

SLOVAK REPUBLIC

Restrictions on the right to conscientious objection

Introduction

Amnesty International is concerned that the right to conscientious objection in the Slovak Republic is restricted by certain provisions of the Slovak legislation on alternative civilian service. These provisions are at variance with internationally recognized principles concerning conscientious objection to military service. So far this restrictive legislation has resulted in the imprisonment of at least three men, whom Amnesty International has adopted as prisoners of conscience, urging their immediate and unconditional release. Furthermore, at least four other men have been sentenced to imprisonment for refusing to perform their military service, but are at present free.

For many years, Amnesty International has campaigned for the recognition by governments of the right to conscientious objection to military service and for the protection of that right in national legislation. The organization considers a conscientious objector to be a person who, for reasons of conscience or profound conviction arising from religious, ethical, moral, humanitarian, philosophical, political or similar motives, refuses to perform armed service or any other direct or indirect participation in wars or armed conflicts. This right also extends to persons who have already been conscripted into military service, as well as to soldiers serving in professional armies who have developed a conscientious objection after joining the armed forces.

The right to refuse military service for reasons of conscience is inherent in the notion of freedom of thought, conscience and religion as laid down by Article 18 of the Universal Declaration of Human Rights. This freedom is also set forth in the International Covenant on Civil and Political Rights (Article 18) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 9), to which the Slovak Republic is a party. Resolution 1989/59 adopted by the United Nations Commission on Human Rights recognizes "the right of everyone to have conscientious objections to military service as a legitimate exercise of the right of freedom of thought, conscience and religion", appeals to states to enact legislation and to take measures aimed at exemption from military service on the basis of genuinely held conscientious objection to military service, and calls on states to refrain from imprisoning conscientious objectors. The Commission on Human Rights repeated its appeal in 1995¹. Similarly, the European Parliament has stressed the importance of the right to conscientious objection, starting with its resolution adopted in October 1989, calling for "the right to be granted to all conscripts at any time to refuse military service, whether armed or unarmed, on grounds of conscience", and repeating its appeals in resolutions adopted in 1993 and 1994.

¹Resolution 1995/83, appealing to all UN member states "... if they have not already done so, to enact legislation and to take measures aimed at exemption from military service on the basis of a genuinely held conscientious objection to armed service".

Where a person is detained or imprisoned because of such conscientious objection to military service, Amnesty International considers that person to be a prisoner of conscience, including in cases where the imprisonment is a consequence of a restricted recognition of conscientious objection or of restrictions placed on the time limit in which a person can apply for conscientious objector status.

The Slovak legislation on alternative service

On 12 September 1995 the Slovak National Council (Parliament) adopted the Law on Civilian Service (Law number 207/1995). Amnesty International has expressed its concern to the Slovak authorities that certain provisions of this law are at variance with internationally recognized principles concerning conscientious objection to military service. In particular, Amnesty International is concerned about the provision which regulates the length of civilian service as well as the provision which restricts the time within which conscientious objectors can submit declarations refusing military service.

According to Article 1, paragraph 8, of the Law on Civilian Service, the length of civilian service for conscripts is twice the length of compulsory military service². The length of civilian service for reservists is twice the length of military service.

According to Article 2, paragraph 2, conscripts can submit a written declaration refusing military service within 30 days after the decision of the conscription board has come into force. Any declaration submitted after this term or declarations submitted during a state of defence alert will not be taken into consideration.

² The Law on Military Service (*Branný Zákon*), Law number 92/1946, later registered as Law number 331/1992, stipulates that citizens are liable for military service from the age of 17 until 60. The length of compulsory military service is 12 months.

The new law extended the duration of civilian service from one and a half to twice the length of military service. Amnesty International believes that the length of alternative civilian service should not be such as to constitute a punishment for a person's conscientiously held conviction. Recommendation No. R(89)8 of the Committee of Ministers of the Council of Europe recommends that alternative service "shall not be of a punitive nature. Its duration shall, in comparison to that of military service, remain within reasonable limits". Resolution 1989/59 on Conscientious Objection to Military Service, adopted by the UN Commission on Human Rights on 8 March 1989 (reaffirmed by Resolution 1995/83 adopted in 1995), in paragraph 4 emphasizes that: "alternative service should be of non-combatant or civilian character, in the public interest and **not of a punitive nature** (emphasis added by Amnesty International)". Amnesty International in this respect refers to the European Parliament's³ Resolution A3-0025/92, paragraph 51, which stresses that "an alternative civilian service should be provided for, of the same length as military service, so that it is not seen as a sanction or deterrent". Amnesty International considers the extended length of civilian service to be punitive.

Furthermore, by requiring that declarations be submitted within 30 days of the coming into force of a conscription board decision, the law effectively disqualifies from civilian service all those people who develop a conscientious objection to military service between conscription and call-up - a time which could be of several months' or even years' duration - or after call-up.

Amnesty International believes that conscientious objectors to military service are exercising their right to freedom of conscience, a most fundamental human right which international standards provide may never be derogated from, even in time of war or public emergency. The organization believes that they should therefore have the right to claim conscientious objector status **at any time**. Amnesty International considers that conscientious objectors who are denied the right to do so, and who are imprisoned as a consequence, are prisoners of conscience.

