FRANCE

Conscientious objection to the national service laws: a summary of Amnesty International's concerns

When the current legislation governing conscientious objection to military service, Law No 83-605 of July 1993, modifying the National Service Code, was introduced, it was welcomed by Amnesty International insofar as it contained greater flexibility in granting conscientious objector status and an improvement in the type of alternative civilian service offered to recognized objectors. However, at the same time, Amnesty International expressed and has continued to express concern that the legislation allows applications for conscientious objector status to be submitted only within stipulated time limits, making no provision for conscientious objection developed during active military service. Similarly, the organization has repeatedly expressed concern that the legislation also offers conscientious objectors a civilian service which is twice the length of ordinary military service. Such a length is considered punitive by Amnesty International.

Amnesty International takes no position on conscription as such and does not oppose the right of a state to request a citizen to undertake alternative civilian service. However, the organization believes that an essential component of the right to conscientious objection to armed service is that alternative service should not be imposed as a **punishment** for such objection. Amnesty International considers that the 20-month civilian service currently offered to conscientious objectors to military service in France does not, therefore, provide an acceptable alternative to the 10-month military service and that those imprisoned for rejecting both services are prisoners of conscience.

In its appeals to the authorities to amend the legislation Amnesty International has pointed out that international standards on conscientious objection to compulsory military service also advocate a non-punitive length of civilian service.

Resolution 1989/59 on conscientious objection to military service, adopted by the UN Commission on Human Rights in March 1989, in operative paragraph 4: "Emphasizes that ... alternative service should be of a non-combatant or civilian character, in the public interest and **not of a punitive nature**." The Commission reaffirmed its position in Resolutions 1993/84 and 1995/83.

Recommendation R (87) 8 regarding conscientious objection to compulsory military service, adopted by the Committee of Ministers of the Council of Europe in April 1987 states, in paragraph 10, that: "Alternative service shall not be of a punitive nature. Its duration shall in comparison to that of military service, remain within reasonable limits."

During the 1990s scores of conscientious objectors to the national service laws have received sentences of up to 15 months' imprisonment on charges such as insubordination *(refus d'obeissance)*, a charge carrying a possible penalty of up to two years' imprisonment. This charge is usually brought when an individual has refused to put on military uniform and bear arms after presenting himself voluntarily at barracks or being escorted there by law enforcement officers. Another charge frequently brought against conscientious objectors is failure to report for national service (*insoumission)*, carrying a possible penalty of up to one year's imprisonment. Desertion (carrying a possible penalty of up to three years' imprisonment) is most commonly brought in cases where recognized conscientious objectors have stopped carrying out their civilian service after completing at least 10 months (that is, the length of military service) in protest, wholly or partly, against its punitive length.

The vast majority of conscripts imprisoned during the 1990s for failure to comply with the national service laws have been Jehovah's Witnesses, who refuse to apply for conscientious objector status and civilian service and base their rejection of both military and civilian service on religious grounds. According to unofficial figures, until 1995 over 500 Jehovah's Witnesses were imprisoned each year as a result of their refusal to perform military service. They were usually charged with insubordination after presenting themselves voluntarily at barracks.

However, no such cases have been reported to Amnesty International since a Ministry of Defence directive came into force "on an experimental basis" in February 1995. Under its provisions, Jehovah's Witnesses who submit a written request to the national service office before call-up, are referred directly to regional health and social authorities who assign them to 20 months' civilian work, comparable with the civilian service carried out by conscripts with official conscientious objector status.

By no means all those refusing to conform to the national service laws and prosecuted as a result have based their actions on religious grounds.

Alain Cazaux, a car-mechanic from the Basque region, based his objection to both military and civilian service on his anti-militarist and political beliefs and considered the length of civilian service to be punitive. He was arrested in June 1994 after failing to report to barracks to start his military service. Following transfer to an army centre, he was escorted to a railway station and ordered to report to his designated barracks. He instead returned home, thus becoming liable for a charge of desertion. He was rearrested in October 1994 and escorted to barracks where he repeatedly refused orders to put on army uniform, thus becoming liable for a charge of insubordination. He was held in isolation until his transfer to a civilian prison five days later. In November 1994 he was sentenced to 12 months' imprisonment, reduced to 10 months on appeal, for desertion and insubordination. He was released in June 1995.

Lionel Raymond was granted official conscientious objector status in January 1994 but failed to report for civilian service in October 1994 as ordered, basing his action on his anti-militarist beliefs. In December 1996 he was tried on a charge of failure to report for national (civilian) service and in February 1997 sentenced to 10 months' suspended imprisonment.

Renaud Rio was granted conscientious objector status in 1991. In October 1993, after carrying out 10 months' civilian service, he decided to leave the service, in protest against its punitive length, amongst other things. He was tried on a charge of desertion in December 1996 and sentenced to three months' suspended imprisonment in February 1997.

Under current legislation, applications for conscientious objector status must be made by the 15th day of the month[1] preceding the announced date of the conscript's incorporation into the armed forces or after completing active military service, when in the reserve. There is no provision for conscientious objection developed during active military service. However, Amnesty International believes that conscientious objectors to military service are exercising their fundamental right to freedom of conscience and that they should, therefore, have the right to claim conscientious objector status at any time, both up to and after entering the armed forces. International standards also support this position.

