

NR 12

2

[EMBARGOED FOR: 15 April 1997]

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Im. Fln.sekr. 19 J.nr. 97/7170-2

24 APR. 1997 EBR

Antal bilag

Aktnr. 1

Out of the margins

The right to conscientious objection to military service in Europe

April 1997

SUMMARY

AI INDEX: EUR 01/02/97

DISTR: SC/CC/PO

The right to conscientious objection is a basic component of the right to freedom of thought, conscience and religion as articulated in the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms. Nevertheless, in spite of this recognition in both United Nations and European standards, many European states continue to deny the right to conscientious objection to military service to many of their citizens.

Amnesty International believes that this situation is entirely unacceptable, and that the respective governments must be encouraged to amend or introduce the necessary legislation guaranteeing conscientious objectors their fundamental rights without further delay. To this end, on 15 April 1997 Amnesty International launched a major campaign for the recognition of the right to conscientious objection to military service in Europe.

This report is the main document for Amnesty International's campaign and gives an overview of the various international and European human rights standards in which the right to conscientious objection is recognized. The report explains the provisions that individual governments should make for conscientious objectors to military service. It highlights the shortcomings in legislation in numerous European countries - countries which, through their membership or associative status in Europe's political institutions, have committed themselves to upholding the right to conscientious objection - illustrating these shortcomings by reference to a set of individual case studies in which citizens of Europe have been denied their basic human right to conscientious objection. The report concludes by making a number of recommendations which, if implemented, would considerably enhance human rights protection for conscientious objectors.

KEYWORDS: CONSCIENTIOUS OBJECTORS / CONSCRIPTION / PRISONERS OF CONSCIENCE / RELIGIOUS GROUPS - JEHOVAH'S WITNESS / TORTURE/ILL-TREATMENT / PRISON CONDITIONS / RELIGIOUS GROUPS - CATHOLIC / RELIGIOUS OFFICIALS - BUDDHIST / ETHNIC GROUPS / PEACE ACTIVISTS / PRISONERS OF WAR / EDITORS / MILITARY POLICE / ARMED CONFLICT / LEGISLATION / HUMAN RIGHTS INSTRUMENTS / COUNCIL OF EUROPE / OSCE / CAMPAIGNS / RECOMMENDED ACTIONS / PHOTOGRAPHS / ALBANIA / AUSTRIA / BELARUS / BOSNIA-HERZEGOVINA / BULGARIA / CROATIA / CYPRUS / CZECH REPUBLIC / FRANCE / GREECE / ITALY / MACEDONIA / POLAND / PORTUGAL / ROMANIA / RUSSIAN FEDERATION / SLOVAK REPUBLIC / SPAIN / SWITZERLAND / TURKEY / UKRAINE / FEDERAL REPUBLIC OF YUGOSLAVIA /

This report summarizes a 61-page document (24,846 words), **OUT OF THE MARGINS: The right to conscientious objection to military service in Europe** (AI Index: EUR 01/02/97) issued by Amnesty International in April 1997. Anyone wishing further details or to take action on this issue should consult the full document.

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the right to conscientious objection to
military service in Europe



In May 1996 Nikša Vioić, a Croatian conscientious objector, was allegedly badly beaten by military police who detained him (see page 25)

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April 1997
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Distr: SC/CC/PO

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Out of the margins

the right to conscientious objection to military service in Europe

I. INTRODUCTION

The right to conscientious objection to military service is not a marginal concern outside the mainstream of international human rights protection and promotion. The right to conscientious objection is a basic component of the right to freedom of thought, conscience and religion - as articulated in the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms. It has been recognized as such in resolutions and recommendations adopted by the United Nations Commission on Human Rights, the United Nations Human Rights Committee, the Council of Europe and the European Parliament.

These bodies have all urged governments to guarantee that individuals objecting to compulsory military service because of their conscientiously held beliefs are given the opportunity to perform an alternative service. They have stated explicitly in a number of resolutions that this alternative service should be of a genuinely civilian character and of a length which cannot be considered to be a punishment. They have recommended that individuals be permitted to register as conscientious objectors at any point in time before their conscription, after call-up papers have been issued, or during military service. Likewise, the United Nations Commission on Human Rights, the Council of Europe and the European Parliament have emphasized that information about how to seek recognition as a conscientious objector should be readily available to all those facing conscription into the armed forces - as well as to those already conscripted.

Amnesty International considers a conscientious objector to be any person liable to conscription for military service or registration for conscription to military service who refuses to perform armed service or any other direct or indirect participation in wars or armed conflicts for reasons of conscience or profound conviction. Their profound conviction may arise from religious, ethical, moral, humanitarian, philosophical, political or similar motives. But regardless of the basis of their objection, the right of such individuals to refuse to carry weapons or to participate in wars or armed conflicts must be guaranteed. This right also extends to those individuals 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.

Wherever such a person is detained or imprisoned solely because they have been refused their right to register an objection or to perform a genuinely alternative service, Amnesty International will adopt that person as a prisoner of conscience. Its world-wide membership in more than 190 countries around the globe campaigns actively for the immediate and unconditional release of such imprisoned conscientious objectors. The

organization also adopts as prisoners of conscience those objectors who are imprisoned or detained because of their refusal to perform an alternative service which is not of a purely civilian character, or of a length which could be considered punitive (for example, twice the length of ordinary military service).

In many societies, the number of individuals seeking recognition as a conscientious objector may be very small. But even where there are few such objectors, the issue should not be dismissed as a minor concern. The right to be recognized as a conscientious objector and to perform an alternative to military service is part of the mainstream of international human rights protection.

Amnesty International does not question the right of governments to conscript individuals into the armed forces. Nor does the organization agree or disagree with the motives of individual conscientious objectors. But in keeping with international standards, Amnesty International insists that all those liable to conscription are given the opportunity to perform an alternative to armed service on the grounds of their conscience or profound conviction. On this basis, Amnesty International campaigns for the development of law and procedure which make adequate provision for conscientious objectors.

1. Why is Amnesty International launching a new campaign on the right to conscientious objection in Europe?

The historic developments in Europe since 1989 have brought a host of new challenges to human rights organizations. The admission of the new democracies of Central and Eastern Europe and several of the successor states of the former Soviet Union to the Council of Europe, as well as the aspirations of many of these nations to become members of the European Union and NATO, have likewise placed new responsibilities for the protection and promotion of human rights on these institutions.

Amnesty International's new campaign on the right to conscientious objection reflects the organization's concern that the human rights commitments undertaken by these young democracies upon entering the Council of Europe or other regional bodies are taken seriously - both by the individual governments themselves and by the European institutions as well. The desirability of swift integration of these states into the European human rights, security and economic systems must not be permitted to take precedence over their obligations to comply with the full range of commitments to human rights and fundamental freedoms - including conscientious objection - which are meant to be the essential criteria for membership in these bodies. Any dilution of these basic principles or standards in the interests of political or economic expediency can only result in the undermining of the integrity and legitimacy of the European institutions themselves.

As this document makes plain, the right to conscientious objection is now clearly recognized and firmly established in both United Nations and European standards. Nevertheless, as this document also illustrates, many European states continue to enjoy full membership or at least associative status in the continent's political and economic institutions while at the same time denying a range of basic human rights to at least some

of their citizens - including the right to conscientious objection to military service. Amnesty International believes that this situation is entirely unacceptable, and that the respective governments must be encouraged to amend or introduce the necessary legislation guaranteeing conscientious objectors their fundamental rights without further delay. The full spectrum of Amnesty International's human rights concerns in the member states of the various European institutions is reflected in *Concerns in Europe: July - December 1996* (AI Index: EUR 01/01/97).

The armed conflicts in Croatia and Bosnia-Herzegovina and in Chechnya in recent years have also highlighted dramatically the shortcomings or complete absence of provision for conscientious objectors to military service in the successor states of the Socialist Federal Republic of Yugoslavia and in the Russian Federation. During the war in Chechnya, for example, the lack of any form of alternative service for those opposed to all war or to that particular conflict on the basis of their conscientiously-held beliefs or profound convictions resulted in desertion from the army on a large scale. Large numbers of deserters were reportedly executed by the military authorities following their capture.

In the new republics arising out of the former Yugoslavia, most men above a certain age had already served in what had been the Yugoslav National Army. Nevertheless, many of these men have subsequently been called up for reserve duty or have been otherwise liable for conscription into the armies of their new states. However, the limited provision for conscientious objection which has been available in the new states has generally not been extended to reservists.

Many individuals in the region have not wanted to participate in a conflict taking place within the borders of what had been a single country. Yet the concept of conscientious objection was comparatively unknown or little understood by many such individuals. Partly for these reasons, few of those men who objected to participation in the conflict were able to present their objections as being grounded in conscience or profound conviction. Resolutions concerning the situation of deserters and draft resisters from the former Yugoslavia were adopted by both the European Parliament and the Council of Europe Parliamentary Assembly on 28 October 1993 and 1 July 1994 respectively.

Some countries in Western Europe, including France and Spain, have indicated their intention of phasing out compulsory military service by the early years of the 21st century. Others, such as Belgium and the Netherlands, have already ended it. However, a number of Western European states currently retain unsatisfactory legislation on conscientious objection to military service. For example, France, Italy and Spain make no provision for conscientious objection developed during military service. France, in addition, offers conscientious objectors a civilian service which, at twice the length of ordinary military service, is clearly punitive. In Austria, Amnesty International has concerns regarding the restrictive time limit for the submission of applications for alternative service. In Switzerland a genuine civilian alternative to compulsory military service only became available in October 1996.

The continuing failure of the Greek Government, although a member of the European Union and Council of Europe, to introduce a genuinely alternative service under

civilian control for conscientious objectors to military service has also been a source of continuing concern to Amnesty International. This situation, resulting in hundreds of men being tried and imprisoned for their refusal to perform military service each year, has been noted in several resolutions adopted by the European Parliament. Similarly, Turkey continues to deny conscientious objectors to military service an alternative civilian service - in spite of the country's increasingly close relationship to the European Union and its membership in the Council of Europe and NATO.

Both these states, as well as a large number of other countries participating in the **Organization on Security and Co-operation in Europe (OSCE, formerly the CSCE)**, likewise continue to fall short of that body's commitment of 1990 "...to consider introducing, where this has not been done, various forms of alternative service, which are compatible with reasons for conscientious objection, such forms of alternative service being in principle of a non-combatant or civilian nature, in the public interest and of a non-punitive nature."

Amnesty International is concerned that in spite of the OSCE's stated intention in its **1990 Copenhagen Document** to continue to consider the subject as an integral part of its "Human Dimension framework" and to facilitate an information-exchange concerning conscientious objection to military service among OSCE-participating states, the matter has all but disappeared from view in the various OSCE fora - as evidenced by the absence of any substantial reference to the right to conscientious objection in the 1994 Budapest and 1996 Lisbon Documents.

Apart from the inclusion of a brief reference to the need for OSCE participating states to "...consider introducing exemptions from or alternatives to military service" in the **Code of Conduct on Politico-Military Aspects of Security (VII, 28)**, adopted at the 1994 Budapest Summit, the right to conscientious objection to military service has not featured prominently on the OSCE's agenda in recent years. As suggested above, this situation of commitments once made and then largely ignored can only call into question the credibility of the very institutions themselves as guarantors of the human rights of individual citizens. Likewise, such a state of neglect effectively gives licence to those states eager to avoid compliance with their obligations for whatever reason.

But the articulation of international standards and the drafting of adequate legislation alone will not be sufficient to guarantee widespread recognition of conscientious objection to military service as a basic component of one of the most fundamental of all human rights - freedom of thought, conscience and religion. A substantial and creative human rights promotion initiative is required - most especially in areas of Central and Eastern Europe.

To this end, Amnesty International's current campaign also aims to raise public awareness of the issue through a series of public meetings and events held in selected European countries. In particular, Amnesty International hopes to deliver the message - that conscientious objection to military service is an internationally recognized human right - to the widest possible audience of young people of secondary school and university age. Amnesty International's intention is to promote a vigorous and informed public discussion about conscientious objection among educators, students, politicians, religious groups and

the media in countries where it is most needed, or where the level of consciousness about the issue is particularly low.

II. CONSCIENTIOUS OBJECTION TO MILITARY SERVICE AND INTERNATIONAL HUMAN RIGHTS STANDARDS

1. Why is conscientious objection to military service considered to be a human right?

The right to refuse to perform military service for reasons of conscience is inherent in the notion of freedom of thought, conscience and religion as recognized in **Article 18** of the **Universal Declaration of Human Rights**. This freedom is also articulated in **Article 18** of the **International Covenant on Civil and Political Rights** and **Article 9** of the **European Convention for the Protection of Human Rights and Fundamental Freedoms**.

The past decade has seen the definition of this right at both the international and regional level. In 1987, the **United Nations Commission on Human Rights** adopted **Resolution 1987/46**, which explicitly defines conscientious objection to military service as "a legitimate exercise of freedom of thought, conscience and religion." This definition has been reaffirmed in subsequent resolutions adopted by the Commission in 1989, 1993, and 1995. The **Commission's 1995 Resolution (1995/83)** appeals 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." The matter of conscientious objection to military service will again be considered by the Commission at its 53rd session in 1997.

In its **General Comment Number 22 (48)** concerning **Article 18** of the **International Covenant on Civil and Political Rights**, adopted by the **United Nations Human Rights Committee** in July 1993, the Committee concurred with the Commission's view and stated its belief "...that such a right can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief."

At the European level, the **Committee of Ministers of the Council of Europe** have also supported this definition in their **Recommendation No. R (87) 8** to all member states - issued in April 1987. This text underlines the basic principle that "anyone liable to conscription for military service who, for compelling reasons of conscience, refuses to be involved in the use of arms, shall have the right to be released from the obligation to perform such service..." The 1987 Recommendation also urges that "...the governments of members states, insofar as they have not already done so, bring their national law and practice into line..." with this basic principle.

A series of resolutions adopted by the **European Parliament** likewise support the conclusions of the two United Nations bodies. In a Resolution of 13 October 1989, the European Parliament "calls for the right to be granted to all conscripts to refuse military service, whether armed or unarmed, on grounds of conscience, with full respect for the principles of freedom and equal treatment for all members of society." A Resolution adopted on 11 March 1993 makes plain that the European Parliament "considers that the right of conscientious objection, as recognized by Resolution 89/59 of the UN Commission on Human Rights on conscientious objection against military service, should be incorporated as a fundamental right in the legal systems of the Member States."

The Parliament's subsequent Resolution on the subject, adopted on 18 January 1994, states that "...conscientious objection to military service is inherent in the concept of freedom of thought, conscience and religion, as recognized in Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms." This 1994 Resolution also re-emphasizes that the Parliament "considers conscientious objection to be a real subjective right, as recognized by resolution 1989/59 of the United Nations Commission on Human Rights..."

Finally, the 1994 Resolution makes clear that the European Parliament "is convinced that the right of conscientious objection derives from the human rights and fundamental freedoms which the [European] Union undertakes to respect pursuant to Article F(2) of the EU Treaty and, therefore, that the harmonization of legislation in this field falls within the competence of the European Community."

Completing this battery of European standards on conscientious objection as a human right, the **Document of the 1990 Copenhagen Meeting of the Conference on the Human Dimension of the Organization for Security and Co-operation in Europe** (since 1994, the OSCE; then the CSCE) records that OSCE participating states "note that the United Nations Commission on Human Rights has recognized the right of everyone to have conscientious objections to military service."

2. Who should be recognized as a conscientious objector to military service?

In its 1995 Resolution (1995/83) on the subject of conscientious objection, the United Nations Commission on Human Rights "draws attention to the right of everyone to have conscientious objections to military service as a legitimate exercise of the right to freedom of thought, conscience and religion..." The Resolution reiterates "...that conscientious objection to military service derives from principles and reasons of conscience, including profound convictions, arising from religious, ethical, humanitarian or similar motives."

