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Working Documents

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25 August 1982

DOCUMENT 1-546/82

Report

drawn up on behalf of the Legal Affairs Committee
on conscientious objection

Rapporteur: Mrs M.A. MACCIOCCHI

PE 76.198/fin.



C O R R I G E N D U M

to the report by Mrs A. MACCIOCCHI
(Doc. 1-546/82)

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Amend penultimate line as follows:

Duration of military service: 24 months in army
26 months in navy and air force

3.11.1982

At its sitting of 15 September 1980 the European Parliament referred the motion for a resolution (Doc. 1-803/79) tabled by Mr van Minnen and others on conscientious objectors, which had initially been referred to the Political Affairs Committee, to the Legal Affairs Committee as the committee responsible, although the former committee was asked to give its opinion.

At its meeting of 1 and 2 October 1980 the Legal Affairs Committee decided to appoint a single rapporteur on all the documents relating to conscientious objection which had been referred to it, namely: the above-mentioned motion for a resolution and the motion for a resolution (Doc. 1-244/80) tabled by Mr Sieglerschmidt and others on behalf of the Socialist Group (the Political Affairs Committee, to which the motion had previously been referred, having declared that it did not consider that it should be the committee responsible) and Petitions Nos 19/80, 26/80 and 42/80, on the understanding that Petition No. 14/80, which had been forwarded for information to the Legal Affairs Committee by the Committee on the Rules of Procedure and Petitions, would also be included among the texts to be considered.

At its meeting of 21 January 1981 the Legal Affairs Committee appointed Mrs MACCIOCCHI rapporteur.

At its sitting of 15 January 1981 the European Parliament referred the motion for a resolution (Doc. 1-796/80) tabled by Mrs Van Den Heuvel and others on the conscientious objector Christos Nounis to the Legal Affairs Committee.

At its meeting of 17 February 1981 and in accordance with its deliberations of 1 and 2 October 1980, the Legal Affairs Committee appointed Mrs MACCIOCCHI rapporteur on the last-mentioned motion for a resolution.

At its meetings of 25 and 26 February 1982 and 12 and 13 July 1982 the Legal Affairs Committee considered the draft report drawn up by Mrs MACCIOCCHI and adopted it by 14 votes with 7 abstentions.

The following took part in the vote:

Mrs Veil, Chairman; Mr Luster and Mr Turner, Vice-chairmen; Mrs Macciocchi, rapporteur; Mr Alber (deputizing for Mr Goppel), Mrs Baduel Glorioso (deputizing for Mr Visentini), Mr Ferri, Mr Geurtsen, Mr Janssen van Raay, Mr Mahy, Mr Poniridis, Mr Prout, Mr Sieglerschmidt, Mr Tyrrell, Mrs Vayssade, Mr Vie and Mr Zagari (deputizing for Mr Craxi).

The opinion of the Political Affairs Committee is attached to this report.

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A

The Legal Affairs Committee hereby submits to the European Parliament the following motion for a resolution, together with explanatory statement:

MOTION FOR A RESOLUTION

on conscientious objection

The European Parliament,

- having regard to Article 9 of the European Convention on Human Rights, which guarantees the right to freedom of thought, conscience and religion,
 - having regard to Resolution 337 (1967) and Recommendation 816 (1977) of the Consultative Assembly of the Council of Europe on the right of conscientious objection,
 - having regard to the laws of the Member States of the European Community concerning the right of conscientious objection,
 - having regard to the case law of the Court of Justice of the European Communities and the Joint Declaration of Parliament, Council and Commission¹ in which these institutions stressed the prime importance they attach to the protection of fundamental rights as derived in particular from the European Human Rights Convention,
 - having regard to motions for resolutions Doc. 1-796/80, Doc. 1-803/79 and Doc. 1-244/80,
 - having regard to Petitions Nos 14/80, 19/80, 26/80 and 42/80,
 - having regard to the report of the Legal Affairs Committee and the opinion of the Political Affairs Committee (Doc. 1-546/82),
1. Recalls that the right to freedom of thought, conscience and religion is a fundamental right;
 2. Notes that protection of freedom of conscience implies the right to refuse to carry out armed military service and to withdraw from such service on grounds of conscience;

