



The Right to Conscientious Objection in Europe: A Review of the Current Situation

Country Report: SERBIA & MONTENEGRO

Conscription

Conscription is enshrined in Article 57 of the 2003 Constitution and is further regulated by the 1993 Defence Law.

The length of military service is 9 months.

All men between the ages of 18 and 35 are liable for military service. In practice men are seldom called up after the age of 27.

Reservist obligations apply up to the age of 60. Since 2000, reservists are in practice seldom called up for reservist duties.¹

In recent years, the Serbian government has discussed the idea of gradually introducing a professional army. However, the abolition of conscription is not foreseen in the near future, as it is considered to be too expensive. The Ministry of Defence recently announced that the duration of military service may be further reduced in 2006 but that the abolition of conscription is not foreseen.² Meanwhile, the Montenegrin authorities have announced their plans to introduce professional armed forces on their territory, but it remains unclear if they have the financial means to do so.³

Statistics

The armed forces comprise 74,200 troops, including 39,600 conscripts. Every year, approx. 82,000 young men reach conscription age.

Conscientious objection

Legal basis

The right to conscientious objection is enshrined in Article 58 of the 2003 Constitution, according to which "Recruits shall be guaranteed the right to conscientious objection".

Further legal provisions on conscientious objection are laid down in the Regulation on Civilian Service (37/2003). The Regulation was adopted by Parliament on 25 August 2003 and entered into force on 14 October 2003.

Before 2003, the right to conscientious objection was restrictively recognized as COs were only allowed to do an unarmed military service within the armed forces. Upon accession to the Council of Europe in April 2003, the Serbian government committed itself to adopting CO legislation within three years of accession. Unlike some other new member states of the Council of Europe, the government has managed to introduce a law on conscientious objection well ahead of this deadline.⁴

¹ Information provided by EBCO Balkan, October 2004.

² 'SCG army might go professional by end of 2006 - deputy defence chief', FoNet News Agency, 6 January 2005.

³ Dusan Kosanovic: Concerns Raised over Civilian Service in Serbia-Montenegro, www.setimes.com (Centre for South East European Studies), 28 October 2004.

⁴ The Regulation on Civilian Service was in fact considered to be an improvement compared to a previous draft law that the government discussed with CO groups, human rights organisations and lawyers. This draft law did not provide for a civilian substitute service outside the armed forces and did not make a clear distinction between substitute service and unarmed service within the armed forces.

Scope

Both religious and non-religious grounds for conscientious objection are legally recognized.

Time limits

There is a time limit for submitting CO applications. According to Article 8 of the Regulation on Civilian Service, CO applications can only be made before starting military service or within the first three months of performing military service. Applications can thus not be made by serving conscripts after they have served for three months, nor can applications be made by reservists. The Ministry of Defence has reportedly stated in the past that applications by reservists would be taken into consideration.⁵ It is, however, not known if this happens in practice. The legal exclusion from the right to conscientious objection for reservists is particularly relevant because before 2003 the right to conscientious objection was restrictively recognized. Consequently, men who were called up for military service before 2003 have never had the opportunity to claim the right to conscientious objection.

There are no legal provisions for the right to conscientious objection for professional soldiers.⁶

Procedure

Applications must be made to the local office of the armed forces. Applications are decided on by a commission, which falls under the responsibility of the Ministry of Defence. The commission includes a lawyer, a theologian, a psychologist and an army officer. At present there are 52 commissions, one in every local military section. The commission may order the applicant to come for a personal interview. In practice, this rarely happens.⁷

The commission needs to make a decision on the application within 15 days. Applications may be rejected if the applicant has a licence to carry weapons or has been sentenced for criminal acts within three years before submitting an application (Regulation on Civilian Service, Article 10).

If the application is rejected, there is a right to appeal, which needs to be made within 15 days to the Ministry of Defence (Regulation on Civilian Service, Article 8).

Substitute service

The length of substitute service is 13 months, which is four months longer than military service.⁸

Substitute service is administered by the Ministry of Defence. It can be performed in government institutions, such as hospitals, nurseries, cultural institutions, institutions for handicapped people and rescue organisations. Substitute service can also be performed with some non-governmental organisations.⁹

After completing substitute service, COs have no reservist duties during peacetime. During wartime, COs may be called up for unarmed military service within the armed forces.¹⁰

Practice

The Regulation on Civilian Service entered into force on 1 October 2003. Since then, the number of CO applications has increased with every call-up.

According to the Ministry of Defence, 2,637 CO applications were made between October 2003 and April 2004.¹¹ Between April 2004 and October 2004, approx. 9,000 applications were made.¹² More recent figures are not available, but the number of CO applications is believed to

⁵ EBCO Balkan (2004).

⁶ Amnesty International: Amnesty International's concerns and Serbia and Montenegro's commitments to the Council of Europe (EUR 70/002/2004).

⁷ Regional Network for Conscientious Objection 'Objection for Peace': To Europe Through Conscientious Objection and Civilian Service, Sarajevo, September 2004 (Seminar Report).

⁸ COs may also choose to perform an unarmed military service within the armed forces.