The European Parliament's Resolution of 18 January 1994 stated the view "...that 'conscientious objector' should be taken to mean someone who, faced with an obligation to perform military service, refuses to do so on religious, ethical or philosophical grounds or for reasons of conscience and calls on all Member States to adopt this definition."

The 1995 Resolution of the UN Human Rights Commission also "urges States in their law and practice not to differentiate between conscientious objectors on the basis of the nature of their particular beliefs nor to discriminate against recognized conscientious objectors for failure to perform military service." Likewise, in addressing the matter of conscientious objection to military service, the 1993 General Comment of the UN Human Rights Committee concurs that "when this right is recognized by law or practice, there shall be no differentiation among conscientious objectors on the basis of the nature of their particular beliefs; likewise, there shall be no discrimination against conscientious objectors because they have failed to perform military service."

It should be noted here that Amnesty International's mandate also includes the categories of "moral" and "political" objections to military service as acceptable bases for recognition as a conscientious objector. The organization believes that an individual need not be an absolute pacifist or express opposition to all armed conflict in order to warrant recognition as a conscientious objector to military service. Accordingly, what might be described as a "selective" objection to military service in a particular conflict or military operation, for reasons of conscience or profound conviction, should also be recognized as legitimate grounds for exemption from military duties and the provision of an alternative form of service.

On this basis, Amnesty International has in the past adopted as prisoners of conscience individuals whose conscience or profound convictions resulted in their objection to military service in the Vietnam War, the Gulf War, or in a force which was integrated into NATO's nuclear defence strategy. The organization therefore encourages governments to recognize the selective objections of those who might otherwise be prepared to defend their country, but feel that they cannot participate in a specific military operation as a result of their profound conviction.

Amnesty International consequently takes up the cases of individual objectors imprisoned because the recognition of conscientious objection in their country is so restricted that only some and not all of the above-mentioned grounds of conscience or profound conviction are acceptable to the authorities.

3. How should a government determine who is entitled to recognition as a conscientious objector to military service?

Apart from guarantees of fairness, Amnesty International takes no position on the merits or otherwise of particular procedures established by governments for examining or evaluating the claims of an individual seeking recognition as a conscientious objector. However, it should be noted that the organization will **not** adopt as a prisoner of conscience an imprisoned individual who is not willing to state to the decision-making authorities the reason for his or her conscientious objection, where this is required by the law of the country, unless the reason can be inferred by all the circumstances of the case.

Nevertheless, relevant United Nations and European standards do include specific recommendations on this matter. The 1995 Resolution of the UN Human Rights

Commission, for example, "recognizes that some States accept claims of conscientious objection as valid without inquiry, and appeals to Member States that do not have such a system to establish, within the framework of their national legal system, independent and impartial decision-making bodies with the task of determining whether a conscientious objection is valid in a specific case."

The 1987 Council of Europe Committee of Ministers' Recommendation accepts that "states may lay down a suitable procedure for the examination of applications for conscientious objector status or accept a declaration giving reasons by the person concerned." But the Recommendation maintains that "the examination of all applications shall include all the necessary guarantees for a fair procedure," and that "an applicant shall have the right to appeal against the decision at first instance." The Recommendations also suggests that "the appeal authority shall be separate from the military administration and composed so as to ensure its independence."

In its 13 October 1989 Resolution, the European Parliament merely "urges that, in order to be recognized as a conscientious objector, a declaration setting out the individual's motives should suffice in order to obtain the status of conscientious objector." In calling for "common principles to be defined with a view to eliminating discrimination between European citizens with respect to military service", the European Parliament's Resolution of 11 March 1993 urges that as one of several minimum guarantees to be included in these principles "an effective means of appeal is made available should the conscientious objector status be refused."

4. What kind of alternative service are governments encouraged to provide for conscientious objectors to military service?

Amnesty International also takes no position on the precise nature or content of the alternative service which a state offers to conscientious objectors to military service. However, the organization will adopt as a prisoner of conscience an individual conscientious objector imprisoned when there is not a right to alternative service which is of purely civilian character and under civilian control, or where the length of alternative service can be considered as a punishment.

This requirement is determined on the basis of all relevant factors including: 1) whether the authorities have indicated that the length of alternative service as compared with military service is intended to be punitive; 2) whether the authorities have failed to offer adequate justification as to the non-punitive nature of any period of time by which alternative service exceeds that of military service; and 3) whether the time spent in alternative service exceeds the total amount of time spent in military service including basic training and active reserve duty.

It is important to stress that Amnesty International will **not** consider an individual objector to be a prisoner of conscience if he or she is offered and refuses alternative service which is of purely civilian character and under civilian control, and which meets the above requirements concerning length.

The 1995 Resolution of the UN Human Rights Commission "emphasizes that such forms of alternative service should be of a non-combatant or civilian character, in the public interest and not of a punitive nature." These definitions are similar to those contained in the 1987 Council of Europe Committee of Ministers' Recommendation, which underlines the requirement that the duration of alternative service "...shall, in comparison to that of military service, remain within reasonable limits." However, the Recommendation does concede that "...in addition to civilian service, the state may also provide for unarmed military service, assigning to it only those conscientious objectors whose objections are restricted to the personal use of arms."

The Recommendation includes the additional comment that "conscientious objectors performing alternative service shall not have less social and financial rights than persons performing military service. Legislative provisions or regulations which relate to the taking into account of military service for employment, career or pension purposes shall apply to alternative service."

The European Parliament's Resolution of 13 October 1989 "urges that the length of alternative service should be allowed to exceed the duration of ordinary service only by half as much, again to compensate for periods of reserve training by those performing military service." This Resolution also "calls for persons performing alternative service to be safeguarded against exploitation and for individuals in civilian service to receive the same pay as conscripts." Likewise, the Resolution "urges that conscripts who perform alternative service should be given the opportunity of taking part in regular training and further vocational training, equivalent to that offered during military service."

Expanding the possibilities for alternative service, the same Resolution "calls for conscientious objectors who are recognized as such in the Member State of which they are nationals to be allowed, where appropriate and provided the individual concerned so requests, to participate in programmes of alternative service in another Member State and for their release from alternative service in their own country as a result of such participation." Therefore, the Parliament "instructs the [European] Commission to draw up a programme of development projects in the Third World in which all conscientious objectors from the Member States can, where appropriate and provided they so request, participate; such participation should release them from alternative service in their own country."

The European Parliament's subsequent Resolution of 18 January 1994 goes even further in this regard - calling on the Commission to submit a proposal to the Parliament "...for the establishment of a European civilian service open to both conscientious objectors and volunteers from the Member States," as well as for "an exchange programme allowing those engaged in alternative civilian service to choose to perform it in another Member State or in a developing country as part of a cooperation programme." The Resolution also "considers that this service should also be able to be performed with organizations in other Member States, without the need for reciprocity and even when there is no conscription in the country concerned."

Finally, the January 1994 Resolution included a recommendation to the EU Member States "...to ensure that compulsory military service and civilian service performed at institutions which do not come under the supervision of the Defence Ministry are of the same length..."

5. When should an individual be permitted to apply for recognition as a conscientious objector to military service?

The 1987 Council of Europe Committee of Ministers' Recommendation asserts that "applications for conscientious objector status shall be made in ways and within time limits to be determined having due regard to the requirement that the procedure for the examination of an application should, as a rule, be completed before the individual concerned is actually enlisted in the forces."

However, the Recommendation also states that "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."

Similarly, Paragraph 26 of the Explanatory Report to the 1987 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."

The UN Human Rights Commission's 1995 Resolution similarly "affirms that persons performing military service should not be excluded from the right to have conscientious objections to military service." The Resolution acknowledges "...that persons performing military service may develop conscientious objections..." Likewise, the European Parliament's Resolution of 11 March 1993 calls for EU Member States to guarantee that "conscientious objector status can be applied for at any time, including military service..."

Amnesty International will adopt as a prisoner of conscience any individual objector imprisoned because his or her country does not allow the right to recognition as a conscientious objector on grounds of a conscientiously held belief or profound conviction developed **after** conscription into the armed forces.

6. Are governments obliged to inform prospective conscripts and serving soldiers about their right to conscientious objection to military service?

The UN Human Rights Commission's 1995 Resolution "affirms the importance of the availability of information about the right to conscientious objection to military service, and the means of acquiring conscientious objector status, to all relevant persons affected by military service." The 1995 Resolution also requests that the UN Secretary-General "...include the right of conscientious objection to military service in the public information

activities of the United Nations, including the United Nations Decade for Human Rights Education."

The 1987 Council of Europe Committee of Ministers' Recommendation emphasizes that "...persons liable to conscription shall be informed in advance of their rights. For this purpose, the state shall provide them with all relevant information directly or allow private organisations concerned to furnish that information." The 1990 Copenhagen Document of the OSCE likewise instructs OSCE-participating states to "...make available to the public information on this issue."

The 13 October 1989 Resolution of the European Parliament "calls for call-up papers to be accompanied, where this is not already the case, by a statement on the legal position with regard to conscientious objection." The importance of access to "sufficient information" about the right to conscientious objection was reiterated in the Parliament's subsequent Resolution of 11 March 1993.

Information about the individual right to recognition as a conscientious objector should also be accompanied by information about existing procedures for obtaining that recognition - including procedures available to serving soldiers. Amnesty International will adopt as a prisoner of conscience any individual objector imprisoned as a consequence of his or her leaving the armed forces without authorization for reasons of conscience developed after conscription into the armed forces - if he or she has taken such reasonable steps to secure his or her release by lawful means as might grant him or her release from military obligations on the grounds of conscience; or if he or she did not use those means because he or she has been deprived of reasonable access to the knowledge of such procedures.

III. THE FUTURE OF CONSCIENTIOUS OBJECTION IN EUROPE

1. How can the right to conscientious objection in Europe be extended and better protected?

A number of new initiatives from both non-governmental organizations (NGOs) and European inter-governmental institutions are under way which could have a significant impact on the protection and promotion of the right to conscientious objection in Europe. A draft Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms, specifically recognizing the right to conscientious objection to military service, has been in circulation since 1984. In its Resolution of 13 October 1989, the European Parliament expressed its explicit support for the Protocol - a position which was then reiterated in a subsequent Resolution adopted by the Parliament on 18 January 1994.

Fresh support for the incorporation of this Protocol into the Convention has recently come from the grouping of NGOs which have consultative status at the Council of Europe (including Amnesty International). On 25 September 1996, the grouping approved unanimously a resolution on the recognition of the right to conscientious objection proposed by the Quaker Council for European Affairs. Co-sponsors of the Resolution included the European Ecumenical Commission for Church and Society (EECCS) and the Conference of European Churches (CEC).

The Resolution expressed concern that "...although the principles set out in Recommendation R(87)8 of the Committee of Ministers (see above) represent only minimum standards the situation in several Member States fall short of those principles." The Resolution also called on the Committee of Ministers to instruct the Steering Committee on Human Rights (CDDH) to request a report from each member state of the Council of Europe on action taken in response to the 1987 Recommendation. It also asked the Parliamentary Assembly of the Council of Europe and its Committee on Legal Affairs and Human Rights to reconsider the Draft Protocol on the right to conscientious objection, and to report back to the NGO grouping in time for their next meeting in September 1998.

In response to a written question put to them by a member of the Council of Europe Parliamentary Assembly on the subject of conscientious objectors in Greece, the Committee of Ministers replied in October 1996 that they had noted:

...a number of developments in recent years in several member States as regard conscription and/or conscientious objection to military service. At the same time, the membership of the Organisation has expanded considerably since the time the Committee adopted its Recommendation No. R(87) 8. For these reasons, the Committee of Ministers believes it would be helpful to have at its disposal a comparative review of member States' legislation and practice in the field. The Committee of Ministers...has instructed the Steering Committee for Human Rights (CDDH) to conduct such a review and to assess the implementation of Recommendation No. R (87) 8 with a view to identifying what further action might be called for at a European level.

The Steering Committee for Human Rights (CDDH) is currently carrying out this review, with an aim to completing the work by the end of 1997. The comparative study requested is currently scheduled to be presented to a meeting of the Steering Committee for Human Rights in June 1997.

Complementing these developments at the Council of Europe, Amnesty International also urges European Union member states, through an appropriate resolution adopted by the European Parliament, to make clear that recognition of the right to conscientious objection to military service and the introduction of an alternative civilian service of non-punitive length will be included among the criteria for the admission of new members to the European Union in future.

Concern about the need for applicant states to the EU to comply with international instruments on the right to conscientious objection was the impetus for the preparation of a recent report by Dr Christof Tannert, a German Member of the European Parliament. Dr Tannert's study, *Military Service and Conscientious Objection in Central and Eastern Europe in View of the Extension of the European Union towards the East*, was conducted in cooperation with the European Bureau for Conscientious Objection (EBCO) and completed in 1996.

Amnesty International also reiterates its call for all member states of the European Union and the Council of Europe to re-examine their own legislation on conscientious objection to military service in the light of current international resolutions and recommendations.

2. What other international NGOs in addition to Amnesty International are working to support the right to conscientious objection in Europe?

Amnesty International works together with a number of well-established NGOs committed to raising awareness about the right to conscientious objection and protecting the rights of individual objectors:



European Bureau for Conscientious Objection

Amnesty International's current campaign on the right to conscientious objection in Europe has been planned and carried out in close cooperation with the European Bureau for Conscientious Objection (EBCO), founded in 1979 and based in Brussels. Through its network of constituent organizations throughout Europe, EBCO works to promote the right to conscientious objection as a fundamental human right on both the national and international levels. In recent years, EBCO has published important studies on *The Right to Conscientious Objection and the European Parliament* (1994) and on *Conscientious Objectors, Draft Evaders and Deserters from former Yugoslavia* (1995). In November 1996, EBCO held a conference on *The Balkans and The Right to Refuse to Kill* in Budapest, with the cooperation of the Council of Europe. In May 1997, EBCO will host a meeting of conscientious objectors and deserters from Nazi Germany with conscientious objectors and deserters from the former Yugoslavia in Linz, Austria. For further information about EBCO, contact:

European Bureau for Conscientious Objection (EBCO)
rue Van Elewyck 35
B-1050 Brussels, BELGIUM
TEL: +32 2 648 5220
FAX: +32 2 640 0774

E-MAIL: ebco@club.innet.be
HTTP://www.club.innet.be/ind2088/ebco



War Resisters' International

Founded in 1921, War Resisters' International (WRI) has national sections, associate organizations, and members in over 40 countries. Among their activities, WRI supports campaigns for the rights of conscientious objectors around the globe - presently focussing on the situation in Turkey and in Latin America. WRI have also been active on the issue of asylum for draft resisters and deserters from the former Yugoslavia. Each year on Prisoners for Peace Day, 1 December, WRI produces an Honour Roll "...to gather international support for those imprisoned for conscientious objection or nonviolent resistance to war preparations." For further information about WRI, contact:

War Resisters' International (WRI)
5 Caledonian Road
London N1 9DX
UK

TEL: +44 171 278 4040
FAX: +44 171 278 0444
E-MAIL: warresisters@gn.apc.org



Quaker Council for European Affairs

The Quaker Council for European Affairs (QCEA) was founded in 1979 to promote the values of the Religious Society of Friends (Quakers) in the European context, and to "...express a Quaker vision in matters of peace, human rights, and the right sharing of world resources." Based in Brussels, QCEA works closely with other NGOs, such as EBCO, and other church organizations who share its concerns. QCEA seeks to raise awareness of and encourage action on a range of human rights, peace and social justice issues within the Council of Europe and the European Union.

