than 24 months and not shorter than 16 months.

¹⁸² Council of Europe Committee on Legal Affairs and Human Rights (2001).

¹⁸³ Figures provided by the Estonian Ministry of Defence, in: Tannert, C. & R. Bachmann: Military service and conscientious objection in Central and Eastern Europe in view of the extension of the European Union towards the East, Brussels, 1997.

¹⁸⁴ Magi (2001). War Resisters' International: Refusing to bear arms - A world survey on conscription and conscientious objection to military service, 1998.

¹⁸⁵ United Nations Human Rights Committee, Consideration of reports submitted by states parties under article 40 of the Covenant: Addendum Estonia (CCPR/C/EST/2002/2), 27 May 2002.

FINLAND

Conscription

Conscription is enshrined in Article 127 of the 1999 Constitution and is further regulated by the 1998 Military Service Law (19/1998).

The length of military service is 180, 260 or 362 days, depending on the rank attained and the branch of the armed forces where service is performed. Approx. 50 per cent of all conscripts perform a 180 days' military service.

All men between the ages of 18 and 30 are liable for military service.

Reservist obligations apply up to the age of 50 and up to the age of 60 for officers. According to the Military Service Law, reservist training lasts between 40 and 100 days. In practice reservists are called up for considerably shorter periods of time.¹⁸⁶

Apart from medical and social reasons, exemption is granted to the citizens of the Ahvenanmaa (Åland) islands. This is a so-called demilitarised area, of which the population is Swedish speaking. The majority of its population has stated in the past that it wants to be part of Sweden.

Since 1985, Jehovah's Witnesses are legally exempt from service in peacetime, on providing proof of membership and participation in its activities.

Statistics

The armed forces comprise 24,500 troops, including 11,500 conscripts. Every year, approx. 34,000 young men reach conscription age; approx. 80 per cent are recruited.

There are no plans to abolish conscription. According to the Defence White Paper of 2004, the conscription system will remain in place and not be significantly reformed, although the number of conscripts that will actually be called up for service will be slightly reduced in the future.¹⁸⁷

Conscientious objection

Legal basis

The right to conscientious objection has been legally recognized since 1931. Its present legal basis is the 1991 Civilian Service Act (1723/91).¹⁸⁸

Scope

Both religious and non-religious grounds for conscientious objection are legally recognized. According to Article 1 of the Civilian Service Act: "A person liable for military service who avers that serious reasons of conscience founded on religious or ethical conviction prevent him from carrying out the service laid down in the Military Service Act will in peacetime be exempted from such service and assigned to civilian service as provided for in this Act".

Time limits

There are no time limits for submitting CO applications. Applications can thus be made before, during and after military service (Civilian Service Act, Article 6).

Serving conscripts must apply to the regimental commander, after which they must be released from duty immediately. Reservists must apply to the commander of the military province or to the non-military service training centre in Lapinjärvi.¹⁸⁹

There are no legal provisions for conscientious objection for professional soldiers.¹⁹⁰ The Civilian Service Act only applies to conscripts and it contains no provisions for professional soldiers.¹⁹¹

Procedure

Applications must be made to the Ministry of Defence. Applications can be made with a standard application form that is available from the Ministry. Since 1987, there is no personal interview during the application procedure. Consequently, applications are almost automatically granted.

Substitute service

The length of substitute service is 395 days. In 1998, the length of military service was reduced from 240 days to 180 days (for most conscripts). The duration of substitute service remained the same, which means that substitute service now lasts more than twice as long as military service.

Substitute service is administered by the Ministry of Labour. It can be performed with both government institutions and non-governmental (non-profit) organisations. Most COs perform their substitute service in social and health care institutions, public offices, schools, universities, libraries and cultural institutions.

There is a lack of places where substitute service can be performed. The Civilian Service Act stipulates that the Ministry of Labour is responsible for the assignment of workplaces, but in practice most COs find a workplace themselves. If a CO

¹⁸⁶ War Resisters' International: Imprisonment of conscientious objectors in Finland. Report for the Human Rights Committee in relation to Article 18 of the International Covenant on Civil and Political Rights, September 2004.

¹⁸⁷ Ministry of Defence: Defence White Paper 2004, www.defmin.fi

¹⁸⁸ English translation of the Civilian Service Act, www.motherearth.org/hermaja/en/act.php

¹⁸⁹ www.aseistakieltaytyjaliito.fi (Finnish Union of Conscientious Objectors)

¹⁹⁰ Exercise of the right of conscientious objection to military service in Council of Europe member states, Report Committee on Legal Affairs and Human Rights, Doc. 8809 (Revised), 4 May 2001.

¹⁹¹ War Resisters' International (2004).

does not manage to find a workplace in time, he is obliged to serve in a special training centre in Lapinjärvi.¹⁹²

After completing substitute service, COs have no reservist duties during peacetime. The legal position of COs in wartime is not quite clear. Article 1 of the Civilian Service Act stipulates that COs are assigned to substitute service during peacetime, but the law does not specify the position of COs during wartime. According to the Military Service Law, COs must join the defence effort during wartime, but the law does not specify what kind of service they are supposed to do. Consequently, it remains unclear if COs may be called up for military service during wartime.¹⁹³

Practice

In recent years, the number of CO applications is relatively stable at between 2,000 and 2,500 per year. Almost all applications are granted. According to the Finnish government in 1999: "neither the grounds for the application nor the personal conviction are interpreted in any way".¹⁹⁴

Total objectors

Since the length of substitute service has become twice as long as military service in 1998, the number of total objectors has increased significantly. Since 1999, approx. 70 COs declare themselves total objectors annually. Some total objectors protest in particular against the punitive length of substitute service, others are unconditional total objectors. Since 1999, 49 total objectors have been adopted as prisoners of conscience by Amnesty International.¹⁹⁵

Total objectors may be sentenced according to two different laws, depending on whether they first applied for legal recognition as conscientious objectors or not. Total objectors who obtain CO status and subsequently refuse to perform substitute service are sentenced for civilian service offences under Article 26 of the Civilian Service Act. Total objectors who did not apply for CO status are usually sentenced for refusing military service under Article 39 of the Military Service Law.

Most total objectors are sentenced to 196 days' imprisonment, which is half the length of substitute service. Total objectors are usually imprisoned in open prisons.¹⁹⁶

¹⁹² www.aseistakieltaytjaliito.fi

¹⁹³ War Resisters' International (2004).

¹⁹⁴ United Nations Commission on Human Rights, 56th session, Civil and political rights including the question of conscientious objection to military service, Report of the Secretary-General submitted pursuant to Commission resolution 1998/77 (E/CN.4/2000/55), 17 December 1999.

¹⁹⁵ A regularly updated list of imprisoned total objectors is available at: www.wri.org/news/htdocs and www.aseistakieltaytjaliito.fi

¹⁹⁶ War Resisters' International (2004).

The following table gives the number of total objectors that has been sentenced to imprisonment in recent years:¹⁹⁷

1998	33
1999	53
2000	44
2001	61
2002	76

By November 2004, 25 total objectors were serving prison sentences.¹⁹⁸

The case of Jussi Hermaja is of special interest. He applied for asylum in Belgium, the only country within the European Union that accepts asylum applications from other EU Member States. His application was rejected by both the Foreigners Department and the Commissariat for Refugees. In 2004, the Raad van State rejected Hermaja's appeal. If Hermaja returns to Finland, he would be sentenced to imprisonment, but so far the Finnish state has not called for Hermaja's extradition. Hermaja has also made an appeal against the rejection of his asylum request with the European Court of Human Rights. His case is still pending.¹⁹⁹

Background

The current controversy about the punitive length of substitute service is actually not new for Finland. Between 1987 and 1991, substitute service also lasted twice as long as military service, which also resulted in an increasing number of total objectors.

Since 1998, the Finnish Parliament has twice discussed a reduction of the length of substitute service but there was no majority to do so. In November 2004, the United Nations Human Rights Committee called upon the Finnish government to reduce the length of substitute service. In addition, the Committee also called for a clear legal protection of the right to conscientious objection during wartime and for an equal treatment between Jehovah's Witnesses and other total objectors, as since 1985 Jehovah's Witnesses are legally exempt from service altogether.²⁰⁰

Remarkably enough, the punitive length of Finnish substitute service has not been condemned by the European Parliament or the Parliamentary Assembly of the Council of Europe. In 2003 the Council of Europe Committee of Ministers stated that it agrees with the Assembly that alternative service should be neither a deterrent nor punitive in character, but it also stated that "in certain

¹⁹⁷ Finnish district court statistics, quoted in: War Resisters' International (2004).

¹⁹⁸ War Resisters' International: The Broken Rifle, No.64 / November 2004.

¹⁹⁹ Regular updates on the case of Hermaja are available at: www.motherearth.org/hermaja

²⁰⁰ United Nations Human Rights Committee, Concluding Observations and Recommendations (CCPR/CO/82/FIN/2004), 5 November 2004.

cases, the less onerous duties of civilian service may justify a longer duration than that of military service” and that member states enjoy a certain discretion on the length and organisation of the alternative service.²⁰¹

The draft version of the 2003 Report on Fundamental Freedoms in the European Union did contain comments on the punitive length of the Finnish substitute service. These comments were however voted out by a 366/143/22 votes majority. A majority of the European Parliament apparently agreed with the Finnish Socialist MEP Ulpu Ilvari, according to whom it is “a matter for every country to judge for themselves how alternative service is organised and not the EU”.²⁰²

FRANCE

Conscription

France was the first country in the world to introduce conscription in 1793.

In 1997, the French government decided to suspend conscription. The last conscripts were called up for military service in 2001. Since 2002 the armed forces consist of professional soldiers only.

Conscription has been replaced by a compulsory one day “rendez-vous citoyen” (national day of preparation for national defence). All young men and women between the ages of 16 and 18 are obliged to participate in this day. On this day, people have civil status and do not have to bear arms or wear a uniform or be subjected to military discipline. Participation in the “rendez-vous citoyen” is a necessary condition for taking part in final examinations or obtaining a diploma in state universities.²⁰³

According to the Law on National Service Reform (97-1019), the government may reintroduce conscription at any time. The legislation providing for national service has in fact not been repealed.²⁰⁴

Conscientious objection

The right to conscientious objection was legally recognized in 1963. French CO legislation was restrictive and did not comply with international standards on conscientious objection. CO applications could only be made before starting military service and not by serving conscripts, and substitute service lasted twice as long as military service. Compared to other European countries, the number of COs in France has always remained relatively low. During the 1990s approx. 6,000 CO applications were made per year, which was only 3 per cent of all eligible conscripts.

With the suspension of conscription in 2002, the 1983 Law on Conscientious Objection (Law 83/605) became applicable only to men born before 31 December 1978. Consequently, young men who are born after 1979 have no possibility of claiming the right to conscientious objection.²⁰⁵

There are no legal provisions for conscientious objection for professional soldiers.²⁰⁶

²⁰¹ Council of Europe, Council of Ministers, Reply by the Chairman of the CoM to Written Question No. 417 on “Conscientious objection in Greece and Finland” by Lord Russell-Johnston (CM/AS (2003) Quest417 final, 10 January 2003.

²⁰² European Bureau for Conscientious Objection: The Right to Refuse to Kill, October 2003.

²⁰³ European Bureau for Conscientious Objection/Heinrich Böll Foundation: European Union without Compulsory Military Service - Consequences for Alternative Service, 2000.

²⁰⁴ Coalition to Stop the Use of Child Soldiers: Child Soldiers Global Report 2004.

²⁰⁵ European Bureau for Conscientious Objection/Heinrich Böll Foundation (2000).

²⁰⁶ Information provided by Union Pacifiste, August 2004. Exercise of the right of conscientious objection to military service in Council of Europe member states, Report Committee on Legal Affairs and Human Rights, Doc. 8809 (Revised), 4 May 2001. ‘War Resister’ International: Refusing to bear arms - A

GEORGIA

Conscription

Conscription is enshrined in Article 101 of the 1995 Constitution. It is further regulated by four laws on military service, which were adopted by the Georgian Parliament in 1997 and 1998.

The length of military service is 18 months.

All men between the ages of 18 and 27 are liable for military service.

Since 2002, it is possible to buy oneself out of military service for 2000 GEL (900 USD), or to postpone it by paying a sum of 200 GEL (90 USD) per year. Men who have bought themselves out of their service are assigned to the reserves and may only be called up for service during times of mobilisation.²⁰⁷

In August 2004, the Georgian Parliament discussed a new draft law on military service. The law provides for a reduction of the length of military service to 12 months, and to 6 months for university graduates who have completed military training at university. According to the law, it will no longer be possible to postpone military service on paying 200 GEL per year, although it would still be possible to buy off service on paying a lump sum of 2000 GEL. No decision has been made yet as to when the law will be implemented.²⁰⁸

Due to the political situation, inhabitants of South Ossetia and Abkhazia are not called up for service in the Georgian armed forces. Following Georgian independence from the Soviet Union in 1991, Abkhazia and South Ossetia engaged in separatist wars. Since 1992, these regions are de facto independent from the Georgian government and operate their own armed forces and conscription systems.

Statistics

The armed forces comprise 17,500 troops, including 10,400 conscripts. Every year, approx. 42,000 young men reach conscription age; approx. 20 per cent are recruited.

The Georgian government has announced a reform of the Georgian armed forces in order to comply with NATO standards. The government has planned to reduce the size of the armed forces and increase the number of professional soldiers to two

thirds of the total manpower. The abolition of conscription is not foreseen.²⁰⁹

Conscientious objection

Legal basis

The right to conscientious objection is legally recognized by the 1997 Law on Alternative Service.²¹⁰

The Law was supposed to enter into force in January 1998, but the government did not manage to implement it. In May 2001 the government introduced new regulations (Government Decree 170 and 171) which were aimed at implementing the Law. However, the Law on Alternative Service has still not been implemented.

Consequently, there are no application procedures for claiming the right to conscientious objection and substitute service is not available. In the following paragraphs a description is given of the legal provisions in the Law on Alternative Service; the actual practice is described in a separate paragraph.

Scope

The Law on Alternative Service recognizes both religious and non-religious grounds for conscientious objection. According to Article 4: "Those conscripts who according to the legislation must perform military service, but refuse to do so because military service of any sort is incompatible with their conscience, may be called up to perform civilian service in times of peace".

Time limits

The Law on Alternative Service provides for a strict time limit for submitting CO applications. Applications must be made within ten days of being called up (Article 7). Applications can thus not be made by serving conscripts or reservists.

Procedure

According to Article 8 of the Law on Alternative Service, applications must be made to the district military commission (Ministry of Defence). The commission needs to make a consultative decision within 20 days, which needs to be confirmed by the State Commission for Civilian Service. A personal interview may be part of the procedure.

world survey on conscription and conscientious objection to military service, 1998.

²⁰⁷ Netherlands Ministry of Foreign Affairs: Algemeen Ambtsbericht Georgië (country report), February 2004.

²⁰⁸ Ketik Sikharulidze: Military service for everybody? New draft law seeks to make military service obligatory, but the rich can still opt out, www.messengercom.ge, 10 August 2004.

²⁰⁹ Schweizerisches Bundesamt für Flüchtlinge: Georgien: Wehrdienst, BFF Analysen, Bern, 22 November 2002. 'Georgia's Scarce Army Aspires NATO', www.civil.ge (Civil Georgia), 17 February 2004.

²¹⁰ English translation of the Law on Alternative Service, appendix in: Danish Immigration Service: Report on roving attaché mission to Georgia 14-27 October 2000. Copenhagen, 2000.

Substitute service

Article 6 of the Law on Alternative Service envisages 36 months' substitute service. This is twice the length of military service.

Substitute service may be performed in government institutions such as environmental protection and the health sector (Article 5).

After completion of substitute service, COs remain in the reserves up to the age of 50 (Article 18). They may be called up during time of mobilisation or a state of emergency, but the Law does not specify what kind of duties they have to do.

Practice

The Law on Alternative Service has never been implemented and the State Commission for Civilian Service has never functioned. Before 2001, the Ministry of Defence was responsible for the organization and administration of substitute service. Since May 2001, the Ministry of Health & Social Affairs is responsible. Both ministries have not managed to organise substitute service in practice.

Since the Law on Alternative Service entered into force in 1998, a considerable number of conscripts seem to have applied for substitute service. According to the Ministry of Defence, between 400 and 800 applications were made during 1998 and 1999 alone.²¹¹ More recently, 300 CO applications were reportedly made in 2002.²¹² More recent figures are not known.

The treatment of COs by the Georgian authorities is not clear. In fact in 2002, the United Nations Human Rights Committee stated in its concluding observations on Georgia's periodic report that: "It regrets the lack of clear information on the rules currently governing conscientious objection to military service".²¹³

Most CO applications have apparently been made by members of religious denominations who forbid their members to bear arms, particularly Jehovah's Witnesses. Their applications have not

been decided upon and they have not been called up for service. The Ministry of Defence stated in 2000 that members of religious denominations who forbid their members to bear arms can obtain a document from the Ministry, which states that they have performed an alternative to military service. This arrangement reportedly applied to Jehovah's Witnesses and Baptists, upon handing over a document proving membership of the denomination.²¹⁴

It is not clear if this informal arrangement is still in place. However, since 1998 there have been no known cases of Jehovah's Witnesses or members of other religious denominations being prosecuted for refusal of military service.²¹⁵

This informal arrangement has never applied to non-religious COs. This is particularly remarkable because the Law on Alternative Service does not restrict the right to conscientious objection to religious grounds.

Pending the implementation of the Law on Alternative Service, the legal position of non-religious COs has remained unclear. Many young men have reportedly joined the Jehovah's Witnesses in order to evade military service. According to some sources, this has led to a considerable growth in the membership of religious sects in Georgia.²¹⁶

Nevertheless, apart from joining a religious denomination for false reasons, non-religious COs can only avoid military service by bribing draft officials or evading call-up.

Draft evasion

Draft evasion and desertion are punishable under administrative law and under the Criminal Code.

Refusing call-up for military service is punishable with one to three years' imprisonment, and up to five years in case of aggravating circumstances such as using false documents (Criminal Code, Article 81). Refusing call-up for mobilization is punishable with three to ten years' imprisonment (Article 82). Desertion is punishable with three to seven years' imprisonment (Article 256). During wartime, higher sentences apply.²¹⁷

Draft evasion is widespread, partly due to the poor conditions and human rights violations within the armed forces. Exact figures on the scale of draft evasion and desertion are not available, but in 2001 the Military Prosecutor filed 2,498 cases of desertion.²¹⁸

²¹¹ Caucasian Institute for Peace, Democracy and Development: *Army & Society in Georgia*, April 2000 and May 2000.

²¹² Andreas Speck: *Impressions from a journey through the South Caucasus*, Peace News No. 2452/September-November 2003.

²¹³ United Nations Human Rights Committee: *Concluding observations on the second periodic report of Georgia (CCPR/CO/74/GEO)*, 19 April 2002. The Human Rights Committee in fact discussed the issue with the Georgian delegation in a public meeting, but the delegation did not succeed in clarifying the issue. According to the Georgian delegation, CO applications are reviewed by the local conscription commission and finally decided upon by the State Commission for Civilian Service. However, the Georgian delegation merely referred to the provisions in the Law on Alternative Service, but not to actual practice. (United Nations Human Rights Committee: *Summary record of the first part of (public) of the 1988th meeting (CCPR/C/SR.1988)*, 18 April 2002). According to the Georgian Public Prosecutor in 2003, the State Commission for Civilian Service had not been set up. (Austrian Red Cross/ACCORD: *Reisebericht Georgien*, 18-25 Mai 2003, Vienna, July 2003).

²¹⁴ Danish Immigration Service (2000).

²¹⁵ Before 1998, there were some known cases of Jehovah's Witnesses who were sentenced and imprisoned for refusing military service.

²¹⁶ Austrian Red Cross/ACCORD (2003). *Caucasian Institute for Peace, Democracy and Development: Army & Society in Georgia*, April 2000.

²¹⁷ Netherlands Ministry of Foreign Affairs (2004).

²¹⁸ 'On the situation of Protection of Human Rights and Freedoms in Georgia', Report of the Public Defender of Georgia, Tbilisi, 2002.

Many cases against draft evaders and deserters are apparently dropped. In other cases they are forced to serve in so-called punishment battalions within the armed forces, where conditions may be particularly harsh. In other cases, draft evaders and deserters may be prosecuted by a military prosecutor in a civic court.²¹⁹

According to the Ministry of Defence, 167 draft evaders and deserters were imprisoned in September 2002.²²⁰ More recent figures are not available.

In the past, several amnesties have been announced for draft evaders and deserters. The most recent amnesty was announced during the autumn of 2000 and applied to men who deserted from the armed forces before 22 December 2000. The amnesty law was believed to apply to approx. 4,500 draft evaders and deserters.²²¹ Although they were freed from criminal prosecution, they remained liable for military service and may consequently still be called up to serve. It is believed that only one third of them actually made themselves known to the military authorities.²²²

ABKHAZIA

The self-declared Republic of Abkhazia has its own armed forces, which are believed to comprise approx. 5,000 troops, and its own conscription system.

Military service is compulsory for all men between the ages of 18 and 27. Reservist duties apply up to the age of 60.²²³

In December 2003, the Defence Minister declared that its armed forces would become fully professional under a reform programme to be completed by 2007.²²⁴ By June 2004, conscription was still in place.²²⁵

The right to conscientious objection is not legally recognized and there is no possibility of performing a substitute service outside the armed forces. Between 1995 and 2000, at least 30 Jehovah's Witnesses were imprisoned for refusing military service. In 1995 the Abkhazian authorities actually banned the Jehovah's Witnesses as an

illegal organisation. Their refusal to do military service was considered to be an attempt to undermine state security.²²⁶

The latest known case of a CO being prosecuted occurred in December 2002, when a Jehovah's Witness was sentenced to four years' imprisonment. He was released early in April 2003.²²⁷

SOUTH OSSETIA

South Ossetia has its own armed forces, which are believed to comprise 6,000 troops. At least until 2002 there was a conscription system and all ethnic Ossetians had to complete an 18 months' military service. There was no possibility of performing a substitute service outside the armed forces.²²⁸

In 2002, the South Ossetian authorities announced the abolition of conscription and its plans to turn its forces into a professional army.²²⁹ According to the South Ossetian authorities in August 2003, the armed forces are now fully professional.²³⁰

²¹⁹ Since 2000 there are no military courts in Georgia (Danish Immigration Service 2000).

