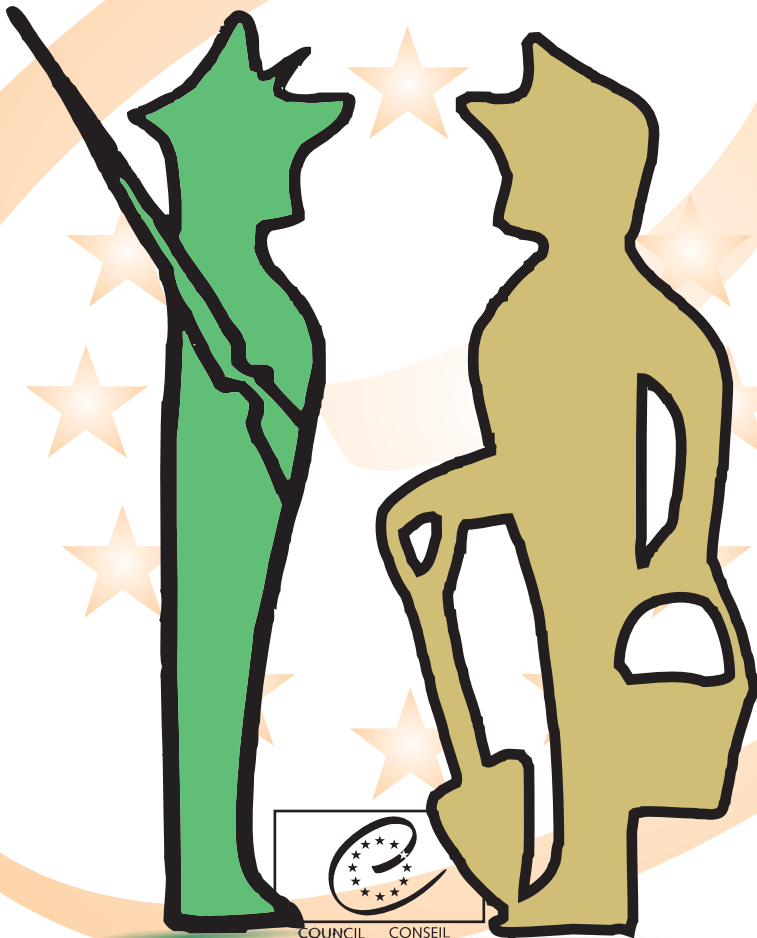


Conscientious objection to compulsory military service



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Council of Europe
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Introduction

There are people liable to conscription for military service who, for compelling reasons of conscience, refuse to perform such service, mainly because of the obligation to use arms. Problems may arise when a country's legislation or practice does not allow such people, known as conscientious objectors, to perform alternative civilian service. 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 in this area.

This booklet is designed to make the authorities and the public at large aware of the problems currently raised in Europe by conscientious objection to compulsory military service and of the solutions needed at international and national level.

The situation at present

The right to a conscientious objection to military service can be inferred from a number of international legal instruments and from the legislation of many countries. The exercise of this right is, however, subject to rules and practices that differ greatly from country to country.

Experience shows that, unfortunately, the rights of certain objectors are not recognised in law or in practice in their country, although the right to conscientious objection to military service is recognised in many states as a human right.

The situation at international level

The Council of Europe, the United Nations Commission on Human Rights and the European Parliament have stressed that the right to conscientious objection is a fundamental aspect of the right to freedom of thought, conscience and religion as recognised in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights).

It is on this basis that many states regulate the way in which people may exercise their right to conscientious objection. Usually they provide for alternative, civilian service, which the person concerned must agree to perform. The conscientious objector cannot argue compelling

reasons of conscience in order to avoid such service as well, on the grounds, for example, that it is “forced or compulsory labour”. Article 4, paragraph 3.b of the European Convention on Human Rights is clear on this point:

“For the purpose of this article the term ‘forced or compulsory labour’ shall not include ... any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service.”

This article allows a State Party to the European Convention on Human Rights not to recognise the right to conscientious objection to compulsory military service. The member states of the Council of Europe have, however, given a

clear political endorsement to recognition of conscientious objection. In its Recommendation No. R (87) 8 (see Appendix II to this booklet, page 11), adopted on 9 April 1987, the Committee of Ministers of the Council of Europe invites the governments of member states, where they have not already done so, to bring their national legislation and practice into line with the following basic 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 United Nations Commission on Human Rights, the Council of Europe and the European Parliament have urged governments to ensure that individuals who object to compulsory military service on grounds of conscience have the opportunity to perform alternative service. They have asked that:

- information on the status of conscientious objector and the means of obtaining such status be readily available to all those liable to be conscripted to the armed forces;
- individuals be allowed to register as conscientious objectors at any time before, during or after their conscription or performance of military service;
- the alternative service be clearly civilian and that its duration be such that it cannot be considered punitive.

In order to assess the extent to which member states actually complied with the principles set out in the recommendation, the Council of Europe called for a comparative study of legislation and practice in this area in member States. As many states had joined the organisation since the recommendation had been adopted, the study proved particularly useful as a means of ascertaining the situation. Called for by the Committee of Ministers and carried out under the auspices of the Steering Committee for Human Rights (CDDH), the study was published in November 1999.