¹ OJ No. C 103, 27.4.1977, p.1

3. Points out that no court or commission can penetrate the conscience of an individual and that a declaration setting out the individual's motives must therefore suffice in the vast majority of cases to secure the status of conscientious objector;
4. Stresses that the performance of alternative service as provided for in Resolution No. 337 (1967) of the Consultative Assembly of the Council of Europe may not be regarded as a sanction and must therefore be organized in such a way as to respect the dignity of the person concerned and benefit the community, particularly in the social field;
5. Considers that the duration of such alternative service when carried out within a civil administration or organization should not exceed the period of normal military service including military exercises following the period of basic military training;
6. Emphasizes the need to approximate the legislation of the Member States of the Community governing the right of conscientious objection, the status of conscientious objector, the procedures to be applied and alternative forms of service;
7. Calls on the governments and parliaments of the Member States of the Community to examine their respective legislation in this field;
8. Supports efforts to include a right of conscientious objection in the Convention on Human Rights;
9. Instructs its President to forward this resolution to the Commission, the governments and parliaments of the Member States, and the Parliamentary Assembly of the Council of Europe.

B

EXPLANATORY STATEMENT

A number of motions for resolutions have been tabled in Parliament on the problem of conscientious objection (see attached texts). The Legal Affairs Committee considers that this problem must be examined in depth in the light of the legal texts and other available international documents with a view to standardizing the relevant laws of the Member States of the European Community.

I - Legal bases

1. The right to conscientious objection is derived from a number of fundamental individual freedoms guaranteed by certain international conventions and principles of international law and may also be based on a number of principles and texts whose moral authority is widely recognized.

The most important texts are Article 9 of the European Convention on Human Rights, Resolution 337 and Recommendation 816 of the Consultative Assembly of the Council of Europe. Furthermore, the existence in all those Member States which have military conscription of laws relating to conscientious objection constitutes a de facto recognition of this right as a fundamental human right.

2. Resolution 337 (1967) of the Consultative Assembly of the Council of Europe on the right of conscientious objection states that:

A. Basic principles

- (1) Persons liable to conscription for military service who, for reasons of conscience or profound conviction arising from religious, ethical, moral, humanitarian, philosophical or similar motives, refuse to perform armed service shall enjoy a personal right to be released from the obligation to perform such service.
- (2) This right shall be regarded as deriving logically from the fundamental rights of the individual in democratic Rule of Law States which are guaranteed in Article 9 of the European Convention on Human Rights.

This definition is important in a number of respects:

- it recognizes the right to be released from armed service not only for 'reasons of conscience' but also on the basis of 'a profound conviction arising from religious, ethical, moral, humanitarian, philosophical or similar motives'.

- it assimilates this right to Article 9 of the European Convention on Human Rights which guarantees everyone 'the right to freedom of thought, conscience and religion'. In addition, the resolution restates in full Article 18 of the Universal Declaration of Human Rights.

3. The International Covenant on Civil and Political Rights (adopted by the UN in 1966) also guarantees 'the right to freedom of thought, conscience and religion' and adds in Article 18(2):

'No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice'.

4. Article 19 of the Universal Declaration of Human Rights expands on the principles listed in Article 18 stating that:

'Everyone shall have the right to freedom of opinion and expression including the right to hold opinions without interference and the right to seek, receive and impart information and ideas, regardless of frontiers, through any media of his choice'.

These principles - this time with a clause setting out special duties and responsibilities - are restated in Article 19 of the International Covenant on Civil and Political Rights and in a similar fashion in Article 10 of the European Convention on Human Rights.

5. At its sitting of 7 October 1977 the Consultative Assembly of the Council of Europe adopted Recommendation 816 which recommends that the Council of Ministers 'introduce the right of conscientious objection to military service into the European Convention on Human Rights' thus definitively confirming this right as a fundamental individual right.