²²⁰ War Resisters' International: The Right to Conscientious Objection to Military Service in selected member states of the Organisation for Security and Cooperation in Europe. Report to the OSCE Supplementary Meeting on Freedom of Religion or Belief 17-18 July 2003, Hofburg, Vienna.

²²¹ 'Georgian Parliament declares amnesty for deserters', Georgian Television, Tbilisi, 28 December 2000 (BBC Monitoring Service).

²²² Human Rights Information and Documentation Centre: Monthly Bulletin 1 (47), Tbilisi, January 2003.

²²³ Amnesty International: Armenia. "Respect my human dignity": Imprisonment of conscientious objectors (EUR 54/06/99).

²²⁴ Coalition to Stop the Use of Child Soldiers: Child Soldiers Global Report 2004.

²²⁵ 'Abkhazia declared the beginning of conscription', www.adygeanatpress.ru, 2 June 2004.

²²⁶ Tatyana Titova: Four year jail sentence for Jehovah's Witness, Keston News Service, 12 December 2000.

²²⁷ Felix Corley: Jehovah's Witnesses still banned and Georgian Orthodox still barred, Forum 18 News Service, 27 April, 2004.

²²⁸ Schweizerisches Bundesamt für Flüchtlinge (2002).

²²⁹ Schweizerisches Bundesamt für Flüchtlinge (2002).

²³⁰ Coalition to Stop the Use of Child Soldiers (2004).

GERMANY

Conscription

Conscription is enshrined in Article 12.1 of the 1949 Constitution and is further regulated by the 1956 Law on Military Service.

The length of military service is 9 months.

All men between the ages of 18 and 23 are liable for military service. Reservist obligations apply up to the age of 45.

In recent years, the future of conscription has been discussed extensively in Germany. So far the government has decided to maintain conscription, but the size of the armed forces and the number of conscripts has been reduced significantly.

Consequently, fewer and fewer conscripts are actually called up for service. Since 2004, men who are married or who live together with a partner are legally exempt from service. In addition, the maximum drafting age has been reduced from 28 to 23 years. Men who have not yet been called up by the age of 23 thus get exempt from service. In previous years this was actual practice already, but in 2004 these grounds for exemption were included in the Law on Military Service.

Statistics

The armed forces comprise 190,000 troops, including 60,000 conscripts (2004). Every year approx. 415,000 young men reach conscription age.

In the next years the armed forces will be further reduced and the government plans to further reduce the number of conscripts to 47,000 by 2010. Consequently even fewer conscripts will be called up for service in the future. In 2005, 67,000 conscripts will be called up for military service; from 2007 onwards this will be 55,000.²³¹

Conscientious objection

Legal basis

The right to conscientious objection is included in Article 4b of the 1949 Constitution. Legal provisions are laid down in the 2003 Law on Conscientious Objection (Kriegsdienstverweigerungsgesetz), which replaced the previous 1983 Law on Conscientious Objection.²³²

The new Law on Conscientious Objection entered into force on 1 November 2003.

Scope

Both religious and non-religious grounds for conscientious objection are legally recognized. According to Article 1 of the Law on Conscientious Objection, CO status is to be granted to those who refuse military service for reasons of conscience as described in the Constitution. Article 4b of the Constitution in fact states that "no one shall be compelled to perform armed war service contrary to his conscience".

Time limits

There are no time limits for submitting CO applications. Applications can thus be made before, during and after military service, by both serving conscripts and reservists.

Applications that are made by serving conscripts are usually decided on in two to four weeks. Approx. 2,500 CO applications per year are actually made by serving conscripts. Approx. 1,000 applications per year are made by reservists.²³³

Procedure

Applications must be made to the Federal Office of Civilian Service (Ministry of Youth, Family Affairs, Women and Health). Applications must include a reference to Article 4b of the Constitution. No personal interview takes place and applications are not individually examined. Consequently, almost all applications are automatically granted.²³⁴

If the application is rejected, there is a right to appeal to the administrative court

Professional soldiers

The right to conscientious objection also applies to professional soldiers. Some provisions on conscientious objection for professional soldiers are laid down in a government decree of 21 October 2003. The application procedure for professional soldiers who wish to be discharged from the armed forces because of conscientious objection is comparable with the application procedure for conscripts.

Applications must be made to the local military commander and must include a motivation letter in which the applicant explains in more detail how and when his/her problems of conscience started. The application is forwarded to the Federal Office of Civilian Service (Ministry of Youth, Family Affairs, Women and Health), which makes a decision. The Federal Office may ask the opinion of the military commander or the personnel office. If the Federal Office has doubts about the application, it may order the applicant to attend for a personal interview. In practice, this does not seem to happen often. The Federal Office needs to

²³¹ Figures provided by the Ministry of Defence, quoted in: Zentralstelle KDV : KDV Aktuell 1/2004, 15 September 2004.

²³² Law on Conscientious Objection, http://bundesrecht.juris.de/bundesrecht/kdvg_2003/inhalt.html

²³³ 'Informationen zur Kriegsdienstverweigerung', www.zentralstelle-kdv.de

²³⁴ Until 2003, applicants could be ordered to provide additional information or be ordered for a personal interview. Although this didn't happen very often in practice, this option was abolished in the new Law on Conscientious Objection of 2003.

make a decision on the application within 8 weeks.²³⁵

If a professional soldier is recognized as a conscientious objector he needs to be released from the armed forces immediately (2003 Government Decree, Article 3.2).

The application procedure is the same during wartime or time of emergency or during combat (2003 Decree, Article 3.6).

It is believed that every year approx. 80 professional soldiers ask for discharge from the armed forces because of conscientious objection. There are no detailed figures available about the number of applications granted, but most applications are reportedly being granted.

The military authorities regard a release from the armed forces which is based on conscientious objection as a release on someone's own initiative. This means that a professional soldier who has been recognized as a conscientious objector, needs to pay back the costs of any courses that (s)he has followed in the military and that have a civilian use.²³⁶

Substitute service

The length of substitute service is 9 months, which is the same length as military service. The length of substitute service was actually reduced from 10 months in 2004, meaning that after 40 years, substitute service now has the same duration as military service.

Substitute service is administered by the Federal Office of Civilian Service (Ministry of Youth, Family Affairs, Women and Health). Substitute service is mainly performed in social welfare institutions, such as hospitals, nursing and working with handicapped people. The salaries of COs are partially paid for by the employing organisation and partly by the government. A few placements are made with (non-profit) non-governmental organisations.

COs who have completed one year of voluntary work abroad, mostly ecological or social work, do not have to perform substitute service.

After completing substitute service, COs have no reservist duties. During wartime the right to conscientious objection is guaranteed and COs may not be called up for military service.

Practice

In the previous ten years approx. 150,000 CO applications were made per year. Most applications (approx. 95 per cent) are granted.

The following table gives the number of granted CO applications in recent years:²³⁷

2000	146,099
2001	143,312
2002	153,925
2003	147,809
2004	115,779

The following table gives the number of COs performing substitute service in recent years:²³⁸

2000	124,063
2001	118,252
2002	112,378
2003	103,948
2004	82,046

The number of placements in substitute service is supposed to be similar to the number of conscripts in the armed forces - as laid down in the government agreement. However, in recent years there are actually more COs in substitute service than conscripts serving in the armed forces. For example, in 2004 78,343 conscripts performed military service and 82,046 COs were called up for substitute service.²³⁹

This inequality will, in fact, be increasing in the coming years. The Federal Office has stated in 2005, 90,000 COs will be called up for substitute service. By comparison, in 2005 only 67,000 conscripts will be called up for service in the armed forces.²⁴⁰

Still, the number of COs by far exceeds the number of available workplaces. Consequently, a considerable number of COs are not called up for substitute service and are in practice exempt from service altogether. This trend will continue in the coming years.

Most COs (approx. 80 per cent) perform their substitute service within the health sector. The contribution of COs to the German health sector has often been cited as an obstacle for the abolition of conscription. Charitable organisations regularly stated that the abolition of conscription would have serious consequences for the future of the health sector as it would be financially impossible to replace all COs by regular paid staff.

²³⁵ Information provided by Zentralstelle KDV, August 2004.

²³⁶ Information provided by Zentralstelle KDV, August 2004.

²³⁷ Bundesamt für Zivildienst:: Fortlaufende Statistik der anerkannten Kriegsdienstverweigerer in Deutschland seit 1971, www.zivildienst.de

²³⁸ Bundesamt für Zivildienst: Jahresdurchschnittszahlen ZDL, www.zivildienst.de

²³⁹ This figure does not include the 3,500 COs who were exempt from substitute service because they completed a year of voluntary work abroad.

²⁴⁰ KDV: Es erinnert an ein Roulettespiel und an Willkür, 18 February 2005, www.zentralstelle-kdv.de

Total objection

COs who refuse to perform both military and substitute service are usually sentenced to between 62 and 84 days of military arrest, over periods of 7, 14 and 21 days. Afterwards they may be prosecuted under Article 109 of the Military Penal Code for disobeying orders and "refusal to perform national military service". They are sentenced by district courts, which mean that the sentences can vary.²⁴¹

Those who have been granted CO status and state that they cannot perform substitute service for reasons of conscience, but who promise to work in social welfare institutions for a certain amount of time get exempt from substitute service. Obviously, this option was introduced to facilitate Jehovah's Witnesses, who refuse to perform substitute service but comply with it if they are sentenced to do it.

GREECE

Conscription

Conscription is enshrined in Article 4.6 of the 1975 Constitution and is further regulated by Law 731/1977, as amended in 1988 (1763/1988).

The length of military service is 12 months, and 17 months for officers.²⁴² Certain categories, such as children from large families and men having two or more children, may perform a shorter term of service of 3, 6 or 9 months.

All men between the ages of 18 and 50 are liable for military service. This includes all males born to either a Greek father or mother. They automatically acquire Greek citizenship, regardless of whether they wish to possess Greek citizenship and regardless of whether they also hold citizenship of another country.

Reservist obligations apply up to the age of 50. Reservists are periodically called up for reservist training.²⁴³

Since 1976 Greece is in a formal state of mobilisation, which was announced because of the Cyprus conflict and the tension with neighbouring Turkey. During periods of general mobilisation or war, the Ministry of Defence has an unlimited right to decide on matters concerning conscription (Law 1763/1988, Article 8.7).

Statistics

The armed forces comprise 162,000 troops, including 119,000 conscripts. Every year, approx. 85,000 young men reach conscription age. Approx. 75 per cent are recruited.

Conscientious objection

Legal basis

The right to conscientious objection is legally recognized with the 1997 Law on Conscientious Objection (2510/1997).²⁴⁴ The Law entered into force on 1 January 1998. Before 1998, the right to conscientious objection was not legally recognized.

Scope

Both religious and non-religious grounds for conscientious objection are legally recognized. According to Article 18.1 of the Law on Conscientious Objection, CO status may be granted to "those who invoke their religious or ideological convictions in order not to fulfil their draft obligations for reasons of conscience". Article 18.2

²⁴² This duration of military service applies to men who have been called up for service after 1 January 2003. The length of military service was reduced from 19 months to 16 months in 2001 and to 12 months in 2003.

²⁴³ "Basic military service information for the Hellenes abroad", www.stratologia.gr (Greek Ministry of Defence)

²⁴⁴ English translation of the Law on Conscientious Objection, www.omhroi.gr/SAS/12510en.html

²⁴¹ War Resisters' International: Two total objectors in military arrest, 22 October 2003.

stipulates that the reasons of conscience "are considered to be related to a general perception of life, based on conscientious religious, philosophical or moral convictions, which are inviolably applied by the person and are expressed by a corresponding behaviour".

In 2000 the Greek Constitution was in fact amended, in order to ensure the constitutionality of the legal recognition of non-religious grounds for conscientious objection.

Time limits

There is a strict time limit for submitting CO applications. Applications can only be made before starting military service, at the latest on the day before enlistment into the armed forces.

According to Article 18.4(a) of the Law on Conscientious Objection: "those who have carried arms for whatever length of time in the Greek or foreign armed forces or in the security forces" cannot be considered as conscientious objectors. CO applications can thus not be made by serving conscripts or reservists.

Professional soldiers

There are no legal provisions for conscientious objection for professional soldiers. The Law on Conscientious Objection only applies to conscripts. In addition, Article 18.4(a) effectively excludes professional soldiers from claiming the right to conscientious objection.

In 2003 the first known case occurred of a professional soldier who asked to be discharged from the armed forces because of conscientious objection. In May 2003, he publicly announced that he refused to participate in the war in Iraq. In September 2004, he was charged for desertion and convicted by the Piraeus Navy Court Martial to three years and four months' imprisonment. His trial took place without any lawyer or witnesses for the defendant. He made an appeal and applied for postponement of his imprisonment until his appeal is judged. In October 2004, the Athens Appeal Court granted the request for postponement. In January 2005, the Piraeus Naval court sentenced him to five months' imprisonment on suspension in case of appeal.²⁴⁵

Procedure

CO applications must be made to the Ministry of Defence. The application must include a copy of the applicant's criminal record and documents proving that the applicant does not have a gun licence or a licence for hunting (Law on Conscientious Objection, Article 18.4(b) and (c)). Applications are considered by a committee, which falls under the authority of the Ministry of Defence. The committee consists of a legal expert,

two university professors who are specialized in philosophy, psychology or social science, and two military officers (one of them a psychiatrist). Applicants may be ordered for a personal interview with the committee, during which they need to prove their "stable, permanent and inviolable pacifist attitude of life and behaviour", as laid down in Article 18.2 of the Law on Conscientious Objection.

The committee makes a consultative decision, which needs to be confirmed by the Ministry of Defence. The Ministry of Defence usually accepts the consultative decisions of the committee.²⁴⁶

If the application is rejected, there is a right of appeal to the civil court within five days of receiving the decision.²⁴⁷

Substitute service

The length of substitute service is 23 months, which is almost twice the length of military service. In some cases, due to family reasons, COs are allowed to perform a shorter service of at least 15 months.

The Law on Conscientious Objection also provides for an unarmed military service within the armed forces from 4 months and 15 days to 18 months. So far, no COs have chosen to perform this unarmed military service.²⁴⁸

Substitute service is administered by the Ministry of Defence. Article 21.3 of the Law on Conscientious Objection in fact stipulates that COs who are performing substitute service "are considered as quasi enlisted in the armed forces".

According to the Law on Conscientious Objection, substitute service may be performed in various institutions in the public sector. In practice, most COs perform substitute service on remote islands. Substitute service cannot be performed in Athens, Thessaloniki and four other big cities, nor can it be performed in the place of birth, origin or residence of the CO.²⁴⁹ This is, in fact, a discriminatory treatment of COs in comparison with conscripts in the armed forces, because most military units are situated within close range of big cities.

According to Article 21.5, CO status may be withdrawn in cases where the CO commits a disciplinary or criminal offence, is absent from duty, carries out trade union activities or participates in strikes.

²⁴⁶ Greek National Commission for Human Rights (NCHR): Answers to the UNHCHR questionnaire on conscientious objection to military service, October 2003.

²⁴⁷ War Resisters' International: Conscientious objection to military service in Greece: Human Rights shortfalls, Report for the Human Rights Committee in relation to Article 18 of the International Covenant on Civil and Political Rights, February 2005.

²⁴⁸ War Resisters' International (2005).

²⁴⁹ According to Article 19.4 of the Law on Conscientious Objection, Athens and Thessaloniki are excluded from the performance of substitute service. The other four cities were excluded in a subsequent ministerial decision.

²⁴⁵ Amnesty International: Professional soldier Giorgos Monastiriotos is a prisoner of conscience and must be released (EUR 24/011/2004). War Resisters' International: CO sentenced to five months in prison, 18 January 2005.

The right to conscientious objection is not legally recognized during wartime. According to Article 24.2, substitute service may be suspended during wartime by the Ministry of Defence and COs may be called up for unarmed military service within the armed forces.

Practice

Since the Law on Conscientious Objection entered into force on 1 January 1998, approx. 150 CO applications are believed to be made per year. Most applicants are members of religious denominations who forbid their members to bear arms, in particular Jehovah's Witnesses, but there are also COs who refuse military service for pacifist secular reasons. The number of CO applications is low, which is probably partly due to the strictness of the application procedure and the harsh conditions of substitute service. Moreover, the Greek authorities have been criticized for not informing new conscripts about the application procedure for substitute service. The information for new recruits in fact merely states that "applications under Law 2510/1997" are available, but it does not give any additional details about the application procedure.²⁵⁰

It is not clear what percentage of CO applications is granted. There appears to be a discriminatory treatment of non-religious COs, with applications from Jehovah's Witnesses always being accepted if the full required documentation is present, whereas COs who do not relate their conscientious objection to membership of a particular religious denomination are often unsuccessful. According to Amnesty International, the committee has suggested the blanket rejection of applications that are made on non-religious ideological grounds.²⁵¹

According to the Greek government, 758 out of 771 CO applications that had been made between 1998 and June 2003 had been granted.²⁵² It is not clear, however, if this number includes the applications that have not been taken into consideration because they were not submitted within the time limit or because they were not accompanied by the required documentation. Numerous CO applications have, in fact, been rejected because they were not submitted within the time limit or because they were not accompanied by documentation, such as a copy of the criminal

record or documents proving non-ownership of a gun licence. In fact, in many cases, local authorities have reportedly refused to provide COs with these documents.²⁵³

It is not known how many COs are currently performing substitute service. In 1999, approx. 200 COs were believed to be performing substitute service.²⁵⁴

Since the Law on Conscientious Objection entered into force, approx. 40 COs agreed to perform substitute service, but have rejected their posting as a protest against the punitive duration and conditions of substitute service.²⁵⁵ The Greek authorities have started criminal proceedings against some of these COs.

A CO who does not report for substitute service in time becomes an 'Anipótaktos' (objector to conscription) and may be prosecuted under military law and lose his CO status. This section of the Greek Law on Conscientious Objection is confusing, because it leaves COs in a 'legal limbo' situation in which it is unclear if they are to be prosecuted by the civilian or military authorities.²⁵⁶

Refusing substitute service is considered as 'insubordination' and is punishable by up to six months' imprisonment during peacetime. Upon release, COs may again be called up for military service.²⁵⁷

The practice of trying COs for more than one case of draft evasion or insubordination is, in fact, a violation of Article 14.7 of the International Covenant on Civil and Political Rights, according to which "No one shall be liable to be tried or punished again for an offence for which he has been finally convicted or acquitted in accordance with the law and penal procedure of each country".

The continuing harsh treatment of COs is best exemplified by the case of Lazaros Petromelidis. Petromelidis has been persecuted since 1992 when he declared his conscientious objection, when the right to conscientious objection was not yet legally recognized. In 1999 he was recognized as a conscientious objector but he refused to perform substitute service because of its punitive nature. His CO status was withdrawn and he was consequently called up for military service again, which he again refused. Over the years, Petromelidis has been passed through a dozen

²⁵⁰ Information provided by Greek National Commission on Human Rights, quoted in: Conscience and Peace Tax International: Comments on Paragraphs 678 to 692 of the Initial Report of Greece under Article 40 of the International Covenant on Civil and Political Rights: "The recognition of conscientious objectors", 2004.

²⁵¹ Amnesty International: Europe and Central Asia. Summary of Amnesty International's concerns in the Region January-June 2004 (EUR 01/005/2004).

²⁵² United Nations Human Rights Committee: Consideration of reports submitted by states parties under Article 40 of the Covenant, Initial report Greece (CCPR/C/GRC/2004/1), 15 April 2004.

²⁵³ Amnesty International: 15th May: International CO Day - Greece misses another opportunity to celebrate (EUR 25/002/2004). Amnesty International: The continuous harassment of conscientious objectors (EUR 25/003/2003).

²⁵⁴ War Resisters' International (2005).

²⁵⁵ 'Conscientious objection in Greece', Joint Statement of War Resisters' International and European Bureau for Conscientious Objection, February 2004. Amnesty International (EUR 25/003/2003).

²⁵⁶ War Resisters' International (2005).

²⁵⁷ War Resisters' International (2005).

trials, has been jailed three times and was sentenced to a 20 month suspended sentence in 1999. In December 2004, Petromelidis was eventually sentenced to 30 months' imprisonment for two charges of insubordination dating from 1999 and 2003.²⁵⁸

Draft evasion

Apart from the COs mentioned above, there are a considerable number of draft evaders who have not responded to their call-up for military service. Many of them may be considered as COs, particularly because the right to conscientious objection was not legally recognized until 1998.

Thousands of draft evaders have changed address and live in hiding in Greece. Many draft evaders have in fact left Greece in order to avoid call-up for military service. Officials estimate their number as between 8,000 and 35,000, but CO groups have estimated the number of draft evaders as between 40,000 and 70,000.²⁵⁹

Draft evaders remain liable for criminal prosecution up to the age of 51. In exceptional circumstances draft evaders may be allowed to enter Greece for a maximum period of 15 days or three months, providing they can prove evidence of serious personal or family reasons.²⁶⁰

Draft evaders can buy off criminal prosecution, on the condition that they complete military service. The payment is at least 100,000 GDR (approximately 300 Euros) per month of military service, which must be paid as a lump sum.²⁶¹

Background

Greece has a long history of repression of COs. Since the 1950s, approx. 3,500 COs have been imprisoned. Initially most COs were members of the Jehovah's Witnesses, but since the 1980s there was also a growing number of COs who are inspired by secular, pacifist or other motives.

Although the right to conscientious objection is legally recognised since 1998, the Law on Conscientious Objection is clearly not in line with several international standards on conscientious objection. Both the Greek Ombudsman and the National Commission on Human Rights have called for a reduction of the duration of substitute service and have urged the removal of the application procedure and substitute service from the Ministry of Defence.²⁶²

Over the years, the Greek government has been urged on numerous occasions by several inter-governmental bodies to bring its policy towards COs in compliance with international standards on conscientious objection.

In 2001, the European Parliament adopted a resolution in which it called on Greece to recognise the right to conscientious objection to military service without restrictions and without reference to any religious grounds, to introduce forms of alternative service which do not last longer than compulsory military service and to immediately release all those serving prison sentences in this connection.²⁶³

In 2001, the European Committee of Social Rights concluded that the duration of substitute service amounts to a disproportionate restriction on "the right of the worker to earn his living in an occupation freely entered upon" and is a violation of Article 1.2 of the European Social Charter, as substitute service keeps COs away from the labour market for an amount of time which is disproportionately longer than conscripts in the armed forces.²⁶⁴

In 2003, the European Parliament in its Annual Report on Fundamental Freedoms called upon Greece to recognize the right to conscientious objection without restrictions, to introduce a substitute service that is of equal duration to military service and to release all those serving prison sentences in this connection.²⁶⁵

²⁵⁸ Amnesty International: Petromelidis's Promethean trials (EUR 25/015/2004). Regular updates on the case Petromelidis are available at: www.wri-org/co/cases/petromelidis-en.htm

²⁵⁹ War Resisters' International: Refusing to bear arms - A world survey on conscription and conscientious objection to military service, 1998.

