



COUNCIL OF EUROPE
CONSEIL DE L'EUROPE
PARLIAMENTARY ASSEMBLY
ASSEMBLÉE PARLEMENTAIRE

Exercise of the right of conscientious objection to military service in Council of Europe member states

Doc. 8809 revised

4 May 2001

Report

Committee on Legal Affairs and Human Rights

Rapporteur: Mr Dick Marty, Switzerland, Liberal, Democratic and Reformers' Group

For debate in the Standing Committee see Rule 15 of the Rules of Procedure

Pour débat à la Commission permanente – Voir article 15 du Règlement

Summary

Although more and more states in Europe recognise the right to conscientious objection to military service, the actual situation concerning the exercise of this right varies greatly from country to country. The right to an alternative service is not always recognized and if it is, it is sometimes seen as a constraint. Information on the means of obtaining conscientious objector status is not sufficiently available to interested parties. Permanent

members of the armed forces should in certain circumstances also be able to apply for conscientious objector status. For all these reasons, the Assembly recommends that the right to conscientious objection to military service be incorporated into the European Convention on Human Rights, and that states take the necessary steps to ensure respect for this right.

I. Draft recommendation

1. The Assembly recalls its Resolution 337 (1967) and its Recommendation 816 (1977) on the right of conscientious objection and the right of conscientious objection to military service respectively, and also Recommendation No. R (87) 8 of the Committee of Ministers. It notes that the exercise of the right of conscientious objection to military service has been an on-going concern of the Council of Europe for over thirty years.

2. The right of conscientious objection is a fundamental aspect of the right to freedom of thought, conscience and religion enshrined in the Universal Declaration of Human Rights and the European Convention on Human Rights.

3. Most Council of Europe member states have introduced the right of conscientious objection into their constitutions or legislation. There are only five member states where this right is not recognised.

4. The position of conscientious objectors still differs considerably from one country to another, and differences in the law unfortunately result in varying levels of protection across Europe. The situation of conscientious objectors is therefore wholly unsatisfactory in member states which have recognised the right of conscientious objection.

5. The Assembly accordingly recommends that the Committee of Ministers invite those member states which have not yet done so to introduce into their legislation:

- i. the right to be registered as a conscientious objector at any time before, during or after conscription, or performance of military service;
- ii. the right for permanent members of the armed forces to apply for the granting of conscientious objector status;
- iii. the right for all conscripts to receive information on conscientious objector status and the means of obtaining it;
- iv. genuine alternative service, which should be neither deterrent nor punitive in character.

6. The Assembly also recommends that the Committee of Ministers incorporate the right of conscientious objection to military service into the European Convention on Human Rights by means of a protocol amending Articles 4.3.b and 9.

II. Explanatory memorandum by Mr Marty, Rapporteur

A. Introduction

1. In June 1993, the Committee on Legal Affairs and Human Rights submitted a draft recommendation on the right of conscientious objection to military service to the Parliamentary Assembly, but this and the accompanying report were returned to it for further discussion and redrafting[1].

2. In the meantime, I was appointed rapporteur to replace Mr Rodotà. On 26 November 1998, a questionnaire was sent to all the national parliamentary delegations, the aim being to supplement the information contained in the comparative study of laws on conscientious objection to military service in Council of Europe member states[2], which served as a working document for the Group of Specialists on Conscientious Objection to Military Service (DH-S-CO) of the Steering Committee for Human Rights (CDDH), and was approved for publication in November 1999. Twenty-nine countries responded: Albania, Austria, Bulgaria, Cyprus, Croatia, the Czech Republic, Estonia, Finland, France, Greece, Hungary, Ireland, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Norway, Poland, the United Kingdom, Russia, San Marino, Slovakia, Slovenia, Spain, Sweden and Switzerland.

3. This report is concerned with the way in which the right of conscientious objection is currently exercised in Europe. Since analysing national laws was not enough, it was necessary to look at national practices. The report tries to show how constitutional principles, ordinary laws and administrative practices relate to the realities of conscientious objection in the member states. It was important not to focus solely on the strictly legal aspects of conscientious objection, or on a description of the facts, but to assess the practical effects of regulations and case law.