Recommendation 816 (1977) of the Consultative Assembly of the Council of Europe states that:

'The Assembly,

1. Wishing to promote legal status for conscientious objectors in Council of Europe member states;
2. Recalling its Recommendation 478 (1967) and Resolution 337 (1967) on the right of conscientious objection;
3. Reasserting the principles stated in Resolution 337 (1967), which form an integral part of this recommendation;
4. Recommends that the Committee of Ministers:

(a) urge the governments of member states, in so far as they have not already done so, to bring their legislation into line with the principles adopted by the Assembly;

(b) introduce the right of conscientious objection to military service into the European Convention on Human Rights'.

6. The recommendation contained in 4(b) is in no way superfluous for the purpose of clarifying the legal basis of conscientious objection. Although the Consultative Assembly of the Council of Europe and many non-governmental institutions and organizations (NGOs) cite Article 9 of the European Convention on Human Rights as a legitimate legal basis for the right to conscientious objection, the relevant case law is contradictory. In various opinions the European Commission on Human Rights, commenting notably on cases brought by German, Austrian and Danish citizens, has expressed the view that the right of conscientious objection is not one of the rights and freedoms guaranteed by the Convention.

Hence the need to remove any ambiguity surrounding the interpretation of the relevant articles of the European Convention and to lay down a clear and precise European legal norm. Now, more than 30 years after the European Convention was drawn up, the member states of the Council of Europe which have conscription have all accepted - though not always to the same extent - the legal principle of the right of conscientious objection, the political obstacles to including this right in the Convention should have been largely removed. It should be possible as a first step to propose a supplementary protocol to the Convention in the near future.

7. The right to conscientious objection is also based on a whole series of texts which have some legal or moral status even though binding procedures do not always exist to ensure their application or that the objector can rely on them in the courts. They are important nonetheless as they impose a certain pattern of behaviour and lay down a number of universal principles.

As regards the obligations placed on conscientious objectors by laws, conventions and international agreements, the Hague Conventions of 1899 and 1907 and the Geneva Conventions of 1929 and 1949, for instance, seek to minimize the brutality of war, particularly in regard to non-combatants, and hence imply de facto a right to refuse to take part in activities which threaten the wholesale destruction of civilian populations.

8. The right to life is guaranteed in Article 3 of the Universal Declaration of Human Rights which proclaims that:

'Everyone has the right to life, liberty and personal security'.

This right is also contained in the United Nations' International Covenant on Civil and Political Rights of 1966 (Article 6) and in Article 2 of the European Convention on Human Rights. Conscientious objectors are justified in referring to these. The World Congress of the Forces of Peace which met in Moscow in 1973 expressed the opinion that the right to life also raised the problem of the right to refuse to kill.

It might be argued that in some respects conscientious objection is not merely a right but a duty. Indeed, support for the right of conscientious objection may be adduced from the fact that since the last world war, wars (at all events wars with sophisticated weapons) have virtually been outlawed.

9. Against this background, reference might be made, for the purpose of clarifying the legal position as far as crimes against peace and war crimes are concerned, to the 'Principles of international law as adopted by the statute of the Nuremburg Tribunal and in the judgment of the Tribunal.' Even if the historical background to the Nuremberg Trials is altogether exceptional.

Principle VI of the Statute of the Nuremburg Tribunal defines various crimes including those against peace :

'the planning, preparation, declaration or pursuit of a war of aggression or a war conducted in violation of international treaties, agreements and commitments.....',

while Principle VII states that :

'complicity in a crime against peace, a war crime or a crime against humanity, as defined in Principle VI, is a crime in terms of international law.'

Once again, so as to make the legal situation as clear as possible, reference might be made to the fact that, in quite exceptional historical circumstances such as those obtaining at the end of the Second World War, an individual may therefore be accused in international law of a crime against humanity, a crime against peace or a war crime for having obeyed the orders of his government or a superior (Principle VI). Principle II specifies that the fact that national law does not punish crimes against international law does not release the accused from his responsibility for his actions in terms of international law.

10. All this invites us to reflect once more on the lessons of the Second World War which led to the inclusion in the statute of the Nuremburg Tribunal of the notion that the individual must use his judgement before taking part in a war or the preparation of a war or before obeying certain military orders if he wishes to avoid the risk of being accused of a crime in international law. Principle VI, which holds the individual responsible even where he has obeyed an order, refers explicitly to moral choice, thus implying an ethical judgement on the part of the individual and hence a question of conscience.