²⁶⁰ 'Basic military information for Hellenes abroad', www.stratologia.gr (Ministry of Defence).

²⁶¹ www.mod.gr (Ministry of Defence)

²⁶² Greek Union of Conscientious Objectors: Greek Conscientious Objector, already repeatedly punished, to be court-martialed, www.omhroi.gr

²⁶³ European Parliament Resolution 2001/2014.

²⁶⁴ European Committee on Social Rights, Decision on the merits, Complaint 8/2000. The collective complaint was submitted by the Quaker Council for European Affairs 'Collective Complaint on Greece to the Council of Europe under the Social Charter' (registered as 8/2000).

²⁶⁵ European Parliament: Report by the Network of Experts on the Situation of Fundamental Rights in the European Union in 2002, January 2003.

HUNGARY

Conscription

In February 2003, the Hungarian government announced that it would end conscription by August 2005. During the last years of conscription, some categories were no longer called up for military service (men over 23, married men and men having children).

The transformation process into professional armed forces went faster than initially anticipated. The last 2,000 conscripts were discharged from military service in November 2004. Since December 2004 the armed forces consist of professional soldiers only.²⁶⁶

Conscription is in fact suspended. In November 2004, the Hungarian Parliament accepted the modification of the Constitution and the Defence Law. Accordingly, conscription is suspended during peacetime, but it may be reintroduced in case of emergency or during wartime.²⁶⁷

Conscientious objection

The right to conscientious objection was legally recognized in 1989, following a liberal revolt in the Communist Party. Since 1993, CO applications were no longer individually examined and personal interviews no longer took place. Since then, the number of CO applications increased significantly from 500 to approx. 5,000 applications per year.

There are no legal provisions for conscientious objection for professional soldiers.²⁶⁸

When conscription applied, the Law on Civilian Service allowed for CO applications to be made by serving conscripts, but only until the military oath was taken (after performance of three weeks' military service). This provision practically excludes professional soldiers from claiming the right to conscientious objection.²⁶⁹

²⁶⁶ Ministry of Defence: Conscript service abolished, 14 June 2004, www.honveledem.hu.

²⁶⁷ Henrik Farkas: End of conscription in Hungary, in: European Bureau for Conscientious Objection, *The Right to Refuse to Kill*, October 2003. Henrik Farkas: Email on anti-conscription email list, 8 November 2004.

²⁶⁸ Exercise of the right of conscientious objection to military service in Council of Europe member states, Report Committee on Legal Affairs and Human Rights, Doc. 8809 (Revised), 4 May 2001.

²⁶⁹ War Resisters' International: *Refusing to bear arms - A world survey on conscription and conscientious objection to military service*, 1998.

ICELAND

Iceland has no armed forces and maintains only a small coastguard. Iceland's external security rests on its membership of NATO and on the 1951 joint defence agreement with the USA. The USA has a military base in the port of Keflavik.

According to Article 75 of the 1944 Constitution, conscription may be introduced in case of "national danger".

Conscription or any other kind of compulsory service has never been introduced in practice.²⁷⁰

IRELAND

Conscription

Conscription has never existed in Ireland.

According to Article 28 of the Constitution and Article 54 of the Defence Act, conscription may be introduced in case of national emergency.

There is no further legislation on conscription and there never has been since Ireland became independent as the Irish Free State in 1922.

Conscientious objection

It is not known if there are legal provisions for conscientious objection for professional soldiers. According to one source, it is believed that soldiers who develop conscientious objection may seek discharge from the armed forces.²⁷¹ No further information is available.

²⁷⁰ War Resisters' International: *Refusing to bear arms - A world survey on conscription and conscientious objection to military service*, 1998.

²⁷¹ Information provided by Peace Pledge Union, quoted in: War Resisters' International: *Refusing to bear arms - A world survey on conscription and conscientious objection to military service*, 1998.

ITALY

Conscription

In November 2000, the Italian Parliament decided to end conscription. It was initially planned to end conscription by 2007, but the transformation process into professional armed forces went faster than anticipated. In March 2003, the Parliament adopted a law that advanced the end of conscription. Accordingly, young men born after 1985 were no longer called up for military service. The last conscripts were called up in February 2004 and since 1 January 2005 the Italian armed forces consist of professional soldiers only.

Conscription is in fact suspended. According to Law 331/2000, conscription may be reintroduced in case of war or national emergency.²⁷²

Conscription is still included in Article 52 of the Constitution, according to which: "The defence of the country is the sacred duty of every citizen, Military service is compulsory within the limits and the manner laid down by law".

Conscientious objection

The right to conscientious objection was legally recognized in 1972.

Since 1989 substitute service was of the same duration as military service. Previously, substitute service lasted 8 months longer than military service, but in 1989 the Constitutional Court ruled that the longer duration of substitute service was unconstitutional. After the reduction of the duration of substitute service the number of CO applications increased significantly. By the end of the 1990s there were approx. 80,000 COs per year. During the final years of conscription there were actually more COs performing substitute service than conscripts serving in the armed forces.²⁷³

Legal provisions for conscientious objection are laid down in the 1998 Law on Conscientious Objection (230/1998). If conscription is reintroduced in case of war or national emergency, COs will be called up to serve in civil protection or the Red Cross (Article 13.4).²⁷⁴

There are no legal provisions for conscientious objection for professional soldiers.²⁷⁵

In addition, according to Article 2 of the 1998 Law on Conscientious Objection, the right to conscientious objection to military service does not apply to those "who have presented a request within less than two years to serve in the Military Armed Forces" or any other government institutions which involve the use of weapons. This restriction practically excludes professional soldiers from claiming the right to conscientious objection.

²⁷² Coalition to Stop the Use of Child soldiers: Child Soldiers Global Report 2004.

²⁷³ ARCI (Associazione Recreative Culturala Italiana): Overview of the Italian Civilian Service, September 1999, www.serviziocivilearci.org

²⁷⁴ English translation of Law 230/1998 (New Rules on Conscientious Objection), www.arciserviziocivile.it/entereng.html

²⁷⁵ Exercise of the right of conscientious objection to military service in Council of Europe member states, Report Committee on Legal Affairs and Human Rights, Doc. 8809 (Revised), 4 May 2001. War Resisters' International: Refusing to bear arms - A world survey on conscription and conscientious objection to military service, 1998.

LATVIA

Conscription

Conscription is regulated by the 1997 Law on Military Service.

The length of military service is 12 months, and 9 months for university graduates.

All men between the ages of 19 and 27 are liable for military service. Reservist duties apply up to the age of 55.

Apart from medical and social reasons, exemption may also be granted to graduates of state universities who have completed a voluntary military training during their studies.²⁷⁶

The Latvian government has announced that it will phase out conscription by 2007. The armed forces are planned to consist solely of professional soldiers by 2007.²⁷⁷

Statistics

The armed forces comprise 4,800 troops, including 1,600 conscripts. Every year, approx. 20,000 young men reach conscription age; approx. 10 per cent are recruited.

Conscientious objection

Legal basis

The right to conscientious objection is legally recognized by the 2002 Law on Alternative Service.²⁷⁸

The Law entered into force on 1 July 2002. Before 2002, the right to conscientious objection was not legally recognized.²⁷⁹

Scope

Both religious and non-religious grounds for conscientious objection are legally recognized. According to Article 1 of the Law on Alternative Service, the purpose of the Law is "to guarantee freedom of human thought, conscience and religious beliefs by linking such freedom with the duty of a citizen towards the State".

Time limits

CO applications can only be made before starting military service. Article 5.5 of the Law on Alternative Service mentions the possibility of transfer from substitute service to military service, but there are no legal provisions for a transfer vice versa. Applications can thus not be made by serving conscripts or reservists.

There are no legal provisions for conscientious objection for professional soldiers. The Law on Alternative Service only applies to conscripts.²⁸⁰

Procedure

CO applications must be made to the local conscription centre (Ministry of Defence). The Law on Alternative Service does not specify if applications are individually examined and if there is a personal interview. According to the Latvian government, applications are decided on by a commission consisting of members of the Ministry of Defence and the National Human Rights Commission.²⁸¹

The Law on Alternative Service contains no specific regulations on the right to appeal in case the application is rejected. However, all conscripts may appeal against decisions concerning call-up for regular military service within ten days to the local conscription centre (Ministry of Defence).²⁸² This option is apparently also available for conscripts whose CO applications are rejected.

Substitute service

The length of substitute service is 24 months, and 18 months for university graduates. This is twice the length of military service.

Substitute service is administered by the Ministry of Defence. According to Article 4.1 of the Law on Alternative Service, substitute service may be performed in both government institutions and non-governmental organisations working in areas like social care, health care and fire fighting. The exact list of institutions where substitute service may be performed is proposed by the Ministry of Defence, in cooperation with (local) government institutions. It is not known how far substitute service has been organised in practice.

²⁷⁶ 'Conscripts service', www.mod.gov.lv (Ministry of Defence)

²⁷⁷ Ministry of Defence of the Republic of Latvia: Amendments to the Alternative Service Law to be reviewed, 20 July 2004, www.mod.gov.lv

²⁷⁸ English translation of The Law on Alternative Service, www.mod.gov.lv/index.php?pid=12343

²⁷⁹ In 1991, when still a part of the former Soviet Union, the Latvian Parliament adopted a law on alternative service. However, provisions on conscientious objection were practically abolished again in 1993. The 1997 Law on Military Service contained some provisions on conscientious objection, but called for the introduction of further legislation.

²⁸⁰ A 2001 report by the Council of Europe concluded from a Latvian government response submitted in 1999 that "regular servicemen's right of conscientious objection is recognized" in Latvia. (Exercise of the right of conscientious objection to military service in Council of Europe member states, Report Committee on Legal Affairs and Human Rights, Doc. 8809 (Revised), 4 May 2001). The text of the government response is not publicly available, but the conclusions drawn in the report are probably the result of a misunderstanding. In 1999, the Law on Alternative Service had not even been passed, so at that time the right to conscientious objection was not even legally recognized for conscripts.

²⁸¹ United Nations Human Rights Committee, Summary record of the 2150th meeting, Consideration of second periodic report of Latvia (CCPR/C/SR.2150), 7 November 2003.

²⁸² 'Conscripts service', www.mod.gov.lv

Practice

The Law on Alternative Service entered into force on 1 July 2002.

By the end of 2002, no CO applications had been made yet.²⁸³ According to the Latvian government in October 2003, the number of CO applications is low. The government also stated that all applications had been approved so far.²⁸⁴ More detailed figures are not known.

The number of applications is believed to be still low and most likely confined to members of the Jehovah's Witnesses. The only known cases of COs applying for substitute service before 2002 were in fact Jehovah's Witnesses. There are no CO groups or human rights organisations campaigning on conscientious objection.

Background

Before the Law on Alternative Service was passed in 2002, there were not many known cases of COs either. The only known cases were in 1999 when two Jehovah's Witnesses refused military service and applied for an alternative service outside the armed forces, which was not available at the time. Their requests were first denied by the authorities, but in 2000 they got exempt from service altogether.²⁸⁵ Their cases attracted considerable international attention, which seems to have contributed to the introduction of the Law on Alternative Service.

In 2003, the United Nations Human Rights Committee in its concluding observations on Latvia's periodic report, expressed its concern about the punitive length of substitute service being twice as long as military service.²⁸⁶ The duration of substitute service is in fact remarkable, because the Ministry of Defence publicly stated in 2000 that "the length of alternative service would be the same as military service".²⁸⁷

The comments by the United Nations Human Rights Committee have apparently been discussed within the Latvian government. In April and July 2004, amendments to the Law on Alternative Service reducing the length of substitute service to one

year were sent for discussion to the Cabinet of Ministers.²⁸⁸

By February 2005, the length of substitute service has apparently still not been reduced.

LIECHTENSTEIN

Liechtenstein has no armed forces.

The 1921 Constitution, as amended in 2003, does allow for the introduction of conscription in case of war or emergency. According to Article 44: "Every man fit to bear arms shall be liable, up to the completion of his sixtieth year, to serve in the defence of his country in the event of an emergency. Apart from this contingency, no armed units may be organized or maintained, except so far as may be necessary for the provision of the police force and the preservation of internal order. Detailed regulations regarding this matter may be laid down by law".²⁸⁹

²⁸³ International Helsinki Federation for Human Rights: Annual Report 2003.

²⁸⁴ United Nations Human Rights Committee (CCPR/C/SR.2150).

²⁸⁵ In 2000 a new regulation was introduced, which exempts clerics of registered religious organisations from military service. One of the Jehovah's Witnesses concerned was a minister with the Jehovah's Witnesses and thus got exemption on this ground. (Amnesty International: Latvia. The Right to Conscientious Objection EUR 52/01/00, Concerns in Europe January-June 2000 EUR 01/03/00)

²⁸⁶ United Nations Human Rights Committee, Concluding observations of the Human Rights Committee: Latvia (CCPR/CO/79/LVA), 6 November 2003.

²⁸⁷ Ministry of Defence of the Republic of Latvia: Position of the Ministry of Defence on the question of alternative service, 11 August 2000, www.mod.gov.lv

²⁸⁸ Ministry of Defence of the Republic of Latvia: Amendments to the Alternative Service Law have been submitted, 22 April 2004 & Amendments to the Alternative Service Law to be reviewed, 20 July 2004, www.mod.gov.lv

²⁸⁹ Coalition to Stop the Use of Child Soldiers: Child Soldiers Global Report 2004.

LITHUANIA

Conscription

Conscription is enshrined in Article 139 of the 1992 Constitution and is further regulated by the 1996 Law on National Conscription (1593/1996).²⁹⁰

The length of military service is 12 months, and 6 months for university and college graduates.

All men between the ages of 19 and 26 are liable for military service. Reservist obligations apply up to the age of 35.

Statistics

The armed forces comprise 12,190 troops, including 3,740 conscripts. Each year approx. 26,000 young men reach conscription age; approx. 10 per cent are recruited

Conscientious objection

Legal basis

The right to conscientious objection is enshrined in Article 139 of the 1992 Constitution, according to which "Citizens of the Republic of Lithuania are to serve in the national defence or to perform alternative service in the manner established by law".

Further provisions for conscientious objection are laid down in the 1996 Law on National Conscription.²⁹¹

Scope

According to Article 4 of the Law on National Conscription, substitute service is available for "those who due to religious or pacifist beliefs may not serve under arms".

This wording suggests that both religious and secular grounds for conscientious objection are legally recognized. It is, however, unclear how the grounds for recognition are interpreted in practice. In fact, both in 1997 and 2004 the United Nations Human Rights Committee called upon the Lithuanian government to "clarify the grounds and eligibility for performing alternative service to persons objecting to military service on grounds of conscience or religious belief".²⁹²

²⁹⁰ English translation of the Law on National Conscription, as amended in 2002, www.3lrs.lt

²⁹¹ The Law on National Conscription replaced the 1990 Law on Alternative Service. This law only recognized religious grounds for conscientious objection. Moreover, the government required COs to be members of religious pacifist organisations who forbid their members to bear arms. However, the government always maintained that no such organisations existed in Lithuania. (War Resisters' International: Refusing to bear arms: A world survey on conscription and conscientious objection to military service, 1998).

²⁹² United Nations Human Rights Committee, Concluding observations of the Human Rights Committee: Lithuania (CCPR/CO/80/LTU), 4 May 2004 and (CCPR/C/79/Add.87), 19 November 1997.

Time limits

The Law on National Conscription does not specify if there are time limits for submitting CO applications. However, the absence of clear legal provisions implies that serving conscripts and reservists cannot apply for CO status. Moreover, the Lithuanian government has stated in the past that applications can only be made before starting military service.²⁹³

There are no legal provisions for the right to conscientious objection for professional soldiers.²⁹⁴

Procedure

According to Article 20 of the Law on National Conscription, CO applications must be made to the regional conscription centre. The application must include a motivation letter and curriculum vitae. The application is decided on by a commission, consisting of representatives of public organisations, religious communities and educational institutes.

The Law does not specify if a personal interview is part of the application procedure. According to Article 20.1, a request for alternative service "must be reasonably grounded", but it is not known which criteria the commission uses to assess this.²⁹⁵

It is not clear how far the application procedure is actually functioning. Article 20.2 requires the government to introduce further procedures to set up the commission. According to one source, the government announced in 2000 that a commission was to be established. This suggests that at least until 2000 no such commission existed.²⁹⁶

Substitute service

According to Article 23.2 of the Law on National Conscription, the length of substitute service is 18 months. This is one and a half times the length of military service.

In practice, substitute service is not organised and only an unarmed military service within the armed forces is available.

The Law on National Conscription provides for both an unarmed military service within the armed forces and a substitute service outside the armed forces. The option of unarmed military service is

²⁹³ Tannert, C. & R. Bachmann: Military service and conscientious objection in Central and Eastern Europe in view of the extension of the European Union towards the East, Brussels, 1997.

²⁹⁴ Exercise of the right of conscientious objection to military service in Council of Europe member states, Report Committee on Legal Affairs and Human Rights, Doc. 8809 (Revised), 4 May 2001.

²⁹⁵ In fact, during the United Nations Human Rights Committee's discussion on Lithuania's country report in 2004, one committee member asked which criteria are used by the commission, and if CO status is only granted to members of religious and pacifist organisations. These questions were, however, not answered by the Lithuanian delegation. (United Nations Human Rights Committee, Press Release (HR/CT/653), 25 March 2004).

²⁹⁶ BNS News Agency, Vilnius, 10 February 2000 (quoted in: UK Home Office, Country Assessment, 2001).

included in Article 22.1, according to which: "citizens shall complete alternative national defence service within the national defence system" (...) "They shall be appointed to serve in positions which do not require using coercion and weapons". Substitute service is dealt with in Article 22.2: "By decision of the Government, alternative national defence service as civil-type socially useful labour, may be completed in other state institutions". The Law requires the government to introduce further procedures on the organisation of substitute service, but so far this has not happened. Consequently, only an unarmed service within the armed forces is available.

In May 2004, the United Nations Human Rights Committee called upon the Lithuanian government to ensure that the right to conscientious objection is respected "by permitting in practice alternative service outside the armed forces".²⁹⁷

According to the US State Department in September 2004, the Lithuanian government was believed to be exploring the possibility of introducing a substitute service outside the armed forces.²⁹⁸ However, no concrete steps seem yet to have been taken to introduce a substitute service outside the armed forces.

Practice

Not many CO applications are made. According to figures provided by the Lithuanian government, between 1993 and 1997 no CO applications were made at all.²⁹⁹ Figures for recent years are not available, but the number of applications is believed to be low. There are no human rights organisations or CO groups campaigning on the issue.

The only known recent CO applications were made by several Jehovah's Witnesses in 2003. They were assigned to perform unarmed military service within the armed forces. They refused this service and appealed against their call-up. They were initially sentenced to a fine and one year's imprisonment by a local court. In February 2004 Klaipeda District Court overturned this ruling and their appeals were granted.³⁰⁰ It is not known if they will not be called up for service at all or if their cases are still pending.

LUXEMBOURG

Conscription

Conscription was abolished in 1967. The armed forces comprise 900 troops and consist of professional soldiers only.

Conscientious objection

There are no legal provisions for conscientious objection for professional soldiers. There are no known cases of professional soldiers seeking discharge from the armed forces because of conscientious objection.³⁰¹

²⁹⁷ United Nations Human Rights Committee (CCPR/CO/80/LTU). During the United Nations Human Rights Committee discussion on Lithuania's state report in 2004, the Lithuanian delegation actually failed to answer the question as to whether COs could perform an alternative service (United Nations Human Rights Committee, HR/CT/653).

²⁹⁸ US State Department Bureau of Democracy, Human Rights and Labor: International Religious Freedom Report 2004.

²⁹⁹ Tannert and Bachmann (1997).

³⁰⁰ United Nations Human Rights Committee (HR/CT/653). US State Department Bureau of Democracy, Human Rights and Labor: International Religious Freedom Report 2003 & 2004.

³⁰¹ War Resisters' International: Refusing to bear arms - A world survey on conscription and conscientious objection to military service, 1998.

MACEDONIA

Conscription

Conscription is enshrined in Article 28 of the Constitution and is further regulated by the 2001 Law on Defence.

The length of military service is 6 months.³⁰²

All men between the ages of 18 and 27 are liable for military service. There are four call-up periods per year: in January, April, June and October.

Reservist obligations apply up to the age of 55. After completing military service, men may be called up for reservist training periodically.³⁰³

In addition to conscription into military service, all men between the ages of 18 and 60 and all women between the ages of 18 and 55 are liable for civil protection service. Citizens may be called up for civil protection service by a government decision (Law on Defence, Chapter IX). So far, the government has never issued such a call-up.³⁰⁴

The Macedonian government has regularly announced its intention to professionalize its armed forces in order to comply with NATO standards. According to the Strategic Defence Review, the transformation into fully professional armed forces should be completed by 2008. The Ministry of Defence has also stated its intention to reduce the length of military service to 4 months, but this will not happen before 2006.³⁰⁵ However, no concrete decisions have been made on the abolition of conscription.

Statistics

The armed forces comprise 10,890 troops, including 2,000 conscripts. Every year, approx. 19,000 young men reach conscription age.

Conscientious objection

Legal basis

Legal provisions on conscientious objection are included in the 2001 Law on Defence.³⁰⁶

Before 2001, the right to conscientious objection was very restrictively recognized, as there was only an unarmed military service for COs refusing military service on religious grounds.

Scope

Both religious and non-religious grounds for conscientious objection are legally recognized. According to Article 8 of the Law on Defence: "A conscript who refuses to carry weapons because of religious or moral reasons (conscientious objection) may serve his conscript service in the armed forces without weapons or in civilian service".

Time limits

There is a legal time limit for submitting CO applications. According to Article 3 of the Defence Law (as amended in 2003) CO applications need to be made by the day of receiving call-up papers. According to the Law on Defence, applications can thus not be made by serving conscripts or reservists.³⁰⁷

This time limit is, in fact, in contradiction with a ruling by the Constitutional Court in September 2002. According to the Constitutional Court, time limits for submitting CO applications are a violation of the freedom of belief, conscience and thought as laid down in Article 16.1 of the Constitution. The Constitutional Court acknowledged that conscientious objection may develop in time and that CO applications should thus be allowed to be made before, during and after military service.³⁰⁸ The Macedonian Constitutional Court is expected to discuss the constitutionality of the time limits again.