B. General points concerning the right of conscientious objection to military service in Europe

4. The debate on the right of conscientious objection may seem superfluous at a time when a number of European countries are abolishing national service in favour of fully professional armies. Nevertheless, compulsory military service (conscription) still exists in most Council of Europe member states. It has either been abolished or has never existed in Andorra, Belgium, Ireland, Iceland, Liechtenstein, Luxembourg, Malta, the Netherlands, the United Kingdom and San Marino. Spain will be putting an end to conscription on 31 December 2001; France will follow suit on 1 January 2003. The Netherlands still has a law on conscription, but this contains no provisions on the performance of military service. Recruits are no longer called for medical examination, and the last conscripts were called up in February 1996, to do six months' service. In Italy, compulsory military service will be abolished on 1 January 2006. Eastern Europe is not exempt from the trend, which may lead to increased reliance on regular servicemen and the end of compulsory military service in the Czech Republic, Poland and Ukraine.

5. Albania, Armenia, Azerbaijan, "the Former Yugoslav Republic of Macedonia" and Turkey are the only Council of Europe member states which have not recognised the right of conscientious objection. All the

others, except Cyprus and Russia, have brought in laws providing in principle, in a generally uniform manner, for genuine alternative service of a non-punitive nature. There are very great differences between national regulations on the duration of alternative service, time-limits for the submission of applications for conscientious objector status, and the effects and processing of such applications.

6. In Albania, the right of conscientious objection is not guaranteed. Conscientious objectors who refuse to do military service may be fined or sent to prison for a maximum period of two years. There have been a few conscientious objectors, all of them Jehovah's Witnesses (14 in all, 3 of whom were given six-month prison sentences for refusing to serve in the armed forces; on release, they were again called up, and again refused to serve). The Albanian Constitution of 1998 states that anyone refusing to do military service must perform alternative service, as provided for in law. The next stage is to ensure that the new Military Service Act stipulates the form, organisation and duration of this alternative service.

7. In Armenia, the right to conscientious objection is not guaranteed. Conscientious objectors are punishable by prison sentences of up to seven years or by between six months and three years of service in a disciplinary battalion. After they have completed their sentence the objectors are called up again and must serve two further years. If a conscientious objector again refuses to do the armed service, he will then be sentenced to seven years' imprisonment under the present legislation. At least one conscientious objector condemned for the second time has been amnestied by the President of the Republic.

8. In Azerbaijan, the right to conscientious objection is not guaranteed either. As in Armenia, conscientious objectors serve prison sentences or serve in disciplinary battalions.

9. In "the Former Yugoslav Republic of Macedonia", the right of conscientious objection is not constitutionally guaranteed. There are no specific regulations on conscientious objection and alternative service. A 1992 defence law merely allows people who reject armed military service on religious grounds to perform 14-month unarmed military service instead. No information is available on individual cases of conscientious objection.

10. In Turkey, the right of conscientious objection is not recognised in law. Since the law makes no provision for any form of alternative service, conscientious objectors are treated as deserters and the military criminal code is strictly enforced.

11. There are other problems in Russia and Cyprus. Although the Russian Constitution of April 1992 recognised the right of conscientious objection, the Russian Parliament has not yet passed legislation authorising alternative civilian service, or amended the Criminal Code to incorporate this constitutional principle. Cyprus has been criticised in a report by the UN Human Rights Commission^[3] for repeatedly convicting and imprisoning objectors who persistently refuse to perform any type of service (on completing their prison sentences, objectors are called up again and then sent back to prison if they again refuse military service: some persistent objectors have been imprisoned four times. Penalties can be very

harsh: objectors may receive the maximum sentence every time they refuse to serve - in 1994, for example one conscientious objector was sentenced to 32 months). The UN Human Rights Commission also found the period of alternative service (42 months) excessive, and held that Cyprus had violated Articles 18 and 26 of the International Covenant on Civil and Political Rights.

C. Case law of the European Commission and Court of Human Rights and the role of the Parliamentary Assembly and Committee of Ministers of the Council of Europe

12. Article 9 of the 1950 European Convention on Human Rights allows everyone to act in accordance with their conscience^[4]. However, the Convention does not explicitly refer to a right of conscientious objection to military service.

13. Conscientious objection to military service is not a right under the Convention; the European Commission of Human Rights accordingly dismissed several applications on the ground that Article 4.3^[5] on forced or compulsory labour did not require contracting states to introduce alternative civilian service, any more than it required them to recognise conscientious objection or exempt objectors from performing other types of service for equivalent periods of time.

