

Updated June 2008

## SERBIA

Serbia is - following its Parliament's decision of 5 June 2006 - the legal successor of the state union of Serbia and Montenegro and took over the laws of that state union. On 28 and 29 October 2006, a new constitution was adopted in a referendum.

### Conscription

Conscription is enshrined in Article 45 of the 2006<sup>1</sup> 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.<sup>2</sup>

In July 2006 the Ministry of Defence published the Strategic Defence Review<sup>3</sup> which establishes the objective of making the Serb Armed Forces into a professional army by 2015. Although it is not explicitly stated, the planned number of conscripts in 2010 is zero according to this Review.

### Statistics

According to the Strategic Defence Review, in July 2006 the armed forces consisted of 33,160 troops (forecast for 2007: 27,046), including 11,041 conscripts (forecast for 2007: 6,583).

### Conscientious objection

#### Legal basis

The right to conscientious objection is enshrined in Article 45 of the 2006 Constitution, saying: "No person shall be obliged to perform military or any other service involving the use of weapons if this opposes his religion or beliefs. Any person pleading conscientious objection may be called upon to fulfill military duty without the obligation to carry weapons, in accordance with the law."

Further legal provisions on conscientious objection are laid down in the Decree on Military Service, last amended on 28 January 2005. This Decree, compared to the 2003 version, has led to a slight deterioration in the situation of COs in Serbia.

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 government has managed to introduce a law on conscientious objection well ahead of this deadline.<sup>4</sup>

#### Scope

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

#### Time limits

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<sup>1</sup> Serbian Constitution, [http://www.srbija.sr.gov.yu/cinjenice\\_o\\_srbiji/ustav\\_odredbe.php?id=218](http://www.srbija.sr.gov.yu/cinjenice_o_srbiji/ustav_odredbe.php?id=218) (Site of the Serb Government), 24 October 2007

<sup>2</sup> Information provided by EBCO Balkan, October 2004.

<sup>3</sup> <http://www.mod.gov.yu/02ministarstvo/04-odredbe/Strategic%20Defence%20Review.zip> (Site of the Serb MoD), 24 October 2007

<sup>4</sup> 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.

There is a relatively strict time limit, newly introduced by the 2005 Decree. “A recruit who wants to serve his military duty in civilian service files such a request to the army recruitment centre he is registered with, and within 8 days from receiving the summons for serving the military duty. In his request he states the reasons for which he wants to serve military duty in civilian service, as well as what are the jobs he wants to engage in as a part of his military duty within the organisations and institutions outside the Army and the Ministry of Defence.”<sup>5</sup>

### **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 two representatives of the army recruitment centre, one of whom is a legal adviser and the other a defence expert. One of the latter acts as the chair, a role that did not exist in the 2003 version, where a civilian chaired the commission. At present there are 52 commissions, one in every local military section. The commission is obliged to order the applicant to come for a personal interview. In the 2003 version, interviews were not compulsory. It is thus obvious that the amended decree has led to a deterioration in the situation for applicants.

The commission needs to make a decision on the application within 30 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 (Decree Article 27).

A recruit can file a complaint against the decision in accordance with Paragraph 3 of this Article within 15 days of receiving notice of the decision. The decision on this complaint is made by the headquarters of the Army district (Decree Article 26).<sup>6</sup>

### **Substitute service**

The length of substitute service is nine months, which is three months longer than military service<sup>7</sup>. 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. All organisations where substitute service is performed have to be funded by the state, a rule implemented by the 2005 Decree which has led to a deterioration in the situation of COs since the pool of organisations where they can perform such service has become smaller by this rule.<sup>8</sup>

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.<sup>9</sup>

### **Practice**

By 2007, approx. 40,000 conscientious objectors have accomplished their civilian service, approx. 10,000 are currently serving.<sup>10</sup> More exact figures are not available.

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.<sup>11</sup>

There are no detailed figures available about the percentage of CO applications granted, but so far most applications have apparently been granted.

The 2005 Decree has in fact deteriorated the situation of COs, apparently in response to the increasing success of civilian service in Serbia. The forthcoming situation needs to be monitored.

## **Background**

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<sup>5</sup> Decree Article 26a

<sup>6</sup> Information provided by EBCO Balkan.

<sup>7</sup> Zivl 4/2007, p. 21

<sup>8</sup> Decree Article 27

<sup>9</sup> Regional Network for Conscientious Objection (2004).

<sup>10</sup> Zivl 4/2007, p. 21

<sup>11</sup> Regional Network for Conscientious Objection (2004); EBCO Balkan (2004).

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.<sup>12</sup>

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 any more.<sup>13</sup>

### **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.<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup>

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<sup>12</sup> 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.

<sup>13</sup> US State Department, Bureau of Democracy, Human Rights and Labor: International Religious Freedom Report 2003 and 2004.

<sup>14</sup> Amnesty International: Conscientious objectors can return to Yugoslavia (EUR/70/002/2001).

<sup>15</sup> 'Conscription obligatory for Serbia-Montenegro citizens living abroad', Radio B92, 27 January 2005 (BBC Monitoring Service).

<sup>16</sup> 'Diaspora conscripts unable to return', War Resisters' International: CO Update No.6 / February 2005.