In practice, the Ministry of Defence seems to apply the time limit selectively. Some CO applications that are made by serving conscripts are rejected because they are not submitted within the legal time limit. However, if an appeal is made against such a rejection at court, the Ministry regularly takes the application into consideration.³⁰⁹

There are no legal provisions for the right to conscientious objection for professional soldiers. The provisions in the Law on Defence only apply to conscripts, as does the 2002 decision by the Constitutional Court.

Procedure

CO applications must be made to the local conscription department of the Ministry of Defence. Applicants must explain their reasons for applying for substitute service in writing. Applications are decided on by the Commission for Civilian Service (Ministry of Defence). No personal interview takes place with the applicant. The Commission needs to decide on the application within 60 days (Law on Defence, Article 10).

If the application is rejected, there is the possibility of appealing to a higher conscription commission (Ministry of Defence) within 15 days

³⁰² The length of military service was reduced from 9 months in 2003.

³⁰³ During the unrests in 2001, reservists were particularly called up by both the armed forces and police forces. (Netherlands Ministry of Foreign Affairs: Algemeen Ambtsbericht Macedonië (country report), October 2001)

³⁰⁴ Information provided by Peace Action Macedonia, August 2004.

³⁰⁵ 'Macedonia to abolish draft by 2008, set up fully professional army', www.csees.net (South East Europe Security Monitor), 12 June 2004.

³⁰⁶ English translation of the Law on Defence, www.morm.gov.mk (Ministry of Defence).

³⁰⁷ The 2001 Law on Defence originally stipulated that CO applications need to be made within 15 days of receiving call-up papers for military service.

³⁰⁸ Decision of the Constitutional Court of the Republic of Macedonia, 12 September 2002.

³⁰⁹ Peace Action Macedonia (2004).

of receiving the rejection (Article 10). If the application is rejected again, there is the possibility of appeal to a civilian court.

Substitute service

The length of substitute service is 10 months. This is more than one and half times the length of military service.³¹⁰ COs may also opt for an unarmed military service within the armed forces, which is the same length as substitute service.

Substitute service is administered by the Ministry of Defence. According to Article 9 of the Defence Law, substitute service can be performed in health, humanitarian and welfare organisations and in the fire brigades. Substitute service may also be performed in non-governmental organisations. At present, two humanitarian NGOs are approved as workplaces by the Ministry of Defence.³¹¹

Article 81.2 of the Law on Defence stipulates that after completing substitute service COs have reservist duties in the civilian protection system up to the age of 55. In practice, COs have so far not been called up for reservist duties.³¹²

The Law on Defence contains no specific provisions on the right to conscientious objection during wartime.

Practice

Legal provisions on conscientious objection were introduced in 2001. Between 2001 and 2003 very few CO applications were made, but since 2003 the number of applications is increasing.

The Ministry of Defence has not published any detailed figures on the number of CO applications. It is estimated that between 200 and 300 CO applications were made in 2003, and approx. 1,000 in 2004.³¹³

Although the Ministry of Defence does not inform new conscripts about the possibility of applying for substitute service, the number of applications is believed to be increasing. According to CO groups, in 2004 the number of CO applications is reportedly increasing by 30 per cent at each call-up period.³¹⁴

Detailed figures on the number of applications granted are not available. According to the Macedonian government, 652 out of 680

applications that had been made until April 2004 had been granted.³¹⁵

The government has not issued more recent figures on the percentage of granted applications. CO groups have expressed concern that applications are getting granted more restrictively, which is possibly a reaction of the Ministry of Defence to the growing number of applications.³¹⁶

The first COs started substitute service in January 2003. By September 2004, 41 institutions have been accepted as workplaces by the Ministry of Defence. They include medical and social work institutions, territorial fire brigades and two humanitarian NGOs. In practice, most COs perform hygienic and cleaning duties for the most part of their service. The background and education of COs is not taken into account when making the assignment for substitute service.³¹⁷

Background

Before 2001, the right to conscientious objection was very restrictively recognized. Under the previous 1992 Defence Law only religious grounds for conscientious objection were recognized and it only provided for an unarmed military service within the armed forces. There were several known cases of COs who refused to perform unarmed service and were consequently sentenced to imprisonment. If they continued to refuse to serve on release, they could be prosecuted and imprisoned again.³¹⁸

Draft evasion

Failing to respond to a call-up for military service is punishable under Article 168 of the Law on Defence by a fine of 5,000 to up to 30,000 dinars or up to two months' imprisonment. Draft evasion is also punishable under Article 341 of the Criminal Code.³¹⁹

In practice, most draft evaders seem to be sentenced to a fine, after which they may still be called up for service.³²⁰ In July 2003 the government announced an amnesty for all those who had evaded military service during the previous ten years. The amnesty law reportedly applied to 12,369 draft evaders. 7,730 of them were ethnic Albanians.³²¹

Albanian conscripts in particular have tried to avoid military service. Since 2002, the number of

³¹⁰ In 2003, the length of military service was reduced from 9 to 6 months, but the length of substitute service was only reduced from 14 to 10 months. As the 14:10 ratio is more punitive than the 9:6, the length of substitute service thus became more punitive in 2003.

³¹¹ Regional Network for Conscientious Objection 'Objection for Peace': To Europe Through Conscientious Objection and Civilian Service, Report Regional Conference, Sarajevo, September 2004.

³¹² Peace Action (2004).

³¹³ Peace Action (2004).

³¹⁴ Peace Action (2004).

³¹⁵ Peace Action (2004).

³¹⁶ Peace Action (2004).

³¹⁷ Regional Network for Conscientious Objection (2004).

³¹⁸ Amnesty International and Helsinki Committee for Human Rights of the Republic of Macedonia: Joint appeal to the Macedonian government for amendments to the defence law which will guarantee the rights of conscientious objectors in the spirit of international standards (EUR 65/011/00).

³¹⁹ Swiss Refugee Council: Report on the political, human rights, humanitarian and security situation in Macedonia, Schweizerische Flüchtlingshilfe SFH, Bern, August 2001.

³²⁰ Netherlands Ministry of Foreign Affairs (2001).

³²¹ Amnesty International: Annual Report 2004.

Albanians in the armed forces seems to have increased.

MALTA

Conscription

Conscription has never existed in Malta. The armed forces comprise 2,140 troops and consist of professional soldiers only.

Conscientious objection

There are no legal provisions for conscientious objection for professional soldiers.

The government stated in 1988 that: "As military service is voluntary, the question of 'conscientious objection' does not arise".³²²

MOLDOVA

Conscription

Conscription is enshrined in Article 57 of the 1994 Constitution and is further regulated by the 2002 Law on Preparation for Defence.³²³

The length of military service is one year, and three months for university graduates.³²⁴

All men between the ages of 18 and 27 are liable for military service. There are two drafting periods per year, during spring (May-June) and during autumn (November-December).

Apart from medical and social reasons, exemption is possible for students who have served in military departments at education institutes. This possibility was introduced in 2002, when education institutes were allowed to set up military departments. Such departments did in fact exist when Moldova was still a part of the former Soviet Union, but they were abolished in 1992.³²⁵

In 2001 the Ministry of Defence proposed a draft bill that provided for the abolition of conscription. The bill was discussed by the Moldavian Parliament, but it was rejected. A majority in Parliament considered it to be too expensive to replace all conscripts by professional soldiers.³²⁶

Statistics

The armed forces comprise 6,900 troops, including 5,200 conscripts. Every year approx. 38,000 young men reach conscription age; approx. 15 per cent are recruited.

Conscientious objection

Legal basis

It is unclear how far the right to conscientious objection is legally recognized.

In 1991, the Moldavian Parliament adopted the Alternative Service Act. According to Article 3, citizens have the right to refuse the performance of military service because of their religious or pacifist beliefs, and must in this case perform alternative service.³²⁷

It is unclear if the Alternative Service Act has been in place ever since 1991. According to several sources, the Alternative Service Act is inapplicable

³²³ 'Parliament cuts mandatory military service down to 12 from 18 months', BASA-Press, www.azi.md, 19 July 2002.

³²⁴ The length of military service was reduced from 18 months in 2002.

³²⁵ UK Home Office Country Information and Policy Unit: Country Report, April 2004.

³²⁶ 'Moldavian Parliament rejects bill on contract military service', Infotag News Agency, 26 April 2001 (BBC Monitoring Service).

³²⁷ United Nations Human Rights Committee, Consideration of reports submitted by States parties to Article 40 of the Covenant: Republic of Moldova (CCPR/C/MDA/2000/1), 8 August 2001.

³²² United Nations Commission on Human Rights, Report of the Secretary-General (E/CN.4/1989/30).

in practice and the law does not provide for clear procedures whereby one can apply for substitute service. It is believed that at least during the late 1990s the law no longer applied.³²⁸

According to the Law on Preparation for Defence that was adopted in 2002, the Alternative Service Act will be abrogated and alternative service will in future be regulated by a separate government resolution.³²⁹ The Moldavian government announced in 2002 that it would introduce a separate law on conscientious objection in the future.³³⁰

By 2004, no new law on conscientious objection is known to have been introduced. Different reports, however, suggest that the Law on Alternative Service is still in place (see: **Practice**).

Provisions for the right to conscientious objection are also laid down in the Law on Religion. According to Article 5, citizens who cannot fulfil military service because of confessional reasons may perform an alternative service. The Law on Religion further states that the details of alternative service are to be laid down in the Law on Alternative Service.³³¹

Practice

According to a report published by the United Nations High Commissioner for Human Rights in 2003, CO applications are accepted without further inquiry.³³² This is, however, not in line with actual practice, as described by several sources.

According to Artur Visotin (Head of the Alternative Service Department) in 2003, applications for alternative service must include a proof of membership of a religious organisation that forbids its members to bear arms. Applications are decided on by a recruitment commission (Ministry of Defence) and need to be made before the start of the drafting period, which suggests that applications cannot be made by serving conscripts.³³³

According to the Head of the Alternative Service Department, the following number of applications was made during recent drafting periods:

	Applications	Granted
Autumn 2002	1,675	1,317
Spring 2003	1,436	1,213
Autumn 2003	796	unknown

According to the Ministry of Defence, 1,625 conscripts were assigned to alternative service during the autumn draft of 2004.³³⁴

It is not known which criteria the recruitment commission uses to decide on applications. The requirement to prove membership of a religious organisation obviously means that only members of certain religious denominations can be granted CO status. This is in clear contradiction with Article 3 of the Alternative Service Law, which does not restrict the right to conscientious objection to religious grounds.³³⁵

It is not known of which religious denominations one must be a member in order to be able to obtain CO status. According to one source, members of ten out of the nineteen religions that are registered in Moldova may be recognized as COs.³³⁶

Many young men reportedly specifically join certain religious organisations in order to avoid military service. In fact, the government has reacted to this phenomenon and has forbidden young men to join religious pacifist organisations during drafting periods (May-June and November-December).³³⁷

Substitute service

Moldova's concept of substitute service is different from other European countries. There is no substitute service available which is comparable with other countries. Instead, COs may continue their regular jobs and pay 25 per cent of their salaries to the state.³³⁸ It is not known what consequences this has for students or unemployed

³²⁸ Association for Participatory Democracy (ADEPT): Parliament Activity Review July 15-19, 2002, www.e-democracy.md, Centre for Human Rights in Moldova, 1999, www.iatp.md/cpdom/en/military.htm

³²⁹ Association for Participatory Democracy (2002).

³³⁰ BASA-Press (19 July 2002).

³³¹ Olivier de Schutter (University of Louvain): Expert opinion on the conformity of the Law on Religion of the Republic of Moldova with the European Convention on Human Rights, Council of Europe, SG/Inf (2002) 30, 18 September 2002.

³³² This is the conclusion drawn by the United Nations High Commissioner based on a Moldavian government response. As the text of the government response is not publicly available, it is not known which information the Moldavian government submitted. (United Nations Commission on Human Rights, Civil and Political rights, including the question of conscientious objection to military service, report of the Office of the High Commissioner for Human Rights (E/CN.4/2004/55), 16 February 2004).

³³³ 'Alternative service becomes less attractive', BASA-Press, www.azi.md, 5 November 2003.

³³⁴ '2004 Autumn Military Draft Gets Underway', Infotag News Agency, www.azi.md, 2 November 2004.

³³⁵ During the discussion on Moldova's periodic report with the United Nations Human Rights Committee in 2002, when asked if only religious grounds for conscientious objection are legally recognized, the Moldavian delegation answered that pacifism constituted grounds for conscientious objection. The delegation member added that he needed to contact the relevant authorities for further details on the grounds for recognition (United Nations Human Rights Committee, Summary record of the first part (public) of the 2030th meeting: Republic of Moldova (CCPR/C/SR.2030), 25 July 2002).

³³⁶ Ilona Kiss: Rights of conscripts in peacetime: Obstacles to and opportunities for providing judicial and non-judicial remedies in East European and Central Asian countries, Geneva Centre for the Democratic Control of Armed Forces (DCAF), Working Paper Series No.62, August 2002.

³³⁷ Kiss (2002). Liliana Gurez: Dedovhtschina - The fear of Moldavian recruits!, www.azi.md, 31 March 2003.

³³⁸ BASA-Press (2 November 2003). War Resisters' International (1998).

people and if this limits their right to conscientious objection.

It is unclear for how long the obligation to pay 25 per cent of one's salary to the state lasts. According to the Law on Alternative Service, the duration of alternative service is 24 months. Most sources in fact maintain that the length of substitute service is 24 months.³³⁹ However, the Moldavian government stated in 2002 that the length of alternative service is 12 months, which is the same length as military service.³⁴⁰

TRANSNISTRIA

In 1991 separatist groups in Transnistria declared a 'Dniester Republic' between the Dniester River and Ukraine. It declared independence from Moldova in 1991, but it has not been internationally recognized.

The Dniester Republic has its own armed forces and conscription system. Conscription is enshrined in Article 48 of the Constitution, according to which "Defence of the Pridnestrovskiaia Moldavskaia Respublica is a sacred duty for everybody". The 2000 Law on Universal Military Service requires men over the age of 18 to undertake military service for 18 months.³⁴¹ All residents of Transnistria are allegedly obliged to serve in the Transnistrian army, including those who have citizenship of another country. There are no legal provisions for conscientious objection and substitute service.³⁴²

MONACO

Monaco has no armed forces.

The defence of Monaco is a responsibility of France. Internal security is provided by a national police force and the paramilitary Prince's Guard.³⁴³

³³⁹ UK Home Office (2004). BASA-Press (2 November 2003). According to the Moldavian mission to NATO in 2004, COs undertake alternative civil service for 24 months in state institutions and special units (Coalition to Stop the Use of Child Soldiers: Child Soldiers Global Report 2004).

³⁴⁰ Information provided by the Moldovan delegation to the United Nations Human Rights Committee (United Nations Human Rights Committee CCPR/C/SR.2030).

³⁴¹ Coalition to Stop the Use of Child Soldiers (2004).

³⁴² UK Home Office (2004).

³⁴³ Coalition to Stop the Use of Child Soldiers: Child Soldiers Global Report 2004.

NETHERLANDS

Conscription

In 1992 the Dutch Parliament decided to suspend conscription. The last conscripts were called up for military service in 1996. Since January 1997 the armed forces consist of professional soldiers only.

Conscription is still included in Article 97 of the Constitution, according to which: "All Dutch nationals who are capable of doing so shall have a duty to cooperate in maintaining the independence of the state and defending its territory... This duty may also be imposed on residents of the Netherlands who are not Dutch nationals". According to Article 98: "To protect its interests, the State shall maintain armed forces which consist of volunteers and which can also consist of conscripts... Compulsory service in the armed forces and the power to postpone the call-up in active service shall be regulated by an Act of Parliament".

With the suspension of conscription in 1997 the Law on Conscription was amended. Young men are still registered for military service at the age of 17. They receive a notice of registration from the Ministry of Defence, but they are not called up for medical examination or military service.

Conscription may be re-enforced during wartime or time of emergency. In that case, all registered conscripts up to the age of 45 may be called up for military service.³⁴⁴

Conscientious objection

The right to conscientious objection has been legally recognized since 1920. Its further legal basis was laid down in the 1962 Law on Conscientious Objection.

During the 1980s, approx. 3,000 CO applications were made per year, which was approx. 8 per cent of eligible conscripts. During the last years of conscription the number of COs actually increased, as many applicants tried to delay their call-up for service hoping that they would not be called up at all.³⁴⁵

The right to conscientious objection is included in Article 99 of the Constitution, according to which: "The conditions on which exemption is granted from military service because of serious

³⁴⁴ European Bureau for Conscientious Objection/Heinrich Böll Foundation: European Union without compulsory military service - Consequences for alternative service, 2000.

³⁴⁵ European Bureau for Conscientious Objection/Heinrich Böll Foundation (2000).

conscientious objection shall be specified by Act of Parliament”.

Following the suspension of conscription in 1997, the Law on Conscientious Objection was amended.³⁴⁶

When conscription applied, CO applications could only be made after medical examination. Consequently, only conscripts who were declared fit for military service were able to make a CO application. Following the suspension of conscription, young men are no longer called up for medical examination. This means that young men have no possibility of making a CO application, although all registered conscripts may be called up for military service if conscription is re-established.

In the late 1990s, Dutch peace groups started a campaign to enable people to be registered as conscientious objectors during peacetime. During the discussion on the Law on Conscientious Objection by the Parliamentary Defence Commission in 2002, several political parties in fact called upon the Ministry of Defence to enable men to claim the right to conscientious objection during peacetime. However, the Ministry of Defence did not want to introduce such a register. The Ministry considered it to be too expensive to make the necessary administrative efforts to set up such a register.

Since the suspension of conscription, one conscript has actually tried to obtain recognition as a conscientious objector. After receiving information about his registration, he made a CO application to the Ministry of Defence. His application was, however, not taken into consideration by the Ministry.³⁴⁷

Professional soldiers

The Law on Conscientious Objection applies to both conscripts and contract soldiers. According to Article 3, reasons of conscientious objection by both conscripts and the military may be considered by the Ministry of Defence as deep and profound.

It is not known if there is an application procedure for professional soldiers who wish to be discharged from the armed forces because of conscientious objection. It is believed that, in the past, several professional soldiers who asked to be discharged from the armed forces because of conscientious objection were granted honourable leave.³⁴⁸ There

are no known recent cases of professional soldiers seeking discharge because of conscientious objection.

According to the Ministry of Defence in 2004, professional soldiers who have conscientious objection to particular campaigns of the armed forces, for example deployment in Iraq, do not have the right to claim conscientious objection to participation in these particular campaigns. According to the Ministry, professional soldiers who have conscientious objection to a particular army campaign may only seek discharge from the armed forces.³⁴⁹

³⁴⁶ Wet van 22 mei 2003 tot wijziging van de wet gewetensbezwaren militaire dienst in verband met de kaderwet dienstplicht, Staatsblad van het Koninkrijk der Nederlanden 255, 2003.

³⁴⁷ State Secretary of Defence: Voorstel van wet houdende wijziging van de Wet Gewetensbezwaren militaire dienst in verband met de Kaderwet Dienstplicht (25 990), 23 November 2002.

³⁴⁸ War Resisters' International: Refusing to bear arms - A world survey on conscription and conscientious objection to military service, 1998.

³⁴⁹ Information provided by the Netherlands Ministry of Defence, November 2004.

NORWAY

Conscription

Conscription is enshrined in Article 109 of the Constitution and is further regulated by the 1953 General Compulsory Service Act (29/1953).

The length of military service is 12 months. In practice, it is regularly shortened to 8 or 9 months.

All men between the ages of 18 and 44 are liable for military service. In practice, men are seldom called up after the age of 30.

A small number of conscripts serve in the National Guards. They serve for 6 months, but have to do an annual two weeks' reservist training up to the age of 44. Conscripts who have performed regular military service also have reservist obligations up to the age of 44, but are in practice seldom called up for reservist training.³⁵⁰

In recent years, Norway has reviewed its defence policy and decided to keep conscription in place. Apart from the Green Party, there seems to be political consensus to maintain conscription in the future. According to the Ministry of Defence "conscription will remain a pillar of Norwegian defence".³⁵¹

Statistics

The armed forces comprise 19,000 troops, including 11,300 conscripts. Every year, approx. 32,000 young men reach conscription age.

Conscientious objection

Legal basis

The right to conscientious objection has been legally recognized since 1922. Its present legal basis is the 1965 Law on Exemption of Military Service for Reasons of Personal Conviction.

Scope

Both religious and non-religious grounds for conscientious objection are legally recognized. According to Article 1 of the 1965 Law: "If there is any reason to suppose that a conscript is unable to perform military service of any kind without coming into conflict with his serious conviction, he shall be exempted from such service by the competent Ministry or by judgement pronounced pursuant to the provisions of this Act".

Opposition to the use of nuclear weapons has also been included as a legal ground for conscientious objection. According to an amendment made to the 1965 law in 1990, beliefs "related to the use of

weapons of mass destruction as they might be expected to be used in the present day defence" may be seen as a legal ground for conscientious objection.³⁵² Norway is in fact the only European country where opposition to nuclear weapons is recognized as a legal ground for conscientious objection to military service.

Time limits

There are no time limits for submitting CO applications. When a serving conscript makes an application, he needs to be discharged from the armed forces within four weeks. During these four weeks, he will not have to carry arms.³⁵³

It is not clear if there are legal provisions for the right to conscientious objection for professional soldiers. A report published by the Council of Europe in 2001 suggests that the right to conscientious objection does not apply to professional soldiers.³⁵⁴ According to another source, professional soldiers may claim the right to conscientious objection and should, in this case, be released from duty. No further information is available about an application procedure for professional soldiers and there are actually no known cases of professional soldiers seeking discharge from the armed forces because of conscientious objection.³⁵⁵

Procedure

Applications have to be made to the Ministry of Justice. Applications can be made by signing a standard form that is available from the Ministry. Since 2001, no personal interview takes place during the application procedure. Consequently, applications are almost automatically granted.³⁵⁶

Substitute service

The length of substitute service is 13 months, which is one month longer than military service. Substitute service is administered by the Ministry of Justice. According to Article 10 of the 1965 Law, substitute service "must have a civilian character and must be commanded by civilians. It should have no connection with any military establishment or activity". Substitute service may be performed in government institutions, such as hospitals, but also in non-governmental organizations. A large number of COs do their substitute service in the VOKT, an educational programme on violence prevention in junior high

³⁵² War Resisters' International: Refusing to bear arms - A world survey on conscription and conscientious objection to military service, 1998.