14. The obligation to do military service is not in itself at variance with Article 9 of the Convention, which guarantees freedom of thought, conscience and religion. According to the Commission's case law, this article ought to be read in the light of Article 4.3 b.^[6] The Commission refused to consider Article 9 as guaranteeing an absolute right to conscientious objection. In states where there is alternative civilian service, the obligation to perform it is in keeping with the Convention.

15. The right of conscientious objection may not be guaranteed by Article 9 of the ECHR, but it should be recognised more widely, allowing all conscripts to claim objector status, and all regular servicemen to apply for it while serving. It is in fact a fundamental aspect of the right to freedom of thought, conscience and religion enshrined in the Universal Declaration of Human Rights and the European Convention on Human Rights. Experience, however, unfortunately shows that the rights of certain objectors are not secured by their country's laws or practice.

16. In its Resolution 337(1967), the Parliamentary Assembly had pointed the way by declaring that persons liable to conscription and refusing to perform armed service should have a personal right to be released from this obligation, by advocating alternative civilian service lasting for at least as long as normal military service, and by calling for social and financial equality of recognised conscientious objectors and military conscripts.

17. Ten years after first stating its position on the question of conscientious objection, the Assembly reiterated these principles in its Recommendation 816(1977), and suggested that the right of conscientious objection to military service be written into the European Convention on Human Rights - a wish which, twenty years on, has still to be fulfilled.

18. The Council of Europe urges its member states to set up a legal framework, governed by common principles, to guarantee the right of conscientious objection. Committee of Ministers Recommendation No. R (87) 8 of 9 April 1987[7] asks member states to introduce suitable procedures for the examination of applications for conscientious objector status:

- persons liable to conscription for military service should be informed in advance of their rights;
- applications for conscientious objector status should be examined in time for this process to be completed before the applicant's enlistment;
- applicants must be able to appeal the first-instance decision to an impartial and independent civil appeal court.

However, Greece, Cyprus, Switzerland, Turkey and Italy have entered reservations to this recommendation. Moreover, although the draft text had been submitted to the Assembly for opinion, most of the amendments it proposed in Opinion 132 (87) were rejected by the Committee of Ministers.

19. Other institutions have also taken an interest in this subject: the United Nations[8], the OSCE and the European Union[9] have all issued recommendations and resolutions urging their member states to recognise the right of conscientious objection and amend their laws to guarantee alternative civilian service. The wording of Article 9 of the ECHR can be compared to Article 18 of the United Nations International Covenant on Civil and Political Rights or Article 18 of the Universal Declaration of Human Rights. The right to refuse military service for reasons of conscience is thus inherent in the concept of freedom of thought, conscience and religion.

D. Analysis, comments and evaluation of replies to the questionnaire

a. Conscripts and granting of conscientious objector status

20. Most European states recognise the right of conscientious objection, regarding it as one of their domestic measures for the protection of human rights. Many have written it into their constitutions. Most countries have passed laws setting up procedures for the processing of applications for exemption from military service, and generally providing for the performance of alternative service by exempted conscripts. The importance attached to human rights and the right of conscientious objection in individual states depends, to a large extent, on the importance attached to conscription and recruitment of citizens for military service, and on the effectiveness of the laws and procedures applying to conscription. Many Eastern European states have no difficulty in securing the number of voluntary recruits they need for their armed forces. Failure to report for duty is not therefore a punishable offence and conscripts unwilling to do military service are not obliged to plead conscientious objection. In several Eastern European countries (Latvia, Lithuania, Moldova, Russia and Ukraine), conscripts frequently avoid doing military service. In these

countries between 10 and 20% of conscripts on average are actually enlisted for military service. Since all defaulters cannot be prosecuted, some states make an example of only a few by bringing them to court, or declare amnesties (Russia and Ukraine).

21. The number of conscientious objectors in Europe ranges from under 50 (in Estonia) to over ten thousand (in the Czech Republic), or even to over a hundred thousand (in Spain, the number of conscientious objectors doubled between 1996 and 1999, from 93,279 to 180,000). The number of those who reject any kind of service does not usually exceed one hundred, except in Sweden where there are some 400 per year (civilian service in Sweden is not simply an alternative service for conscientious objectors, but one of the three elements in "total defence"), and in Spain, where it reaches 1,196, of whom 586 are registered in Catalonia and 331 in the Basque Country (this number includes declared total objectors as well as those who do not present themselves to do an alternative service).