Recommendation N°R (87) 8 regarding Conscientious Objection to Compulsory Military Service adopted by the Committee of Ministers of the Council of Europe on 9 April 1987 in section B, para.8 states: "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".

Amnesty International has also pointed out that the Council of Europe's Explanatory Report to the Recommendation states, with reference to Section B, para. 8: "To prescribe an absolute time-limit in the rules to which applications are subject could be considered as contrary to the very purpose of the Recommendation. If refusal to perform military service is acknowledged as being based on a conflict of conscience, it follows that this conflict might occur at any moment in a person's life. Indeed there is nothing to prevent this type of conflict arising during military service".

[1] Prior to a modification of the National Service Code in January 1992 applications had to be submitted by the 30th day.

Resolution 1993/84 on Conscientious Objection to Military Service, adopted by the UN Commission on Human Rights in March 1993 affirms, in operative paragraph 2, "that persons performing compulsory military service should not be excluded from the right to have conscientious objections to military service". This was reaffirmed by Resolution 1995/83 adopted by the Commission in March 1995.

Amnesty International has also noted that in April 1996, following its consideration of *Spain*'s Fourth Periodic Report on its implementation of the International Covenant on Civil and Political Rights (ICCPR), the Human Rights Committee stated that it was "greatly concerned" that individuals had no right to claim conscientious objector status after entering the armed forces as this did not appear consistent with the requirements of Article 18 of the ICCPR (guaranteeing the right to freedom of thought, conscience and religion), as pointed out in its General Comment No 22 (48)[2], and urged Spain "to amend its legislation on conscientious objection so that any individual who wishes to claim the status of conscientious objector may do so at any time, either before or after entering the armed forces".

Up to 1993 the conscientious objectors adopted as prisoners of conscience by Amnesty International in France each year included, on average, at least one whose imprisonment was the result of his refusal to perform military service, after his application for conscientious objector status had been rejected on the grounds that it had been made outside the stipulated time limits. The majority of such cases appeared to arise because the conscripts concerned had received insufficient, or insufficiently clear, information about the procedures and time limits to be observed in order to obtain conscientious objector status. In many of the cases the individual's application for conscientious objector status was made before the start of active military service and received by the authorities only a matter of days after the stipulated time limit.

During the 1990s the French authorities have appeared responsive to appeals on behalf of conscientious objectors imprisoned as a result of applications received after the stipulated time limits and eventually have taken steps to resolve the cases by, for example, granting conscientious objector status on an "exceptional" basis or granting an early discharge from national service obligations. Since a revision of the relevant section of the law in 1992 clarified procedures to be followed by conscripts wishing to apply for conscientious objector status, only one case - arising in 1993 - has been reported to Amnesty International where a conscientious objector has been imprisoned as a result of

[2]In its General Comment 22 (48) on Article 18 of the International Covenant on Civil and Political Rights the Human Rights Committee states that a right of conscientious objection can be derived from Article 18 and that, when this right is recognized by law or practice, there should be no differentiation between conscientious objectors on the basis of the nature of their beliefs, and that there should be no discrimination against conscientious objectors because they have failed to perform military service.

his application for conscientious objector status being rejected on the grounds that it was made outside the stipulated time limits. However, Amnesty International continues to receive complaints that conscripts receive inadequate information from the State about the right to apply for conscientious objector status and civilian service.

In November 1996 the government led by Prime Minister Alain Juppé approved a draft bill proposing the total suspension by the end of 2002, via a phasing-out process commencing in 1997, of the existing compulsory national service for male citizens. Under the new bill male citizens born after 31 December 1978, that is those under 18, would no longer be liable for the existing national service. Those born before 1 January 1979, that is, those over 18, would remain liable for national service until 2002. As national service would be suspended, rather than abolished, it could, therefore, be reinstated at a future date when the current legislation on conscientious objection would apparently again apply.

The bill proposed replacing compulsory national service with a compulsory, five-day 'citizenship course' (*rendez-vous citoyen*) carried out by both males and females between the ages of 18 and 20. During the five days they would receive medical and educational assessments, instruction in the meaning and duties of citizenship, and information about new voluntary services to be made available in three main areas: defence and security; national cohesion and solidarity; international cooperation and humanitarian aid. Failure to carry out the course would result in administrative sanctions, including disqualification from sitting state-run examinations (including the school-leaving certificate and the driving test), from holding a post in the public administration and from receiving financial assistance from the State (for example, for housing).

The bill began its passage through parliament in 1997. However, its examination was suspended by the legislative elections of June 1997 which brought the new government of Prime Minister Lionel Jospin to power. At the time of writing, the new government has confirmed its commitment to the phasing out of compulsory military service. However, it is not yet clear to what extent it wishes to retain or substantially change, in any new bill presented to parliament, the provisions of the bill presented by the previous government which replaced all forms of compulsory national service with the *rendez-vous citoyen*.