Given the historic pacifism of Quakers (dating back to their seventeenth century origins), not surprisingly the right to conscientious objection is one of the primary concerns of QCEA in the above European fora. Similar work on the issue is done at the level of the United Nations by the Quaker United Nations Office (QUNO) in Geneva. For further information about QCEA, contact:

Quaker Council for European Affairs (QCEA)
Square Ambiorix 50
B-1000 Brussels
BELGIUM

TEL: +32 2 230 4935
FAX: +32 2 230 6370
E-MAIL: qcea@gn.apc.org



European Council of Conscripts Organisations

The European Council of Conscripts Organisations (ECCO) was founded in 1979 as "...an international platform by which experiences and information of conscripts could be exchanged." Based in Utrecht in The

Netherlands, ECCO is an umbrella organization composed of conscripts' organizations in many European countries - including the Czech Republic, the Slovak Republic, Hungary, and Georgia among others. ECCO works for the promotion and protection of the human rights of conscripts - including the right of serving soldiers to apply for recognition as conscientious objectors. ECCO also issues reports on the torture and ill-treatment of conscripts - an issue of increasing concern to Amnesty International.

In September 1996, the member organizations of ECCO adopted a *European Charter on the Rights of Conscripts*. Recent ECCO publications include *The Guide Book for Creating a Representation System for Conscripts* (1993 - also available in Russian), a general survey on *Compulsory Military Service in Central and Eastern Europe* (1996) and a *Black Book on Rights of Conscripts in Central and Eastern Europe* (1996). ECCO has consultative status at the Council of Europe, and has also received project funding from the Phare and Tacis Democracy Programme of the European Union. For further information about ECCO, contact:

European Council of Conscripts Organisations (ECCO)
Postbus 2384
3500 GJ Utrecht
The Netherlands

TEL: +31 30 244 3425
FAX: +31 30 242 2195



PEACE CONGRESS
OSNABRÜCK '98

European Congress for Peace and Conscientious Objectors

Commemorating the 350th anniversary of the Peace of Westphalia which ended the Thirty Years' War in Europe, a major international conference is scheduled to be held in Osnabrück, Germany in May 1998 - the **European Congress for Peace and Conscientious Objectors**. The Congress is being organized by a consortium of over 30 organizations (including EBCO and Amnesty International) and a long list of distinguished religious leaders, scholars and human rights advocates from across Europe. "Conscientious Objection as a Human Right" will be one of the featured topics of the Congress, and it is hoped that the Congress will draw up imaginative and effective strategies for education and action on this issue for the next few years. Amnesty International will be working closely together with the organizers of the Congress to devise a range of programs for awareness-raising and recognition of the right to conscientious objection in the run-up to the Congress itself - particularly in Central and Eastern Europe. For further information about the Congress (also available in Russian), contact:

Peace Congress '98
Postfach 4124
D-49031 Osnabrück
GERMANY

TEL: +49 541 26 06 50
FAX: +49 541 26 06 80

IV. A SUMMARY OF AMNESTY INTERNATIONAL'S CURRENT CONCERNS IN EUROPE REGARDING THE RIGHT TO CONSCIENTIOUS OBJECTION

ALBANIA

Able-bodied men are liable for military duties from the age of 19 to 55 years, including a year's military service (to be performed between the ages of 19 and 40) and subsequent reserve duties. There are no provisions allowing conscientious objectors to do unarmed or civilian service. However, exemption from military service is granted to men on payment of the equivalent of \$US 4,000, a sum well beyond the means of most young men. Conscientious objectors who refuse to do military service are liable to be prosecuted and tried by a military court on charges of "failing to respond to call-up" under Article 16 of the Military Criminal Code (which came into force on 15 November 1995), an offence punishable by a fine or up to two years' imprisonment. It appears that failure to respond to call-up is initially punished by a fine; when a conscript continues to refuse to do military service he risks imprisonment.

In theory, conscientious objectors may be repeatedly called up to do military service and repeatedly prosecuted and imprisoned for refusing to be drafted. Legal experts have criticized this, and have also criticized as discriminatory the introduction of provisions which effectively allow the more wealthy to buy exemption from military service.

CASE FILE

The only imprisoned conscientious objectors of which Amnesty International has learned are Jehovah's Witnesses. The first of these to be prosecuted under the new Military Code was Llambi Mile who in February 1996 was sentenced by a military court in Berat to six months' imprisonment for refusing, on religious grounds, to do military service. The court ruled that he should start serving his sentence immediately. Llambi Mile appealed, but his sentence was confirmed on appeal. He had previously, in June 1995, been fined the equivalent of \$US100 by the same court for refusing conscription.

In the second half of 1996 there were reportedly over 10 Jehovah's Witnesses in Berat who were under arrest or house arrest awaiting trial for failing, because of their religious convictions, to respond to call-up. In November 1996 three of these, Edlir Lipe, Sajmir Gega and Arben Merko, were sentenced to four months' imprisonment and three others were said to be still awaiting trial.

Amnesty International is calling for the immediate and unconditional release of imprisoned conscientious objectors.

AUSTRIA

Since the abolition in 1991 of the requirement for conscientious objectors to submit to an oral examination of the reasons for their objection, the length of alternative service has been progressively increased and the time limits within which applications for alternative service have to be made have been tightened.

In 1991 alternative service was of eight months' duration - the same length as military service. Since 1 January this year, conscientious objectors to military service have to complete 12 months' alternative service. Under the 1991 Alternative Service Law, applications for alternative service could be submitted any time after notification of fitness to perform military service and up to two weeks after receipt of call-up papers. Since 1 January 1997, applications are only valid if they are submitted two days before receipt of call-up papers. A potential applicant can therefore never know that the period for submitting an application is actually over, until it is already too late. (The law stipulates, however, that the period of time between notification of fitness to perform military service and receipt of call-up papers must be of at least six months' duration.) The time-limits for applications are even more restrictive for people who were declared fit to perform military service before 1994.

Amnesty International has repeatedly brought to the attention of the Austrian authorities its concern regarding the time limits for the submission of applications for alternative service. The organization has also questioned the reasoning behind the steady increase in the length of alternative service. Its letters have met with little response.

CASE FILE

At the end of December 1996 at least three men - Herwig Matzka, Peter Zwiauer and Andreas Gruber - faced possible imprisonment as a result of their refusal to perform military service. All three had fallen foul of the restrictive time limits laid down by the alternative service legislation then in force. Two of the three had gone into hiding, fearful of arrest and detention, while trial proceedings against the third had begun in November 1996 but were adjourned. Amnesty International learned in March 1997 that criminal proceedings against Peter Zwiauer had been discontinued.

Amnesty International urges the Austrian authorities to stop proceedings against these men. Amnesty International has informed the Austrian authorities that if any of the men are imprisoned the organization will adopt them as prisoners of conscience and will call for their immediate and unconditional release.

Amnesty International has described its concerns regarding Austrian legislation on conscientious objection, and the cases of Herwig Matzka, Peter Zwiauer and Andreas Gruber in the document: *Austria: Conscientious objection to military service - a summary of current concerns*, AI Index: EUR 13/01/97, published in February 1997.

BELARUS

Military service is compulsory for all males between the age of 18 and 27. It lasts 18 months, except for university graduates, who have to serve 12 months. Military service can be postponed for social reasons like family matters, being the breadwinner of the family, having small children, etc. - or for educational reasons, such as attending university. Educational reasons can only be used to postpone military service once. Should a young man want to enroll at another university or begin another period of study, he must do the compulsory military service first.

There is no alternative service at present for conscientious objectors to military service. A draft law on alternative service (of a proposed length of three years, or twice the length of compulsory military service) has been under discussion in parliament since 1994. The Parliament did not include provisions for conscientious objectors in the Constitution adopted in March 1994.

It was reported in 1995 that the government proposed to extend the alternative service to people who are unfit for military service for reasons of bad health. According to reports, the Ministry of Defence was inclined to broaden the concept of military service to include a wide range of options for alternative service similar to the German model. The government allegedly planned to extend the alternative service to people with a criminal record, as it is not willing to provide them with access to weapons during military service. The current law exempts from military service those who have served a term in a forced labour colony for a major criminal offence.

In the absence of alternative civilian service in Belarus young men who state their

conscientious objection to military service continue to face prosecution by the military authorities, conviction on criminal charges for evading the service and imprisonment. According to statistics provided by the Belarus League for Human Rights, a local NGO, at the spring call-up in 1995, 30% of the conscripts refused to enter the service. According to the same source, 99% of these had gone into hiding or they had feigned illnesses to avoid being drafted.

BOSNIA-HERZEGOVINA

With the signing of the peace agreement in December 1995, Bosnia-Herzegovina was formally divided into two Entities, the Federation of Bosnia and Herzegovina - consisting of Cantons which are administered in most cases either by Muslim (or Bosniac) authorities or Bosnian Croat authorities - and the Republika Srpska which is administered by Bosnian Serb politicians. Although a Presidency and Government of Bosnia and Herzegovina representing both Entities exist, they do not have responsibility for defence matters which are the domain of the authorities in the two Entities.

As in other former republics of Yugoslavia, the legislation regulating military service is based upon the Defence Laws and Criminal Codes of the former Socialist Federal Republic of Yugoslavia (SFRY). The articles of the former SFRY Criminal Code relating to the armed forces are in effect in both Entities including Articles 214 ("evading military service") and 217 ("desertion"). The situation has otherwise varied between the different areas and they are therefore dealt with separately below. However, one common factor to note is that during the war work obligations were enforced in most areas of Bosnia-Herzegovina. The distinction between mobilization into the armed forces and for work obligations was often blurred. Those performing work obligations who belonged to the minorities were often made to work in extremely dangerous conditions, for example, digging trenches close to front-lines where they risked injury or even death. The conditions of some of those on work obligations, particularly in the Bosnian Serb-controlled areas, amounted to detention.

The Federation

During the war military service was compulsory for all men and remains so. Men can now officially choose service in the Army of Bosnia-Herzegovina (which includes predominantly Bosnian Muslim recruits) or in the Croatian Defence Council (HVO). Both these armies are officially to merge into one by 1999. The possibility of unarmed service in the armed forces was introduced in mid-1996, but may not have been implemented.

Between 1992 and late 1995 men, including conscientious objectors, were regularly imprisoned in the Bosnian Government areas for "evading military service" or "desertion." Since a state of "immediate danger of war" or state of war was in effect for most of the period of the conflict the maximum legal penalty was the death penalty. In practice, the sentences known to be passed were of up to five years' imprisonment. Resistance to conscription is known to have occurred in the HVO-controlled areas (the "Croatian Republic of Herceg-Bosna") but little information is available about punishments which were applied. Those most commonly prosecuted and imprisoned in the Bosnian Government-controlled areas appear to have been Serbs, many of whom objected to fighting against Serbs on the other side. In some courts Serbs who refused to serve on these grounds were given more lenient sentences. However, there was also pressure to accept release in prisoner exchanges with the Bosnian Serb forces and some Serbs were effectively forcibly expelled from their home areas in this manner. There were also a small number of men who were clearly conscientious objectors whose objection was based on

their religious beliefs; these included Jehovah's Witnesses.

When the Federation was formally announced in March 1994, including the mainly-Muslim Bosnian Government-controlled part of Bosnia and that controlled by the HVO, the self-proclaimed "Croatian Republic of Herceg-Bosna", these areas effectively had separate administrations. These bodies were not officially abolished until late 1996 and the Federation is still not fully in place. Although military service is theoretically covered by the federal laws which are mentioned below, it is not clear whether these federal laws are respected by courts in the Bosnian Croat areas, particularly in the town of Mostar which is the centre of the dispute between the Muslims and Croats.

A limited amnesty for draft evaders was introduced by the Bosnian Government in December 1994 which gave deserters or draft evaders up to 30 days to report for duty to avoid prosecution or up to six months if they were living abroad. As a result of obligations under the peace agreement, a comprehensive amnesty law was introduced by the Bosnian Government in February 1996 (a similar law was passed afterwards for the Federation). This applied to acts of "desertion" or "evading military service". All known imprisoned conscientious objectors were released and criminal charges were dropped against those awaiting trial as a result of the amnesty. However, it applied only to acts committed up to 14 December 1995. Anyone who refused to perform military service after this date could be prosecuted, although in practice the end of the war has meant mass demobilization and little recruitment of new soldiers.

In July 1996 a new federal Law on Defence was enacted which is understood to allow for conscientious objectors to serve in

the armed forces without carrying weapons. Amnesty International believes that these provisions do not constitute a purely civilian alternative service. The organization calls on the government to introduce legislation making available a purely civilian alternative service of non-punitive length available to anyone who refuses to perform military service on conscientious grounds.

The Republika Srpska

Military service was compulsory for all men in the Bosnian-Serb controlled areas throughout the war. For some of the war some men, particularly those living abroad, were able to "buy" exemption from service by paying money. There were frequent reports of resistance to conscription, motivated by a variety of reasons, which probably included conscientious ones.

The Bosnian Serb authorities themselves complained of the problem of desertion and evasion of military service. For example, according to one report the military court in Banja Luka convicted some 1,000 people for these offences between July and August 1993 alone. They received punishments ranging from suspended prison sentences to sentences of five years' imprisonment. In mid-1995, when the problem of desertion was at its worst, sentences of up to eight years' imprisonment were reported. Many of those deserting or avoiding military service went abroad, mostly to the Federal Republic of Yugoslavia (FRY). The FRY authorities forcibly returned deserters to the Republika Srpska on many occasions. A 10-year maximum prison sentence applied through most of the war and still applies now. For several months from July 1995 a "state of war" was in effect meaning that the death

penalty could be applied as the maximum sentence.

An amnesty law was enacted by the Republika Srpska parliament in June 1996 to comply with the requirements of the Dayton peace agreement. However, during debate in parliament the offences of "desertion" and "evading military service" were specifically excluded from the amnesty. Proposals for a new law on defence were under consideration in early 1997. A new Law on the Army was enacted at the end of 1996, but at the time of writing no text was available for examination.

Although Amnesty International believes that it is likely that there are men imprisoned in the Republika Srpska for deserting or evading military service, there is no information available about individual cases or the numbers of men involved.

Amnesty International calls upon the authorities in the Republika Srpska to introduce an immediate amnesty for anyone imprisoned as a result of desertion or any similar offence arising as a result of their refusal to perform military service on conscientious grounds. The organization also calls on the authorities to introduce the right for anyone liable to perform military service, but who develops conscientiously held objections to military service, at any time, to perform a purely civilian alternative service of non-punitive length.

BULGARIA

Although the right to perform an alternative service is recognized by the Bulgarian Constitution (Article 59 paragraph 2), there is no law in Bulgaria which would enable conscientious objectors to duly address their requests to perform an alternative service to the competent authorities. Prosecution of conscientious objectors like Dian Yankov Dimitrov (see case file) for evasion of military service represents a violation of their constitutional right to an alternative service.

According to information recently received by Amnesty International, the Bulgarian Government adopted a Draft Law on - Alternative Service. Amnesty International is concerned that the following proposed provisions are at variance with internationally recognized principles concerning conscientious objection to military service.

Article 3 of the Draft Law states that applications for an alternative service can be based only on religious convictions. Amnesty International believes 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.

Article 4, paragraph 1, of the Draft Law states that alternative service is to be performed only "within the armed forces and civilian defence units, in posts which do not require the use of arms." Amnesty International is concerned that such alternative service would not be considered to be of purely civilian character and under civilian control and that objectors may be imprisoned for refusing such service on grounds of conscience.

CASE FILE

Dian Yankov Dimitrov has been in prison since September 1996, serving a 10-month sentence for refusing to carry out military service.

Dian Yankov Dimitrov is a 20-year-old Jehovah's Witness, whose religious convictions forbid him to carry arms and perform military service. On 5 September 1995, the Popovo Regional Court sentenced Dian Yankov Dimitrov to a suspended term of six months' imprisonment under Art 361, paragraph 1, of the Bulgarian Penal Code for failing to respond to a call-up order.

Following a second call-up on 5 October 1995, Dian Yankov Dimitrov was tried again under the same law and sentenced on 1 February 1996 to eight months' imprisonment. On 31 July 1996 this sentence was reduced on appeal to four months' imprisonment by the Targovishte County Court.