22. Some countries grant members of certain religious groups collective exemption from compulsory military service (e.g. Jehovah's Witnesses in Finland and Sweden). Most, however, regard conscientious objection as an individual right, which groups cannot exercise.

23. National regulations defining the nature and scope of the right of conscientious objection differ widely. The manner in which the right of conscientious objection is interpreted varies considerably from country to country, as do the terms used ("alternative service", "substitute service", "alternative civilian service", "civilian service", etc.).

24. Grounds for exemption from military service range from a very limited list of reasons to a very broad interpretation of the concept of conscience. In some countries (Norway), potential objectors must explain exactly why their conscience does not allow them to participate in armed conflict between states. In others (Spain), almost any religious, pacifist or political reason justifies an application for exemption from military service. In some cases, conscientious objection is accepted only for strict reasons of conscience and religion, and not for moral reasons (Slovakia). Under the laws of several states (including Greece), people in voluntary or professional contact with firearms are not eligible for alternative service.

25. As regards the examination and outcome of applications for objector status, most states have laws guaranteeing procedures worthy of the name, including the right to appeal against first-instance decisions. In some countries (Poland), the first stage in processing an application involves making individual enquiries or interviewing the applicant. In others (Denmark), a written application, stating the grounds for and nature of objection, is officially examined. Many states do not hear applicants personally and, in accordance with their laws or practice, examination merely involves verifying that the application is complete (Austria, Germany, Denmark, Finland and Sweden).

26. Objectors' applications for exemption should be assessed on objective criteria. If they are rejected, this should be for precise legal reasons, and should not depend on purely discretionary decisions by administrative bodies.

27. Many countries which examine the merits of applications try to ensure that the procedure is unbiased by making the membership of the examining panel as heterogeneous as possible. In Bulgaria, applications are examined by a nine-member committee, representing all sectors of the community. In other countries (e.g. Poland), the examining body is largely composed of representatives of the military authorities - but this does not necessarily reduce the applicants' chances of succeeding.

28. In most cases, the first-instance body's decision can be challenged before an independent administrative body or a civil court (Slovakia and Slovenia). There are very few countries where the initial administrative decision cannot be appealed to a court (Romania and Russia).

b. Absolute objectors and prison sentences

29. "Absolute objectors", i.e. those who refuse to perform both military service and any type of alternative service, pose a special problem. Failure to report for duty when first called up is usually punishable as such, or as desertion, under the military offences code or the criminal code. European countries' laws on penalties which may be imposed on recognised conscientious objectors who refuse to perform alternative service differ widely. Many Eastern European countries, which have no specific criminal laws on such cases, simply apply the law on failure to do military service to conscientious objectors (Russia and Ukraine). Most, however, have inserted specific provisions in their criminal legislation in this field (Sweden). The penalty that may be imposed is either the same as that imposed for failure to report for duty or, sometimes, less harsh (Finland). Germany has found a general solution to the problem of absolute objection by exempting recognised objectors from compulsory civilian service if they can show that they are, or will be, employed for a definite time by a charitable association working in the health sector.

30. Rejection of all compulsory service, civilian or military, cannot be accepted in legal systems which provide for compulsory service, since this would be tantamount to privileging certain groups (particularly Jehovah's Witnesses), and would flagrantly violate the principle of the equality of citizens before the law. Swiss law stipulates that anyone who refuses to perform both military and civilian service must do some form of compulsory work. If a country insists on imposing prison sentences, the sentence must in all cases be short and entail no unduly harsh conditions of detention.

31. Moreover, it is interesting to note that in Spain in 1999, 112 of the 254 sentences pronounced for a total refusal to do any form of military service were handed down in one region of Spain, the Basque Country.