⁹ Regional Network on Conscientious Objection (2004).

¹⁰ Regional Network for Conscientious Objection (2004).

¹¹ www.vj.yu/english/en_aktuelno/vesti/april2004/v0406e.html (Ministry of Defence)

¹² War Resisters' International: CO Update No.4/December 2004.

be still increasing. Approx. 30 per cent of eligible conscripts are actually applying for substitute service.

The increasing number of CO applications is particularly remarkable because the military authorities have regularly been criticized for not providing conscripts with correct information about conscientious objection and substitute service. Some local military offices have reportedly discouraged conscripts from applying for substitute service.¹³

There are no detailed figures available about the percentage of CO applications granted, but so far most applications have apparently been granted.

CO groups have expressed concern that the Ministry of Defence may react to the growing number of applications by becoming more restrictive.¹⁴ Army representatives have, in fact, regularly stated in public that the increasing number of COs may jeopardise the performance of the armed forces.¹⁵

In February 2005, the Ministry of Defence in fact announced that it wants to introduce new regulations that would make substitute service less attractive. According to the new regulations, the application procedure will include a personal interview, it will no longer be possible to make a CO application during the first three months of military service, and it will no longer be possible to perform substitute service with non-governmental organisations or cultural institutions.¹⁶

With these new regulations, the Ministry apparently wants to restrict the number of COs. It is not known if and when these new regulations will be implemented, but the situation remains to be monitored.

Substitute service is available in practice since December 2003. On 22 December 2003 the first group of 226 COs started their substitute service. According to the Ministry of Defence, 8,500 COs had performed substitute service during 2004. By February 2005, 7,500 COs were reportedly waiting for assignment.¹⁷

The increasing number of CO applications has resulted in a shortage of workplaces for substitute service. Local military authorities are responsible for organising workplaces. They have regularly been criticized for showing little interest in developing substitute service and organising sufficient workplaces. The number of institutions that is interested in providing for workplaces for COs is believed to be increasing, but the Ministry of Defence has not signed any new contracts in 2004.¹⁸

Background

Although the right to conscientious objection was included in the Yugoslav Constitution in 1992, regulations on conscientious objection remained restrictive until 2003. Until 2003 COs were only allowed to perform an unarmed military service within the armed forces. Moreover, CO applications could only be made within 15 days of receipt of call-up papers. Until 2003, very few COs actually applied for unarmed military service. According to the government, only 76 COs performed such an unarmed service between 1994 and 2003.¹⁹

There were several known cases of COs who refused to perform unarmed military service and were consequently sentenced to imprisonment. When the Regulation on Civilian Service entered into force in 2003, some COs who had previously been prosecuted were allowed to do

¹³ Regional Network for Conscientious Objection (2004); EBCO Balkan (2004).

¹⁴ EBCO Balkan (2004).

¹⁵ Kosanovic (2004)

¹⁶ Information provided by EBCO Balkan, quoted in: War Resisters' International: CO Update, No.7, March 2005.

¹⁷ Ivana Petrovic: Serb army recruits trade guns for plays, Balkan Crisis Report, 25 February 2005, www.iwpr.net (Institute for War Peace and Reporting).

¹⁸ EBCO Balkan (2004).

¹⁹ United Nations Human Rights Committee, Consideration of reports submitted by state parties under Article 40 of the Covenant: Initial report Serbia and Montenegro (CCPR/C/SEMO/2003/1), 24 July 2003.

substitute service but some other COs reportedly remained imprisoned. However, by the end of 2003 none of these COs was believed to be imprisoned anymore.²⁰

Draft evasion

During the 1990s there were thousands of draft evaders and deserters. Many went into hiding or fled abroad and were sentenced in absentia. The Yugoslav authorities have never released detailed information about the number of prosecuted draft evaders and deserters. It is believed that in 1999 and 2000, criminal proceedings were started against 26,000 men in connection with draft evasion and desertion during the Kosovo crisis. In 2001 the government announced an amnesty, which applied to approx. 24,000 draft evaders and deserters.²¹ In 1995, a similar amnesty was announced as a part of the Dayton Peace Agreements for thousands of men who evaded military service or deserted during the early 1990s.

Draft evaders and deserters who are granted an amnesty are consequently freed from criminal prosecution, but they remain liable for military service. The Ministry of Defence in fact recently stated that Serbian citizens living abroad are still obligated to fulfil military service, although the Ministry reportedly considers liberalizing conscription obligations for citizens living abroad.²² There are reportedly approx. 150,000 people living abroad who do not return or visit Serbia for fear of getting arrested at the border and/or taken to military barracks, as they had left the country without reporting for military service.²³

²⁰ US State Department, Bureau of Democracy, Human Rights and Labor: International Religious Freedom Report 2003 and 2004.

²¹ Amnesty International: Conscientious objectors can return to Yugoslavia (EUR/70/002/2001).

²² 'Conscription obligatory for Serbia-Montenegro citizens living abroad', Radio B92, 27 January 2005 (BBC Monitoring Service).

²³ 'Diaspora conscripts unable to return', War Resisters' International: CO Update No.6 / February 2005.