

PUBLIC



AI Index: EUR 39/06/00

Date: 6 October 2000

Romania

Conscientious objectors face imprisonment

Amnesty International is concerned about the sentencing of 29 conscientious objectors who have been convicted for failing to report for military service. Should they be imprisoned as a result of their refusal, on grounds of conscience, to carry out military service, Amnesty International would consider them to be prisoners of conscience and would call for their immediate and unconditional release.

According to information recently received by Amnesty International, 29 Jehovah's Witnesses whose religious convictions forbid them to carry arms and perform military service have been sentenced for failing to report for military service under Article 354 of the Penal Code which states the following:

"Failure to report when called for active military service or military reserve service within three days of the date of notification or, if the term of presentation exceeds three days, failure to report by that date, is punishable by one to five years' imprisonment.

"The same penalty applies to a person's failure to report to the unit assigned if he is in military service or is a reservist."

All 29 conscientious objectors refused to carry out alternative service because they had reservations about its length and nature and on the grounds that provisions of Law no. 46/96 exempt from military service ordained ministers of recognized churches. They were tried individually by military tribunals of first instance which acquitted all but three of the defendants of the charges, finding that the failure to carry out alternative service was not proscribed by any law in force at the time when the alleged offence took place. Ruling on appeal the Bucharest Military Tribunal convicted all 29 Jehovah's Witnesses and sentenced them to different lengths of imprisonment.

The prosecution of 13 men comprising **Cosmin Bălănean, Dănuț Bărăian, Mozes Czego, Csaba Janos Czink, Ioan Teodor Demian, Teodor Crinișor Dumbravă, Robert Fazekas, Marius Sebastian Găzdac, Dumitru Dan Laslou, Mihaly Marthon, Alexandru Mircea, Iacov Porav and Arpad Szep** was reviewed on appeal by the Bucharest Military Court of Appeal which on 14 July 2000 sentenced them each to one year and six months' imprisonment, suspended for a period of three years and six months.

The cases of 16 other Jehovah's Witnesses comprising **Mihai Bojko, Daniel Clicineschi, Darius Diviriceanu, Florin Dumitrache, Tibor Fodor, Bogdan Emilian Gădălean, Francisc Molnar, Sorin Petru Mureșan, Ovidiu Ciprian Nașca, Liviu Cornel Pușcaș, Ioan Ștefan Rusu, Mircea Sălăgean, Dumitru Sântămărean, Janos Szekely, Daniel Valentin Tacu and Ion Vîlcu** are still under review by the Bucharest Military Court of Appeal.

The cases of Robert Fazekas, Alexandru Mircea and Janos Szekely

The following, as an example, are some details of the prosecution of three of the conscientious objectors to military service. On 28 February 1999 Robert Fazekas was summoned by the Târgu Mureș County Military Centre to present himself to the induction board which, in view of his religious beliefs, instructed him to report for alternative service. However, he refused to perform alternative service stating that as an ordained minister he was exempt from military service. Robert Fazekas was indicted on 21 May 1999 by the Military Prosecutor of Târgu Mureș for failing to report for service under Article 354, paragraph 2, of the Penal Code. He was tried before the Club Military Tribunal where, in his defence, he claimed that the provisions of Article 354, paragraph 2, could be applied only to those who are in military service. He also claimed that, as an ordained minister of his church, he was exempt under Article 6 of Law no. 46/96 from military service and therefore from any alternative service to military service. On 28 October 1999 Club Military Tribunal established that provisions of Article 352, paragraph 2, applied only to military and reserve service and acquitted Robert Fazekas of the charge. Ruling on appeal, Bucharest Military Tribunal quashed this decision on 6 April 2000 and sentenced Robert Fazekas to two years and six months' imprisonment. On 14 June 2000 the Bucharest Military Tribunal of Appeal confirmed the conviction but suspended his prison sentence for a period of three years and six months.

Alexandru Mircea was indicted on 21 June 1999 by the Cluj Military Prosecutor under Article 354, paragraph 1, of the Penal Code for failure to report for military service. At the trial before the Cluj Military Tribunal, Alexandru Mircea claimed in his defence that he did not received any summons which made specific mention of the firm where, and the date when, he should report for alternative service. It was also established, that when he had been called by the Cluj County Military Centre to be instructed about alternative service, Alexandru Mircea stated that as an ordained minister of his church he was exempt from military service. On 14 December 1999 Cluj Military Tribunal acquitted Alexandru Mircea of the charge. This decision was overturned on appeal on 16 March 2000 by the Bucharest Military Tribunal which sentenced him to three years' imprisonment under Article 354, paragraph 1, of the Penal Code. On 14 June 2000 Military Court of Appeal reduced the punishment to one year and six months' imprisonment, suspended for a period of three years and six months.

Janos Szekely was indicted on 10 May 1999 by the Cluj Military Prosecutor for failure to report for military service under Article 354, paragraph 1. On 11 February 1999 Cluj County Military Centre had summoned for alternative service 13 men, including Janos Szekely, who were on their records as individuals whose religious belief prohibited them from carrying arms. Janos Szekely refused to perform alternative service expressing reservations about Law number 46/1996 and the Government Decision 618/1997 regarding alternative service. He also wrote a statement that as an ordained minister of his church he was exempt from military service and he therefore refused to carry out alternative service. The military authorities rejected this as Jehovah's Witnesses, in their view, were not one of the churches officially recognized by the state. Janos Szekely was tried by the Cluj Military Tribunal on 14 October 1999. He was acquitted of the charge after the court established that his conduct did not constitute the offence provided for under Article 354 of the Penal Code and that the law did not prescribe any punishment for refusing alternative service. Ruling on appeal, Bucharest Military Tribunal on 1 June 2000 overturned this decision and sentenced Janos Szekely to two years' imprisonment under article 354 paragraph 2, of the Penal Code. However, the presiding judge published a separate opinion in which he concurred with the first instance court.