32. The length of prison sentences varies from three months (Norway) to five years (Bulgaria and Latvia), depending on the seriousness of the offence. Sentences often match the duration of military service (Greece) or civilian service (Finland). The Russian Criminal Code stipulates that imprisonment is one of the penalties which may be imposed for refusal to perform military or alternative service, in addition to fines, forced labour or short periods in custody.

c. Alternative service and civilian service

33. In most countries, except Sweden, "substitute service" is conceived as a form of national service for people who officially apply for exemption from compulsory military service on grounds of conscience. Objectors performing substitute service still discharge their military service obligations. Although substitute service is simply another way of fulfilling these military obligations, it is usually governed by a separate law, and conscientious objectors are answerable to a non-military authority. In some countries (particularly Greece), substitute service is supervised by the military authorities - contrary to the Committee of Ministers' recommendation. However, it is not exceptional for states to offer unarmed military service as the only alternative to military service (Albania, Croatia and Estonia). On the other hand, unarmed military service is totally unheard of Austria, the Czech Republic or in Spain.

34. Sweden is the only country with genuine "substitute service", offering conscripts a real alternative by allowing them to choose between military service and substitute service without having to secure conscientious objector status (civilian service is not designed as an alternative service for objectors only, but as one of three elements in "total defence").

35. The substitute national service proposed by European states is, without exception, unarmed and civilian in character. Alternative service is usually performed in medical care establishments and social welfare institutions (Germany). Some countries have a wider range of alternative services, e.g. participation in development projects (conscientious objectors in Spain work on projects concerned, among other things, with protection of the environment, countryside or nature, international co-operation and education).

36. Civilian service should not be administered by defence ministries. States must be free to decide what form civilian service is to take, but its management should have nothing to do with military structures - which are not, in any case, the best equipped to run activities with social aims.

37. Member states which can afford to do so, should allow conscientious objectors to perform genuine alternative civilian service, i.e. service which does not involve the wearing of uniform and is not performed in a military context.

38. The various criteria applied by some countries need to be urgently reviewed and brought into line with European and international standards in this field. This concerns Albania, Bulgaria, Croatia, Cyprus, Romania, "the Former Yugoslav Republic of Macedonia" and Turkey.

39. As regards the relative duration of substitute and military service, there are very few countries, e.g. Slovenia or Spain, where the duration of both is effectively the same. In many states, alternative service lasts substantially longer than military service (the most blatant example is Cyprus, where alternative service lasts 38 to 42 months, whereas military service lasts only 26 months). In some cases, the long periods of service which reservists are later required to perform may justify making alternative

service longer. In some countries, it lasts twice as long as normal military service (in France, for example, military service lasts ten months, and the service performed by conscientious objectors twenty).

d. Specific cases

40. In many countries, the suspensive effect (or otherwise) of applications for exemption from compulsory armed military service depends on when the application is made. In most cases, applications submitted by applicants who are already serving have no suspensive effect. In fact, some countries stipulate that the right of conscientious objection may not be exercised during military service, and some even extend this restriction to a certain period following completion of the initial period of service. These countries believe that the right of conscientious objection should be suspended during this period to avoid disruption of the armed forces. In a very large majority of countries, conscripts are not allowed to change their attitude to the use of arms while performing their military service. This policy takes no account of the fact that conflicts of conscience can arise at any stage, and that people are likelier to develop a conscious aversion to the use of arms while actually using them, than previously.

41. The possibility of pleading conscientious objection at any time, even after beginning military service, must be guaranteed, as it is already in France, for example. Following Slovenia's example, this possibility should be extended to permanent members of the armed forces.

42. Very few countries recognise regular servicemen's right of conscientious objection. The Czech Republic, Latvia and Slovenia are the only exceptions. In other countries, regular servicemen's only option is to denounce their service contract.

43. Permanent members of the armed forces should have the right to apply for the granting of conscientious objector status.

44. The final question of the questionnaire sent to the parliamentary delegations asked them to provide information on voluntary military service for women. This is still accepted in too few countries (Austria, Estonia, Greece, Norway, Russia, Sweden and Switzerland). In Estonia, it will soon be abolished. In Italy, a government bill introducing it is well on the way to adoption. Equality requires that women be allowed to volunteer for military service and if necessary be able to apply for the status of conscientious objector during their military service.

E. Conclusions

45. The right of conscientious objection to military service has been strengthened in both quantitative and qualitative terms. In quantitative terms, many European states now accept it, although three South-Eastern European countries - Turkey, Albania and "the Former Yugoslav Republic of Macedonia" – and two Caucasian countries, Armenia and Azerbaijan – do not. Most states which have recognised this right have also introduced alternative civilian service to replace military service (although Cyprus and Russia have no laws setting up genuine alternative service). In qualitative terms, many existing laws have been improved with regard to the

examination of applications by objectors, the length and conditions of civilian service, objectors' rights and the courts which deal with them. These developments may be considered consistent with the new requirements of international law. The right of conscientious objection is thus moving towards full acceptance.