On 9 September 1996, Dian Yankov Dimitrov was imprisoned in the Belene Island Prison to serve the cumulative 10-month sentence. In prison, Dian Yankov Dimitrov's shoes, articles of clothing and a blanket have been repeatedly stolen from him by other inmates. Attempts by his father, Yanko Dimitrov Stoyanov, to make the Prison Director intervene on his son's behalf have failed.

Amnesty International is urging the Bulgarian authorities to release Dian Yankov Dimitrov immediately and unconditionally and to take the necessary steps to bring the draft legislation on alternative service in line with international instruments.

Article 6 of the Draft Law sets the length of the alternative service at 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.

The Draft Law also limits the time period for the submission of the application for alternative service to 31 March of the year in which the applicant reaches the age of 18 years. If the applicant is younger at the time of applying for alternative service, the application has to be countersigned by his parents or guardians (§9). The application is reviewed by a commission established by regional military authorities (§10). This commission is required to hear the applicant as well as his parents or guardian if the applicant is underage (§ 13). The decisions of the commissions can be appealed within a seven-day period to the Central Commission for Alternative Service (§16), which operates within the Ministry of Defence (§ 17,1). Decision on the appeal should be made within a 14-day period and these decisions are final (§ 18, 5).

Amnesty International is concerned that this procedure would not be considered fair and independent, as recommended by the international instruments. By imposing time limits for the submission of an application for alternative service, the law would effectively disqualify from alternative service all those people who develop conscientious objection to military service between the time provided for the submission of the application and call-up - a time which could be of several months' or even years' duration - or after call-up.

Amnesty International urges the Bulgarian Government and the National Assembly to review these proposed provisions in the Draft Law on Alternative

Service and to adopt a law on alternative service which will be in accordance with all of the cited international principles on conscientious objection.

CROATIA

The right to conscientious objection is guaranteed under the Croatian Constitution of 1990. However, no purely civilian alternative to military service is universally available under the current legislation.

The Laws on Defence which were enacted in 1991 and 1993 (and some later amendments) regulate military obligations and the rights of conscientious objectors. However, these laws essentially provide for conscientious objectors to serve in the armed forces without carrying weapons. There is a possibility, but not a right, to perform a civilian service in civilian institutions. No one is known so far to have been able to perform the civilian service. At 15 months' duration the alternative service, whether performed as unarmed service in the armed forces or in a civilian institution, is 50 per cent longer than the normal service of 10 months and appears to be punitive in length.

All men aged between 16 and 60 years are liable to perform military service. In some circumstances women are also required to be called up for certain duties. Young men are normally called up for the standard 10-month period of military service at about 19 years of age. After demobilization they become members of the reserve forces and are liable to call-up for exercises or in time of war.

A conscript has 90 days from the date of registration for military service to apply for conscientious objector status. However, newly-registered conscripts or reservists are not automatically informed of their right to apply for conscientious objector status. The authorities have not publicized this right and have refused offers by the main Croatian non-governmental organization which promotes the right to conscientious objection, the Anti-War Campaign (ARK),

CASE FILE

Those imprisoned for avoiding military service, including conscientious objectors, have frequently avoided publicity and it is difficult to document the number of cases. Among the most recent known cases was Nikša Viočić from the Split area who objected to wearing a uniform and carrying weapons because of his religious convictions as a Jehovah's Witness. He was badly beaten by military police who briefly detained him in May 1996.

Criminal charges for refusing to accept arms were brought against Nikša Viočić, although the current status of the case against him is unclear as he has reportedly been exempted from military service temporarily on medical grounds.

Amnesty International urges the Croatian authorities not to pursue criminal charges against Nikša Viočić. Should Nikša Viočić be imprisoned at a future date for refusing to perform military service because of his religious convictions, Amnesty International would adopt him as a prisoner of conscience.

to provide leaflets for distribution to new conscripts. The situation is also complicated by the fact that most men aged over 25 or 30 years of age have already served in the Yugoslav National Army (JNA) when Croatia was part of the Socialist Federal Republic of Yugoslavia (SFRY). Such men are liable to be called up for reserve duties in the Croatian armed forces, but have limited possibilities to express conscientious objection.

The applications are reviewed by the Commission for Civilian Service which is appointed by the Ministry of Justice. Men who have already served in the JNA or who had been registered for it before the break-up of the former Yugoslavia were originally given until March 1992 to apply for conscientious objector status. After lobbying by ARK, this period was extended until May 1994. More recently the possibility has been reopened and the deadline is 20 July 1998. New or recent conscripts also have the possibility of applying for conscientious objector status up to this last date. After that date it appears that no one will be able to apply outside of the 90-day period and thus anyone who subsequently develops conscientious objections will be denied the right to be recognized as a conscientious objector.

There is currently no guarantee in law that anyone, whether a new conscript or a reservist already registered for service, will not be mobilized in between submitting a request for the status of conscientious objector and receiving the ruling of the Commission on Civilian Service.

Those who refuse military service can be punished under the Criminal Code, General Part; the main articles relevant to this are "evading military service" (Article 166) and "desertion" (Article 169). Both these laws are taken from the old federal laws of the SFRY, Articles 214 and 217 respectively. These provide for a maximum sentence of 10 years' imprisonment in peacetime. However, the authorities have regularly used military regulations to imprison people for the above acts (including possible conscientious objectors) for periods of up to 30 days. Prosecution under these regulations does not protect individuals from further prosecution under the criminal law.

Croatia's involvement in fighting in Bosnia has also been the subject of much political controversy and there has been resistance on the part of conscripts who objected to being sent there. The distinctions between service in the Croatian Army and the Bosnian Croat forces (HVO) which fought in Bosnia-Herzegovina has also been very blurred. The HVO is theoretically a separate, foreign force. For example, at the end of 1994 and early 1995 a large number of men (reportedly up to 1,000) residing in Croatia, but of Bosnian Croat origin (most of whom either were, or were considered by the authorities to be, citizens of both Croatia and Bosnia-Herzegovina), were mobilized in Croatia and sent immediately to fight in the HVO in Bosnia. Some who refused were reportedly imprisoned for periods of up to 30 days under the military regulations. The reasons for their refusal appeared to include objections to participating in the armed conflict in Bosnia-Herzegovina. At least some of the men were given uniforms without Croatian Army insignia before being despatched to Bosnia and/or were told that they were being taken to fight at locations in Croatia.

At the same time, Viktor Ivančić, editor of an independent weekly newspaper, *Feral Tribune*, which has been extremely critical of the government, was mobilized. His mobilization occurred just as he was formally granted Croatian citizenship (he was born in Bosnia-Herzegovina) which made him liable for military service in Croatia and eligible to seek conscientious objector status or exemption on other grounds. Commentators pointed out that newspaper editors working on pro-government publications were exempted because of their occupation.

In November 1995, Božidar Balenović, the editor of a small regional

publication in the town of Ivanić-Grad, which has also been critical of the authorities, was called up, apparently because of opinions expressed in his paper. He refused to put on a uniform claiming that his ordination as a Catholic priest some years before exempted him from military service. In December 1995 he was sentenced to, and served, 30 days' imprisonment for refusing to wear a uniform.

Amnesty International calls on the Croatian authorities to amend the current legislation governing military service to make a purely civilian alternative service of non-punitive length available to anyone who refuses to perform military service on grounds of conscience. The legislation should also be amended to recognize the right of any individual to seek conscientious objector status at any time after having been registered for service or having performed or commenced military service.

CYPRUS

The alternative "unarmed military service" provided for conscientious objectors remains punitive in length (42 or 36 months as against 26 months of ordinary military service) and is suspended during periods of emergency or general mobilization. At least 18 Jehovah's Witnesses were imprisoned during 1996 for refusing to perform military service. Those called up for the first time received 26-month sentences, (while reservists received sentences of seven or eight months' imprisonment.

CZECH REPUBLIC

In March 1990 Amnesty International welcomed the adoption by the Czech and Slovak Federal Government of provisions for civilian service for conscientious objectors to military service. In October 1991 Amnesty International urged Vaclav Havel, then President of the Czech and Slovak Federal Republic, to ensure that further legislation concerning conscientious objection was fully in accordance with internationally recognized principles. Since then, however, legislation has been adopted in the Czech Republic which Amnesty International considers at variance with these principles. In particular, Amnesty International is concerned about provisions of the Czech Law on Civilian Service (Law number 18/1992, amended by Law number 135/1993) which restrict the time within which conscientious objectors can submit declarations refusing military service.

According to Article 2, paragraph 1, of the Law on Civilian Service conscripts can submit a written declaration refusing military service within 30 days of conscription for military service. Paragraph 2 states that declarations submitted after this time limit will not be taken into consideration.

By requiring that declarations be submitted within 30 days of conscription for military service 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

CASE FILE

Two conscientious objectors, Martin Nevák and Martin Duda, were imprisoned from March to September and June to October 1995 respectively for failing to commence military service. Both had conscientious objections to military service on religious grounds. They were refused civilian service because they had not submitted their declarations within the prescribed period. Initially both men were sentenced to suspended imprisonment. They were imprisoned following a second conviction under the same law when they failed to respond to a second call-up order. Both men were released following the decision by the Constitutional Court which ruled in September 1995 that it was unconstitutional to convict a person more than once under Article 269 of the Criminal Code for not performing military service. Amnesty International considered them to be prisoners of conscience.

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.

In October 1995, Amnesty International wrote to Jiří Novák, then Minister of Justice, urging him to initiate a revision of the law. The letter stated that AI understood that a new law on civilian service had been drafted which left unaltered the requirement for declarations to

be made within the very limited time period of 30 days after conscription into army service (Article 2, paragraph 2). Furthermore, it was understood that the new law would extend the duration of civilian service from one and a half to twice the length of military service (Article 1, paragraph 4). 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. The proposed civilian service which is twice as long as military service would be considered punitive by Amnesty International. In this respect the draft law is a retrograde step, and Amnesty International urged that it be reviewed in that light. The Czech authorities did not respond to Amnesty International's letter, and a new law has not been adopted to date.

Amnesty International urges the Czech Government to consider seriously the points raised above and to re-examine the provisions of the draft law concerning time limits for the submission of declarations refusing military service as well as the length of civilian service.

FRANCE

In November 1996 the French Government approved a draft bill proposing the total suspension by 2002, via a phasing-out process commencing in 1997, of the existing compulsory national service for male citizens. The National Assembly approved the bill in February 1997 and passed it on to the Senate which is due to consider it in March. Under its provisions compulsory national service is replaced by a compulsory five-day 'citizenship course' (*rendez-vous citoyen*) for both males and females, who may apply for a voluntary military, or a voluntary civilian, service. Hitherto, male citizens have normally been required to start their period of active military or civilian service between the ages of 18 and 27. Under the new bill male citizens born after 31 December 1978, that is those under 18, will no longer be liable for the existing national service. Those born before 1 January 1979, that is, those over 18, remain liable for national service until 2002.

Since the introduction, in July 1983, of Law No 83-605 modifying the National Service Code, Amnesty International has repeatedly expressed concern that French legislation governing conscientious objection to compulsory military service allows applications for conscientious objector status to be submitted only within stipulated time limits, making no provision for conscientious objection developed during military service. It also offers officially-recognized conscientious objectors a civilian service which, at 20 months, is twice the length of ordinary military service. This length is considered punitive by Amnesty International.

As stated elsewhere, 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. International standards on conscientious objection to compulsory military service also advocate a non-punitive length of civilian service (see Section II of this document).

Amnesty International considers that the civilian service offered to conscientious objectors to military service in France does not provide an acceptable alternative to military service and that those imprisoned for rejecting both services are prisoners of conscience.

A number of criminal proceedings against conscientious objectors prosecuted as result of their refusal to conform to the national service laws in previous years were open at the beginning of 1997 and 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'obéissance*), a charge carrying a possible penalty of up to two years' imprisonment. This charge is usually brought after 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 frequently brought charge 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.

Before 1993 the conscientious objectors adopted as prisoners of conscience by Amnesty International 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.

Under current legislation, applications for conscientious objector status must be made by the 15th day of the month preceding the announced date of the

CASE FILE

By no means all those refusing to conform to the national service laws 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. 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 ordered to report to his designated barracks but 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.

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 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. This position is supported by UN Human Rights Commission Resolutions 1993/84 and 1995/83 on conscientious objection to military service (operative paragraph 2) and Recommendation No R(87) 8 regarding conscientious objection to compulsory military service, adopted by the Committee of Ministers of the Council of Europe (Section B, paragraph 8), and its accompanying Explanatory Report (See Section II, 5 of this document).

The majority of cases where applications were rejected because they had been made outside the stipulated time limits 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, only one case - arising in 1993 - has come to Amnesty International's attention where a conscientious objector has been imprisoned as a result of his application for conscientious objector status being rejected on the grounds that it was made outside the stipulated time limits.

GREECE

In Greece, there is no provision for alternative civilian service¹ and conscientious objectors who refuse to perform military service are tried and imprisoned. Each year hundreds of men are serving sentences of up to four years² under Article 70 of the Military Penal Code, being charged with "insubordination during a period of general mobilization" (Greece has been in such a situation since the invasion of Northern Cyprus by Turkish troops in 1974). Several conscientious objectors have been given an additional punishment of five years' deprivation of civil rights (they are thus not allowed to vote, to be elected to parliament, to work as civil servants, to obtain a passport or a licence to set up their own business for five years after their release from prison).

The vast majority of imprisoned conscientious objectors in Greece are Jehovah's Witnesses whose religious beliefs do not permit them to serve in the armed forces in any capacity whatsoever. When they are called up they report to the military camp where they have been ordered to enlist. On being told to put on a uniform and take up arms they inform the officer-in-

charge that they cannot do so as they are conscientious objectors. They are then ordered to perform unarmed military service. When they refuse, they are imprisoned in the disciplinary cell of the camp or in a cell at a nearby military police post - pending their transfer to a military prison, either Avlona, near Athens, or Sindos, near Thessaloniki.

Prison conditions for conscientious objectors, in both civilian and military prisons have been a concern in recent years. The then Minister of National Defence declared in July 1993 in a press interview that living conditions in the Avlona Military Prison where most conscientious objectors were held in the past and are still held in 1997 (pending transfer to the military prison of Sindos, where conditions are far better and where only conscientious objectors are held) were "objectionable and inadmissible". In Kassandra Agricultural Prison, visited by a Belgian Human Rights group in 1992, it was reported that in one building the dormitory was a stable - unheated and cold during winter, with holes throughout the building. Sanitary conditions were abominable, the quality of food poor, and only limited and poor medical care was given. Despite his acknowledgement of these living conditions in Kassandra prison, the Minister of Justice claimed that many conscientious objectors sought their transfer to Kassandra - despite its bad conditions - in order to be able to work and thus reduce their sentence.

In 1996 the situation remained the same. Living conditions at the agricultural prisons of Kassavetia, near Volos, Tyrinths, Peloponnese, and Hania, Crete, are reported to be far better, conscientious objectors themselves describing the food, sanitary and medical conditions as satisfactory. When

¹ Conscription and conscientious objection is regulated by Law 1763/88, passed in March 1988. Conscientious objectors on religious or philosophical grounds are permitted to perform unarmed military service lasting twice as long as ordinary military service. All able-bodied men aged between the ages of 19 and 50 are liable to conscription with the exception of religious ministers, monks and novice monks of recognized religions and fathers of four or more children.

² A small number receive a lower sentence if they are considered the main breadwinner in their family (for example, if their father is dead or ill, if they are the eldest of four or more children or if they are married with two or more children).

work is available in the Military Prison of Sindos, conscientious objectors who work are able to reduce their sentences either by three-quarters of a day for each day worked or by one day for each day worked. Later on in their sentence they are transferred to agricultural prisons, Kassandra and Kassavetia, where they can perform agricultural work and reduce their remaining sentence by one half (each day they work counts as one day off their sentence).