³⁵³ Sivilarbeider (2004).

³⁵⁴ Exercise of the right of conscientious objection to military service in Council of Europe member states, Report Committee on Legal Affairs and Human Rights, Doc. 8809 (Revised), 4 May 2001.

³⁵⁵ Sivilarbeider (2004).

³⁵⁶ Before 2000, the application procedure could be rather strict, as approx. 30 per cent of applications were rejected (War Resisters' International 1998).

³⁵⁰ Information provided by Sivilarbeider (Norwegian Union of Conscientious Objectors), August 2004.

³⁵¹ Norwegian Ministry of Defence: The further modernisation of the Norwegian Armed Forces 2005-2008, 12 March 2004, www.odin.dep.no

schools and high schools. In 2004, 400 COs were employed in this programme, making it in fact the largest employer of COs.

The salary of COs is paid for by the Ministry of Justice. Employing organizations need to pay a sum of 18.3 Euros per day to the Ministry, which makes it quite attractive for organizations to employ COs. This money is given to UNICEF, meaning that employers of COs largely pay for Norway's regular contribution to UNICEF.

After completing substitute service, COs have reservist duties in the Civilian Defence Force and may be called up for an annual two weeks' reservist training. The Civilian Defence Force is aimed at supporting civilians during wartime. Its training includes training in first-aid, self-defence and administering logistics, but it does not include training with arms.³⁵⁷

Practice

During the last ten years, the number of CO applications has been relatively stable at between 2,000 and 2,500 per year. In recent years, the following number of CO applications has been granted:³⁵⁸

2001	2,364
2002	2,150
2003	2,209

Since the abolition of personal interviews in 2001, almost all applications are granted. It is believed that an application is only rejected if the applicant has been convicted for a violent offence. In 2002, three applications were rejected because the applicants had been convicted for a criminal offence in the past.³⁵⁹

The government has set a maximum on the number of COs that can be employed per year at 1,490. As the number of recognized COs is higher, this means that a considerable number of COs cannot start their substitute service. Consequently, between 500 and 1,000 COs per year are not called up for substitute service and are in practice exempt from serving altogether.³⁶⁰

Total objectors

Each year, between 100 and 200 conscripts refuse to perform both military and substitute service. They are usually sentenced to "enforced completion of the service", which means that they are forced to perform a substitute service consisting of regular substitute service duties. This

is mainly relevant for Jehovah's Witnesses. They do not want to apply for substitute service but they will comply with doing substitute service if they are sentenced to perform it.

Approximately 150 Jehovah's Witnesses per year are sentenced to enforced service.³⁶¹

Total objectors who do not comply with the sentence of enforced substitute service are usually sentenced to a fine and three months' imprisonment under Article 35 of the Military Penal Law for "unauthorized absence from military service". The Military Penal Law envisages a renewed call-up after release and a repeated three months' imprisonment. In practice, the second sentence is often pardoned. In 2003, ten total objectors were believed to have been sentenced to imprisonment.³⁶²

³⁵⁷ Sivilarbeider (2004).

³⁵⁸ Norwegian Ministry of Defence: Norwegian Defence Facts and Figures 2003, www.odin.dep.no. European Bureau for Conscientious Objection: New challenges for peace: From the global to the local view, Strasbourg 9-16 March 2003 (seminar report).

³⁵⁹ European Bureau for Conscientious Objection (2003).

³⁶⁰ Sivilarbeider (2004).

³⁶¹ Kampanjen Mot Verneplikt (Campaign against Conscripton), www.pluto.no/doogie/ga/huset.kmv

³⁶² Sivilarbeider (2004)

POLAND

Conscription

Conscription is enshrined in Article 85 of the 1997 Constitution and is further regulated by the 1999 Law on the Obligation to Defend the Republic of Poland.

The length of military service is 10 months, and 3 months for university graduates. Instead of performing military service, students may also participate in military training during their studies. All men between the ages of 18 and 28 are liable for military service. Reservist obligations apply up to the age of 50, but in practice most conscripts are not called up for reservist training in peacetime.

During the past decade, in its attempts to comply with NATO standards, the Polish government has reduced the size of the armed forces and increased the number of professional soldiers. The number of conscripts in the armed forces has been reduced and will be further reduced in future. The duration of military service has been reduced and will be further reduced to 9 months in 2006.³⁶³ There are no known plans to abolish conscription.

Statistics

The armed forces comprise 87,000 troops, including 39,000 conscripts. Every year, approx. 330,000 young men reach conscription age; approx. 20 per cent are recruited.

Conscientious objection

Legal basis

The right to conscientious objection has been legally recognized since 1988 and is included in Article 85 of the Constitution, according to which "Any citizen whose religious convictions or moral principles do not allow him to perform military service may be obliged to perform substitute service in accordance with principles specified by statute".

Its present legal basis is the new Law on Alternative Service, which entered into force on 1 January 2004.

The 1999 Law on the Obligation to Defend the Republic of Poland also contains provisions on conscientious objection.

Scope

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

Time limits

There is a time limit for submitting CO applications. Applications can only be made before starting military service, at the latest by the time of receiving the call-up order for military service. Applications can thus not be made by serving conscripts or reservists.³⁶⁴

There are no legal provisions for conscientious objection for professional soldiers.³⁶⁵ According to the Polish government, professional soldiers who develop conscientious objection may seek to dissolve their employment contract without specifying the reason, with appropriate notice. If a soldier's contract is dissolved, he needs to repay an equivalent of the costs of accommodation, board and uniforms obtained during the period of studies or instruction.³⁶⁶

Procedure

Applications must be made to the local 'voivod' (local government) commission. The commission consists of five members, three of whom must be present in order to make a decision. At least two of the commission members are specialists in ethical or religious issues. The commission conducts a personal interview with the applicant, after which it makes a decision.

If the application is rejected, it is possible to make a new CO application within six months of the first decision. If the application is rejected again, an appeal can be made to the alternative service commission at a higher level and then to the administrative court.³⁶⁷

Substitute service

The length of substitute service is 18 months, and 6 months for university graduates.³⁶⁸

Substitute service is administered by the Ministry of Labour, in cooperation with local governments. It can be performed in government institutions in areas like health care, nursing, social work and environmental protection. Substitute service may also be performed with religious organisations that have received public benefit status, and with non-governmental organisations that have been approved by the Ministry.³⁶⁹

³⁶⁴ Information provided by Amnesty International Polish Section, August 2004.

³⁶⁵ Exercise of the right of conscientious objection to military service in Council of Europe member states, Report Committee on Legal Affairs and Human Rights, Doc. 8809 (Revised), 4 May 2001.

³⁶⁶ United Nations Human Rights Committee, Consideration of reports submitted by states parties under Article 40 of the Covenant, Fifth periodic report Poland (CCPR/C/POL/2004/5), 26 January 2004.

³⁶⁷ Amnesty International Polish section (2004).

³⁶⁸ In 1999, the length of military service was reduced from 18 to 12 months, but substitute service was only reduced from 24 to 21 months. The new 21/12 ratio, as well as the 18/10 ratio that has been in place since 2004, are thus far more punitive than the 24/18 ratio that was in place before 1999.

³⁶⁹ Amnesty International Polish section (2004).

³⁶³ The length of military service was reduced from 18 to 12 months on 1 January 2004, and from 12 to 10 months on 1 January 2005. ('Shape Up or Ship Out', www.warzawoice.pl, 28 August 2003).

After completing substitute service, COs are not called up for reservist duties in peacetime. According to the 1999 Law on the Obligation to Defend Poland, the right to perform substitute service is suspended during wartime. Consequently, COs may be called up for military service during wartime.³⁷⁰

Practice

It is believed that in both 2003 and 2004 approx. 4,000 CO applications have been made. Exact figures are not available.

The Polish government has, in fact, given different statistics about the number of CO applications in recent years. The following table gives the number of CO applications and the number of granted applications in recent years. The first table is based on the figures provided in Poland’s periodic report to the United Nations Human Rights Committee in 2004; the second table is based on information provided by the Polish government in August 2004.³⁷¹

	Applications	Applications granted
2000	6,327	3,991
2001	4,410	2,848
2002	4,851	2,861

	Applications	Applications granted
2000	3,372	2,361
2001	3,147	2,243
2002	3,153	2,394

As the statistics show, the Polish application procedure is rather strict and only approx. 60 per cent of applications are granted. This has been the case ever since the early 1990s. Considering the percentage of recognized CO applications, Poland has, in fact, the strictest application procedure of all European countries having CO legislation.

Until 2004 CO applications were decided on by a commission that consisted of both civilian and military members. Under the new Law on Alternative Service that entered into force in 2004, the commission no longer has military members. It is not yet clear if this means that applications will be granted more liberally.

There is a shortage of places where substitute service can be performed. This has actually been the case ever since substitute service became available in the early 1990s. In 2000, 1,420 COs were assigned to substitute service, 1,803 in 2001, and 1,780 in 2002.³⁷²

³⁷⁰ Amnesty International Polish section (2004).
³⁷¹ United Nations Human Rights Committee (CCPR/C/POL/2004/5). Information provided to Amnesty International Polish section by Polish Ministry of Interior, August 2004.

³⁷² United Nations Human Rights Committee (CCPR/C/POL/2004/5).

As these statistics show, the number of COs who are assigned to substitute service is far less than the number of recognized COs. Consequently, COs may have to wait for several years before they can start substitute service. According to the Polish government, by 31 December 2002 there were 9,181 COs waiting for an assignment to start their substitute service.³⁷³ Eventually, they may also get exempt from service altogether or get transferred to the reserves.³⁷⁴

In November 2004, the United Nations Human Rights Committee called upon the Polish government to reduce the length of substitute service. The Committee noted that the duration of substitute service was 18 months, compared to 12 months’ military service and stated that the Polish government “should ensure that the length of alternative service to military service does not have a punitive character”.³⁷⁵

Background

In the past, Polish CO groups have regularly claimed that CO status is mostly granted to absolute pacifists and members of religious denominations who forbid their members to bear arms.³⁷⁶ During the 1990s there were dozens of Roman Catholic COs whose applications were rejected and who continued to refuse military service. They were sentenced to fines and imprisonment for “refusing to perform military service”. The most recently known case occurred in 1998 when a CO was sentenced to six months’ imprisonment. His CO application was rejected on the ground that the Roman Catholic religion does not constitute sufficient grounds for conscientious objection.³⁷⁷

Since 1999, there are no known similar cases of COs being imprisoned.

³⁷³ United Nations Human Rights Committee (CCPR/C/POL/2004/5).

³⁷⁴ Amnesty International Polish section (2004).

³⁷⁵ United Nations Human Rights Committee, Concluding observations of the Human Rights Committee: Poland (CCPR/CO/82/POL/Rev.1), 5 November 2004.

³⁷⁶ Radek Rzehak (Amnesty International Poland CO group): Conscientious Objection to Military Service in Poland, Youth Action for Peace: Voluntary Service as a Tool for awareness raising about Conscientious Objection in East and West, Barcelona 21-26 February 2000 (seminar report).

³⁷⁷ Amnesty International: Marcin Petke, a possible prisoner of conscience (EUR 37/002/1998), Concerns in Europe January-December 1999 (EUR 01/001/2000).

PORTUGAL

Conscription

In 1999 the Portuguese government announced the abolition of conscription and started a transformation process into fully professional armed forces. The last conscripts were called up for military service in 2004. Since November 2004, the armed forces consist of professional soldiers only.³⁷⁸

Conscientious objection

The right to conscientious objection was legally recognized in 1976.

There are no legal provisions for the right to conscientious objection for professional soldiers.³⁷⁹

When conscription applied, legal provisions on conscientious objection were laid down in Law 7/1992. This law only applied to conscripts. CO applications could only be made before starting military service. Article 13 practically excludes professional soldiers from claiming the right to conscientious objection. According to this Article, the right to conscientious objection does not apply to those whose work includes bearing arms, have a licence to do so or whose work is connected with the manufacture of arms and armaments.³⁸⁰

³⁷⁸ Coalition to Stop the Use of Child Soldiers: Child Soldiers Global Report 2004.

³⁷⁹ War Resisters' International: Refusing to bear arms - A world survey on conscription and conscientious objection to military service, 1998.

³⁸⁰ War Resisters' International (1998).

ROMANIA

Conscription

Conscription is enshrined in Article 55 of the Constitution, as amended in 2003, and is further regulated by the 1996 Law on the Preparation of the Population for Defence (46/1996).

The length of military service is 8 months, and 4 months for university and college graduates.³⁸¹

All men aged between the ages of 20 and 35 are liable for military service. Reservist obligations apply up to the age of 50.

The Romanian government has announced that it plans to abolish conscription in 2007. The transformation into fully professionalized forces in order to comply with NATO standards has been planned for some time. Since the 1990s, the size of the Romanian armed forces and the number of conscripts has been reduced significantly. In 2003 the Ministry of Defence announced that a bill had been drafted to gradually phase out conscription by 2007.³⁸² It is not known if and when this bill has been discussed by the Romanian Parliament. In 2003 the Constitution was in fact amended in order to allow for the abolition of conscription.³⁸³

Statistics

The armed forces comprise 97,000 troops, including 29,600 conscripts. Every year, approx. 170,000 young men reach conscription age; approx. 35 per cent are recruited.

Conscientious objection

Legal basis

The right to conscientious objection is regulated by the 1996 Law on the Preparation of the Population for Defence (1996/46) and the 1997 Government Decree 'As regards the way of execution of the alternative service law according to the provision of Article 4 from Law 46/1996' (618/1997).

Scope

Only religious grounds for conscientious objection are legally recognized. According to Article 4 of the 1996 Law: "Citizens who, for religious reasons, refuse military service under arms shall perform alternative utilitarian service, according to present law".

³⁸¹ The length of military service was reduced from 12 to 8 months in 2003.

³⁸² "Romanian government to draft new bill on military service", www.setimes.com, 7 November 2003.

³⁸³ Article 55 of the Constitution now reads that "The terms for doing military service shall be set up in organic law". Previously, Article 51 read that "Military service is compulsory for all Romanian citizens". (Law No. 429/2003 on the Revision of the Constitution of Romania, www.cdep.ro)

The grounds for recognition are further restricted by Article 6.3 of the 1997 Government Decree, which states that the right to conscientious objection only applies to "members of religious groups that do not allow the discharge of military service under arms".

The religious groups concerned are named in a list that is made by the State Secretariat for Religious Denominations. The list includes the Pentecostals, Adventists, Baptists, Seventh Day Adventists and Jehovah's Witnesses.³⁸⁴

Time limits

There is a strict time limit for submitting CO applications. Applications must be made within 15 days of receiving call-up papers. Applications can thus not be made by serving conscripts or reservists.³⁸⁵

Procedure

Applications must be made to the Ministry of Defence. The applicant must state in his application to which church or religious group he adheres. The Ministry of Defence checks the application with the State Secretariat for Religious Denominations. Applications are only granted if the mentioned religion is included in the government list.

If the application is rejected, there is no right to appeal with the civil court.³⁸⁶

Substitute service

The length of substitute service is 12 months, and 6 months for high school graduates. This is one and a half times the length of military service.³⁸⁷

Substitute service is administered by the Ministry of Defence. According to Government Decree 618/1997, substitute service can be performed in public institutions, independent administrations and trade companies working in social and medical assistance, industrial construction, and protection of the environment, agriculture and forestry (Article 2.2).

Practice

It is not known how many CO applications are made.

According to the Ministry of Defence, between 1991 and 1998, 1,670 conscripts had applied for an alternative service. Most of them were members of the Jehovah's Witnesses and other religious denominations who forbid their members to bear arms. Pending the introduction of Government

Decree 618/1997, their call up for service was postponed, but they were supposed to be called up for substitute service by 1998. It is not known how many CO applications have been made since 1998, nor is it known how far substitute service has been organised in practice.

In 2000 there were 29 known cases of Jehovah's Witnesses who refused to perform substitute service. They had reservations about its length and nature as, at that time, substitute service lasted twice as long as military service. Moreover, they felt discriminated against because ordained priests of officially recognized religious organisations are legally exempt from military service.

Court rulings were inconsistent. Some of them were charged under Article 354 of the Criminal Code for failure to report for military service; some of them were acquitted. In October 2001, the Supreme Court ruled that the failure to report for substitute service is not provided for in the Criminal Code.³⁸⁸ Since this Supreme Court ruling there have been no new cases of Jehovah's Witnesses refusing to perform substitute service. Some of the Jehovah's Witnesses concerned actually lodged a complaint with the European Court of Human Rights. They accused the Romanian authorities of discrimination because ordained ministers of officially recognized religious organisations are legally exempt from military service. Their cases are believed to be still pending.

There are no known cases of conscripts claiming the right to conscientious objection on non-religious grounds. Under the present legislation, they would clearly not be able to obtain CO status and they would not be allowed to perform substitute service.

The Romanian government has been under national and international pressure to recognize secular pacifist grounds for conscientious objection. In 1998 the National Coalition for Civil Service was formed. The Coalition is a network of youth and human rights organisations campaigning for CO legislation that complies with international standards. At the end of 1998, the Coalition had 70 member organisations representing 70,000 people.³⁸⁹

In 1999, the United Nations Human Rights Committee expressed its concern that Romania "did not provide for the right to conscientious

³⁸⁴ UK Home Office Asylum and Appeals Policy Directorate: Country Assessment, April 2004.

³⁸⁵ Amnesty International: Conscientious objectors face imprisonment (EUR 39/06/00).

³⁸⁶ Exercise of the right of conscientious objection to military service in Council of Europe member states, Report Committee on Legal Affairs and Human Rights, Doc. 8809 (Revised), 4 May 2001.

³⁸⁷ The length of substitute service was reduced in 2003. Before 2003, substitute service lasted twice as long as military service.

³⁸⁸ Amnesty International: Conscientious objectors face imprisonment (EUR 39/06/00), Concerns in Europe: January-June 2001 (EUR 01/003/2001), Concerns in Europe: July-December 2001 (EUR 01/002/2002).

³⁸⁹ Alex Badinici (Youth Action for Peace Romania): The Beginning of the Conscientious Objectors Campaign in Romania, in: Youth Action for Peace: Voluntary Service as a Tool for awareness raising about Conscientious Objection in East and West, 21-26 February 2000 Barcelona, (seminar report).

objection without discrimination” and called upon the Romanian government to amend its practice.³⁹⁰

However, the Romanian government has never been willing to widen the grounds for recognition and include secular pacifist grounds for conscientious objection.

Consequently, the only way for non-religious COs to avoid military service is by bribing draft officials or by evading call-up. Draft evasion is punishable by a fine of between 500,000 and 3 million lei. Furthermore, failure to report for military service is punishable by one to five years’ imprisonment under Article 354 of the Criminal Code.³⁹¹

RUSSIAN FEDERATION

Conscription

Conscription is enshrined in Article 59 of the 1993 Constitution and is further regulated by the 1998 Law on Conscription Obligation and Military Service.

The length of military service is 24 months, and 12 months for graduate students of higher education institutes.

All men between the ages of 18 and 27 are liable for military service. Reservist obligations apply up to the age of 50.

All male citizens are entered into the military register at the age of 17, after which they receive a summons to appear at the local draft commission for medical examination at the age of 18. There are two call-up periods per year, during spring (April-June) and during autumn (October-December).³⁹²

Students may postpone their military service, but the government is reportedly considering changing the regulations on postponement. Exemption from military service is possible on medical grounds and various social grounds. The Ministry of Defence is reportedly considering reducing the grounds for exemption as it considers that too many young men obtain legal exemption from service.³⁹³

The Russian armed forces have been involved in an armed struggle in Chechnya ever since the 1990s. According to Presidential Decree No. 660, serving conscripts can be sent to conflict areas upon completing six months’ military service.³⁹⁴ However, the Ministry of Defence announced in March 2004 that from 2005 onwards, conscripts would no longer be sent to serve in Chechnya.³⁹⁵

The future of conscription is a much-debated issue in the Russian Federation, but the abolition of conscription is not foreseen in the near future. The military are in favour of maintaining conscription and it appears to be financially impossible to replace conscripts by professional soldiers in the short term. In fact, Minister of Defence Ivanov publicly stated in April 2004 that “conscription into military service will never be abolished in Russia”.

³⁹² Guidelines on the conscription process are laid down in the 1998 Law on Military Service and a consequent government regulation No. 587 of 1 June 1999. There are many reported cases of the military authorities not adhering to legal conscription methods. (Human Rights Watch: Conscription through detention in Russia’s armed forces, November 2002).

³⁹³ Netherlands Ministry of Foreign Affairs: Algemeen Ambtsbericht Noordelijke Kaukasus (country report), January 2005. Oksana Yabolokova: Ivanov reverses on student call-up’, www.themowcowtimes.com, 20 January 2005.

³⁹⁴ UNHCR: Basis of Claims and Background Information on Asylum-seekers and Refugees from the Russian Federation, June 2004.

³⁹⁵ ‘New conscripts promised warmth and safety’, www.russiajournal.com, 1 April 2004.

³⁹⁰ United Nations Human Rights Committee: Concluding Observations of the Human Rights Committee. Romania (CCPR/C/SR.1777), 28 July 1999.

³⁹¹ UK Home Office (2004).

However, President Putin has announced that by the end of 2007 contract soldiers should make up almost half of the military, which should allow for a gradual reduction of the term of military service to one year by 2008.

Statistics

The armed forces comprise 1,130,000 troops, including 600,000 conscripts. Every year, approx. 1,250,000 young men reach conscription age.

Conscientious objection

Legal basis

The right to conscientious objection is enshrined in Article 59.3 of the 1993 Constitution, according to which citizens "whose convictions and faith are at odds with military service (...) shall have the right to the substitution of an alternative civil service for military service". In addition, Article 17.1 of the Constitution recognises and guarantees "the commonly recognised principles and norms of international law".

Although the right to conscientious objection was included in the Constitution in 1993, further legislation was only introduced in 2002 when the State Duma passed the Federal Bill on Alternative Civilian Service. The Law on Alternative Civilian Service entered into force on 1 January 2004.³⁹⁶

Scope

Both religious and non-religious grounds for conscientious objection are legally recognized. According to Article 2 of the Law on Alternative Civilian Service "A citizen has the right to perform alternative civil service as a substitute for military service if the performance of military duties is in conflict with his convictions or religious beliefs".