46. The actual situation concerning the right of conscientious objection varies greatly in Europe. Originally, conscientious objection was motivated by religious, philosophical or political convictions; today, however, deplorable conditions of military service, and also economic or social factors, are increasingly behind it. Many countries whose defence needs and military budgets have diminished are now less strict on recruitment of conscripts, and those which can afford to do so have introduced alternative civilian service. In some countries, such as France, national service no longer fulfils its original function of breaking down social barriers, and the existence of various forms of civilian service, attracting well-educated objectors on the look-out for worthwhile experience which they can later use in other contexts, leads to discrimination between this group and ordinary conscripts. These new circumstances create new forms of inequality between European countries.

47. Against this background, countries which do not exempt religious and other objectors from all military obligations could respond to conscientious objection by introducing a genuine alternative civilian service scheme, allowing young people who wish to serve the community to work on social, political or cultural projects. It is vital that these various forms of civilian service should not entail tasks more difficult than those expected of ordinary conscripts or rejected by other people, and that objectors do not, as a cheap source of labour, take jobs from the unemployed. This is why civilian service should not be performed in companies working for the state, but in public authorities, international organisations or NGOs.

48. The Parliamentary Assembly and the Committee of Ministers must co-operate closely in pursuing and stepping up existing efforts to ensure respect for the right of conscientious objection of conscripts and permanent members of the armed forces, the right to genuine alternative service and women's right to volunteer for military service. Other objectives to be achieved include:

- the right for all those called up for service in the armed forces to receive information on conscientious objector status and the means of securing it
- the right to be registered as a conscientious objector at any time before, during, or after conscription or the performance of military service
- the right to perform alternative service of a clearly civilian nature and a length not exceeding that of military service
- States should not envisage alternative service as a deterrent or a punishment
- insertion of the right of conscientious objection to military service

in the ECHR through a protocol amending Articles 9 and 4.3 b.

Reporting committee: Committee on Legal Affairs and Human Rights

Budgetary implications for the Assembly: none

Reference to committee: Order No. 366 (1977)

Draft recommendation adopted unanimously by the committee on 13 June 2000 with one abstention

Members of the committee: MM Jansson (*Chairperson*), Bindig, Frunda, Mrs Err (*Vice-Chairpersons*), Mrs Aguiar, MM Akçali, Arzilli, Attard Montalto, Bal (alternate: Mrs Gülek), Bartumeu Cassany, Bruce, Bulavinov, Clerfayt, Contestabile, Demetriou, Derycke, Dimas, Enright, Floros, Mrs Frimansdóttir, MM Fyodorov, Gustafsson (alternate: Mr von der Esch), Holovaty, Mrs Hren-Vencelj, Mrs Imbrasiene, MM Jaskiernia, Jurgens, Kelemen, Lord Kirkhill, MM S. Kovalev, Kresák (alternate: Mr Tkác), Mrs Krzyzanowska, Mr Le Guen, Mrs Libane, MM Lintner, Lippelt, Loutfi, Magnusson, Mrs Markovic-Dimova, MM Marty, McNamara, Moeller, Nastase (alternate: Mrs Ionescu), Mrs Ninoshvili, MM Pavlov, Pollo, Mrs Pourtaud (alternate: Mr Bordas), MM Robles Fraga, Rodeghiero, Mrs Roudy (alternate: Mr Michel), Mrs Serafini, MM Simonsen, Skrabalo, Solonari, Spindelegger, Svoboda, Symonenko, Tabajdi, Tallo, Vera Jardim, Verhagen, Mrs Vermot-Mangold, Mr Vyvadil, Mrs Wohlwend, Mrs Wurm, Mr Yáñez-Barnuevo

N.B. The names of those members who were present at the meeting are printed in italics.