The need for national legislation to recognise that a person's conscientiously-held beliefs may change over time has been recognised in Resolution 84/93 on Conscientious Objection to Military Service, adopted by the United Nations Commission on Human Rights on 10 March 1993. This Resolution calls for "minimum guarantees to ensure that...conscientious objector status can be applied for at any time...". Similarly, Paragraph 26 of the Explanatory Report to Recommendation No. 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, states that:

³The Slovak Republic has associate membership of the European Union.

"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."

Since December 1995, Amnesty International has repeatedly urged the Slovak authorities to initiate a judicial review of the Law on Civilian in order to bring this legislation into line with the above mentioned international standards regulating conscientious objection to military service. Regrettably, with only one exception⁴, the Slovak authorities have so far not responded to the organization's appeals.

Conscientious objectors - individual cases

Erik Kratmüller

Twenty-two-year-old Erik Kratmüller from Trnava is at present serving a prison sentence for having refused to carry out his military service. In September 1994 he had refused to obey a call-up order to start his military service one month later, stating that he had become a Jehovah's Witness in the summer of 1994 and therefore could not carry arms. Having been declared fit to serve in the army some time before he acquired his new religion, he had missed the 30-day time limit in which he should have applied for alternative service and was therefore excluded from the possibility lawfully to object to military service. In April 1996, the Bratislava District Military Court convicted him under Article 269, paragraph 1 of the Slovak Penal Code⁵, and sentenced him to 18 months' imprisonment. An appeal against the court's decision was turned down in May 1996 and Erik Kratmüller was imprisoned in Trenčín prison in June 1996. Erik Kratmüller's lawyer has appealed to the Slovak Constitutional Court to quash the sentence and grant him conscientious objector status. Amnesty International adopted Erik Kratmüller as a prisoner of conscience in October 1996, urging his unconditional and immediate release.

Martin Badin

⁴ See the case of Martin Badin (below).

⁵ Failure to commence military service in the armed forces.

Martin Badin, aged 21 and also from Trnava, was imprisoned on 27 August 1996 in Trenčín prison to serve a one year sentence. He had been sentenced by the Bratislava District Military Court under article 269, paragraph 1 of the Penal Code in May 1996 to 20 months' imprisonment, which was reduced on appeal to one year. Martin Badin had similarly acquired religious convictions that did not allow him to carry arms after the 30-day period following the date he was declared fit had run out. Amnesty International adopted him as a prisoner of conscience in December 1996 and urged his immediate and unconditional release.

The Slovak Ministry of Defence replied to one of Amnesty International's appeals on behalf of Martin Badin, stating that his conviction resulted from conduct which violated the existing legal provisions. The Ministry also pointed out that it is not in its competence to assess whether the term for submitting applications and the length of the alternative service "is appropriate or not".⁶

Martin Bednár

Martin Bednár, aged 19, from Giraltovce, has been imprisoned since 24 February 1997, serving a one year sentence for refusing to do his military service on grounds of conscience. Martin Bednár was declared fit for military service in October 1995 and was called up in June 1996. In the meantime, he had acquired religious convictions which did not allow him to carry arms. Again, Martin Bednár, having missed the 30-day period after being declared fit, did not have the possibility to object to military service lawfully. He was adopted as a prisoner of conscience by Amnesty International in February 1997.

Miloš Lipinský

Twenty-two-year-old Miloš Lipinský from Giraltovce is currently waiting to be tried for the second time for having refused to carry out his military service on grounds of conscience. In November 1994, the District Military Court in Prešov sentenced him to 14 months' imprisonment suspended for two years under Article 269, paragraph 1 of the Penal Code. He had been called up in August 1993 to start his military service two months later in Kežmarok military unit, but had returned the call-up order with a written statement saying that he refused to carry out military service now or in the future. The Prešov court argued that Miloš Lipinský should have made his objections to military service known within the legally required period of 30 days after he had been declared fit in 1992. Miloš Lipinský pointed out during his trial that he only acquired his religious

⁶Amnesty International notes that under Article 119 of the Slovak Constitution the Government proposes laws for adoption to the National Council (Parliament). Therefore, the Ministry of Defence can initiate a revision of this law.

convictions in the second half of 1993, at a time when he could no longer apply for alternative civilian service. An appeal which Miloš Lipinský's lawyer filed with the Trenčín Higher Military Court was turned down in January 1995.

One month later, in February 1995, Miloš Lipinský was called up for the second time to commence his military service in April 1995, in the Hlohovec military unit. Again he wrote to the district military authorities to state his motives for refusing to carry arms. In August 1995, he was charged by the Prešov District Military Prosecutor under Article 269, paragraph 1. However the Prešov District Military Court decided to discontinue criminal proceedings against Miloš Lipinský, arguing that a previous sentence, convicting him of the same offence, was still in force. The Prešov Prosecutor appealed this decision first to the Trenčín Higher Military Court, which upheld the lower court's decision and subsequently to the Slovak Prosecutor General. Finally in May 1996 the Slovak Supreme Court ruled that Miloš Lipinský had committed two separate crimes, arguing that each time he had refused to report to a different military unit, and that therefore his case should go to trial again⁷.