Time limits

The Law on Alternative Civilian Service contains a strict time limit for submitting CO applications. Applications must be made at least six months before receipt of call-up papers (Article 11.1). As conscripts usually receive their call-up papers at the age of 18, they are only 17 years and six months old when they need to submit a CO application if they wish to do so. Consequently, conscripts are, in fact, still minors at the time when they are eligible to make a CO application.³⁹⁷

CO applications cannot be made by serving conscripts and reservists. According to Article 3.1:

"Substitute service is only granted to those who are not in military service".

There are no legal provisions for conscientious objection for professional soldiers. The Law on Alternative Civilian service only applies to conscripts and the legal time limits further exclude professional soldiers from claiming the right to conscientious objection.

Procedure

CO applications must be made to the military draft commission (Ministry of Defence). Applications must include a curriculum vitae and a written explanation of the reasons for conscientious objection. The military draft commission conducts a personal interview with the applicant, after which it makes a decision.

If the application is rejected, the decision can be appealed in court through procedures set out in Russian law (Article 15).

Substitute service

The length of substitute service is 42 months, and 21 months for graduates of higher education institutes. This is 1.75 times the length of military service, as laid down in Article 5.1 of the Law on Alternative Civilian Service. The Law also provides for an unarmed service within the armed forces, which lasts 36 months, and 18 months for graduates.

Substitute service is administered by the Ministry of Defence. According to Article 4, substitute service consists of "civilian work outside the armed forces".

The Law on Alternative Civilian Service does not specify the workplaces where substitute service may be performed. The workplaces and positions for performing substitute service are listed in a regulation that was issued by the Ministry of Labour in March 2004.³⁹⁸ According to the Regulation, there are 23,500 vacancies for substitute service in over 700 organisations at federal and regional level. The list includes organisations in federal military departments, such as the Ministry of Defence, the Federal Service of Specialised Construction, the Russian Agency for Conventional Weapons and the Russian Organisation for Ammunitions.

Substitute service may also be performed with organisations that are connected to federal civilian ministries, such as the Ministry of Natural Resources, the Ministry of Labour, the Ministry of Justice Department of the Penitentiary and the Russian Weather Forecasting Service. The Ministries of Health, Education and Culture have so far not offered any workplaces for substitute service. There are also workplaces available with

³⁹⁶ English translation of the Law on Alternative Civilian Service, www.zivi-ru.org

³⁹⁷ Article 11 of the Law on Alternative Civilian Service thus seems to be in contradiction with Article 60 of the Constitution, according to which citizens are considered to be of legal age and may independently exercise their rights and duties in full upon reaching the age of 18. (A.E. Barannikov: Prospects For An Alternative Service in Russia, in: European Bureau for Conscientious Objection, The Right to Refuse to Kill, October 2003).

³⁹⁸ Ministry of Labour, Regulation No. 27, 3 March 2004.

regional authorities, in health care and social institutions.³⁹⁹

COs cannot choose themselves where they perform substitute service, but are assigned to a workplace by the Ministry of Defence. According to Article 14 of the Law on Alternative Civilian Service, the military authorities may assign COs to either civilian work outside the armed forces or to non-combatant duties within the armed forces.

According to Article 4.2 of the Law on Alternative Civilian Service, COs perform substitute service "as a rule" outside their home area.⁴⁰⁰ Concerns have been raised as to whether the Ministry of Defence is able to provide COs with accommodation. Of the 23,000 available vacancies for substitute service, only 3,400 reportedly have housing assigned to them.⁴⁰¹ As the army is actually the government body that is most able to provide accommodation, it is in fact most convenient for the Ministry of Defence to assign most COs to serve in military units or workplaces connected to the military authorities.⁴⁰² So far, most COs perform substitute service within federal military organisations.

While performing substitute service, COs are not allowed to take part in strikes or to leave the city where they perform substitute service. In such cases, CO status may be withdrawn (Law on Alternative Civilian Service, Article 21.2).

After completing substitute service, COs are transferred to the reserves. According to Article 24 of the Law on Alternative Civilian Service, COs shall not be subject to periodic military training. The Law does not specify the position of COs during wartime.

Practice

The Law on Alternative Civilian Service entered into force on 1 January 2004.

Of the conscripts who were called up during the spring draft of 2004, approx. 100 made a CO application. Because of the six months' time limit, conscripts who expected to be called up during the spring draft of 2004 had to have already made their application by October 2003. Most of the applications during the spring draft of 2004 were in fact made by COs who had already applied for substitute service in previous years, and who had been granted deferment.⁴⁰³

Of the conscripts who were called up during the autumn draft of 2004, 1,445 CO applications were made. Out of these, 953 applications were granted, approx. 200 were rejected and approx. 200 applicants were granted a deferment.⁴⁰⁴

Of the conscripts who were called up during the spring draft of 2005, 616 CO applications were made.⁴⁰⁵

The figures for the autumn draft of 2004 indicate that approx. 15 per cent of CO applications have been rejected. According to the military draft commissions, applications have been rejected because they did not meet the formal criteria or because the applicants did not manage to prove their convictions to the military draft commission.⁴⁰⁶

According to various reports, it is not clear if the members of the military draft commissions have received instructions and criteria for assessing CO applications. Some draft commissions have reportedly refused to accept CO applications. Some draft commissions have reportedly required applicants to prove membership of a religious organisation that forbids its members to bear arms.⁴⁰⁷ These draft commissions are thus restricting the right to conscientious objection to religious grounds, which is in contradiction with provisions of the Law on Alternative Civilian Service.

The authorities have been criticized for not informing conscripts about the possibility of applying for substitute service. Some draft commissions deliberately misinform conscripts about the application procedure for substitute service. In many draft commissions there is no information available about the workplaces where substitute service can be performed. In fact, regional authorities and draft commissions themselves, particularly outside the big cities, do not seem well informed about the possibilities of performing substitute service.⁴⁰⁸

So far, most COs appear to come from big cities like Moscow and St Petersburg where there are NGOs offering legal support to COs. In the provinces, conscripts seem far less aware of their right to conscientious objection.

The first 80 COs started performing substitute service during the spring of 2004. As outlined above, Article 4.2 and Article 14 of the Law on Alternative Civilian Service do not ensure that

³⁹⁹ Coalition "For democratic alternative civilian service": The situation of alternative civilian service in Russia in 2004, 18 October 2004.

⁴⁰⁰ Conscripts in the armed forces also perform their military service outside their home area.

⁴⁰¹ '...As NGO says, military is unprepared for new alternative civilian service program', Radio Free Europe / Radio Liberty Newline, 24 March 2004.

⁴⁰² 'New law on alternative service is no alternative, say activists', www.chechentimes.org, 5 February 2004. Igor Fedyukin: No alternatives. Experts say law on alternative service will not be popular, Vedomosti, 23 July 2003 (WPS Monitoring Agency).

⁴⁰³ Coalition for democratic alternative service (2004).

⁴⁰⁴ '1,500 conscripts to undergo alternative civil service this year', RIA Novosti, 30 September 2004.

⁴⁰⁵ 'Russia's Defence authorities optimistic about future of alternative service programs', RIA Novosti, 15 December 2004.

⁴⁰⁶ Coalition for democratic alternative civilian service (2004).

⁴⁰⁷ Galina Stolyarova: Families seek advice on dodging draft, www.themoscowtimes.com, 14 April 2004.

⁴⁰⁸ Coalition for democratic alternative service (2004). Stolyarova (2004). Oksana Yablokova: Few lining up for alternative service, www.themoscowtimes.com, 12 April 2004.

substitute service has a civilian character. (See: **Substitute service**). Until now, most COs have in fact been assigned to perform substitute service with organisations in federal military departments, in particular with the Federal Service for Special Construction and other defence related institutions. So far, only a small number of COs serve in civilian institutions.⁴⁰⁹

Several COs who were assigned to substitute service have in fact refused this, and required a civilian substitute service. In 2004, there were at least 12 of such cases, all of them Jehovah's Witnesses. An administrative court case results when a conscientious objector files a request to reverse the decision of the draft commission to induct him into the military. Criminal cases result from a conscientious objector being charged with "draft evasion" after he does not report for military service.⁴¹⁰ Their cases are believed to be still pending.

Background

The Law on Alternative Civilian Service does not comply with several international standards on conscientious objection. In 2003, the United Nations Human Rights Committee in fact expressed its concern about the duration and conditions of substitute service, including its possible military character, stating that "the law does not appear to guarantee that the tasks to be performed by conscientious objectors are compatible with their convictions". The Committee called upon the Russian government to "reduce the length of civilian service to that of military service and ensure that its terms are compatible with Articles 18 and 26 of the Covenant".⁴¹¹

In January 2004, a conscientious objector from Perm submitted a complaint to the Constitutional Court in which he submitted that the duration of substitute service is a violation of the Constitution. His complaint was rejected for formal reasons, but the Federal Ombudsman has agreed to appeal to the Constitutional Court in support of the CO's petition.⁴¹² By February 2005, the case is believed to be still pending.

So far, the Russian government has not shown any intention of amending the law and improving the conditions of substitute service to ensure that it is genuinely civilian.

Practice before 2004

Although the right to conscientious objection was included in the Russian Constitution in 1993, the Law on Alternative Civilian Service was only passed

in 2002 and entered into force in 2004. Consequently, between 1993 and 2004 the legal position of COs was unclear. During this period, thousands of young men claimed their constitutional right to conscientious objection and applied for a substitute service outside the armed forces. Per year, between 1,000 and 1,500 COs appealed to court to defend their constitutional right to conscientious objection. There was no consistent approach in the treatment of COs, which very much depended on the presiding military draft commission, judge and region. Some COs were fined, some were charged for draft evasion to between one and two years' imprisonment and some were not charged at all.

The Nizhny Novgorod region has been of particular interest. In 2001 the local government allowed nine COs to perform substitute service in local hospitals. However, in 2003 a new mayor was elected in Nizhny Novgorod and the project was eventually cancelled.

Draft evasion

Draft evasion and desertion are widespread, which is prompted by the fear of being sent to serve in Chechnya and poor conditions and human rights violations within the armed forces. For example, in 2001 the military prosecutor's office admitted to dealing with some 2,000 conscript deaths (including suicides) per year. Independent human rights organisations put the annual toll at nearer 3,000.⁴¹³

There are several means of draft evasion. Many young men obtain false medical documents through bribery and are consequently exempt from service for health reasons. Others simply do not respond to call-up papers. According to the General Staff of the Armed Forces in 2001, approx. 30,000 young men ignore the draft summons annually.⁴¹⁴ According to the Ministry of Defence, there were 21,000 draft evaders in 2004 and 25,000 in 2003.⁴¹⁵ According to estimates, there are approx. 40,000 deserters at any given time in the Russian Federation.⁴¹⁶

Draft evasion and desertion are punishable under the Criminal Code. Draft evasion is punishable by a fine, arrest for three to six months or up to two years' imprisonment (Article 328). Desertion is punishable by up to seven years' imprisonment, up to ten years in case of an armed conflict or collective desertion (Article 336). Leaving a military unit is punishable by up to six years' imprisonment or up to two years' sentence in disciplinary battalions (Article 337). Criminal prosecution may be waived if the non-authorized absence or desertion is committed for the first

⁴⁰⁹ Coalition for Democratic Alternative Service (2004).

⁴¹⁰ 'Jehovah's Witnesses in Russia January 1, 2004 to December 31, 2004', www.jw-media.org

⁴¹¹ Concluding observations of the United Nations Human Rights Committee: Russian Federation (CCPR/CO/79/RUS), 6 November 2003.

⁴¹² Netherlands Ministry of Foreign Affairs (2005). Coalition for Democratic Alternative Service (2004).

⁴¹³ UNHCR (2004).

⁴¹⁴ Human Rights Watch: Conscription through detention in Russia's Armed Forces, November 2002.

⁴¹⁵ RIA Novosti (15 December 2004).

⁴¹⁶ UNHCR (2004).

time or if the desertion was caused by a combination of grave circumstances (Article 338).⁴¹⁷

There are no detailed figures available on the criminal prosecution of draft evaders. Because of its scale, it is evidently impossible for the Russian authorities to prosecute all draft evaders. Obviously, some draft evaders may avoid criminal prosecution through bribery.

The Russian authorities maintain several means of monitoring draft evasion. The military and police authorities regularly conduct search operations for draft evaders and deserters. When recruitment officials fail to hand over the draft summons to draft age men they inform the police. The police then stop and detain them at home or in the streets, and hand them over to the military authorities. The majority of these conscripts are sent to military units on the same day as their detention.⁴¹⁸

In recent years the Russian authorities have announced several amnesties for draft evaders and deserters. The latest amnesty was announced in 2003 following the adoption of the Constitution of the Chechen Republic when the State Duma passed a series of resolutions on the amnesty of persons who "committed socially dangerous acts". This amnesty regulation also applied to draft evaders and deserters who reported themselves to the authorities by 1 September 2003. The deadline for the amnesty has not been extended. Despite the declared amnesty, NGOs have reported that many Russian soldiers released in Chechnya are still being held in Russia and are under criminal investigation for desertion.⁴¹⁹

SAN MARINO

The armed forces are made up of the gendarmerie and the Corpi Militari Voluntar, a voluntary military force performing ceremonial duties and limited police assistance.

Legislation allows for conscription during wartime or time of emergency, during which all citizens between the ages of 16 and 60 are liable.

SERBIA & MONTENEGRO

Conscription

Conscription is enshrined in Article 57 of the 2003 Constitution and is further regulated by the 1993 Defence Law.

The length of military service is 9 months.

All men between the ages of 18 and 35 are liable for military service. In practice men are seldom called up after the age of 27.

Reservist obligations apply up to the age of 60. Since 2000, reservists are in practice seldom called up for reservist duties.⁴²⁰

In recent years, the Serbian government has discussed the idea of gradually introducing a professional army. However, the abolition of conscription is not foreseen in the near future, as it is considered to be too expensive. The Ministry of Defence recently announced that the duration of military service may be further reduced in 2006 but that the abolition of conscription is not foreseen.⁴²¹ Meanwhile, the Montenegrin authorities have announced their plans to introduce professional armed forces on their territory, but it remains unclear if they have the financial means to do so.⁴²²

Statistics

The armed forces comprise 74,200 troops, including 39,600 conscripts. Every year, approx. 82,000 young men reach conscription age.

Conscientious objection

Legal basis

The right to conscientious objection is enshrined in Article 58 of the 2003 Constitution, according to which "Recruits shall be guaranteed the right to conscientious objection".

Further legal provisions on conscientious objection are laid down in the Regulation on Civilian Service (37/2003). The Regulation was adopted by Parliament on 25 August 2003 and entered into force on 14 October 2003.

Before 2003, the right to conscientious objection was restrictively recognized as COs were only allowed to do an unarmed military service within the armed forces. Upon accession to the Council of Europe in April 2003, the Serbian government committed itself to adopting CO legislation within three years of accession. Unlike some other new member states of the Council of Europe, the

⁴¹⁷ UNHCR (2004).

⁴¹⁸ UNHCR (2004).

⁴¹⁹ Human Rights Watch (2002).

⁴²⁰ Information provided by EBCO Balkan, October 2004.

⁴²¹ 'SCG army might go professional by end of 2006 - deputy defence chief', FoNet News Agency, 6 January 2005.

⁴²² Dusan Kosanovic: Concerns Raised over Civilian Service in Serbia-Montenegro, www.setimes.com (Centre for South East European Studies), 28 October 2004.

government has managed to introduce a law on conscientious objection well ahead of this deadline.⁴²³

Scope

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

Time limits

There is a time limit for submitting CO applications. According to Article 8 of the Regulation on Civilian Service, CO applications can only be made before starting military service or within the first three months of performing military service. Applications can thus not be made by serving conscripts after they have served for three months, nor can applications be made by reservists.

The Ministry of Defence has reportedly stated in the past that applications by reservists would be taken into consideration.⁴²⁴ It is, however, not known if this happens in practice. The legal exclusion from the right to conscientious objection for reservists is particularly relevant because before 2003 the right to conscientious objection was restrictively recognized. Consequently, men who were called up for military service before 2003 have never had the opportunity to claim the right to conscientious objection.

There are no legal provisions for the right to conscientious objection for professional soldiers.⁴²⁵

Procedure

Applications must be made to the local office of the armed forces. Applications are decided on by a commission, which falls under the responsibility of the Ministry of Defence. The commission includes a lawyer, a theologian, a psychologist and an army officer. At present there are 52 commissions, one in every local military section. The commission may order the applicant to come for a personal interview. In practice, this rarely happens.⁴²⁶

The commission needs to make a decision on the application within 15 days. Applications may be rejected if the applicant has a licence to carry weapons or has been sentenced for criminal acts within three years before submitting an application (Regulation on Civilian Service, Article 10).

⁴²³ The Regulation on Civilian Service was in fact considered to be an improvement compared to a previous draft law that the government discussed with CO groups, human rights organisations and lawyers. This draft law did not provide for a civilian substitute service outside the armed forces and did not make a clear distinction between substitute service and unarmed service within the armed forces.

⁴²⁴ EBCO Balkan (2004).

⁴²⁵ Amnesty International: Amnesty International's concerns and Serbia and Montenegro's commitments to the Council of Europe (EUR 70/002/2004).

⁴²⁶ Regional Network for Conscientious Objection 'Objection for Peace': To Europe Through Conscientious Objection and Civilian Service, Sarajevo, September 2004 (Seminar Report).

If the application is rejected, there is a right to appeal, which needs to be made within 15 days to the Ministry of Defence (Regulation on Civilian Service, Article 8).

Substitute service

The length of substitute service is 13 months, which is four months longer than military service.⁴²⁷

Substitute service is administered by the Ministry of Defence. It can be performed in government institutions, such as hospitals, nurseries, cultural institutions, institutions for handicapped people and rescue organisations. Substitute service can also be performed with some non-governmental organisations.⁴²⁸

After completing substitute service, COs have no reservist duties during peacetime. During wartime, COs may be called up for unarmed military service within the armed forces.⁴²⁹

Practice

The Regulation on Civilian Service entered into force on 1 October 2003. Since then, the number of CO applications has increased with every call-up.

According to the Ministry of Defence, 2,637 CO applications were made between October 2003 and April 2004.⁴³⁰ Between April 2004 and October 2004, approx. 9,000 applications were made.⁴³¹ More recent figures are not available, but the number of CO applications is believed to be still increasing. Approx. 30 per cent of eligible conscripts are actually applying for substitute service.

The increasing number of CO applications is particularly remarkable because the military authorities have regularly been criticized for not providing conscripts with correct information about conscientious objection and substitute service. Some local military offices have reportedly discouraged conscripts from applying for substitute service.⁴³²

There are no detailed figures available about the percentage of CO applications granted, but so far most applications have apparently been granted.

CO groups have expressed concern that the Ministry of Defence may react to the growing number of applications by becoming more restrictive.⁴³³ Army representatives have, in fact,

⁴²⁷ COs may also choose to perform an unarmed military service within the armed forces.

⁴²⁸ Regional Network on Conscientious Objection (2004).

⁴²⁹ Regional Network for Conscientious Objection (2004).

⁴³⁰

www.vj.yu/english/en_aktuelno/vesti/april2004/v0406e.html (Ministry of Defence)

⁴³¹ War Resisters' International: CO Update No.4/December 2004.

⁴³² Regional Network for Conscientious Objection (2004); EBCO Balkan (2004).

⁴³³ EBCO Balkan (2004).

regularly stated in public that the increasing number of COs may jeopardise the performance of the armed forces.⁴³⁴

In February 2005, the Ministry of Defence in fact announced that it wants to introduce new regulations that would make substitute service less attractive. According to the new regulations, the application procedure will include a personal interview, it will no longer be possible to make a CO application during the first three months of military service, and it will no longer be possible to perform substitute service with non-governmental organisations or cultural institutions.⁴³⁵

With these new regulations, the Ministry apparently wants to restrict the number of COs. It is not known if and when these new regulations will be implemented, but the situation remains to be monitored.

Substitute service is available in practice since December 2003. On 22 December 2003 the first group of 226 COs started their substitute service. According to the Ministry of Defence, 8,500 COs had performed substitute service during 2004. By February 2005, 7,500 COs were reportedly waiting for assignment.⁴³⁶

The increasing number of CO applications has resulted in a shortage of workplaces for substitute service. Local military authorities are responsible for organising workplaces. They have regularly been criticized for showing little interest in developing substitute service and organising sufficient workplaces. The number of institutions that is interested in providing for workplaces for COs is believed to be increasing, but the Ministry of Defence has not signed any new contracts in 2004.⁴³⁷

Background

Although the right to conscientious objection was included in the Yugoslav Constitution in 1992, regulations on conscientious objection remained restrictive until 2003. Until 2003 COs were only allowed to perform an unarmed military service within the armed forces. Moreover, CO applications could only be made within 15 days of receipt of call-up papers. Until 2003, very few COs actually applied for unarmed military service. According to the government, only 76 COs performed such an unarmed service between 1994 and 2003.⁴³⁸

There were several known cases of COs who refused to perform unarmed military service and were consequently sentenced to imprisonment. When the Regulation on Civilian Service entered into force in 2003, some COs who had previously been prosecuted were allowed to do substitute service but some other COs reportedly remained imprisoned. However, by the end of 2003 none of these COs was believed to be imprisoned anymore.⁴³⁹

Draft evasion

During the 1990s there were thousands of draft evaders and deserters. Many went into hiding or fled abroad and were sentenced in absentia. The Yugoslav authorities have never released detailed information about the number of prosecuted draft evaders and deserters. It is believed that in 1999 and 2000, criminal proceedings were started against 26,000 men in connection with draft evasion and desertion during the Kosovo crisis. In 2001 the government announced an amnesty, which applied to approx. 24,000 draft evaders and deserters.⁴⁴⁰ In 1995, a similar amnesty was announced as a part of the Dayton Peace Agreements for thousands of men who evaded military service or deserted during the early 1990s. Draft evaders and deserters who are granted an amnesty are consequently freed from criminal prosecution, but they remain liable for military service. The Ministry of Defence in fact recently stated that Serbian citizens living abroad are still obligated to fulfil military service, although the Ministry reportedly considers liberalizing conscription obligations for citizens living abroad.⁴⁴¹ There are reportedly approx. 150,000 people living abroad who do not return or visit Serbia for fear of getting arrested at the border and/or taken to military barracks, as they had left the country without reporting for military service.⁴⁴²

⁴³⁴ Kosanovic (2004)

⁴³⁵ Information provided by EBCO Balkan, quoted in: War Resisters' International: CO Update, No.7, March 2005.