On 25 April 1994 a new law (2207/1994) aimed at reducing the overcrowding of the prisons was passed. According to this law "prisoners who have served a prison sentence of more than one year and who have in any way served half of their sentence are lawfully released from prison with the condition that they do not commit the same offence within a period of one year after their discharge". Although conscientious objectors serving their sentences in agricultural or civilian prisons can benefit from the provisions of this law, this law does not apply to prisoners serving their sentences in military prisons, such as Sindos.

Greece is a member of the Council of Europe and the United Nations and a participating state in the Organisation for Security and Co-operation in Europe (OSCE). These bodies have adopted a number of resolutions and recommendations, all of which urge member states to recognize the right to conscientious objection and adjust their national legislation to make provision for alternative civilian service (See Section II of this document). In recent years the Greek Government made declarations that a project to introduce an alternative civilian service was under consideration, but then said that it had been advised by the Legal State Council (an advisory body whose decisions are not

binding on the Government) not to introduce the measures as they were incompatible with the Greek Constitution³.

In January 1994, after Greece was once again criticized by the European Parliament for its refusal to introduce an alternative civilian service, the then Minister of Defence announced that the Greek Government was planning - for the third time - to present a law for the introduction of such a service. In 1996, a fourth draft law on conscription was leaked to the Greek press. According to an article published in *Ta Nea* on 31 August 1996, the unarmed service remained the option for conscientious objectors, provided they have been recognized as such by a Commission

³ According to Article 4§1, "All Greeks are equal before the law". Article 4§6 of the Constitution states: "Every Greek capable of bearing arms is obliged to contribute to the defence of the Fatherland as provided by law." Lawyers who support the view that alternative civilian service is unconstitutional argue that since the Constitution guarantees the equality of all Greek citizens and requires its citizens to contribute to the defence of their country, to permit some people to perform alternative civilian service would be to treat two groups of citizens unequally. A further constitutional objection is based on Article 13§4: "No person shall be exempt from discharging his obligations to the State or may refuse to comply with the laws by reason of his religious convictions". Article 13§1, however, states that: "Freedom of religious conscience is inviolable. Enjoyment of individual and civil rights does not depend on the individual's religious beliefs". A number of lawyers argue that performing alternative civilian service could also contribute to the defence of the Fatherland. Others argue in favour of alternative civilian service on the grounds that Article 2§1 states: "Respect and protection of the value of the human being constitute the primary obligation of the State" and Article 5§1 states "All persons shall have the right to develop freely their personality".

which would examine each application individually. However, this Commission was to be composed of army officers, magistrates and academics; the unarmed service would be under the administration of the Ministry of Defence and it would last 50% longer than military service. The same option would have been offered to those who are detained pending trial or are serving a prison sentence for insubmission or disobedience on grounds of ideology or religion. In these cases the time served in detention either pending trial or as part of the sentence would be deducted from the normal length of the unarmed service. However, early elections were called, the Parliament was dissolved and the issue of alternative service was once more postponed.

On 14 December 1996, according to the daily newspaper *Eleftherotypia*, the Ministry of Defence started to hold talks with representatives of youth associations from all political parties about a new draft bill on conscription which is due to be presented to the Parliament in mid-February. This draft bill reportedly included measures to solve the issue of insubordination to military service, which is currently the basis for prosecution of conscientious objectors in Greece.

On 30 January 1997, the newspaper *Ta Nea* reported that the Ministry had made progress on its primary decision for the introduction of alternative civilian service for conscientious objectors (either on religious or ideological grounds). According to the newspaper, this service will have no connection with the armed forces and will be done in departments of the administration, such as hospitals, or of the local government. The recommended duration of the alternative service, as proposed on 29 January 1997 to the relevant ministerial

authorities, is twice the length of military service.

Although Amnesty International welcomes the measures announced concerning the introduction of an entirely civilian alternative service for conscientious objectors, the organization is concerned that such a service will remain punitive. Amnesty International urges the Greek authorities to reconsider the length of the proposed alternative civilian service with a view to bringing it in line with international standards and recommendations. The organization is also concerned that in the absence of any time-frame given for the draft bill to be passed in Parliament, the latest proposals made by the Minister of Defence may, like all the former proposals announced in the past, remain unadopted.

Amnesty International is reiterating its demand that the Greek authorities release immediately and unconditionally all imprisoned conscientious objectors and introduce without any further delay a provision in law for an entirely civilian alternative service, which should be of non-punitive length and in line with international recommendations.

ITALY

Conscientious objector status and alternative civilian service was not available to conscientious objectors to compulsory military service in Italy until the introduction of Law 772 of 15 December 1972, the current legislation governing conscientious objection to military service. Over the years since its introduction, Amnesty International has repeatedly drawn the attention of government, parliament and the public to its concerns about several aspects of Law 772 and to the international standards on which the organization bases its position. Reform of the law has been under consideration by successive legislatures since 1988 but subject to numerous delays and set-backs. Although the text of a draft bill achieved full parliamentary approval in January 1992 it was rejected by the then President of the Republic the next month. Various draft texts have subsequently been considered by parliament but at the time of writing none have obtained final approval. Amnesty International has commented on the texts of the various draft laws proposing reform of the law and has also expressed concern at the repeated delays in bringing about reform.

Failure to comply with the national service laws is punishable by terms of imprisonment and the deficiencies of Law 772 resulted in Amnesty International adopting numerous conscientious objectors as prisoners of conscience during the 1970s and 1980s.

The law makes no provision for conscientious objection developed during military service and this has led, on occasion, to the imprisonment of genuine conscientious objectors. 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 right (see Section II, 5 of this document).

The law states that conscientious objector status and civilian service is available to conscripts declaring themselves opposed to the personal use of arms in all circumstances for fundamental reasons of conscience, based on religious, philosophical or moral convictions. However, the law does not specify political reasons as acceptable grounds for obtaining conscientious objector status. Conscientious objectors adopted as prisoners of conscience by Amnesty International in the 1970s and 1980s included some whose applications for conscientious objector status were refused because they objected to the use of arms on political grounds and some whose applications were rejected on the grounds that they had not sufficiently proven their religious, moral or philosophical convictions. In some cases conscientious objector status was refused to conscripts claiming personal pacifism. These decisions were frequently reversed when the conscript presented a second or third application for conscientious objector status. Thus, the law appeared open to different interpretations as well as to being applied restrictively in practice.

Amnesty International has also queried whether alternative service may be described as being "of a purely civilian character and under civilian control" while the Minister of Defence decides on initial applications for conscientious objector status (on the advice of a committee composed of

civilian and military members) and is ultimately responsible for the general administration of alternative service.

Article 5 of Law 772 (whose provisions were superseded by a ministerial directive in August 1989 - see below) also directs that civilian service should be eight months longer than ordinary military service (which, until it was reduced to 10 months in January 1997, lasted 12 months). Such a length, over one and a half times that of ordinary military service, is considered punitive by Amnesty International. International standards on conscientious objection to compulsory military service also advocate a non-punitive length of civilian service (see Section II, 4 of this document). Amnesty International considered that the civilian service offered to conscientious objectors to military service in Italy up to August 1989 did not provide an acceptable alternative to military service and that those imprisoned for rejecting both services, or for refusing to continue their civilian service longer than 12 months (that is, the length of ordinary military service), were prisoners of conscience.

However, a Constitutional Court ruling (No 470) of July 1989 found Article 5 of Law 772 to be unconstitutional. The court considered that the greater length of civilian service was a sanction against conscientious objectors. It commented that a difference in the length of military and civilian service could only be justified if the law were to lay down that a specialized training period was necessary before the civilian service could be performed: the difference should, however, be "contained and reasonable". A Ministry of Defence directive followed in August 1989, allowing recognized conscientious objectors to carry out a civilian service of the same length as ordinary military service.

On 29 January 1997 the Senate approved the text of a draft law on conscientious objection, reforming Law 772. The draft law, substantially similar to the texts of previous bills considered by parliament in recent years, includes proposals for conscripts to have a right to conscientious objector status on a simple declaration of their conscientious objection to the use of arms, for civilian service normally to be the same length as military service and for the organization of civilian service to be removed from the Ministry of Defence and entrusted to a department attached to the Prime Minister's office. The bill was passed to the Chamber of Deputies which was expected to vote on it within a few months. Amnesty International welcomed the progress towards reforming Law 772 but was concerned that the bill apparently made no explicit provision for conscientious objection developed during military service.

Amnesty International is also monitoring the progress of a draft law, approved by the government on 22 January 1997 and passed on for parliament's consideration, making significant changes to national service which could affect the eventual civilian service offered to conscientious objectors. Under the provisions of the draft law, all conscripts could apply to perform national service either in the form of a military service lasting 10 months or a reorganized civilian service, offering a wider range of work than that available in the current civilian service performed by recognized conscientious objectors. The civilian service, administered by an agency reporting to the Prime Minister's office, would be three months longer than the military service (rather than the same length, as proposed in the draft law on conscientious objection) in order to

include a training period for a specific area of civilian work. However, if the number of conscripts selecting military service were deemed insufficient for the needs of the armed services then some of those selecting civilian service would be ordered to perform military service.

Further information on the organization's work relating to conscientious objection to military service in Italy may be found in two Amnesty International reports entitled, respectively, *Obiettori* (Edizioni Sonda), published in 1993, and *Le denunce di Amnesty International sulle violazioni di diritti umani in Italia*, published in 1996.

MACEDONIA, FORMER YUGOSLAV REPUBLIC OF

The right to conscientious objection is not guaranteed under the Constitution. Military service is compulsory for all men between the ages of 17 and 55. The only dispensation under the Law on Defence of 1992 is that soldiers who object on religious grounds can be exempted from carrying weapons. For soldiers who object on these grounds the normal period of military service is increased from nine to 14 months.

Failing to respond to a call-up is punishable both under the Law on Defence, which allows for a fine or up to 60 days' imprisonment, or under the Criminal Code. The Criminal Law provides for imprisonment of up to 10 years' for failing to answer call-up in peacetime.

The response rate to call-up is reported to be low, particularly among members of minorities, such as ethnic Albanians. The authorities appear, at least so far, not to have acted to enforce the call-up and prosecute those who fail to respond. Amnesty International is not currently aware of any conscientious objectors imprisoned in Macedonia.

In April 1996 members of the youth sections of a number of political parties (mainly those in opposition) signed a petition calling for the introduction of a civilian alternative service. Amnesty International is not aware of any progress towards realizing this in law.

Amnesty International considers that the current statutory exemption from carrying weapons on religious grounds does not constitute a purely civilian alternative. The increased length of the unarmed service also appears to be entirely punitive. The organization calls on the government to introduce legislation making available a purely civilian alternative service of non-

punitive length available to anyone who applies for recognition as a conscientious objector to military service.

POLAND

In February 1995 a draft law on alternative service was presented to the Sejm (the Polish Parliament) by a small parliamentary committee. This draft was rejected. On 6 November 1996, a draft law on military service was approved by the Polish Government. This law limited the duration of military service to 12 months (from 18 months). It also stated that the duration of alternative service would be reduced, probably to 18 months.

Over the years 1992-1994, Amnesty International adopted as prisoners of conscience eight young men who had applied for alternative service on grounds of conscience and religious convictions. Their applications had been turned down by the recruitment authorities who argued that in most cases, since they were all Roman Catholics, their religion did not prohibit them to carry arms. Amnesty International expressed concern in these cases that the local recruitment authorities appeared too restrictive in their decisions as to who constituted a conscientious objector.

PORTUGAL

Law 7/92 governing conscientious objection to military service in Portugal, in force since May 1992, states that applications for conscientious objector status may be made at any time. However, unless a conscript makes his application at least 30 days before the date fixed for his incorporation into the armed forces, then the application will not be considered until *after* he has completed his active military service and passed into the reserve. Amnesty International is thus concerned that there is no effective provision for conscientious objection developed at any time up to or during military service.

Ordinary military service lasts four months while civilian service lasts seven months. Amnesty International believes that civilian service should be of comparable length to military service but this does not mean that when civilian service is a few months longer than military service it is necessarily considered punitive by the organization. It is important to establish, in particular, whether there is a clear intent to punish conscientious objection. The law in Portugal justifies the difference in length between military and civilian service by stating explicitly that the extra three months of civilian service consists of a training period, both general and specific, according to the needs and abilities of the individual conscientious objector and according to the nature of the civilian service which he is to carry out. However, there have been unconfirmed reports that little training is in fact being offered to conscientious objectors and, although recognizing that both military and civilian service in Portugal are of short duration, Amnesty International is concerned that the current civilian service offered to conscientious objectors, over one

and a half times the length of ordinary military service, could be considered punitive.

ROMANIA

Certain provisions of Law number 46/1996 Concerning the Preparation of the Population for Defence, promulgated in June 1996, are at variance with internationally recognized principles on conscientious objection to military service. Article 4 of this law provides for an alternative service only for those individuals who on religious grounds refuse to perform armed military service. Article 13 envisages the length of the alternative service to be 24 months, twice the length of ordinary military service. Furthermore, this law has no specific provisions regarding procedures for exercising this right, or for the organization and implementation of alternative service. Apparently this matter is to be regulated by a governmental decision which has not been published to date. According to Article 4, paragraph 2: "The modalities of executing alternative service will be determined by a governmental decision".

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 length of alternative civilian service should not be such as to constitute a punishment for a person's conscientiously held convictions. Amnesty International considers the length of alternative service prescribed by Law number 46/1996 to be punitive. The organization considers conscientious objectors who are denied the right to carry out an appropriate alternative service and who are imprisoned as a consequence, to be prisoners of conscience. In December 1996 Amnesty International urged the Romanian Government to revise Law number 46/1996 and to ensure that it is not at variance with internationally recognized standards.

RUSSIAN FEDERATION

Military service is compulsory in Russia for men aged between 18 and 27. There is no law on a civilian alternative to military service, which places any conscientious objector under the threat of imprisonment.

The right to conscientious objection is also recognized in the Russian Constitution, where it has been enshrined since April 1992. Article 59 states "A citizen of the Russian Federation whose convictions or faith preclude the performance of military service...has the right to substitute it for an alternative civilian service".

However, almost five years later parliament has still not introduced the necessary enabling legislation, or amended the Criminal Code to reflect this constitutional provision, and young men continue to risk imprisonment for refusing military service on conscientious grounds. An attempt on 8 December 1995 to pass a law on alternative service resulted in the majority of deputies in the State Duma voting against it. However, a law could be implemented by Presidential Decree. The accession of Russia to the Council of Europe in February 1996 means that Russia should be working towards that body's Recommendation No. R (87) 8 Regarding Conscientious Objection to Compulsory Military Service. This recommends that the governments of member states, insofar as they have not already done so, bring their national law and practice into line with this standard (see Section II, 1 of this document).

The provisions of Article 15(4) of the Russian Constitution allow for direct application of the norms of international law if the national law conflicts with them, (or if laws have not been established). This constitutional principle of international

instruments taking precedence over the rules of internal laws, is in practice, rarely exercised by the courts of general jurisdiction and depends on the interpretation given to it by individual judges. Similarly, the principle of direct applicability of the constitutional provisions (Article 15(1) of the Constitution) in the absence of national legislation to implement them is left to wide interpretation by the local courts. In some instances individual judges have decided to use the provisions of Article 59 of the Constitution directly and dismiss the criminal charges brought against a conscientious objector on the grounds that they violate the Constitution. In most of the other cases, conscientious objectors continue to face convictions and imprisonment.

In an unprecedented move, a decision was made by the Supreme Court of the Russian Federation in the first quarter of 1996, which states under point 11, that "Refusal to carry out military service for religious convictions does not constitute a crime". Several cases were reported where similar decisions were taken by courts of general jurisdiction.

CASE FILE 1

Uvanchaa Dozur-ool Mongushevich, a 22-year-old novice monk at the Religious Buddhist community "Kuntsechoinei Datsan" at the Gelugpa Buddhist Church in St Petersburg, faced up to seven years' imprisonment as a prisoner of conscience when the Russian authorities failed to recognize his right to conscientiously object to military service.