11. Whereas in the past it was possible to plead ignorance of these laws, this is no longer the case since the unanimous adoption on 11 December 1946 of Resolution 1(95) by the General Assembly of the United Nations affirming the Principles of international law set out in the Statute of the Nuremberg Tribunal and the judgment of the Tribunal, Resolution 177 of 21 November 1947 of the General Assembly of the United Nations requesting the Commission on International law to draw up these principles - which it did in 1950 - and the unanimous adoption by the UN Commission on International Law on 28 July 1954 of the draft code of crimes against peace and the security of humanity.

12. It must be remembered that modern warfare with the technical resources at its disposal would most probably lead to genocide as defined in the United Nations Convention on Genocide, unanimously adopted by the General Assembly of the United Nations on 9 December 1948. This text is therefore a legal basis for conscientious objection, in the same way as the abovementioned principles, especially as Article IV of the Convention states that those guilty of infringing the Convention will be punished whether they be governments, officials or individuals. This clause prevents anyone from claiming immunity.

13. In this respect countries which possess nuclear weapons and proclaim nuclear deterrence as a defence strategy may feel that they are not open to accusations of genocide in that it is their declared intention to respond to aggression; they cannot, however, claim to impose this interpretation on all their citizens without exception. The need for clear legislation on conscientious objection is therefore all the more obvious, even if only to avoid weakening their deterrent for the sake of their own interests and strategy by allowing people who may dispute its very nature to operate it.

II - Position of the churches

14. It is also important to look at the religious basis of conscientious objection in the case of those who invoke religious grounds. The text adopted by the World Conference on Religion and Peace meeting in Kyoto, Japan, from 16 to 21 October 1970 is very important in this connection. This conference brought together representatives of the 10 most important religions (Christians, Buddhists, Hindus, Moslems, Shintoists, Jews, Sikhs, Jains, Zoroastrians, Confucians) and 11 other religions. In particular, the text states that the participants consider that the exercise of judgement based on conscience is an integral feature of human dignity and that, consequently, everyone must be entitled to refuse military service for reasons of conscience or deeply held convictions or to reject any other form of direct or indirect participation in wars or armed conflict. The right of conscientious objection must also be

extended to those who do not wish to fight in a particular war because they consider it unjust or because they refuse to participate in a war or conflict in which large-scale destructive weapons may be used. The conference also considered that members of the armed forces have the right and indeed the duty to refuse to obey military orders which might cause them to carry out criminal acts or war crimes or crimes against humanity.

An almost identical text was adopted by the Conference of Christian Churches on Peace which was held in Baden, Austria, under the auspices of SODEPAX (Committee on Society, Development and Peace of the World Council of Churches and the Pontifical Commission Justice and Peace) which urged the churches to do all they could to ensure that the right of conscientious objection as defined was recognized in national and international law.

III - Disparities in Europe

15. The right of conscientious objection is currently respected in a far from uniform way in the countries of the European Community¹. Of those Member States where there is compulsory military service only the Federal Republic of Germany and the Netherlands provide for this right in their constitutions. In the case of the Netherlands the constitution merely states that the law will lay down the conditions for exemption from military service on grounds of conscience.

A number of Member States at present accept only religious motives or religious and philosophical motives combined. Others refer to the sincerity of convictions or conscience without going into details, while some, such as Ireland, Luxembourg or the United Kingdom, are prepared in the absence of specific laws to consider any motives which may be cited by those who wish to terminate their contract with the armed forces on grounds of conscience.

16. Any attempt to arrive at common rules must take account of the existing rights enjoyed by the citizens of the European Community in their respective countries and must not detract from these. The definition of motives must therefore be framed as broadly as possible following the example of Resolution 337. If conscientious objection is a right, it cannot be subject to undefined conditions or restrictions or to modifications or interpretations.

17. It is interesting to note that in most cases the laws currently in force in European countries link the question of conscientious objection with call-up for national military service. However, experience of conscientious objection in practice and certain legal provisions in the Member States of the Community suggest that objection must be considered in a much wider context.

