

02/09/99

14:53

FLYGTNINGESEKR. → +45 33919400

NR. 750

W02

02/09/99 11:48

MISSION DU DANEMARK GENEVE → UM

NO.687 P002/003

49-99

NATIONS UNIES

Frb. Jugoslavien (31)

UNITED NATIONS

HAUT COMMISSARIAT
POUR LES REFUGIESHIGH COMMISSIONER
FOR REFUGEES

Télégrammes : HICOMREF

Télex : 416740 UNHCR CH

Nalre/Our code: PRL 5.6 YUG

Votre/Your code: 17.Dan.1

FN-MISSIÖNEN GFA		
01 . . . 123		
17	DAN	%

Carte Postale 2500

CH-1211 Genève 2 Dépôt

30 August 1999

233

Dear Mr. Ankerstjerne,

Reference is made to your letter of 11 May 1999 addressed to Ms. Paul. UNHCR is finalising a position paper which we hope will provide useful advice to States regarding the treatment of asylum applications lodged by draft evaders and deserters from the Federal Republic of Yugoslavia. The following answers to your questions should, therefore, be taken as interim responses, since the issues you raise and others will be more fully addressed in UNHCR's paper, once it is finalised.

On 24 March 1999 a state of war was declared by the parliament of the Federal Republic of Yugoslavia. From the date of this declaration, until the lifting of the state of war on 23 June, the borders of the Federal Republic of Yugoslavia were closed to males of draft age. Although no general mobilisation was called for, an increasing number of men were called up for military duty. Despite the lifting of the state of war in late June, it should be noted that the punishment applicable for draft evasion and desertion during the war period will be as under the state of war.

Women are not called for military duty but could be called upon to perform civilian service obligations under the state of war. Furthermore, it is not known to UNHCR to what extent persons belonging to ethnic groups other than Serb have been called for military duty. In general, ethnic Albanians and Muslims from Sandjak have, during the past years, not routinely been called to perform military duties, but there have been exceptions. Therefore deciding on such cases should be done on an individual basis taking into account all facts and details of the individual claim.

Draft evasion is covered by the Military Law, Official Gazette of the Federal Republic of Yugoslavia N° 67 of October 1993. In addition, draft evasion and desertion are covered by the Federal Criminal Code. The Military Code and the Federal Criminal Code both deal with draft evasion. The difference in application relates to how, and when in the process, the draftee evades the draft and the authorised body which initiates the process of draft.

Mr. Henrik Ankerstjerne
Counsellor
Permanent Mission of Denmark
Geneva

Articles 214, 217 and 226 of the Criminal Code deal with draft evasion and desertion and provide for terms of imprisonment as follows:

- failure to answer a recruitment call in peacetime; max. 1 year
- idem during war or threat of war; 1 to 10 years
- hiding inside the country with the intent to evade recruitment in peacetime; 3 months to 5 years
- idem during war or threat of war; 5 to 20 years
- going and staying abroad with the intent to evade recruitment in peacetime; 1 to 10 years
- idem during war or threat of war; 5 to 20 years
- desertion and not returning within 30 days in peacetime; 6 month to 5 years
- idem during war or threat of war; 5 to 20 years
- desertion and leaving the country in peacetime; minimum 1 year
- idem during war or threat of war; 5 to 20 years.

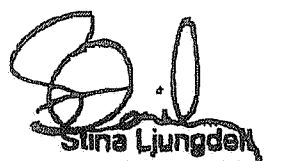
Under the Federal Republic Constitution, capital punishment no longer exists. All reference to it has disappeared. But it has to be noted that the punishment of 20 years only still exists in those laws where previously capital punishment could be applied.

Administrative provisions are in place to provide for exemption from military duties where there is an objection for reasons of conscience. Instead, civil duties within the military structure can be performed for a period twice as long as normal military service would have been. During the state of war this provision did not apply. Furthermore, exemptions of military service which were issued before the declaration of the state of war, were no longer valid during the wartime.

Under the declared state of war, military courts were applying the Criminal Code for both draft evasion and desertion in a shortened procedure. No monitoring of trials has been possible as all court procedures currently fall under military security regulations and are classified as confidential. As noted above with respect to penalties, despite the lifting of the state of war on 23 June 1999, all desertion and draft evasion cases for the period within the state of war will be treated as under the state of war.

I hope the above information will be of use to the Danish authorities and remain at your disposal for any additional information which you may require.

Yours sincerely,


Stina Ljungden
Senior Desk Officer
Bureau for Europe