⁴³⁶ Ivana Petrovic: Serb army recruits trade guns for plays, Balkan Crisis Report, 25 February 2005, www.iwpr.net (Institute for War Peace and Reporting).

⁴³⁷ EBCO Balkan (2004).

⁴³⁸ United Nations Human Rights Committee, Consideration of reports submitted by state parties under Article 40 of the Covenant: Initial report Serbia and Montenegro (CCPR/C/SEMO/2003/1), 24 July 2003.

⁴³⁹ US State Department, Bureau of Democracy, Human Rights and Labor: International Religious Freedom Report 2003 and 2004.

⁴⁴⁰ Amnesty International: Conscientious objectors can return to Yugoslavia (EUR/70/002/2001).

⁴⁴¹ 'Conscription obligatory for Serbia-Montenegro citizens living abroad', Radio B92, 27 January 2005 (BBC Monitoring Service).

⁴⁴² 'Diaspora conscripts unable to return', War Resisters' International: CO Update No.6 / February 2005.

SLOVAKIA

Conscription

Conscription is enshrined in Article 15 of the 1992 Constitution and is further regulated by Law 331/1992.

Since 1 January 2004, the length of military service is 6 months. In some cases, military service may be shortened. This so-called "compensatory service" is available for conscripts having children or being the sole breadwinner.

All men between the ages of 18 and 30 are liable for military service. Reservist duties apply up to the age of 55.

The Slovakian government has decided to phase out conscription by 2006. The last conscripts will probably be drafted in 2005.⁴⁴³ The transformation process into professional armed forces in order to comply with NATO standards has been going on for several years. Parallel to this process, military service was shortened from 12 to 9 months in 2000 and to 6 months in 2004.

Statistics

The armed forces comprise 22,000 troops, including 3,500 conscripts (2004). Every year, approx. 45,000 young men reach conscription age.

Conscientious objection

Legal basis

The right to conscientious objection is enshrined in Article 25 of the 1992 Constitution, according to which "No one shall be forced to perform military service if it is contrary to his or her conscience or religion". Further regulations are laid down in the 1995 Civilian Service Act (207/1995).

Scope

Both religious and non-religious grounds for conscientious objection are legally recognized. According to the Civilian Service Act, citizens may refuse military service on the basis of a declaration stating that it is contrary to his conscience or religion.⁴⁴⁴

Time limits

There is a strict time limit for submitting CO applications. Applications must be made within 30 days of the conscription board's decision on fitness for military service (Article 2.2). Applications that are not submitted within this time limit are not

taken into consideration. Applications can thus not be made by serving conscripts or reservists.

There are no legal provisions for the right to conscientious objection for professional soldiers.⁴⁴⁵

Procedure

Applications must be made to the local conscription committee (Ministry of Defence), which makes a decision.

Substitute service

The length of substitute service is nine months. This is one and a half times the length of military service.⁴⁴⁶

Substitute service is administered by the Ministry of Defence. According to the Slovakian government, substitute service can be performed in state and municipal organisations in the areas of health care, social service and environmental protection, but also with non-governmental organisations and religious organisations.⁴⁴⁷

Practice

There are no detailed figures available about the number of CO applications.

The number of applications was believed to be relatively low, but reportedly increased after the reduction of the length of substitute service in 2000. It appears that there is a shortage of workplaces where substitute service can be performed. According to a media report of September 2002, 6,000 COs were waiting for assignment to substitute service.⁴⁴⁸

Since the introduction of time limits in 1995, there have been several cases of COs who have continued to refuse military service after their CO applications were rejected because they had not been submitted in time. They were usually convicted for refusal to perform military service under Article 269 of the Criminal Code. Some COs were sentenced to 12 to 18 months' imprisonment.⁴⁴⁹

Since 1997 there have been no known cases of COs being imprisoned after not submitting their application within the time limit.

⁴⁴³ Radio Slowakei, Bratislava, 4 December 2003. Professionalization of the Armed Forces of the Slovak Republic, www.mod.gov.sk (Ministry of Defence), March 2004.

⁴⁴⁴ United Nations Human Rights Committee: Consideration of reports submitted by states parties under Article 40 of the Covenant, State Report Slovakia (CCPR/C/SVK/2003/2), 6 August 2002.

⁴⁴⁵ Exercise of the right of conscientious objection to military service in Council of Europe member states, Report Committee on Legal Affairs and Human Rights, Doc. 8809 (Revised), 4 May 2001.

⁴⁴⁶ The length of substitute service was reduced in 2000. Before 2000, substitute service lasted twice as long as military service.

⁴⁴⁷ United Nations Human Rights Committee: Consideration of reports submitted by states parties under Article 40 of the Covenant, Summary Record of the 2108th meeting (CCPR/C/SR.2108), 25 July 2003.

⁴⁴⁸ 'Slovak Parliament changes law on alternative military service', SITA News Agency, 21 May 2003 (BBC Monitoring Service).

⁴⁴⁹ Amnesty International: Conscientious objector Milan Koblka - a possible prisoner of conscience (EUR 72/01/00).

SLOVENIA

Conscription

In 2002 the Slovenian government decided to end conscription. The last conscripts were called up for military service in 2003. In January and April 2003, 1,290 conscripts were called up for service. The call-up of July was cancelled. Since 2004 the armed forces consist of professional soldiers only.⁴⁵⁰

Conscientious objection

The right to conscientious objection was legally recognized since Slovenia became an independent country in 1992. Since 1995 the length of substitute service was in fact the same as military service (7 months). Slovenia was thus one of the few European countries where substitute service and military service had the same duration. Slovenian CO legislation was liberal in other respects as well, as there were no time limits for submitting CO applications and applications could be made by both serving conscripts and reservists.

It is not clear if there are legal provisions for conscientious objection for professional soldiers. A study published by the Council of Europe in 2001 suggests that professional soldiers may apply for CO status.⁴⁵¹ No further information is available and it remains unclear if there is an application procedure for professional soldiers who wish to be discharged from the armed forces for reasons of conscientious objection.

When conscription applied, the right to conscientious objection was legally regulated by the Military Service Act. This law actually only applied to conscripts so it provides no legal basis for the recognition of the right to conscientious objection for professional soldiers.

⁴⁵⁰ 'Mandatory Military Service Abolished', Slovene Press Agency, 9 September 2003.

⁴⁵¹ Exercise of the right of conscientious objection to military service in Council of Europe member states, Report Committee on Legal Affairs and Human Rights, Doc. 8809 (Revised), 4 May 2001. The report states, referring to the recognition of the right to conscientious objection for permanent members of the armed forces, "Following Slovenia's example, this possibility should be extended to permanent members of the armed forces". This conclusion is based on information provided by the Slovenian government. As the text of the government response is not publicly available, it is not known which information was exactly submitted, and if the conclusion in the report may result from a misinterpretation of the information provided by the Slovenian government.

SPAIN

Conscription

The Spanish government initially planned to end conscription by 2003, but the last conscripts were already called up for military service in 2001. Since 2002 the armed forces consist of professional soldiers only.

Conscription and the right to conscientious objection are still included in Article 30 of the Constitution, according to which: "Citizens have the right and duty to defend Spain (...) The law shall determine the military obligations of Spaniards and regulate conscientious objection with its due guarantees".⁴⁵²

Conscientious objection

The history of conscientious objection in Spain is relatively short. The right to conscientious objection was included in the Spanish Constitution in 1978, after which the Law on Conscientious Objection (Law 8 and 48/1984) was introduced in 1984. The first COs performed substitute service in 1988. During the 1990s, the number of COs increased every year. By 1997 Spain was in fact the European country with the highest number of COs. In 2000 there were approx. 120,000 COs, which was in fact approx. 70 per cent of all eligible conscripts. The high number of COs was, in fact, believed to be a main reason why the Spanish government decided to suspend conscription earlier than was initially planned.⁴⁵³

There are no legal provisions for conscientious objection for professional soldiers.⁴⁵⁴ In recent years, there are no known cases of professional soldiers seeking discharge from the armed forces because of conscientious objection.⁴⁵⁵

⁴⁵² Global Coalition to Stop the Use of Child Soldiers: Child Soldiers Global Report 2004.

⁴⁵³ Regional Network for Conscientious Objection 'Objection for Peace': To Europe Through Conscientious Objection and Civilian Service, report regional conference, Sarajevo, September 2004.

⁴⁵⁴ Information provided by European Bureau for Conscientious Objection, October 2004.

⁴⁵⁵ European Bureau for Conscientious Objection (2004).

SWEDEN

Conscription

Conscription is regulated by the 1994 Total Defence Service Act (1809/94), which brought together all previously existing legislation on military service.⁴⁵⁶

The length of military service is 7.5 months, between 10 and 15 months for officers, and between 18 and 20 months for those serving in the navy.

All men between the ages of 18 and 47 are liable for military service.

Swedish defence policy is based on the concept of total defence, which means that all inhabitants are obliged to participate in national defence in case of emergency or war. Total defence consists of military service, civil defence service and general service. Conscription only takes place into military service and civil defence service. General service does not involve any form of training, but means that one may be called up for service in time of war or emergency. All Swedish citizens (both men and women) and all foreigners living in Sweden are liable for general service between the ages of 16 and 70.

In recent years, the total defence system has been reviewed extensively. Apart from the Green Party, there seems to be political consensus to maintain conscription in the future. In 2000, a government commission even proposed making military service compulsory for women as well, but this proposal was eventually withdrawn. Although conscription will remain in place, the number of conscripts that is needed by the armed forces is decreasing. Consequently, fewer and fewer young men are actually recruited.

Statistics

The armed forces comprise 33,900 troops, including 15,900 conscripts. Every year, approx. 50,000 young men reach conscription age. Approx. 40 per cent are recruited.

After medical examination, conscripts are assigned to either military service, civil defence service or the training reserve. Those assigned to the training reserve (approx. 60 per cent of eligible recruits) are not called up for any service in peacetime.

Conscientious objection

Legal basis

The right to conscientious objection has been legally recognized since 1920. Its present legal

basis is the 1994 Total Defence Service Act (1809/94).

Scope

Both religious and non-religious grounds for conscientious objection are legally recognized. According to the Total Defence Service Act, CO status is to be granted if someone "can be assumed as having such a personal conviction about the use of weapons against another person so that this conviction is inconsistent with a combatant role" (Chapter 3, Par. 16).

Time limits

There are no time limits for submitting CO applications. Applications can be made by serving conscripts. In this case, the applicant must explain more elaborately how and why his problems of conscience started. His military service needs to be postponed until the application is decided on (Chapter 3, Par. 19). The Total Defence Service Act does not contain specific provisions for reservists, but the wording of Chapter 3, Par. 19 suggests that the procedure for reservists is the same as for serving conscripts.

There are no legal provisions for the right to conscientious objection for professional soldiers.⁴⁵⁷

Procedure

Applications must be made to the National Service Administration (Ministry of Defence). Since 1991, personal interviews are no longer part of the application procedure. Applications that are submitted before starting military service, or within six months of obtaining knowledge about call-up for service, are approved without further investigation (Chapter 3, Par. 18). Consequently, most applications are almost automatically granted.

Substitute service

The length of substitute service is 7.5 months, which is the same as military service.

Substitute service is administered by the National Service Administration (Ministry of Defence). Substitute service can be performed in institutions of civil defence, such as fire protection, rescue service, social work and maintenance work on railways and roads.

Substitute service does not have an entirely non-military character as the Ministry of Defence administers it and it is clearly linked to the total defence system. COs are granted non-combatant status, which means that they are guaranteed not to be involved in using weapons or "such activities that are combined with actual combat tasks, e.g. maintaining order or guard duty" (Chapter 1, Par. 6).

⁴⁵⁶ English translation of the Total Defence Service Act, www.pliktverket.se

⁴⁵⁷ Exercise of the right of conscientious objection to military service in Council of Europe member states, Report Committee on Legal Affairs and Human Rights, Doc. 8809 (Revised), 4 May 2001.

However, the Ministry of Defence has been criticized regularly for not informing conscripts about the possibility of applying for non-combatant status. The difference between COs having non-combatant status and other conscripts serving in civil defence service is often unclear to new conscripts.⁴⁵⁸

During wartime, all conscripts who have served in the civil defence service are given a war posting with a civil defence institution, such as the national railways administration or the civil aviation administration (Total Defence Service Act, Chapter 2, Par. 13). The Total Defence Service Act does not contain specific provisions on the wartime posting of COs, and it does not specify if and how the non-combatant status of COs is guaranteed during wartime. In the past, Swedish CO groups have expressed concern that it is not clear how far the National Service Administration makes a distinction in its administration between COs having non-combatant status and other conscripts in the civil defence service.⁴⁵⁹

Practice

Every year, between 1,500 and 2,000 CO applications are made. Approx. 90 per cent of applications are granted.⁴⁶⁰

According to the Swedish government, applications are not granted if they are solely based on political motives.⁴⁶¹ As most applications are not individually examined, it is not clear how such an assessment is made.

Total objectors

According to the Swedish government, approx. 400 conscripts per year refuse to perform both military service and substitute service.⁴⁶²

Violations of total defence service regulations are punishable under Chapter 10 of the Total Defence Service Act. Total objectors are usually fined and receive a conditional sentence. After a year they will receive a new call-up. Those who continue to refuse service are usually sentenced to up to four months' imprisonment. The law permits a conscript to be called-up an indefinite number of times, but in practice it is rare for more than two call-up orders to be issued.⁴⁶³

⁴⁵⁸ European Bureau for Conscientious Objection: Conscription and CO in Sweden (country report), 2001, www.terra.es/personal/beoc.ebco/COoverview/sweden.htm

⁴⁵⁹ War Resisters' International: Refusing to bear arms - A world survey on conscription and conscientious objection to military service, 1998.

⁴⁶⁰ Statistics provided by the Swedish Ministry of Defence, in: European Bureau for Conscientious Objection/Heinrich Böll Foundation: European Union without Compulsory Military Service - Consequences for Alternative Service, 2000.

⁴⁶¹ United Nations Commission on Human Rights, 56th session, Civil and political rights, including the question of conscientious objection to military service, Report of the Secretary-General submitted pursuant to Commission resolution 1998/77 (E/CN.4/2000/55).

⁴⁶² Council of Europe Committee on Legal Affairs and Human Rights (2001).

⁴⁶³ European Bureau for Conscientious Objection (2001).

There are no Jehovah's Witnesses amongst the total objectors. Since 1966, Jehovah's Witnesses are legally exempt from military service, on proving membership and participation in its activities.

SWITZERLAND

Conscription

Conscription is enshrined in Article 59 of the 1999 Constitution. It is further regulated by the 1995 Federal Law on the Armed Forces and Military Administration (LAAM) and the 1995 Ordinance on Recruitment of Conscripts (OREC).

The Swiss army is primarily a militia army. The standing forces are relatively small, but the reservist forces form an important component. In fact, the Swiss Ministry of Defence claims that the armed forces are capable of full mobilisation within 72 hours. Consequently, the abolition of conscription is not foreseen. According to a 2000 government report on the future of the armed forces, conscription is to be maintained in the future.

All men between the ages of 19 and 26 are liable for basic military training. The length of basic military training is 21 weeks, and 18 weeks in some exceptional circumstances.

After basic military training, all men have reservist duties up to the age of 34, and up to 50 for officers. Reservist duties consist of 6 or 7 refresher training periods of a maximum of 17 days each. The total length of military service thus amounts to 260 days.⁴⁶⁴ Reservist duties also include home maintenance of equipment, a rifle and ammunition.

Those who are legally exempt from service (for medical or social reasons) must pay a substitute military tax up to the age of 50. The tax is two per cent of taxable income and is at least 150 CHF. Refusal to pay military tax is punishable on each occasion by one to ten days' imprisonment.⁴⁶⁵

Statistics

The armed forces comprise 25,000 troops, including 22,000 conscripts. Every year, approx. 40,000 young men reach conscription age; approx. 70 per cent are recruited.

In recent years, fewer and fewer conscripts are actually called up for service. In 2000, only 16.7 per cent of eligible conscripts were legally exempt from service; in 2003 this had risen to 30.1 per cent.⁴⁶⁶

⁴⁶⁴ This length of military service applies to conscripts who are drafted after 1 January 2004. In 2004, the length of military service was reduced from 300 days and the maximum age for reservist duties was lowered from 55 to 42 years. www.vbs.admin.ch (Ministry of Defence)

⁴⁶⁵ War Resisters' International: Refusing to bear arms - A world survey on conscription and conscientious objection to military service, 1998.

⁴⁶⁶ '28.000 Franken für ein abgelehntes Gesuch', Beratungsstelle für Militärverweigerung und Zivildienst: Zivilcourage No.9 / December 2004, www.zivildienst.ch

Conscientious objection

Legal basis

The right to conscientious objection is legally recognized with the 1996 Law on Civilian Service.

In 1999, the right to conscientious objection was included in the new Constitution. According to Article 59: "Every Swiss man must render military service. The statute shall provide for an alternative service".

Scope

Both religious and non-religious grounds for conscientious objection are legally recognized. According to Article 1 of the Law on Civilian Service: "Those liable for compulsory military service who can credibly assert that performing military service is incompatible with their conscience, must perform civilian substitute service".

Time limits

There are no time limits for submitting CO applications. Applications can thus be made before, during and after military service (by reservists).

If an application is made by a serving conscript, it usually takes two weeks before the application is processed. During this period, the applicant is not released from the army.

Applications cannot be made by people who are too old for reservist training or by those who are legally exempt from service for medical or other reasons.

There are no legal provisions for the right to conscientious objection for professional soldiers.⁴⁶⁷

Procedure

Applications must be made to the Central Civilian Service Authorities (Ministry of Economic Affairs). Applications must include a curriculum vitae, a motivation letter and an expression of willingness to perform substitute service. A personal interview takes place with a commission. Its members are civilians who have been selected and appointed by the Ministry. If the application is rejected, there is a right of appeal to the Ministry of Economic Affairs.

Substitute service

The length of substitute service is 390 days. This is one and a half times the length of military service. Substitute service may be performed in one period, or spread over several shorter periods of a minimum of 26 days each.⁴⁶⁸

⁴⁶⁷ Exercise of the right of conscientious objection to military service in council of Europe member states, Report Committee on Legal Affairs and Human Rights Doc. 8809 (Revised), 4 May 2001.

⁴⁶⁸ Parallel to the reduction of military service, the duration of substitute service was reduced from 450 to 390 days in 2004.

It is also possible to apply for an unarmed military service within the armed forces, which has the same length as basic military training but does not include reservist duties. The application procedure for unarmed military service is the same as for substitute service.

Substitute service is administered by the Ministry of Economic Affairs. It can be performed in any public or private body that serves the public interest, such as social welfare, the health sector and environmental protection.

After completion of substitute service, COs are liable for 'extraordinary civilian service'. COs may only be called up for extraordinary civilian service during time of war or emergency; it consists of unarmed duties within the armed forces.

Practice

Since the Law on Civilian Service came into force in 1996, the number of CO applications has been relatively stable with between 1,500 and 2,000 per year. The following table gives the number of decisions on CO applications in recent years, and the number and percentage of granted applications:⁴⁶⁹

1999	1,996	1,619 (81.1 %)
2000	1,401	1,175 (83.9 %)
2001	1,781	1,393 (78.2 %)
2002	2,039	1,653 (81.1 %)
2003	2,412	1,958 (81.2 %)

As these statistics indicate, approx. 80 per cent of applications are granted. An application may be rejected if the motives of the applicant are considered to be mainly political, if the commission doubts the credibility of the applicant or if it considers that the applicant does not practise his convictions in his daily life.

Decision-making by the commission can be rather strict, which was exemplified by the case of Marino Keckeis in 2001. His application was rejected because he failed to convince the commission of his conscientious beliefs. He continued to refuse military service and was sentenced by military court to five months' imprisonment, although he repeatedly stressed that he was willing to perform substitute service. During his imprisonment he went on hunger strike and after three months in prison, he was released early. His case attracted considerable international attention. In fact, Amnesty International considered the rejection of his application to be "due to a very limited interpretation of conscientious objection".⁴⁷⁰

In 2002, Swiss CO groups started a campaign to abolish the personal interview during the

application procedure. The issue was discussed by the Swiss Parliament in 2003, but Parliament decided to keep the individual examination of CO applications in place.

Total objectors

The following table gives the number of conscripts who have been sentenced for refusing both military service and substitute service:⁴⁷¹

1999	61
2000	110
2001	64
2002	100
2003	74

Under the Law on Civilian Service, total objection is punishable by up to 18 months' imprisonment. In practice, total objectors are sentenced to lower terms. Those who have been sentenced to less than three months' imprisonment can opt for a 'free labour' sentence. In this case, one does not have to stay in prison although the sentence remains included in one's criminal record.⁴⁷²

COs who are members of a religious community that forbids its members to bear arms and who refuse to apply for CO status, are usually sentenced to forced completion of substitute service. This clause of the Law on Civilian Service was obviously introduced to facilitate Jehovah's Witnesses. They refuse to apply for substitute service but comply with it if they are sentenced to it.

Background

Switzerland was one of the last Western European countries to recognize the right to conscientious objection and provide for a substitute service outside the armed forces. Before 1996, the treatment of COs was harsh. During the 1980s and 1990s, approx. 360 COs were imprisoned each year.

The Law on Substitute Service that was adopted in 1996 is the result of years of campaigning by Swiss peace groups. The decision to pass a CO law was in fact made by a referendum.⁴⁷³ In a referendum that was held in 1991, an 82.5 per cent majority voted in favour of amending the constitution, which allowed for a substitute service outside the armed forces. This amendment allowed for the drafting of the Law on Substitute Service, which was eventually passed by the Swiss Parliament in 1995.

⁴⁶⁹ Zivilcourage No.9 / December 2004.

⁴⁷⁰ Amnesty International: Amnesty International urges the immediate release of conscientious objector Marino Keckeis (EUR 43/002/2002).

⁴⁷¹ Zivilcourage No.9/December 2004.

⁴⁷² www.zivildienst.ch (Beratungsstelle für Militärverweigerung und Zivildienst).

⁴⁷³ In Switzerland, anyone may call for a referendum to be held, providing that a sufficient number of signatures is collected.