¹ See Notice to Members No. 44/81, PE 76.372

In the United Kingdom, where there is no conscription at present, provision is made to allow volunteers who have joined the armed forces but who subsequently experience problems of conscience to be released from their contracts. Similarly, in the Netherlands, members of the armed forces may request objector status by informing their superior of their motives in writing.

18. These examples show that any democratic society must be prepared to consider conscientious objection at any time during a person's life, not only when someone is called up for national service in countries where this exists.

It is necessary therefore to lay down legal procedures which will guarantee the right of conscientious objection at any time.

19. In practice most of the European countries where there is conscription have been faced for a number of years with a situation where conscientious objectors return or destroy the military identity documents sent to them. No provision has been made for objector status in such cases. Quite the contrary, as the law generally provides for criminal sanctions against the perpetrators of such acts or their accomplices regardless of their motives. The result is a paradoxical situation in which people who have returned call-up papers are sentenced several years after having completed their military service (some having even served in situations of armed conflict), while conscientious objectors who have decided on their position at an earlier stage are acting within the law and are not subject to any sanctions provided they carry out some form of alternative service.

IV - Recognition of the right of conscientious objection

20. One problem which immediately springs to mind is the fact that no other person, court or commission can penetrate the conscience of an individual. In several Member States of the European Community conscientious objectors have had their requests rejected by the various bodies responsible for deciding on the sincerity of their convictions. As a result they have been forced to choose to go to gaol and thus find themselves in a situation identical to that obtaining before the introduction in the laws of their country of provisions on conscientious objection.

21. It would seem fairer simply to record an individual's refusal to carry out military service - or, in the case of a volunteer or person already conscripted, to continue his service in uniform or to obey certain orders - by virtue of his beliefs.

22. In the Netherlands, for instance, it has been proposed that the verification of requests be abolished or simplified. A bill to this effect was first laid before the Second Chamber of the States General in 1971 and a revised version in 1976. Political difficulties prevented the bill from becoming law whereupon it was abandoned. More important is the reform voted in 1977 by the Bundestag which totally abolished verification of the validity of requests for recognition of conscientious objector status. Although the parliamentary opposition won the day, after taking the matter to the Federal Constitutional Court and finally defeating the bill, the Federal President had signed the act, thus enabling it to come into force on 1 August 1977. All that was needed to obtain the status of conscientious objector was a written request with reasons.

23. Resolution 337 of the Consultative Assembly of the Council of Europe proposes that:

'Where the decision regarding the recognition of the right of conscientious objection is taken in the first instance by an administrative authority, the decision-taking body shall be entirely separate from the military authorities and its composition shall guarantee maximum independence and impartiality'.

The Resolution goes on to say:

'Its decision shall be subject to control by at least one other administrative body, composed likewise in the manner prescribed above, and subsequently to the control of at least one independent judicial body'.

24. The International Peace Bureau, in agreement with other non-governmental organizations, considers it essential that:

- the objector should be heard in person by an independent tribunal meeting in public and should be represented or assisted during the hearing;
- the objector should be entitled to free legal aid if necessary.

25. While such facilities are offered in Belgium, they do not exist in many other countries. Approximation of legislation in Europe should therefore also cover this point. Italy has recently adopted provisions which totally exempt from regular active service young people who have not received a reply from the authorities to their requests for recognition as conscientious objectors within a given period.

26. Once conscientious objection is regarded as a right and not a privilege, it is important that citizens seeking to avail themselves of this right should have guarantees that they will not be conscripted against their wishes until they have exhausted all channels of appeal.

27. Resolution 337, adopted in 1967 by the Consultative Assembly of the Council of Europe and contained in an annex to Recommendation 816, which was adopted by the Consultative Assembly in 1977, specifies with regard to the procedure for obtaining conscientious objector status that:

'the legislative authorities should investigate how the exercise of the right claimed can be made more effective by ensuring that objections and judicial appeals have the effect of suspending the armed service call-up order until the decision regarding the claim has been rendered'.