Uvanchaa Dozur-ool Mongushevich, from the Republic of Tuva, was drafted into the army in 1995, despite the fact that he was preparing to be initiated as a monk. He was sent to serve in the Khabarovsk region. There he was allegedly ill-treated by his fellow soldiers, and as a result of severe beatings was reportedly hospitalized with both legs broken. After treatment he was taken home by his parents. Soon afterwards he returned to his monastery, where he was arrested on 26 May 1996 by the military authorities. He was charged on 13 June 1996 under Article 246 of the Russian Criminal Code with "voluntary desertion of his army unit" and was held in a pre-trial detention centre (SIZO) in St Petersburg.

Uvanchaa Dozur-ool Mongushevich reportedly stated his conscientious objection to military service, based on his religious beliefs, at the time he was drafted into the army, when he left the army unit after his alleged ill-treatment, at the time of his arrest and during the investigation concerning his current criminal charges. His spiritual teacher, Lama Djampa Donyod Badmaev, received a letter dated 28 June 1996 from the Office of the Chief Military Procurator of the Russian Federation which acknowledged the fact that Uvanchaa Dozur-ool Mongushevich has stated his objection based on his religious beliefs.

Amnesty International has learned that on 28 June 1996 the St Petersburg Military Procurator decided to close the case against Uvanchaa Dozur-ool Mongushevich due to a "change in circumstance". The Procurator ruled that he should be dismissed from military service. This decision was upheld on 18 July by the Military Procurator of Moscow.

However, according to information received from the Deputy Military Procurator of Khabarovsk, Uvanchaa Dozur-ool Mongushevich has been returned to his original military unit in Khabarovsk and is being forced to remain in the army. It was said in August 1996 that the criminal charges against him are still being examined by the military procurator of the Krasnoyarsk region. However, in a letter of 12 September 1996 sent to Amnesty International by the Office of the Military Procurator of the Russian Federation, V. G. Kasyanchik, a Military Procurator, stated that the "criminal charges against Uvanchaa Dozur-ool Mongushevich have been dropped in view of his religious beliefs." The letter claimed that "a decision has been taken to release him from detention and the order for his release has been sent to the relevant authorities." However, there was no mention in the letters that Uvanchaa Dozur-ool Mongushevich's conscientious objection to military service would be acknowledged by the authorities and that he would be dismissed from serving in the army.

CASE FILE 2

Sergey Mikhailovich Rozhkov informed the Recruitment Commission of the Murmansk Region on 9 October 1996 that he was a Jehovah's Witness and that he wished to perform an alternative military service. The Recruitment Commission reportedly refused to accept this statement. On 25 December 1996 Sergey was taken out of a maths class at his school in the village of Revda in the Murmansk Region by two police officers, who took him to the Recruitment Commission and then to the collection point for those about to do their military service. Sergey was detained overnight in a cell before being sent to the military camp at Novaya Zemlya, an island in the Kara Sea off Russia's north coast. Sergey Rozhkov repeatedly stated his religious grounds for objecting to military service and requested to be allowed to perform alternative service. He asked to talk to the Military Procurator but this was not permitted.

A local NGO, the Committee of Soldiers' Mothers' in Murmansk, contacted the head of the Regional Military Committee who said that he was authorized to ensure Sergey Rozhkov served his military service. They also contacted the Regional Procurator who said that he could not intervene on behalf of Sergey Rozhkov with the Military Committee. By the time a representative of the Committee of Soldiers' Mothers tried to file a request with the Head of the Military Committee, she was told that Sergey Rozhkov had already been sent to Novaya Zemlya military camp.

On 12 February 1997, Amnesty International learnt from the Murmansk Committee of Soldiers' Mothers that Sergey Rozhkov had been transferred back to a

military unit in Severomorsk, in Murmansk Region. In a letter written on 9 February he reported "here I am washing floors, shovelling snow. Although I was not present at the proceedings of taking the oath [of allegiance to the army], in my military card it is written that I took the oath on 2 February. Honestly, I don't know what I'm doing back here again - they say I'll be serving here."

In July 1995 the Military Committee had brought criminal proceedings against a group of conscientious objectors, Oleg Mikhailov, and four others Nikiforov, Loban, Agaev, and Gorkovets. However, the Military Court of Severomorsk Garnizon ruled that they had the right to perform an alternative service instead, and found the defendants not guilty. The above mentioned decision of the Supreme Court of the Russian Federation of early 1996 provides that, "A citizen of the Russian Federation whose convictions or faith preclude the performance of military service... has the right to substitute for it an alternative service".

Amnesty International was concerned that the action of forcibly taking Sergey Rozhkov to the military camp may have been a way for the Military Committee to avoid arguing the case through the courts, where they feared they might lose.

The armed conflict in Chechnya and the lack of alternative military service for people who due to their conscientiously held beliefs did not want to participate in armed conflict, forced many conscripts to desert their units and go into hiding. For desertion during combat the punishment by law in some cases is the death penalty. During the armed conflict there were credible reports coming from the war zone in Chechnya about alleged mass executions of groups of deserters by the Russian military authorities. According to reports, in some incidents, a group of deserting soldiers were shot by fellow soldiers from a low-flying helicopter. Such incidents were reported by members of the Organization of North Caucasus Women and the Soldiers' Mothers Organization of St Petersburg in 1996. None of these incidents are known to have been investigated by the authorities.

On 27 December 1996 a draft amnesty law relating to the armed conflict in the Chechen Republic and prepared by a group of Duma Deputies was introduced for debate in the Russian Parliament. According to the draft law, amnesty would apply mainly to Russian servicemen from the federal forces who took part in the Chechen conflict. Excluded from the amnesty are those convicted under a number of articles of the Russian Criminal Code, including Article 77 (banditry) and Article 103 (premeditated murder or bodily harm). However, any Chechen who allegedly took part in an armed opposition group could face charges under Article 77 of the Russian Criminal Code and any member of such groups who took part in the fighting during the conflict may be charged under Article 103 or others, including illegal possession of weapons.

If passed by the Duma, this amnesty law would make impossible the process of exchange of prisoners of war and those

detained on both sides. According to reports, there are several hundred Russian soldiers and officers still held in detention by the Chechen fighters who are willing to release them in exchange for members of the Chechen armed groups currently detained by the Russian authorities on criminal charges.

Also excluded from the amnesty, according to the draft law, are persons charged under articles of the Russian Criminal Code relating to treason, espionage and terrorism, which casts serious doubt on the procedure for resolving cases of servicemen who evaded service in Chechnya, including cases of desertion from the Russian armed forces during combat operations and cases of conscientious objection to military service to avoid participation in armed conflict.

The Russian human rights group *Memorial*, supported by the Committee of Soldiers' Mothers and individual families of Russian soldiers detained in Chechnya, have called for the revision of the draft amnesty law which if adopted in its present form could endanger the life and safety of those still detained and would suspend the process of exchange of prisoners of war. Members of *Memorial* have prepared and offered for discussion an alternative draft law on amnesty.

SLOVAK REPUBLIC

Amnesty International has repeatedly criticized certain provisions of the Slovak Law on Civilian Service which it considers to be at variance with internationally recognized principles concerning conscientious objection to military service. Article 2, paragraph 2, of this law requires that applications for alternative service be submitted within 30 days of the coming into force of the conscription board decision on fitness for military service. This effectively disqualifies people who develop a conscientious objection to military service between conscription and call-up, or after call-up. Amnesty International believes that a person's conscientiously-held beliefs may change over time and that therefore people should have the right to claim conscientious objector status at any time. The organization is also concerned that the length of civilian service is punitive. According to Article 1, paragraph 8, the length of civilian service is twice that of military service. Amnesty International has urged the Slovak authorities to revise these provisions.

CASE FILE

Amnesty International has adopted as prisoners of conscience three men who had been imprisoned for refusing to carry out their military service. Erik Kratmüller was imprisoned on 12 June 1996 to serve an 18-month sentence. Martin Badin was imprisoned on 27 August 1996, sentenced to one year's imprisonment. Both men had acquired religious convictions, which did not allow them to carry arms, after the period in which, under Slovak legislation, they could apply for alternative civilian service. Another conscientious objector, Martin Bednár, was convicted of the same

offence and sentenced to one year's imprisonment. An appeal against his sentence was rejected by Prešov Regional Military Court on 13 February 1997, and Martin Bednár was imprisoned in Prešov Prison on 24 February 1997. An appeal against his sentence which his lawyer filed with the was rejected on 13 February 1997.

A fourth objector, Miloš Lipinský, has also been convicted of the same offence, but at the time of writing was free pending a retrial and an appeal. Amnesty International has urged the Slovak authorities to release Erik Kratmüller, Martin Badin and Martin Bednár immediately and unconditionally, and has appealed for the dismissal of criminal charges against Miloš Lipinský.

Another conscientious objector, 20-year-old Emanuel Munko, has been sentenced to 14 months' imprisonment for having refused, on grounds of religious conviction, to carry out military service. On 15 January 1997, the Bratislava district Military Court convicted Emanuel Munko for failure to commence his military service. The authorities failed to inform Emanuel Munko - as they were legally obliged to - that he should apply for civilian service within 30 days after being declared fit for military service or within five days after deferment of military service had run out. At the time of writing he was free pending an appeal. Amnesty International urges the Slovak authorities to stop criminal proceedings against Emanuel Munko and to grant him conscientious objector status.

SPAIN

Amnesty International has repeatedly called for the introduction in Spain of the right to claim conscientious objector status during military service. Under legislation in force since December 1984, the right to conscientious objection to compulsory military service may only be exercised "until the moment of incorporation" into the armed forces and after completing active military service, when in the reserve. Any application for conscientious objector status submitted after joining the armed forces is, therefore, normally automatically rejected, whatever the grounds of objection.

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. Amnesty International considers that conscientious objectors who are denied this right and imprisoned as a consequence are prisoners of conscience.

Over the last 10 years more than a dozen cases of conscripts imprisoned as a result of their refusal to complete their military service, on grounds of conscience developed after joining the armed forces, have been brought to Amnesty International's attention. Charges of refusal to perform military service and/or desertion from the armed forces have been brought against them.

In appealing for the release of conscientious objectors such as José Antonio Escalada and Manuel Blázquez Solís (see case file) and for the introduction of legislation allowing the right to claim conscientious objector status during military service, Amnesty International has pointed

CASE FILE

Manuel Blázquez Solís and José Antonio Escalada were two conscripts imprisoned as a result of their refusal to complete their military service. They were first adopted as prisoners of conscience by Amnesty International during a period of three months' pre-trial detention in 1991. In December 1995 they were rearrested by order of a military tribunal which in June 1994 had sentenced them to 17 months' imprisonment for desertion from the armed forces. They were released into conditional liberty in April and May 1996 respectively.

They had been charged with desertion after leaving the navy in which they were serving as 19-year-old conscripts at the outbreak of the Gulf conflict in January 1991. They left their posts in the port of Cartagena after learning that their ships had been ordered to relieve the Spanish vessels already in the Gulf zone. They explained that participation in the Gulf conflict was incompatible with their conscientiously held beliefs and applied unsuccessfully for conscientious objector status on moral and philosophical grounds. In public statements they declared that "the only thing we have done by deserting is to exercise the right to freedom of conscience" and explained that they had left their vessels and military service because they did not want to take part in "widespread killing".

out that international standards relating to conscientious objection to military service also support this right (See Section II, 5 of this document).

In March 1996 the UN Human Rights Committee considered the Spanish Government's Fourth Periodic Report on its implementation of the International Covenant on Civil and Political Rights (ICCPR). Amnesty International drew the Committee's attention to its concern about the imprisonment of conscientious objectors as prisoners of conscience as a result of the lack of provision for conscripts to claim conscientious objector status during military service.⁴

In April 1996, following its consideration of Spain's report, the 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, as pointed out in its General Comment No 22 (48)⁵, 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".

In November 1996 the Congress of Deputies (one of the two chambers of parliament) voted to discuss a proposal to

reform the existing law on conscientious objection. The text of the proposal included a provision allowing for conscientious objection developed after entering the armed forces. However, the major political parties indicated their intention of making considerable amendments to the text during its passage through parliament in 1997. At the same time the government has also indicated to parliament its intention of ending conscription into the armed forces and replacing it, by 2003, with armed forces staffed by professionals and volunteers.

⁴See - Spain: Comments by Amnesty International on the government's Fourth Periodic Report to the Human Rights Committee - AI Index: EUR 41/07/96)

⁵In its General Comment 22 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.

SWITZERLAND

In October 1996 legislation providing, for the first time, a genuine civilian alternative to compulsory military service came into force in Switzerland. The new civilian service, one and a half times the length of ordinary military service, is available to conscripts able to demonstrate to the satisfaction of a civilian commission their inability to reconcile military service with their consciences. Amnesty International had expressed concern over many years about the lack of a genuine civilian service for conscientious objectors and the sentences of imprisonment or compulsory work imposed on large numbers of conscientious objectors by military tribunals. The organization, therefore, welcomed the new legislation, and is monitoring its implementation.

As in previous decades, at the beginning of the 1990s scores of conscientious objectors were being imprisoned each year as a result of their refusal to perform military service and were considered prisoners of conscience by Amnesty International. According to official statistics, during 1990 a total of 581 people were sentenced to prison terms for refusing to perform military service. Of these, 317 based their refusal on religious, ethical or political grounds. However, it was believed that the number of people who had refused on conscientious grounds was far higher than reflected in the restricted categories of the official statistics.

Article 18.1 of the Federal Constitution stated that all male Swiss citizens were obliged to perform military service but made no provision for an alternative civilian service. This could only be introduced by amending the constitution via a national referendum. However, in

national referenda held in 1977 and 1984 a large majority had voted against the introduction of such a service. Under the Military Penal Code refusal of military service was punishable by up to three years' imprisonment although, in practice, sentences rarely exceeded 10 months. If a military tribunal recognized a conscript's "severe conflict of conscience", on specifically religious or ethical grounds, the law allowed a more lenient sentence of a maximum of six months' imprisonment, with the conscript able to carry out approved work outside the prison during the day.

In June 1991 a national referendum approved a government-proposed amendment to the Military Penal Code which altered the penalties available for certain categories of conscientious objection to military service. Refusal to perform the service remained a criminal offence. However, where a military tribunal concluded that a conscript was unable to reconcile military service with his conscience because of "fundamental ethical values", he was sentenced to a period of work in the public interest, ranging from one and a half times the total length of military service refused up to a total of two years, and did not acquire a criminal record. Conscientious objectors who failed to qualify because, for example, the tribunal considered that they had opposed military service on political grounds, or had put forward ethical beliefs which the court believed to be compatible with military service, continued to be sentenced to terms of imprisonment.

Both before and after the referendum Amnesty International repeatedly brought to the attention of the government, parliament and the public its concern that the

amendment to the Military Penal Code continued to punish people refusing military service on grounds of conscience and did not provide a genuine alternative service outside the military system. The federal authorities informed Amnesty International that they were "aware that the question of conscientious objection in Switzerland has to be solved" and acknowledged that the amendment would not introduce "a real civilian service" but pointed out that previous national referenda had decisively rejected the required amendment to the federal constitution.

In autumn 1991 parliament approved a proposal to amend Article 18.1 of the Federal Constitution by the addition of a clause stating that "The law provides for an alternative civilian service". In a national referendum in May 1992 the proposed amendment was approved by 82.5% of voters. Before the referendum Amnesty International campaigned in favour of the amendment, distributing literature to the Swiss public setting out its position on conscientious objection and the international standards on which this is based. Amnesty International welcomed this constitutional amendment, establishing the principle of a civilian alternative to compulsory military service, as a first essential step towards the introduction of a genuine alternative civilian service in practice. Civilian service was not yet available to conscientious objectors as the texts of enabling legislation establishing, amongst other things, its nature and length and the grounds on which conscientious objector status might be granted, had yet to be drawn up. Following the referendum the authorities carried out a widespread national consultation on such issues, in which Amnesty International participated, at their invitation.