In May 2001 the Parliamentary Assembly in its Recommendation 1518 (see Appendix III, page 14) recalled that “the exercise of the right to conscientious objection to military service has been an ongoing concern of the Council of Europe for over thirty years”. Pointing out in this recommendation the multiplicity of situations, the Parliamentary Assembly concludes in favour of the necessity of the setting up of legislation and the duty of an acceptable implementation of this legislation in the member states – this stressing the major difficulty encountered in many countries.

Alongside these developments in the Council of Europe, Amnesty International has asked the member states of the European Union to make it clear, through a European Parliament resolution, that recognition of the right to conscientious objection to military service and the introduction of alternative, civilian service of a duration that cannot be considered punitive be included among the criteria for the admission of new members to the European Union in the future.

The situation at national level

For democratic states that respect rights and fundamental freedoms, respect for the right to conscientious objection cannot be seen as a minor issue divorced from the mainstream of protection and promotion, at international level, of human rights.

It can be observed, particularly in the light of the above-mentioned comparative study, that progress has been made in a good many member states, in line with the broad principles set out in Recommendation No. R (87) 8. Nevertheless, the study showed that certain states still make no provision in their legislation for alternative service and that in others such service is designed to act as a deterrent, if

indeed it is not completely punitive. In some states alternative service is allowed only on a limited number of grounds, such as religious grounds.

Moreover, it is not enough to have a series of national rules reflecting the Council of Europe's principles as regards conscientious objection to compulsory military service. It is essential that these rules be actually observed in practice. However, as stated in the Parliamentary Assembly's Recommendation 1518, the situation of conscientious objectors is "wholly unsatisfactory in the member states that have recognised the right of conscientious objection".

The solutions needed

Legislative solutions

The Council of Europe wants conscientious objection to compulsory military service to be recognised in all member states and governed by common principles. The minimum basic principles are those set out in Committee of Ministers' Recommendation No. R (87) 8, referred to above.

The recommendation encourages states to lay down a suitable procedure for the examination of applications for conscientious objector status. This means that people liable to conscription for military service must be informed beforehand of their rights. If young people of conscription age are to have a real choice and be placed on an equal footing, the authorities must inform them that it is possible to perform civilian service and indicate the various forms such service may take. This information may be provided in explanatory booklets. It would be very useful to set up information offices at the Ministry

of Labour and in other bodies concerned. The state itself is responsible for providing all the relevant information or enabling the private organisations concerned to disseminate such information.

The examination of applications for conscientious objection status must be completed before enlistment takes place. The examination must fulfil all the conditions attached to a fair procedure and the applicant must have the right of appeal against the decision at first instance.

The appeal authority must be separate from the military administration and composed in such a way as to ensure its independence. 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 appeared during military service or periods of military training after initial service.

Assistance and co-operation

Technical assistance with drafting suitable legal instruments may be provided by the Council of Europe, in conjunction with NGOs active in this area. In this perspective, it is planned to organise regional seminars on the legal framework and practical arrangements for conscientious objection to military service for representatives of the relevant national authorities, foreign affairs, justice and defence ministries, parliamentarians, and so on; these seminars will also be attended by representatives of NGOs, such as the European Bureau for Conscientious Objection (EBCO). Moreover, several NGOs are helping to organise highly practical train-

ing seminars in countries that do not have or do not apply suitable legislation.

The purpose of the seminars will be to help certain member states introduce and implement suitable legislation and set up a technical co-operation network. In particular, they will provide representatives of these states with an opportunity to:

- find out about initiatives in other countries in this area;
- familiarise themselves with the guidelines laid down by the Council of Europe;
- establish contacts with NGOs active in this field.

Awareness-raising measures

The purpose of this booklet is to make the public at large and national authorities aware of the problems encountered by conscientious objectors. Appended to the booklet are:

- the text of Committee of Ministers' Recommendation No. R (87) 8: it can help raise awareness of these problems. It sets out the general principles to be borne in mind in re-

lation to conscientious objection to compulsory military service

- Recommendation 1518 (2001) of the Parliamentary Assembly. This represents the most recent pertinent text issued by an organ of the Council of Europe
- the addresses of several NGOs active in this field: NGOs constitute indeed a particularly effective awareness-raising network.

Appendix I

Addresses

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Appendix II

Recommendation No. R (87) 8

of the Committee of Ministers to member states
regarding conscientious objection to compulsory military service

(Adopted by the Committee of Ministers on 9 April 1987
at the 406th meeting of the Ministers' Deputies)¹

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 par-

ticular, 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;

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 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.

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,

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 infor-

mation 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;

II 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.

Appendix III

Recommendation 1518 (2001) on the exercise of the right of conscientious objection to military service in Council of Europe member states

adopted by the Standing Committee,
acting on behalf of the Parliamentary Assembly
of the Council of Europe, on 23 May 2001

1 The Assembly recalls its Resolution 337 (1967) on the right of conscientious objection and Recommendation 816 (1977) on the right of conscientious objection to military service, and also Recommendation No. R (87) 8 of the Committee of Ministers regarding conscientious objection to compulsory military service. It notes that the exercise of the right of conscientious objection to military service has been an ongoing 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. The situation of conscientious objectors is therefore wholly unsatisfactory in member states that have recognised the right of conscientious objection.

5 The Assembly accordingly recommends that the Committee of Ministers invite those member states that 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 of a clearly civilian nature, 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 an additional protocol amending Articles 4.3.*b* and 9.