28. In France until recently such guarantees were not given to citizens who, having appealed unsuccessfully to the Ministry of Defence following a refusal by the relevant tribunal to grant objector status, then appealed to the Council of State. The same is true of German citizens who have had their requests for conscientious objector status rejected by the review commission (Prüfungsausschuss), the examining court (Prüfungskammer) and the administrative tribunal (Verwaltungsgericht) and who then appeal to the Federal Administrative Tribunal (Bundesverwaltungsgericht).

This lack of guarantees gives rise to many individual problems each year as some objectors still refuse to join the armed forces after having been conscripted against their will. Many show the strength of their convictions by going to prison rather than giving in.

29. It would also be advisable if all the Member States were to recognize conscientious objector status granted to an individual in one Member State of the Community. Although this potentially concerns only a very limited number of cases, it does particularly involve European citizens who for reasons of nationality or residence may have to choose whether to do their national service in one or other Community country and who should not be deprived of a right which they have been granted.

V - Information

30. According to Resolution 337 of the Consultative Assembly of the Council of Europe, 'persons liable for military service should be informed, when notified of their call-up or prospective call-up, of the rights they are entitled to exercise'.

This information is provided in full in Belgium and in part in the Federal Republic of Germany. On the other hand a clause forbidding propaganda aimed at encouraging others to refuse military service has been introduced in the relevant French law which makes it virtually impossible to inform citizens of their rights.

For comparison's sake it is worth noting that in France individuals who are qualified to carry out overseas cooperation or technical aid service generally receive the relevant information from the military authorities automatically thus enabling them, should they wish, to request that they be allowed to serve in a developing country. It is difficult to see why the same provisions should not apply to conscientious objection assuming that it is not merely something which is tolerated but penalized.

31. Finally there is the case of people called up for national service who do not request exemption under the law and do not therefore apply to the relevant authority either because of their principles (which is particularly true of those who object on political grounds) or for religious reasons, notably in the case of Jehovah's Witnesses. Generally speaking, there is no provision governing the position of the latter in most Member States, where they are often sentenced to terms of imprisonment. The Netherlands has solved the problem by no longer calling up Jehovah's Witnesses. Sweden, which is not a member of the Community, operates the same system. This approach does not appear to have given rise to any major problems so far and could be considered in those Member States where this question still arises.

VI - Alternative forms of service

32. All the Member States of the Community which have recognized the right of conscientious objection have introduced an alternative form of service. This so-called 'civil' service has usually been introduced specially for conscientious objectors in order to discourage those citizens who might avail themselves of this right merely to escape the rigours of military service and possibly its dangers. It has also been justified with reference to the principle of the universal nature of conscription which requires that all citizens be equal before the law.

33. Some people, it is true, refuse to accept these arguments. In his report to the Consultative Assembly of the Council of Europe Senator Périquier, moving Recommendation 816 (1977), stated that these arguments were perhaps less convincing than they appeared at first glance. Generally speaking, less than 50% of young people actually carried out their military service. The others did not do so for health reasons or because of psychological factors. Those who had families to support and sometimes those living abroad were exempt. Girls were also exempted from compulsory military service and did not have to carry out any alternative service. Why then should those who were clearly unfitted to serve in the armed forces because of their convictions be punished by the imposition of an often useless form of alternative service? (See Council of Europe Doc. 4027 - 6 October 1977, p.18).

34. This argument seems unacceptable because it equates physical or sociological handicaps relating to sex and family situation with conscientious objection, which is an essentially voluntary act based on moral convictions. The aim of legislation in this field should not be to universalize conscientious objection - in other words to abolish military service - but to establish a compromise between the requirements of national defence and the principle of equality before the law on the one hand, and the need to recognize the right of a minority to live in accordance with its convictions on the other. This is the basis on which alternative service should be introduced.

Duration

35. In the light of the above principles it is clear that the duration of alternative service should not be less than that of military service. This is in fact the situation in the various Community countries although there are wide differences. Whereas in the Federal Republic of Germany or Denmark alternative service is scarcely any longer than military service, in other countries the period of service for objectors is increased by anything from four to twenty-two months. In Greece, where only religious motives are accepted - in itself a considerable restriction of the exercise of the right of conscientious objection - the extra period of service ranges from twenty-six to forty-eight months, which would appear to be a penalty in itself.