Meanwhile conscientious objectors continued to be tried under the provisions of the Military Penal Code and during 1992 and 1993 scores were sentenced to imprisonment or compulsory work. However, few conscientious objectors reportedly served prison sentences in 1994 and 1995 as many cantons had moratoriums on such sentences pending the introduction of the new civilian service. By 1996 reports of prison sentences being imposed on, or served by, conscientious objectors were rare. Criminal proceedings already under way against such conscripts could also be suspended to give these individuals an opportunity to apply for civilian service and, pending its introduction in October, deferments were available to those who had been ordered to report for military service during the year.

TURKEY

Conscientious objection to military service is a concept still alien to Turkish society, where every male citizen from the age of 20 has to perform military service. Even though army officers have staged three military coups in 20 years, the army is still highly respected as the founding institution of modern Turkey and the guardian of Atatürk's legacy of national integrity and secularism.

Article 72 of the 1982 constitution states: "National service is the right and duty of every Turk. The manner in which this service shall be performed, or considered as performed, either in the Armed Forces or in the public service shall be regulated by law."

Military service is currently 18 months for soldiers in the ranks, and 16 months for those performing their service as officers.

Those refusing to take up arms or wear a uniform are liable to prosecution for "persistently disobeying orders" under Article 87/1 of the Turkish Military Penal Code, punishable by two years' imprisonment. Persistent disobedience under mobilization is punished by five years' imprisonment, and in the face of the enemy, 10 years. The offence is tried in a military court.

Any person making a statement disparaging military service can be prosecuted for "alienating the public from military service" under Article 155 of the Turkish Penal Code, carrying a maximum penalty of two years' imprisonment. This is a common criminal offence but may be tried in a military court.

The conscientious objector movement is relatively new in Turkey, and it is perhaps not surprising that one of the first people to challenge seriously the

institution of military service, Osman Murat Ülke (see case file overleaf), was born abroad and spent his childhood in a country where the right to conscientious objection is now well established. His example, which no doubt will soon be followed by others, may be the beginning of a change in public understanding of the issue. Already six young Turkish men have publicly declared their conscientious objection in front of the Turkish Consulate in Frankfurt/Germany in January 1997. Although the ISKD (Izmir War Resisters' Association), of which Osman Murat Ülke was chairperson, was closed down by the authorities after his arrest in October 1996, its members are continuing their campaign for recognition with support from similar organizations in Europe.

CASE FILE

Osman Murat Ülke was detained in Izmir on 7 October 1996, more than one year after he publicly burned his call-up papers and declared in a press conference on 1 September 1995 that, as a pacifist, he would not perform any military service.

On 8 October Osman Murat Ülke was formally arrested on written orders from the Military Court of General Staff. On 11 October he was transferred from Izmir to Ankara for interrogation by the military prosecutor and initially held at the civilian Ankara Central Closed Prison, together with political prisoners, and then moved to Mamak Military Prison in Ankara.

On 19 November 1996 Osman Murat Ülke was put on trial at the Military Court of the General Staff in Ankara. He was charged under Article 155 and then released, only to be taken by gendarmes from the court to the military prison and from there to the recruitment office to begin his military service. He was sent to his military unit, the 9th Gendarmerie Training Unit for conscripts in the northeastern town of Bilecik, from where he was transferred on 26 November to the military prison in Eskişehir to stand trial at the Disciplinary Military Court in Eskişehir for refusing to obey orders.

On 27 December 1996 the trial at Eskişehir Military Court against Osman Murat Ülke for his refusal to wear military uniform continued and he was released at the end of the hearing, but instructed to report to the military recruitment office, which he refused to do.

On 28 January 1997 the Military Court of the General Staff in Ankara sentenced Osman Murat Ülke to six months' imprisonment for "alienating the public from

the institution of military service" by publicly declaring his conscientious objection to military service and burning his call-up papers in September 1995. In his defence speech Osman Murat Ülke stated that *"having the right to life also means having the responsibility not to cause death. Killing a person is the most obvious way of violating the right to life. Therefore, conscientious objection is not only a right for me, but also it is my responsibility"*.

At the end of the hearing before the sentence was passed, Osman Murat Ülke was detained again by the gendarmerie and taken to Mamak Military Prison. His trial at the Military Court in Eskişehir for "continuing disobedience" continues.

Amnesty International considers Osman Murat Ülke to be a prisoner of conscience, and is calling for his immediate and unconditional release. The organization is also calling on the Turkish authorities to introduce legislation recognizing the right to conscientious objection and providing a civilian alternative service to conscientious objectors to military service - in line with resolutions and recommendations made by the United Nations and Council of Europe.

UKRAINE

In Ukraine military service is compulsory. The duration of military service is 18 months. For people with a university degree it is only 12 months. For those persons serving under a contract the duration of military service is three years. According to reports, in reality only 10% of those drafted actually enter the service. Fifty percent of those remaining receive permission to postpone their service for medical reasons (medical certificates are often allegedly acquired through bribes). Others either do not come to the draft offices, or enter graduate schools, or acquire the right to postpone service for family reasons.

Article 18 of the Law on compulsory military service in Ukraine states that in time of peace those draftees can be exempted from military service who: 1/ are recognized to be unfit for military service in time of peace for medical reasons; 2/ are not drafted to military or civilian service before the age of 27; 3/ are ordained and have a full time position in one of the registered religious confessions; 4/ are living abroad on a constant basis and do not have a permanent home in Ukraine; 5/ have sisters or brothers who died or became handicapped while serving in the army. Citizens who have graduated from colleges of the Ministry of Internal Affairs of Ukraine and continue to work within this system are exempt from military service as well, as provided in the law. Postponement of military service is granted for medical reasons, for reasons of professional training, and for family reasons.

The new Ukrainian Constitution adopted in 1996 provides in Article 35(3) for civilian alternative to military service on the basis of religious beliefs: "If performance of military service is contrary to the religious beliefs of a citizen, the performance of this

duty shall be substituted by alternative (non-military) duty". A special law provides the right to alternative service.

The current law on alternative service in Ukraine extends only to those who object to military service on religious grounds. It was introduced in February 1992 and the length of the civilian service was set at twice that for military service (36 months). According to Article 2 of the law, citizens of Ukraine who have genuine religious beliefs, who are members of religious organizations which conform to the legislation, and whose confessional beliefs do not allow them to use arms and serve in the military forces, are granted the right to alternative service in fulfilment of compulsory military service. Neither the Constitution nor the legislation mention other beliefs, ethical or political convictions as a reason for objection to military service. In addition, according to reports, followers of religious confessions which have not been registered officially by the authorities are denied the right to alternative civilian service on the grounds of their religious beliefs.

This provision in the law appears to be in contradiction with the international resolutions and recommendations. Amnesty International has urged the Ukrainian authorities to ensure that the right to conscientious objection should be granted to all those who, for reasons of conscience or profound conviction, are unable to perform military service. This includes people whose convictions are not only based on religious motives, but also on ethical, moral, humanitarian, political or similar grounds. The organization continues to urge the relevant authorities to bring legislation on alternative service into line with

international instruments to which Ukraine is bound.

Amnesty International approached the authorities about the cases of two young men imprisoned at the end of 1994 for refusing to perform both compulsory military service and its civilian alternative on grounds of their religious beliefs (see case file). Amnesty International takes no position on conscription as such, and does not oppose the right of a state to conscript citizens for compulsory military service or to require citizens to undertake an alternative civilian service. It would not normally take up the case of someone who refused to perform both compulsory military service and its civilian alternative. However, Amnesty International believes that such an alternative service should be of non-punitive length and of a purely civilian nature, in line with international human rights instruments. The organization's concern in this case was that the two young men reportedly felt unable to perform an alternative service that they believed might involve them in work connected with supplying materials to military units.

Similar cases of other Jehovah's Witnesses who were prosecuted for their objection to both military and alternative service were reported from Lviv, Kharkiv and other regions of Ukraine. The Kharkiv Human Rights Group, a Ukrainian NGO, reported that during the period 1992-1994 various courts in Ukraine convicted 41 young men, all of them Jehovah's Witnesses, on similar charges under Article 72 of the Criminal Code. According to the same group in 1995, 24 such cases were reported in the Lviv Region alone.

CASE FILE

Robert Golovnyov and Georgy Semyonov, both aged 21 and Jehovah's Witnesses, were sentenced by the Radyansky district court in Kiev under Article 72 of the Criminal Code. Robert Golovnyov was tried on 27 September 1994 and received one year's imprisonment. Georgy Semyonov stood trial on 4 October 1994 and was sentenced to two years' imprisonment. Their appeals were turned down by Kiev City Court and the Ukrainian Supreme Court.

Robert Golovnyov was released from prison on 18 September 1995 and it was reported that he had already received a new draft order for the army. According to his mother, Robert Golovnyov will continue to refuse serving in the army due to his beliefs. Georgy Semyonov was granted an early release by the administration of the region from an ordinary-regime corrective labour colony near Poltava at the end of October. He was reported to be very ill upon his release.

Amnesty International has written to the authorities seeking further information on the nature of the alternative service offered to these two young men, and any others in a similar situation. The organization has urged the authorities to initiate a review of this and any similar cases without delay to ensure that no one was imprisoned for the legitimate exercise of their right to freedom of conscience, if it emerged that the work had a connection with the military, and thus could not be considered completely civilian in nature.

FEDERAL REPUBLIC OF YUGOSLAVIA (Serbia and Montenegro)

Able-bodied men are liable for military duties from the age of 17 to 60, including a year's military service (to be performed between the ages of 18 and 27) and subsequent reserve duties. The Constitution of the FRY adopted in 1992, guarantees that those who do not wish to do armed military service on religious or other conscientious grounds may do unarmed service in the army or civilian service (Article 137). In May 1994 a new Law on the Army of Yugoslavia came into force which limits this constitutional right considerably. It states that recruits have the right to ask for conscientious objector status, but only if within 15 days of receiving a recruitment summons they lodge a written request. The Constitutional Court ruled in 1994 that men on reserve do not have this right, nor do men who are serving in the army (as conscripts or professional military) but decide on conscientious grounds that they no longer wish to serve.

The decision about granting conscientious objector status is made by the local recruiting commission, and there is the possibility of appealing against a decision of this commission to a higher military authority. However, it is not possible to appeal to a court (judicial authority).

Those who have been granted conscientious objector status and do either unarmed military or civilian service are required to serve for 24 months - twice the length of armed service, which in Amnesty International's view is punitive.

Conscientious objectors who do not qualify for conscientious objector status under existing provisions are liable to prosecution under the Criminal Code of Yugoslavia, generally on charges of "refusal to bear and use arms" (Article 202), "draft

CASE FILE

Traditionally, conscientious objection to military service has been rare, except in the case of Jehovah's Witnesses or members of other similarly pacifist religious groups. In 1996 Amnesty International learned of seven cases in which Jehovah's Witness conscientious objectors were sentenced to imprisonment, or were serving prison sentences, for refusing to perform military service. It appeared that in most cases they were convicted of "refusing to bear and use arms", and that they received prison sentences ranging from four months to two years' imprisonment.

One of them was Vladimir Lazar, a Jehovah's Witness from Stara Pazova, who was reportedly sentenced to two years' imprisonment by the Military Court of Belgrade in March 1996 for refusing to bear arms when he was called up to do reserve duties in February 1996. On appeal, in August 1996, his sentence was reduced to one year's imprisonment. He had earlier performed military service (from 1988 to 1989). Under the ruling of the Constitutional Court of 1994 Vladimir Lazar was unable to claim conscientious objector status. It seems likely that other Jehovah's Witnesses serving prison sentences for refusing to bear arms were similarly ineligible (under existing law) for recognition as conscientious objectors, because they made their refusal after being called up to do reserve duties, or (following the introduction of unarmed and civilian service) because they had not applied for conscientious objector status within two weeks of being first called up for recruitment.

evasion" (Article 214), or "desertion" (Article 217). These offences variously provide for maximum sentences (in time of peace) of up to 10 years' imprisonment (or 15 years' in the case of desertion, if the deserter has fled abroad). Trials take place before a Military Court, from which appeal can be made to the Supreme Military Court.

Little, if any, publicity has been given to the introduction of unarmed or civilian service for conscientious objectors and it is likely that most recruits are unaware of the existence of these provisions. Amnesty International does not know of any statistics as to how many men have applied, on conscientious grounds, to do unarmed or civilian service and what the fate of their applications has been.

— Prior to the introduction of unarmed and civilian service for conscientious objectors, the only solution for men who did not, for conscientious reasons, wish to bear arms and did not wish to serve prison sentences, was to go abroad. In the past, an unknown number of men took this path, but if they chose (or were obliged) to return to Yugoslavia, they risked long prison sentences for draft evasion or desertion.

With the outbreak of conflict in former Yugoslavia in 1991, thousands of men from Serbia and Montenegro (many of them ethnic Albanians from Kosovo province) fled abroad in order to avoid being drafted. Their motives were undoubtedly varied, but it is likely that many had political objections - they did not wish to take part in an armed conflict whose aims (explicit or implicit) they opposed. Those who were arrested (within the country) and prosecuted for evading draft or desertion during this period reportedly almost never in court cited conscientious objections to bearing arms, but spoke instead of health or emotional reasons, or the incompetence of their

military superiors. However, in at least some cases, this may have been because they believed that courts would not be sympathetic to such objections.

In June 1996 the Federal Parliament passed a law granting amnesty to those who had evaded draft or deserted the armed forces prior to 14 December 1995. It did not apply to professional soldiers and officers. Press reports indicated that some 12,500 men benefited from the law.

V. FURTHER CONCERNS REGARDING CONSCIENTIOUS OBJECTION IN COUNCIL OF EUROPE MEMBER STATES AND OSCE PARTICIPATING STATES

Owing to Amnesty International's current research priorities and resource limitations, it has not been possible to obtain comprehensive and detailed information regarding recognition of the right to conscientious objection in a number of countries included in the brief of the organization's Europe Regional Program (which includes all Council of Europe member states and all OSCE participating states - except for the United States and Canada). Nevertheless, Amnesty International is aware that there are a range of inadequacies concerning recognition of the right to conscientious objection and the provision of alternative civilian service in a number of these countries.

Although compulsory military service exists in all three of the Baltic states - Estonia, Latvia and Lithuania - the proportion of young men drafted is reportedly small and the numbers exempted, or successful in exploiting loopholes in the legislation, is also high. The situation regarding alternative service is not fully transparent. Amnesty International understands that in Estonia there is still no separate legislation on alternative service in force. In Lithuania, legislation on compulsory military service passed in October 1996 reportedly contained provisions for alternative service, but it is believed that these have not yet been implemented. In Latvia a new law on compulsory military service, passed by parliament in November 1996 but subsequently rejected by President Guntis Ulmanis, reportedly contained no provisions for alternative service. (Amnesty International asked the Latvian authorities for information about the law in May and December 1996, but has received no replies to its letters.) Amnesty International has no reports of people imprisoned in any of the Baltic states for refusing to perform military service on grounds of conscience.

Amnesty International also understands that military service or alternative service is compulsory in Georgia for young men between the ages of 18 and 27. Although a law on a civilian alternative service was adopted on 14 June 1991, and Article 12 of the Law on Universal Military Service of 29 December 1992 sets the term of alternative service at 36 months, Amnesty International understands also that at present there are no concrete provisions in force for anyone actually seeking to request and subsequently perform an alternative service. This means that any young men unable to perform compulsory military service on grounds of conscience face imprisonment for lack of such an alternative.

In Armenia and Azerbaijan, Amnesty International is not aware of any existing or planned provision for recognizing conscientious objection to military service and offering a civilian alternative service to individual objectors.