Secretaries to the committee: Mr Plate, Ms Coin, Ms Kleinsorge and Mr Cupina

APPENDIX

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

RECOMMENDATION No. R (87) 8

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES

REGARDING CONSCIENTIOUS OBJECTION TO COMPULSORY MILITARY SERVICE ¹

*(Adopted by the Committee of Ministers on 9 April 1987
at the 406th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Recalling that respect for human rights and fundamental freedoms is the common heritage of member states of the Council of Europe, as is borne out, in particular, by the European Convention on Human Rights;

Considering that it is desirable to take common action for the further realisation of human rights and fundamental freedoms;

Noting that in the majority of member states of the Council of Europe military service is a basic obligation of citizens;

Considering the problems raised by conscientious objection to compulsory military service;

Wishing that conscientious objection to compulsory military service be recognised in all the member states of the Council of Europe and governed by common principles;

Noting that, in some member states where conscientious objection to compulsory military service is not yet recognised, specific measures have been taken with a view to improving the situation of the individuals concerned,

1. When this recommendation was adopted:

— in application of Article 10.2.c of the Rules of Procedure for the meetings of the Ministers' Deputies, the Representative of Greece reserved the right of his Government to comply with it or not, and the Representative of Cyprus reserved the right of his Government to comply or not with paragraph 9 of the text;

— in application of Article 10.2.d of the Rules of Procedure for the meetings of the Ministers' Deputies, the Representative of Italy recorded his abstention and in an explanatory statement said that his Government was of the opinion that the text as adopted fell short of the suggestions made by the Assembly, and therefore appeared to be deficient;

— in application of Article 10.2.d of the Rules of Procedure for the meetings of the Ministers' Deputies, the Representatives of Switzerland and Turkey recorded their abstentions and in explanatory statements said that their Governments would be unable to comply with the text.

Recommends that the governments of member states, insofar as they have not already done so, bring their national law and practice into line with the following principles and rules :

A. Basic principle

1. 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 hereafter. Such persons may be liable to perform alternative service ;

B. Procedure

2. States may lay down a suitable procedure for the examination of applications for conscientious objector status or accept a declaration giving reasons by the person concerned ;

3. With a view to the effective application of the principles and rules of this recommendation, persons liable to conscription shall be informed in advance of their rights. For this purpose, the state shall provide them with all relevant information directly or allow private organisations concerned to furnish that information ;

4. Applications for conscientious objector status shall be made in ways and within time-limits to be determined having due regard to the requirement that the procedure for the examination of an application should, as a rule, be completed before the individual concerned is actually enlisted in the forces ;

5. The examination of applications shall include all the necessary guarantees for a fair procedure ;

6. An applicant shall have the right to appeal against the decision at first instance ;

7. The appeal authority shall be separate from the military administration and composed so as to ensure its independence ;

8. The law may also provide for the possibility of applying for and obtaining conscientious objector status in cases where the requisite conditions for conscientious objection appear during military service or periods of military training after initial service ;

C. Alternative service

9. Alternative service, if any, shall be in principle civilian and in the public interest. Nevertheless, in addition to civilian service, the state may also provide for unarmed military service, assigning to it only those conscientious objectors whose objections are restricted to the personal use of arms ;

10. Alternative service shall not be of a punitive nature. Its duration shall, in comparison to that of military service, remain within reasonable limits ;

11. Conscientious objectors performing alternative service shall not have less social and financial rights than persons performing military service. Legislative provisions or regulations which relate to the taking into account of military service for employment, career or pension purposes shall apply to alternative service.

[1] See Doc. 6752, report of the Committee on Legal Affairs and Human Rights, Rapporteur: Mr Rodotà, Italy, Independent Left).

[2] Document prepared by the Swiss Institute of Comparative Law, Lausanne (Switzerland) (DH-S-CO (99) 2 def.).

[3] UN Doc. A/49/40 Vol. 1 (1994)

[4] "Everyone has the right to freedom of thought, conscience and religion"

[5] "For the purpose of this Article the term "forced or compulsory labour" shall not include: b. any service of a military character, or in case of conscientious objectors in countries where they are recognised, service enacted instead of compulsory military service"

[6] cf. Applications No. 7.705/76, No. 7.548/76 and No.7.565/76

[7] See Appendix 1

[8] The United Nations Human Rights Commission adopted Resolutions 1989/59, 1993/84, 1995/83 and 1998/77 recognising the right of conscientious objection

[9] The European Parliament dealt with the question in its Resolution of 16 February 1983 and its Resolution of 27 October 1989