36. A number of factors must be taken into account:

- if conscientious objection is a right (which is moreover incorporated in the European Convention) it should not be penalized. The Consultative Assembly of the Council of Europe has recommended that recognized conscientious objectors and those in the armed services should be on an equal footing both as regards social rights and financial considerations. Different periods of service also adversely affect the financial situation of the person concerned.

37. - on the other hand, most European legislators regard alternative service as a test of the seriousness of the convictions of those seeking conscientious objector status. If this view were shared it would then be natural for objectors to be required to complete a longer period of alternative service than those in military service, particularly if, as is always desirable, the law does not provide for inquiries into the beliefs of those seeking objector status but merely records their declaration, in order to discourage those seeking exemption for reasons of personal comfort or convenience and to compensate for the constraints and hardships of military life.

38. If this argument were accepted a reasonable extension of the period of service should not in any case exceed one third of the duration of military service in respect of any alternative form of service undertaken outside the armed forces and military discipline.

Nature

39. On the subject of alternative service, Resolution 337 of the Consultative Assembly of the Council of Europe states:

'the governments concerned shall ensure that conscientious objectors are employed in social work or other work of national importance - having regard also to the manifold needs of the developing countries'.

This approach is shared by a large number of national and international non-governmental organizations.

40. There are still major differences between Member States on this point. While the Netherlands virtually prohibits the imposition on objectors of duties which may help to strengthen the armed forces and excludes participation in any form of unarm^{ed} military service, in Greece non-combatant military service is the only alternative offered to objectors.

41. Many objectors do not agree with the way their status is defined in the laws of a large number of countries, namely those who refuse to bear arms: they regard this definition as too narrow since it does not include refusal to cooperate with the military system as a whole and to contribute to the design or manufacture of arms. Once conscientious objection is recognized as a fundamental human right it follows that it must be accepted in all its aspects: it would be merely sidestepping the problem if, say, the alternative service offered was such as to create new conflicts of conscience for the objector.

42. Alternative service must therefore be adapted to suit different circumstances. There are various possible activities within the armed forces which could satisfy the humanitarian aspirations of conscientious objectors: not only medical services, but also civil defence, a sector largely ignored by the defence community and whose objective is to relieve the suffering of civilian populations and protect them in time of war. In such cases there would be no need to require a period of service any longer than the normal or, if extra service is required, it should be less than that for those who refuse to submit themselves even partially to military laws. The latter should be required to carry out civil service with a civilian administration for the period of time laid down in paragraph 38.

43. In the latter case, conscientious objectors should be able to enjoy full civilian status, notably as regards trade union or political

activities. Any other solution would not only be tantamount to penalizing the exercise of a recognized right but, from a legal point of view, it is not the status of conscript, of young person undergoing 'national service' which imposes the obligation to refrain from certain activities that is generally recognized in the armed forces, but that of soldier. There is therefore every reason for recommending the removal of restrictions currently applied in certain countries.

44. In an international context it should be remembered that many conscientious objectors would like to undertake forms of service which are aimed at promoting peace and international understanding. This concern is echoed in the reference in Resolution 337 of the Consultative Assembly of the Council of Europe to 'the manifold needs of the developing countries' and is in many cases shared by those who have designed various governmental programmes.

45. At least some of the forms of alternative service should therefore be considered in an international context, particularly in the community framework. Above all we have in mind alternative service with international non-governmental organizations. A system of this kind already exists in the Federal Republic of Germany for those on voluntary service with bodies such as Eirene, Aktion Sühnezeichen, etc. This practice could be extended.

VII - Conclusion

46. It follows from the arguments set out above, from the texts adopted by the United Nations General Assembly and by the Council of Europe and from considerations of common sense that any legislation on conscientious objection should be based on the following principles :

(i) Conscientious objection is, in the same way as the rights to freedom of thought and of religion, a right recognized by the basic texts on human rights, the exercise of which may not give rise to victimization or sanctions. Any limits imposed by the legislator should have the sole purpose not of restricting this right but of making sure that the objection is in fact on grounds of conscience and to reconcile the exercise thereof with the idea of national service and with the other obligations of an individual towards society.