Emanuel Munko

Emanuel Munko, aged 21, from Trnava, was sentenced to 14 months' imprisonment by the Bratislava District Military Court in January 1997 for refusing to start his military service on grounds of conscience. As far back as in the beginning of 1994, Emanuel Munko had stated on his recruitment papers that his religious convictions did not allow him to carry arms. He reiterated his position during his interview with the district military authorities. Emanuel Munko was declared fit to serve in the army in October 1994. At this point, the district military authorities reportedly provided him with incorrect information, by telling him that he could apply for "civilian substitute service" (*civilná náhradná služba*). However this term is meaningless under Slovak legislation, as civilian service is carried out instead of military service and substitute service is military service reduced to five months for conscripts who have special family commitments (i.e. substitute service is not civilian in nature). Furthermore, the district military authorities did not inform Emanuel Munko, as they were legally obliged to⁸, that he should apply for civilian service either within 30 days after he was declared fit, or within five days after deferment of military service had run out.

⁷ Interestingly, the Slovak Supreme Court adopted a different position as recently as October 1995 in the case of conscientious objector Dezider Farkaš, ruling that nobody should be criminally prosecuted more than once under Article 269, paragraph 1.

⁸According to paragraph 3.2, of the procedural guidelines to Law 71/1967 : " ... The authorities have to provide citizens or organizations with help and information, so that they will not suffer any disadvantage in case they do not know the legal procedures."

In September 1995, Emanuel Munko wrote to the district military authorities, stating again that he refused to perform his military service on grounds of conscience. In the same month he was sent a call-up order which he did not obey. In October, the Bratislava District Military Prosecutor charged him with failure to commence his military service under Article 269, paragraph 1 of the Penal Code. In January 1997, he was sentenced to 14 month's imprisonment. However, the Trenčín Higher Military Court changed his sentence on appeal to 12 months and suspended it for two years.

Timotej Novotný

Twenty-two-year-old Timotej Novotný from Bečovce is waiting to be tried for the second time for evading military service on grounds of conscience. He was declared fit in May 1992 and in February 1993 obtained a deferment of his military service until the end of July 1994 to finish his secondary school education. When he was called up to begin his military service in September 1994, Timotej Novotný stated that his religious convictions made it impossible for him to carry arms. He was subsequently charged under Article 269, paragraph 1 of the Penal Code and in January 1995 the Prešov District Military Court sentenced him to one year's imprisonment. At his trial, Timotej Novotný stated that he did not know at the time that he could only apply for alternative civilian service for up to 30 days after having been declared fit, and that he therefore had missed his chance to object to military service lawfully. The court however, did not accept this in his defence. Timotej Novotný served half of his sentence in Prešov prison from March until the end of September 1995.

In December 1995, Timotej Novotný received a second call-up order, according to which he had to report for military service on 2 January 1997. He refused to obey the order, saying that his objections to military service had remained unchanged. He was again charged under Article 269, paragraph 1 of the Penal Code. Timotej Novotný's lawyer filed a complaint against the indictment, arguing that it was unlawful to try someone twice for the same crime. However, the Prešov Military Prosecutor rejected his complaint in March 1997, stating that the *ne bis in idem* principle was not applicable to this case as Timotej Novotný had been called up in 1996 to report to a different military unit, and thereby had each time committed a different crime.⁹

Miroslav Albert

⁹ The same argument was used by the Slovak Supreme Court in the case of Miloš Lipinský (see above).

Miroslav Albert, aged 19, from Rimavská Sobota, was sentenced to one year's imprisonment by the Banská Bystrica District Military Court on 11 April 1997 for his refusal to start military service on grounds of conscience. He had, like all the others, missed the 30-day period in which he could have legally applied for alternative service.

Amnesty International's recommendations to the Slovak authorities

Amnesty International is once more urging the Slovak authorities to initiate a revision of Law 207/1995 and to bring the provisions of Article 1, paragraph 8 and Article 2, paragraph 2 in line with internationally recognized standards concerning conscientious objection.

Amnesty International urges the Slovak authorities to release from prison immediately and unconditionally anyone imprisoned for seeking to exercise their right of conscientious objection to military service, including Erik Kratmüller, Martin Badin and Martin Bednár and to grant them conscientious objector status.

Amnesty International furthermore urges the Slovak authorities to stop criminal proceedings against anyone charged for seeking to exercise their right of conscientious objection, including Miloš Lipinský, Emanuel Munko, Timotej Novotný and Miroslav Albert and to equally grant them conscientious objector status.

Finally, Amnesty International calls on the Slovak authorities to ensure that the Slovak military authorities dutifully inform prospective conscripts of their right to conscientious objection and clarify the relevant procedures to them. Various intergovernmental bodies have stressed the importance of the availability of information about the right to conscientious objection and the means of acquiring conscientious objector status to conscripts and serving soldiers, among them the United Nations Human Rights Commission, the Council of Europe and the Organization for Security and Co-operation in Europe.