TURKEY

Conscription

Conscription is enshrined in Article 72 of the 1982 Constitution. Its further legal basis is the Law on Military Service (1111/1982) and Law for Reserve Officers and Reserve Military Servants (1076).

The length of military service is 15 months. University graduates may perform 8 months' military service, or 12 months if they are trained to become reserve officers. Certain professional groups (doctors, teachers, civil servants) may be permitted to perform special service.

All men between the ages of 19 and 40 are liable for military service. Men who have not fulfilled their military service by the age of 40 and who have not been legally exempt from service, may still be called up after the age of 40.

Students may postpone their military service up to the age of 29, or up to the age of 36 in the case of postgraduate students.

After completion of military service, reservist duties apply up to the age of 40.

Different military service regulations apply for Turkish citizens who are living abroad. They can postpone their service up to the age of 38, for a period of three years at a time. Turkish citizens living abroad may also partially buy themselves out of military service by paying a sum of 5,112 Euros. However, in this case they still need to perform a one-month military service.⁴⁷⁴

Turkish citizens who live abroad and who possess dual nationality may get legally exempt from service, on the condition that they lived abroad before the age of 18 and that they performed military service in another country. Exemption on this ground is only possible if the length of military service that has been performed in another country is considered to be comparable to the length of service in Turkey.⁴⁷⁵

Statistics

The armed forces comprise 514,000 troops including 391,000 conscripts. Every year, approx. 640,000 young men reach conscription age.

In recent years, the share of conscripts in the armed forces has been reduced by 17 per cent, mainly by reducing the length of military service. In 2003, the length of military service was reduced from 18 months. The Turkish government plans to increase the number of professional soldiers in the

future, but it has no plans to abolish conscription.⁴⁷⁶

Conscientious objection

Legal basis

The right to conscientious objection is not legally recognized.

Although Article 24.1 of the 1982 Constitution guarantees the right to freedom of conscience, the Constitution does not widen this to include the right to conscientious objection to military service. In 1991, the Turkish Constitutional Court explicitly ruled that the freedom of conscience mentioned in Article 24 does not include the right to conscientious objection to military service.⁴⁷⁷

According to Article 72 of the Constitution: "Fatherland service is the right and duty of every Turk. How this service in the armed forces or public sector is carried out or is supposed to be carried out is prescribed by law". Thus the Constitution does, at least in theory, allow fatherland service to be a non-military service. However, Turkish legislation does not provide for a substitute service or for an unarmed military service within the armed forces.

The Turkish government has never considered introducing legislation on conscientious objection. A brochure published by the armed forces in 1999 in fact states: "In our laws there are no provisions on exemption from military service for reasons of conscience. This is because of the pressing need for security, caused by the strategic geographic position of our country and the circumstances we find ourselves in. As long as the factors threatening the internal and external security of Turkey do not change, it is considered to be impossible to introduce the concept of 'conscientious objection' into our legislation".⁴⁷⁸

The Turkish government has disassociated itself from the United Nations Commission on Human Rights Resolution 1998/77, which affirms the right to conscientious objection to military service as a legitimate exercise of the freedom of thought, conscience and religion as laid down in Article 18 of the Universal Declaration of Human Rights and Article 19 of the International Covenant on Civil and Political Rights. The Turkish government does not recognise the right to conscientious objection to military service as stated in these two international instruments.⁴⁷⁹

⁴⁷⁴ A temporary regulation has been in place which also allowed young men living in Turkey to buy themselves out of service and do a one-month military service. This regulation applied to men born before 1 January 1973 and applications needed to be made before 4 May 2000. 70,000 Turkish men reportedly applied for this regulation.

⁴⁷⁵ Netherlands Ministry of Foreign Affairs: *Algemeen Ambtsbericht Turkije* (country report), November 2003.

⁴⁷⁶ UK Home Office Immigration and Nationality Directorate: *Country Report*, October 2004.

⁴⁷⁷ Turkish Constitutional Court 467/1991 and 422,343/1993 (Netherlands Ministry of Foreign Affairs 2003).

⁴⁷⁸ Netherlands Ministry of Foreign Affairs (2003).

⁴⁷⁹ United Nations Commission on Human Rights, Civil and Political Rights, including the question of conscientious objection to military service, Report of the Secretary-General submitted pursuant to Commission resolution 1998/77, 56th session (E/CN.4/2000/55), 17 December 1999.

The Council of Europe and the United Nations have regularly called upon Turkey to legally recognise the right to conscientious objection. In March 2004, the Parliamentary Assembly of the Council of Europe stated that: "Despite Turkey's geostrategic position, the Assembly demands that Turkey recognises the right to conscientious objection and introduce an alternative civilian service".⁴⁸⁰

In another development, the European Court of Human Rights has recently admitted the case of Osman Murat Ülke, a CO who was sentenced to imprisonment in 1996 (see: **Practice**). His complaint to the European Court is mainly based on the claim that his arrest and imprisonment for conscientious objection are a violation of Article 9 of the European Convention, which guarantees the right to freedom of thought and conscience. He made his complaint in 1997, which was finally admitted in 2004. The admission of the case means that the Court will judge if conscientious objection is part of the right to freedom of thought and conscience as mentioned in the Convention.⁴⁸¹

Practice

Since the 1990s, there are a small number of COs who publicly state that they refuse to perform military service for non-religious, pacifist reasons. The Turkish language actually makes a distinction between conscientious objectors (*vicdani retci*) and draft evaders (*asker kacagi*).

The first known Turkish CO was Osman Murat Ülke, a Turkish citizen who grew up in Germany and returned to Turkey. In 1995 he publicly declared that he was a conscientious objector and refused to perform military service. Since then, dozens of others have followed. Between 1995 and 2004 approx. 40 men have openly declared themselves as conscientious objectors, mostly by making a public statement or giving media interviews about their reasons for refusing military service.

COs may be punished under Article 63 of the Turkish Military Penal Code for avoiding military service. COs who attract media attention or publish articles about their refusal to perform military service may also be punished to between six months' and two years' imprisonment under Article 318 of the Turkish Criminal Code for "alienating the people from the armed forces". In 2004, a new Criminal Code was introduced (Law No 5237). Under the previous Criminal Code, "alienating people from the armed forces" was punishable under Article 155 with a similar term of imprisonment.⁴⁸²

⁴⁸⁰ Parliamentary Assembly of the Council of Europe, Honouring of obligations and commitments by Turkey, Doc. 10111, 17 March 2004.

⁴⁸¹ Council of Europe, European Court of Human Rights, Second Section: Judgment as to the admissibility of the application 39437/98 by Osman Murat Ülke against Turkey, 1 June 2004. War Resisters' International: Conscientious Objection Update, No.3/November 2004.

⁴⁸² Hülya Ücünar: Was erwartet Kriegsdienstverweiger mit dem neuen Strafgesetzbuch, in: Connection e.V., Rundbrief KDV im

In the past, there have been several cases of COs who have been sentenced under these two articles. The most well known case was Osman Murat Ülke, who was arrested in October 1996 and during the following years spent a total of 30 months in prison on several charges of disobeying orders. In some other cases, COs have been acquitted of the charges by military court.

In recent years, it appears that the Turkish authorities have refrained from harsh punishment of COs. This may have been caused by the fact that previous trials of COs attracted considerable (international) attention and the Turkish authorities may wish to avoid further attention for the issue of conscientious objection.

However, as long as there are no legal provisions for their right to conscientious objection, the legal position of COs remains vulnerable and they may still be subject to criminal prosecution.

In 2004 there were five known cases of COs. In May 2004, one CO was briefly arrested after he publicly declared that he refused to perform military service. The police arrested him briefly, but subsequently released him again. So far, the police have not attempted to arrest him again. In October 2004, four COs publicly declared their conscientious objection.⁴⁸³ In December 2004, one of them was arrested and held in military prison.⁴⁸⁴ His case is believed to be still pending.

Previously, in 2003 one CO openly stated his conscientious objection. He was arrested in January 2003, but was released after some days pending trial. The military doctors gave him a three months' holiday to recover from what they diagnosed as "a social disturbance of his personality". His case is believed to be still pending.⁴⁸⁵

Apart from the secular COs mentioned above, some members of religious denominations who forbid their members to bear arms, in particular Jehovah's Witnesses, have also refused to perform military service. Members of Jehovah's Witnesses have regularly been sentenced to imprisonment under Article 63 of the Penal Code for avoiding military service. In recent years, Jehovah's Witnesses are reportedly regularly allowed to perform unarmed military service within the armed forces. They have complied with this.⁴⁸⁶

However, in some cases, members of Jehovah's Witnesses have still been sentenced to imprisonment. In 2003 and 2004, several Jehovah's Witnesses were imprisoned for not taking the military oath and/or refusing to carry weapons.

Krieg, January 2005.

⁴⁸³ War Resisters' International: Conscientious Objection Update, No.3/November 2004.

⁴⁸⁴ War Resisters' International: Conscientious objector Halil Savda arrested / fears of torture, 16 December 2004.

⁴⁸⁵ War Resisters' International: Conscientious objector Mehmet Bal released, 4 February 2003.

⁴⁸⁶ Spokesman of the Jehovah's Witnesses, quoted in: Netherlands Ministry of Foreign Affairs (2003).

They are usually sentenced to one month's imprisonment, after which they are released pending trial.⁴⁸⁷

Draft evasion

Draft evasion and desertion are widespread. The exact number of draft evaders is not known, but the number is estimated to be approx. 350,000.

Draft evasion is prompted by the risk of being sent to serve in South Turkey and poor conditions and human rights violations within the armed forces. There have been regular reports of Kurdish conscripts in particular being subjected to discriminatory treatment, especially when they are suspected of having separatist sympathies.⁴⁸⁸

For years, the Turkish armed forces have been involved in heavy fighting with the PKK in South Eastern Turkey. In 1999 a ceasefire was agreed between the Turkish government and the PKK, but the situation has remained tense ever since. All conscripts may be sent to serve in South Eastern Turkey as postings of conscripts are usually decided at random by computer. There is a sizeable group of conscripts of Kurdish origin who refuse to perform military service because they do not want to fight against their own people. Many Kurdish draft evaders have, in fact, left Turkey and applied for asylum abroad.

Draft evasion and desertion are punishable under the Law on Military Service and the Turkish Military Penal Code. Turkish law actually makes a distinction between evasion of military registration, evasion of medical examination, evasion of enlistment and desertion.

According to Article 63 of the Penal Code, draft evasion is punishable (in peacetime) by imprisonment of:

- One month for those who report themselves within seven days;
- Three months for those who are arrested within seven days;
- Between three months and one year for those who report themselves within three months;
- Between four months and 18 months for those who are arrested within three months;
- Between four months and two years for those who report themselves after three months;
- Between six months and three years for those who are arrested after three months;
- Up to ten years' imprisonment in the case of aggravating circumstances, such as self-inflicted injuries, using false documents (Articles 79-81 of the Penal Code).

⁴⁸⁷ US State Department Bureau of Democracy, Human Rights and Labor: Country report on human rights practices 2004, International Religious Freedom Report 2004, International Religious Freedom Report 2003.

⁴⁸⁸ Different sources make different assessments of the extent to which Kurdish conscripts face discriminatory treatment within the armed forces. This has, in fact, been the subject of debate in many asylum cases of Turkish/Kurdish draft evaders and deserters in Western European countries.

Desertion is punishable under Articles 66-68 of the Penal Code with up to three years' imprisonment. Deserters who have fled abroad may be sentenced to up to five years' imprisonment, and up to ten years in case of aggravating circumstances (Article 67).

Monitoring of draft evasion and desertion is strict.⁴⁸⁹ The registration of conscripts is, in fact, one of the most effective government registrations in Turkey. Draft evaders and deserters may be arrested after routine checks such as traffic control. They are not able to leave Turkey, as the military registration number is included on identity documents. In addition, police and gendarma authorities are responsible for finding draft evaders and deserters and may conduct house searches and arrest them.

There are no detailed figures available on the scale of prosecution of draft evaders and deserters, but military courts are believed to deal with approx. 60,000 cases per year that are connected to draft evasion. About half of these cases reportedly deal with cases of conscripts going absent for less than a week, mostly conscripts who do not report themselves back in time after a period of leave.

Prison sentences of less than one year's imprisonment for evasion of registration/examination for enlistment or for desertion are generally commuted into fines, which must be paid after the end of military service. Sentences for draft evasion for periods longer than three months, when the draft evader has not reported himself voluntarily, may not be commuted into a fine. Suspended sentences may not be imposed for evasion of registration/examination or enlistment or for desertion.

Those who are convicted for draft evasion must still complete their term of military service. Repeated offenders may thus be sentenced again. Prison sentences for repeated offenders may not be commuted into fines.

Those convicted to less than six months' imprisonment usually serve their prison sentence in military prisons; those convicted to over six months' imprisonment are imprisoned in regular prisons. After serving their prison sentence, they still need to perform the remaining term of their military service.

In addition to the sentences outlined above, Turkish citizens can also have their citizenship withdrawn if they live abroad and do not return to perform military service within a certain time limit (Article 25(c) of the Turkish Nationality Law No. 403). The names of individuals who have forfeited their citizenship are published in the official Government Gazette. Over the years, thousands of Turks have, in fact, forfeited their citizenship.

⁴⁸⁹ Netherlands Ministry of Foreign Affairs (2003).

Those who have lost their citizenship in this way may apply to get their citizenship restored, but their applications may only be accepted if they complete their military service.⁴⁹⁰

In December 2000, the Turkish government adopted an amnesty law. The amnesty law applied to various crimes, including draft evasion. The amnesty law applied to draft evaders and deserters who reported themselves to the authorities before 23 April 1999. Although they were freed from criminal prosecution under Articles 63-68 and 70-75 of the Penal Code, they still remained liable for military service. Those who had not reported themselves to the authorities by April 1999 were not granted amnesty.⁴⁹¹

UKRAINE

Conscription

Conscription is enshrined in Article 65 of the 1996 Constitution and is further regulated by the 1999 Law on Military Duty and Military Service.

The length of military service is 18 months, 24 months in the navy, and 12 months for those who have completed higher education. The Ministry of Defence has announced that the length of service will be reduced to 12 months in 2005.⁴⁹²

All men between the ages of 18 and 25 are liable for military service. Reservist obligations apply up to the age of 40, and up to the age of 60 for officers.⁴⁹³

Upon gaining independence in 1991, Ukraine inherited the second largest armed forces in Europe, having 750,000 troops, most of them conscripts. The Ukrainian government has embarked on a transition plan to a professional army. The government aims to gradually increase the number of professional soldiers in the armed forces and to abolish conscription by 2015.⁴⁹⁴ However, the transition into a professional army does not seem to have developed as scheduled, as the Ukrainian armed forces seem to have problems attracting sufficient contract soldiers.⁴⁹⁵

Statistics

The armed forces comprise 300,000 troops, including 250,000 conscripts. Every year approx. 380,000 young men reach conscription age; approx. 20 per cent are recruited.

Conscientious objection

Legal basis

The right to conscientious objection is enshrined in Article 35.3 of the 1996 Constitution, according to which: "If performance of military service is contrary to the religious beliefs of a citizen, the performance of this duty shall be replaced by alternative (non-military) duty".

Further regulations on conscientious objection are laid down in the 1999 Law on Alternative Civilian

⁴⁹⁰ UK Home Office (2004).

⁴⁹¹ Netherlands Ministry of Foreign Affairs (2003). Schweizerische Flüchtlingshilfe: Türkei, Zur Aktuellen Situation, SFH, Bern, June 2003.

⁴⁹² Representative of Ministry of Defence, quoted in: 'Defence Ministry says some 50,000 dodging conscription in Ukraine', Unian, 2 April 2004. In the past, the Ukrainian government has also announced a reduction of the length of military service, but it did not implement this.

⁴⁹³ 'Military status there will be more contracts in the army', Rabochaya Gazeta (Kiev), 11 August 1999.

⁴⁹⁴ Ministry of Defence: The state programme of the Ukrainian armed forces reform and development until 2005, www.mil.gov.ua

⁴⁹⁵ 'Autumn draft campaign', Kiev Narodni Armiya, 2 October 2003.

Service. The Law replaced the previous 1992 law.⁴⁹⁶

Scope

The right to conscientious objection only applies to members of officially registered religious denominations who forbid their members to bear arms. According to Article 2 of the Law on Alternative Civilian Service: "Citizens of Ukraine who have genuine religious beliefs, who are members of religious organisations which conform to the legislation, and whose confessional beliefs do not allow them to use arms and serve in the military force, are accorded the right to alternative service".

The respective religious organisations are listed in the "List of religious organisations, whose doctrine prohibits using weapons" (Resolution 2066/1999), which replaced a previous list of 1992 (Government Decree 360/1992). The list includes Seventh Day Adventists, Baptists, Adventists-Reformists, Jehovah's Witnesses and the Charismatic Christian Church.⁴⁹⁷

Time limits

There is a time limit for submitting CO applications. Applications must be made within six months of receipt of call-up papers. Applications can thus not be made by serving conscripts and reservists.

Procedure

Applications must be made to the alternative service committee at the regional office of the Ministry of Labour & Social Policy. The committee consists of representatives of different government structures, including the armed forces and the committee for religious affairs. Applications must include a document signed by a religious minister of a denomination that is included in the government list of 1999. The committee checks the authenticity of the documents and may ask for additional information. Usually, no personal interview takes place.⁴⁹⁸

Substitute service

The length of substitute service is 27 months, and 18 months for those who have completed higher education. This is one and a half times the length of military service.⁴⁹⁹

⁴⁹⁶ United Nations Human Rights Committee, Consideration of Ukraine's periodic report to the Human Rights Committee (CCPR/C/UKR/99/5), 16 November 2000.

⁴⁹⁷ Inna Sukhorukova: Absence of a law does not free one from its execution, Prava Ludny 08/2002, Informative Bulletin of the Kharkiv Group for Human Rights Protection, www.khpg.org.

⁴⁹⁸ Mykhailo Zubar: If one's convictions preclude service in the army, there is an alternative', The Day, August 2002, www.day.kiev.ua/DIGEST/2002/08/1-page/1p1.htm

⁴⁹⁹ In 1999, the length of substitute service was reduced from 36 months (twice the length of military service). It is not known if the planned reduction of the length of military service in 2005 will mean that the length of substitute service will be reduced accordingly.

Substitute service is administered by the Ministry of Labour & Social Policy. It can be performed in government institutions, such as health care, social welfare and municipal projects. Substitute service may not be performed with non-governmental organisations, with the exception of the Ukrainian Red Cross.⁵⁰⁰

According to a Ukrainian human rights organisation, most COs are employed by local governments as street sweepers and construction workers.⁵⁰¹ Working conditions may be harsh and payment is low. According to the secretary of the alternative service committee, this is done deliberately: "Since it is impossible to have a board of experts verify one's true beliefs, the law provides conditions in which these beliefs can be put to the test".⁵⁰²

Human rights groups have repeatedly claimed that COs, as well as conscripts in the armed forces, are commonly employed to refurbish and build private houses for army and government officials.⁵⁰³

Practice

In 2002, 2,864 COs were performing substitute service. All of them were members of a religious organisation that is included in the government list of Resolution 2066/1999.⁵⁰⁴

As the Law on Alternative Civilian Service explicitly restricts the right to conscientious objection to religious grounds, non-religious COs have no chance of obtaining CO status.

In 2001, the United Nations Human Rights Committee in fact called upon the Ukrainian government to "widen the grounds for conscientious objection in law so that they apply, without discrimination, to all religious beliefs and other convictions and that any alternative service required for conscientious objectors be performed in a non-discriminatory manner".⁵⁰⁵

The Ukrainian government is, however, not known to be considering widening the grounds for recognition. Consequently, non-religious COs can only avoid military service by bribing draft officials or by not responding to call-up orders.

There is one known case of a conscript who openly declared himself as a CO for secular pacifist reasons. In 2000, Andrij Tvardijevych did not respond to his call-up order. When he found out that he would be prosecuted, he told the prosecutor he refused military service for secular pacifist reasons. In July 2000, he was fined 530 Hrivnas and sentenced to one year's provisional

⁵⁰⁰ Zubar (2002).

⁵⁰¹ Sukhorova (2002).

⁵⁰² Zubar (2002).

⁵⁰³ US State Department: 2001 Country Report on Economic Policy and Trade Practices.

⁵⁰⁴ Zubar (2002).

⁵⁰⁵ United Nations Human Rights Committee, Concluding observations of the Human Rights Committee: Ukraine (CCPR/CO/73/UKR), October 2001.

imprisonment under Article 72 of the Criminal Code for evading military service.⁵⁰⁶

Draft evasion

Draft evasion is punishable under Article 72 of the Criminal Code with one to three years' imprisonment.

Draft evasion is widespread in the Ukraine. According to the Ukrainian Ministry of Defence in April 2004, between 1996 and 2004 48,624 cases of draft evaders aged 18 to 25 had been sent for prosecution to the Ministry of Justice.⁵⁰⁷ It is not known how many draft evaders have been prosecuted by the Ministry of Justice.

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'.⁵⁰⁸ 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.⁵⁰⁹

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

⁵⁰⁶ Amnesty International: Concerns in Europe: July - December 2000 (EUR 01/001/2001). Friends of Andrij Tvardijevych: A CO needs help, Rundbrief KDV im Krieg, September 2000, Connection e.V., Offenbach.

⁵⁰⁷ 'Ministry says some 50,000 dodging conscription in Ukraine', Unian, 2 April 2004.

⁵⁰⁸ Instruction No. 6: Retirement or discharge on the grounds of conscience, www.wri-irg.org/pdf/co_uk_army.pdf

⁵⁰⁹ AT EASE: Information for members of the British armed forces, 2004, www.atease.org.uk

Committee on Conscientious Objection (ACCO).⁵¹⁰

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 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.⁵¹¹

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".⁵¹²

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.

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

⁵¹¹ Information provided by AT EASE, October 2004.

⁵¹² '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.

⁵¹⁰ Annex A to Instruction No 6: Appearance before the Advisory Committee on Conscientious Objectors (ACCO), www.wri-irg.org/pdf/co_uk_army.pdf

honourably discharged as conscientious objectors.⁵¹³

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".⁵¹⁴

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.⁵¹⁵

⁵¹³ Judy Kerr: Breaking ranks, in: The Big Issue, 26 May- 2 June 2003.

⁵¹⁴ Annex A to Instruction No. 6.

⁵¹⁵ Variant Issue 18, www.variant.org.uk 'Muslim who refused to fight in Iraq loses appeal', www.guardian.co.uk, 8 October 2004.