Neither is Amnesty International aware of any moves to introduce a suitable alternative to compulsory military service of any kind in Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan, and information about individual objectors in these countries rarely comes to the attention of the organization. However, in 1995, Amnesty International took up the cases of several prisoners of conscience in Kazakhstan - Jehovah's Witnesses who were imprisoned after refusing to do military service.

Tajikistan retains compulsory military service whereby all men of conscription age are required to serve in the armed forces for two years. Recently, Tajikistan's press has highlighted the issues of widespread evasion of call-up to military service by young men who apparently fear being sent to the front to fight the United Tajik Opposition forces (UTO is an armed opposition group which has waged an insurgency against the government since the end of the civil war in 1992), alleged manipulation of the exemption procedures in favour of the sons of wealthy families or public officials, and protest meetings in certain communities against conscription. While from the information available to Amnesty International there is no evidence to suggest that evasion of call-up has been motivated in some cases by a conscientious objection to military service, it is worth noting that Tajikistan has no provision in law for a civilian alternative service which can be performed by people who declare a conscientious objection.

Human rights monitors have reported that, to address the shortfalls in military recruitment caused by the widespread evasion of call-up, authorities have resorted since 1995 to using "press gangs" - military recruiters who round up young men on streets, on public transport and in other public places, and forcibly enlist them in the armed forces. The Tajik Centre for Information and Analysis on Human Rights has reported that "in many cases [the forced conscripts] were sent to areas of conflict without military training, and their relatives were not informed about their recruitment".

VI. AMNESTY INTERNATIONAL'S RECOMMENDATIONS

- ☐ Amnesty International calls for the immediate and unconditional release of all persons detained or imprisoned solely because they have been refused their right to register their conscientious objection to military service or to perform a genuinely alternative service of non-punitive length and of a purely civilian character.
- ☐ Amnesty International calls on all members states of the European Union and the Council of Europe to re-examine their legislation on conscientious objection to military service in the light of current international resolutions and recommendations.
- ☐ Amnesty International urges member states of the European Union, through an appropriate resolution adopted by the European Parliament, to make clear that recognition of the right to conscientious objection to military service and the introduction of an alternative civilian service of a non-punitive length will be included among the criteria for the admission of new members to the European Union in future.
- ☐ Amnesty International calls on the Parliamentary Assembly of the Council of Europe to seek the opinion of the Committee on Legal Affairs on the Draft Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms concerning conscientious objection to military service, in line with the unanimous resolution of the grouping of NGOs with consultative status at the Council of Europe (adopted on 25 September 1996).
- ☐ Amnesty International urges the member states of the Council of Europe to ensure effective implementation of the recommendations included in the review of member states' compliance with Recommendation No. R (87) 8. This review is currently being carried out by the Steering Committee for Human Rights (CDDH) and is scheduled to be completed by the end of 1997.

Sales No. E.85.XIV.1), taking into account information from Governments and non-governmental organizations and any further information available to him;

11. Decides to consider this matter further at its fifty-third session under the agenda item entitled "The role of youth in the promotion and protection of human rights, including the question of conscientious objection to military service".



Economic and Social Council

Distr.
LIMITED

E/CN.4/1995/L.12
2 March 1995

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-first session
Agenda item 26

Co-sponsors: United States, Costa Rica, UK, Sweden, Netherlands.

THE ROLE OF YOUTH IN THE PROMOTION AND PROTECTION OF
HUMAN RIGHTS, INCLUDING THE QUESTION OF CONSCIENTIOUS
OBJECTION TO MILITARY SERVICE

Austria, Canada, Germany, Hungary and Netherlands: draft resolution
1995/... Conscientious objection to military service

The Commission on Human Rights

Reaffirming that all Member States have an obligation to promote and protect human rights and fundamental freedoms and to fulfil the obligations they have undertaken under the various international human rights instruments, the Charter of the United Nations and humanitarian law,

Bearing in mind that it is recognized in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights that everyone has the right to life, liberty and security of person as well as the right to freedom of thought, conscience and religion,

Recalling its resolution 1989/59 of 8 March 1989, in which it recognized the right of everyone to have conscientious objections to military service as a legitimate exercise of the right to freedom of thought, conscience and religion,

Recalling also its resolution 40 (XXXVII) of 12 March 1981, in which it pointed to the need for a better understanding of the circumstances under which military service might be objected to on grounds of conscience,

CE.95-11934 (E)

Recalling further the comprehensive report on the question of

conscientious objection to military service submitted to the Sub-Commission on Prevention of Discrimination and Protection of Minorities at its thirty-sixth session by Mr. Aubjorn Rida and Mr. C.L.C. Mubanga-Chipoya (United Nations publication, Sales No. E.85.XIV.1).

Taking into consideration that some States provide for non-combatant service within the military framework and sometimes for alternative civilian service, even though no provision is made in their domestic legislation concerning the recognition of conscientious objection to military service,

Recalling its resolution 1993/84 of 10 March 1993, in which it requested the Secretary-General to report to the Commission on the matter at its fifty-first session,

Having considered the report of the Secretary-General (E/CN.4/1995/39), and thanking those Governments that provided comments to the Secretary-General,

Noting General Comment No. 22 (48) of the Human Rights Committee on article 18 of the International Covenant on Civil and Political Rights, in which the Committee inter alia expressed the view 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 particular beliefs and that, likewise, there should be no discrimination against conscientious objectors because they have failed to perform military service, Aware that persons performing military service may develop conscientious objections,

Recognizing that conscientious objection to military service derives from principles and reasons of conscience, including profound convictions, arising from religious, ethical, humanitarian or similar motives,

Recalling article 14 of the Universal Declaration of Human Rights which recognizes the right of everyone to seek and enjoy in other countries asylum from persecution,

1. Draws attention to the right of everyone to have conscientious objections to military service as a legitimate exercise of the right to 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;

2. Affirms that persons performing military service should not be excluded from the right to have conscientious objections to military service;

3. Appeals to 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;

4. Urges States in their law and practice not to differentiate between conscientious objectors on the basis of the nature of their particular beliefs nor to discriminate against recognized conscientious objectors for failure to perform military service;

5. Reminds States with a system of compulsory military service, where such provision has not already been made, of its recommendation that they introduce for conscientious objectors various forms of alternative service which are compatible with the reasons for conscientious objection and that they refrain from subjecting conscientious objectors to imprisonment;

6. Emphasizes that such forms of alternative service should be of a non-combatant or civilian character, in the public interest and not of a punitive nature;

7. Recognizes that some States accept claims of conscientious objection as valid without inquiry, and appeals to Member States that do not have such a system to establish, within the framework of their national legal system, independent and impartial decision-making bodies with the task of determining whether a conscientious objection is valid in a specific case;

8. Affirms the importance of the availability of information about the right to conscientious objection to military service, and the means of acquiring conscientious objector status, to all relevant persons affected by military service;

9. Requests the Secretary-General to transmit the text of the present resolution to all States Members of the United Nations and to include the right of conscientious objection to military service in the public information activities of the United Nations, including the United Nations Decade for Human Rights Education;

10. Also requests the Secretary-General to submit to the Commission at its fifty-third session an update of the information provided in the annexes to the report by Mr. Aubjorn Rida and Mr. C.L.C. Mubanga-Chipoya entitled Conscientious Objection to Military Service (United Nations publication,

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RECOMMENDATION No. R (87) 8

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES

REGARDING CONSCIENTIOUS OBJECTION TO COMPULSORY MILITARY SERVICE¹

*(Adopted by the Committee of Ministers on 9 April 1987
at the 406th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Recalling that respect for human rights and fundamental freedoms is the common heritage of member states of the Council of Europe, as is borne out, in particular, by the European Convention on Human Rights;

Considering that it is desirable to take common action for the further realisation of human rights and fundamental freedoms;

Noting that in the majority of member states of the Council of Europe military service is a basic obligation of citizens;

Considering the problems raised by conscientious objection to compulsory military service;

Wishing that conscientious objection to compulsory military service be recognised in all the member states of the Council of Europe and governed by common principles;

Noting that, in some member states where conscientious objection to compulsory military service is not yet recognised, specific measures have been taken with a view to improving the situation of the individuals concerned.

1. When this recommendation was adopted:

— in application of Article 10.2.c of the Rules of Procedure for the meetings of the Ministers' Deputies, the Representative of Greece reserved the right of his Government to comply with it or not, and the Representative of Cyprus reserved the right of his Government to comply or not with paragraph 9 of the text;

— in application of Article 10.2.d of the Rules of Procedure for the meetings of the Ministers' Deputies, the Representative of Italy recorded his abstention and in an explanatory statement said that his Government was of the opinion that the text as adopted fell short of the suggestions made by the Assembly, and therefore appeared to be deficient;

— in application of Article 10.2.d of the Rules of Procedure for the meetings of the Ministers' Deputies, the Representatives of Switzerland and Turkey recorded their abstentions and in explanatory statements said that their Governments would be unable to comply with the text.

Recommends that the governments of member states, insofar as they have not already done so, bring their national law and practice into line with the following principles and rules:

A. Basic principle

1. Anyone liable to conscription for military service who, for compelling reasons of conscience, refuses to be involved in the use of arms, shall have the right to be released from the obligation to perform such service, on the conditions set out hereafter. Such persons may be liable to perform alternative service;

B. Procedure

2. States may lay down a suitable procedure for the examination of applications for conscientious objector status or accept a declaration giving reasons by the person concerned;

3. With a view to the effective application of the principles and rules of this recommendation, persons liable to conscription shall be informed in advance of their rights. For this purpose, the state shall provide them with all relevant information directly or allow private organisations concerned to furnish that information;

4. Applications for conscientious objector status shall be made in ways and within time-limits to be determined having due regard to the requirement that the procedure for the examination of an application should, as a rule, be completed before the individual concerned is actually enlisted in the forces;

5. The examination of applications shall include all the necessary guarantees for a fair procedure;

6. An applicant shall have the right to appeal against the decision at first instance;

7. The appeal authority shall be separate from the military administration and composed so as to ensure its independence;

8. 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;

C. Alternative service

9. Alternative service, if any, shall be in principle civilian and in the public interest. Nevertheless, in addition to civilian service, the state may also provide for unarmed military service, assigning to it only those conscientious objectors whose objections are restricted to the personal use of arms;

10. Alternative service shall not be of a punitive nature. Its duration shall, in comparison to that of military service, remain within reasonable limits;

11. Conscientious objectors performing alternative service shall not have less social and financial rights than persons performing military service. Legislative provisions or regulations which relate to the taking into account of military service for employment, career or pension purposes shall apply to alternative service.

European Parliament: Recommendation from 18 January 1994 on Conscientious Objection in the Member States of the Community

The European Parliament,

A. deploring the lack of response to its resolutions of 1983 and 1989 referred to above, especially the possibility of refusing for reasons of conscience to fulfil an obligation to perform military service,

B. stating once again that the protection of human rights and fundamental freedoms is one of the European Community's main duties, as is stipulated *inter alia* in the Preamble to the Maastricht Treaty,

C. whereas conscientious objection to military service is inherent to the concept of freedom of thought, conscience and religion, as recognized in Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms,

D. whereas the United Nations Commission on Human Rights confirmed this interpretation on 20 July 1993 in its general comments on Article 18 of the International Covenant on Civil and Political Rights,

E. reiterating the fact that the right of conscientious objection is a principle recognized under the law of all Member States in which military service is compulsory, with the exception of Greece, which is the only country where unarmed military service exists, but that the provisions governing this right vary widely between Member States which, as far as young people are concerned, acts as an obstacle to European integration,

F. having regard to its resolutions of 14 June 1991 and 21 November 1991 on European citizenship in which it stated *inter alia* that the status of European citizenship implies that the human rights and fundamental freedoms of all citizens must be protected and that discrimination against citizens on the basis of the Member State to which they belong cannot be tolerated under any circumstances,

1. Considers conscientious objection to be a real subjective right, as recognized by resolution 1989/59 of the United Nations

Commission on Human Rights, closely connected with the exercise of individual freedoms and, therefore, that community service may take the form of either military or civilian service;

2. Believes that "conscientious objector" should be taken to mean someone who, faced with an obligation to perform military service, refuses to do so on religious, ethical or philosophical grounds or for reasons of conscience and calls on all Member States to adopt this definition;
3. Subscribes to the basic principles defined by the Committee of Ministers of the Council of Europe in its recommendation R (87) 8 on conscientious objection to compulsory military service and considers that this recommendation is a minimum basis for provisions concerning civilian service which should link all the Member States of the Council of Europe;
4. Points out that conscientious objection is an issue of international importance, as is demonstrated by the resolution adopted by the United Nations Commission on Human Rights in 1989, the Recommendation adopted by the Committee of Ministers of the Council of Europe in 1987 and its resolution of 1989, all of which include the right of conscientious objection to military service among the various rights and stipulate that alternative civilian service must not be punitive in nature;
5. Is convinced that the right of conscientious objection derives from the human rights and fundamental freedoms which the Union undertakes to respect pursuant to Article F (2) of the EU Treaty and, therefore, that the harmonization of legislation in this field falls within the competence of the European Community;
6. Calls on the Member States to study, as a matter of common interest, the experience of those which have abolished compulsory military service, in favour of fully professional armed services, accepting that all citizens of a Member State should enjoy the same rights and fulfil the same obligations;

7. Calls therefore on the Commission to submit as soon as possible,

- a proposal for the harmonization of legislation and minimum guarantees of the protection of the right of conscientious objection, such as those laid down in paragraph 49 of its aforementioned resolution of 11 March 1993 on respect for human rights in the European Community, with a view to eliminating the current discrimination between Member States,
- a proposal for the establishment of a European civilian service open to both conscientious objectors and volunteers from the Member States,
- an exchange programme allowing those engaged in alternative civilian service to choose to perform it in another Member State or in a developing country as part of a cooperation programme;

8. Considers that this service should also be able to be performed with organisations in other Member States, without the need for reciprocity and even when there is no conscription in the country concerned;

9. Calls on the Member States to ensure that compulsory military service and civilian service performed at institutions which do not come under the supervision of the Defence Ministry are of the same length, pursuant to paragraph 51 of its aforementioned resolution of 11 March 1993 on respect for human rights in the EC;

10. Believes furthermore that conscientious objectors performing civilian service must enjoy the same rights as conscripts engaged in armed military service, both in social terms - in respect of access to vocational training, for example - and in terms of pay;

11. Condemns those states where objectors are imprisoned, as asserted by Amnesty International, and calls on the Greek Government in particular to take the necessary steps

as a matter of urgency to conform to the principles laid down in this resolution;

12. Emphasizes that freedom of religious belief is firmly established as one of the basic individual rights set out in the Universal Declaration of Human rights and the European Convention on Human Rights and restates therefore the views set out in its aforementioned resolutions of 21 January 1993 and 22 April 1993 on the compulsory declaration of religion on identity cards;

13. Calls for the right of conscientious objection and the right to civilian service to be incorporated in a protocol to the European Convention on Human Rights;

14. Calls on the Member States of the European Union which do not have (or no longer have) conscription and military and civilian service nevertheless to guarantee the fundamental right of conscientious objection;

15. Calls on the Commission to ask the Member States of the European Union and the countries which have applied for accession to comply with the principles laid down in its aforementioned resolutions of 7 February 1983, 13 October 1989 and 11 March 1993 and in this resolution;

16. Instructs its Committee on Civil Liberties to draw up an annual report on the application by the Member States of its resolutions on conscientious objection and civilian service, and to involve the European Bureau for Conscientious Objection;

17. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States and the countries which have applied for accession.

cit.: Official Journal of the European Communities No C 44/103, Wednesday, 19 January 1994

INTERNAL (For AI Members only)

AI Index : EUR 01/02/97

Distr : SC/CC/PO

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OUT OF THE MARGINS:

The right to conscientious objection to military service in Europe

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Please ensure that all relevant people in the section have received copies for their attention, and that the document is centrally filed for future reference.

An action circular (AI Index: EUR 01/03/97) has been issued to accompany this document. Please refer to that document for all recommended actions.

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