It should be noted that Colonel Ștefan Pistol, the presiding judge in all 13 cases which have been reviewed so far by the Military Court of Appeal, has published a dissenting opinion explaining in detail why these convictions were in violation of constitutional and legal norms, as well as international standards which Romania has ratified which guarantee that no one shall be convicted for a criminal offence which did not constitute a criminal offence at the time when it was committed.

Amnesty International's Concern:

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 24-month alternative service currently offered to conscientious objectors to military service in Romania does not, therefore, provide an acceptable alternative to the 12-month military service and that those imprisoned for rejecting both services are prisoners of conscience.

Robert Fazekas, Janos Szekely as well as **Mozes Czego, Teodor Crinișor Dumbravă, Mihaly Marthon, Iacov Porav and Arpad Szep** have recently received call-up papers to report to the Mureș County Military Centre for military service on 6 October 2000. Should they be imprisoned for failing to respond to the call-up, a breach of their conditional prison sentences (the case of Janos Szekely is still under appeal) under Article 354 of the Penal Code, Amnesty International would consider them to be prisoners of conscience and would call for their immediate and unconditional release.

Background on Law 46/96 Concerning the Preparation of the Population for Defence

Over the years Amnesty International has expressed its concern to the Romanian authorities that certain provisions of Law number 46/96 Concerning the Preparation of the Population for Defence (further referred to as Law no. 46/96), promulgated in June 1996, and of the Governmental Decision number 618 of 6 October 1997 regarding alternative service, are at variance with internationally recognized principles on conscientious objection to military service. Article 4 of Law no. 46/1996 provides for an alternative service only for those individuals who on religious grounds refuse to perform armed military service. Amnesty International believes that conscientious objection to military service arises not only from religious but also from ethical, moral, humanitarian, philosophical, political or other similar motives. The right to refuse military service for reasons of conscience is inherent in the notion of freedom of thought, conscience and religion as recognized in a number of international human rights instruments, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The right of everyone to exercise conscientious objections to military service was recognized by the United Nations Commission on Human Rights (CAR) in its Resolution 1989/59 of 8 March 1989 (reaffirmed in its Resolution 1993/84 of 10 March 1993 and hereafter referred to as CAR resolutions). It 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 as laid down in Article 18 of the Universal Declaration of Human Rights as well as Article 18 of the International Covenant on Civil and Political Rights", and recommends that Member States "with a system of compulsory military service, where such provision has not already been made...introduce for conscientious objectors various forms of alternative service" (§3) which is "in principle of a non-combatant or civilian character, in the public interest and not of a punitive nature"(§4).

Article 13 of Law no. 46/1996 sets the length of the alternative service at 24 months, which is twice the length of armed 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 (87) 8 of the Committee of Ministers to Member States of the Council of Europe (hereafter referred to as the 1987 Council of Europe Recommendation) emphasizes that alternative service "shall not be of a punitive nature. Its duration shall, in comparison to that of military service, remain within reasonable limits". Previously cited CAR resolutions also state that alternative service should not be of a punitive nature. In the light of Romania's

associated status to the European Union and aspirations to join this organization we would also like to draw your attention to the European Parliament's 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 length of alternative service prescribed by Law no. 46/1996 to be punitive.

Article 13 also states that, once they have begun alternative service, persons wishing to transfer to the armed forces may do so provided that they complete the full duration of the military service. However, no provisions have been made for those wishing to leave the armed forces on grounds of conscience. The law thus effectively disqualifies from alternative service all those people who develop a conscientious objection to military service after their assessment by the recruitment commission or after call-up and induction into the armed forces, or even after completing armed service, when people are obliged to carry out armed service in the reserve units. 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 the 1987 Council of Europe Recommendation states that:

"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."

Provisions regarding procedures for exercising the right to alternative service and for the organization and implementation of alternative service, are contained in the Governmental Decision number 618/97. Similarly to Law no. 46/1996 the governmental decision contains provisions for submitting applications for military service during alternative service and has no provisions for applying for alternative service after induction into military service, or following its completion, or after being assigned to the reserve units.

Furthermore, Article 6 of the governmental decision states that the applicant's declaration concerning alternative service should designate the church or religious group to which he adheres. According to paragraph 3 of the same article: "[the State Secretariat for Religious Denominations will confirm, at the request of the military centres, that the views of the applicant's church or religious group, make it part of the category which does not permit armed military service". Amnesty International reiterates its belief that everyone should have the right to refuse to perform armed service for reasons of conscience or profound conviction arising from religious, ethical, moral, humanitarian, philosophical, political or similar motives. Amnesty International is concerned that the provisions of Article 6 limits the right to alternative service to those people who belong to a number of churches or groups specifically designated by the state authorities. Hence, this provision might restrict the right to alternative service for those people who belong to religious communities which are not in principle opposed to armed military service, but who have individually developed a conscientious objection to carrying arms, or those who belong to religious communities which are not officially recognized in Romania¹. The governmental decision also fails to provide any remedy should the application for alternative service be rejected or to establish an independent civilian authority which would have an oversight of the military centre's decision making. Ultimately, the rejection of an application for alternative service should be subject to a judicial review by ordinary courts of law (not military tribunals).

¹After the State Secretariat for Religious Denominations issued in March 1997 a decree to municipalities prohibiting non-recognized churches and religious associations from building places of worship, it reportedly came to light that only 215 of 385 associations and religious foundations operating in Romania were considered as state-recognized under a law adopted in 1948.