(ii) Conscientious objection may take two main forms whose legitimacy is beyond dispute : firstly, refusal to bear arms or to engage in activities conducive to the infliction of physical violence on other persons, and secondly, refusal to serve in any form of military organization on the ground that the objector rejects the very idea of armed forces and military service as involving collective violence. The difference between

these two cases is that the first type of objector can be allocated to non-combatant units of the armed forces (first aid, civil defence etc. ...) whereas the second type of objector must perform his national service with civil organizations.

(iii) No court or commission can penetrate the conscience of an individual. Conscientious objection is a right, which should be recognized and allowed wherever an objector so requests in a reasoned statement. This procedure should be sufficient in the great majority of cases. However, exceptions might be justified in cases where circumstances clearly disqualifying the applicant's claim to the status of objector come to the attention of the authorities.

(iv) For the reasons stated earlier, the alternative form of service proposed for objectors must not be treated as a punishment. Such service should therefore be organized in such a way as to ensure respect for the dignity of the individual concerned and to benefit the community as a whole. For the same reasons the duration of such alternative forms of service should not be longer than military service where the objector agrees to serve in a non-combatant branch of the armed forces.

Nevertheless, in order to avoid confusing genuine conscientious objectors with those who are simply unwilling to accept military discipline it would seem reasonable to specify a longer duration for national service performed under the aegis of a civil authority. This extra period should not however exceed the duration of ordinary military service including military exercises following basic military training, augmented as necessary by an appropriate amount.

(v) Against this background it is important, having regard to the development of the free movement of citizens, to examine the possibility of harmonizing the laws of the Member States of the Community on the right to conscientious objection, the relevant procedures and alternative forms of service with civil authorities.

(vi) The fact that the Council, Commission and Parliament have in a joint declaration (Joint Declaration by Parliament, the Council and the Commission of 5 April 1977) stressed the prime importance which they attach to the protection of fundamental rights in the Community requires that an end be put to a contradictory state of affairs in which although all the Member States ought to act in concert in applying similar principles, some Member States have been obliged to concede political refugee status to conscientious objectors who are nationals of another Member State of the Community on account of the treatment meted out to them in their country of origin by reason of their being conscientious objectors.

ANNEX 1

MOTION FOR A RESOLUTION (Doc. 1-803/79)

tabled by Mr van MINNEN, Mrs BUCHAN,
Mrs SEIBEL-EMMERLING, Mr PETERS, Mr ARNDT,
Mr ALBERS, Mr JAQUET, Mrs WIECZOREK-ZEUL,
Mr VERNIMMEN, Mr VIEHOFF, Mr COLLA, Mr GLINNE,
Mr BALFE, Mr ESTIER, Mrs LIZIN, Mr SCHWARTZENBERG,
Mr SARRE, Mrs ROUDY, Mr WETTIG, Mr ENRIGHT and
Mr CABORN

pursuant to Rule 25 of the Rules of Procedure

on conscientious objectors

The European Parliament,

1. Considers that all those called up for military service who have objections of conscience on religious, ethical, moral, humanitarian or philosophical grounds have the right to decline to perform such service and to select alternative community service;
2. Calls on all countries to ensure that their legislation and practice are in accordance with Resolution 337 (1967) of the Council of Europe;
3. Requests the Commission to submit to the Council a proposal for a directive to this effect.

MOTION FOR A RESOLUTION (Doc. 1-244/80)

tabled by Mr SIEGLERSCHMIDT, Mrs van den HEUVEL, Mrs VAYSSADE,
Mrs VIEHOFF and Mr Van MINNEN

on behalf of the Socialist Group

pursuant to Rule 25 of the Rules of Procedure

on conscientious objectors

The European Parliament,

- having regard to the right to freedom of thought, conscience and religion guaranteed by Article 9 of the European Convention on Human Rights (ECHR),
 - having regard to Resolution 337 (1967) and Recommendation 816 (1977) of the Parliamentary Assembly of the Council of Europe,
 - having regard to the laws on the right to refuse to perform military service,
1. Stresses the need to strive towards a common standard of protection of human rights in the European Community as embodied in the Joint Declaration of 5 April 1977 and in the decisions of the Court of Justice of the European Communities;
 2. Recalls that the right to freedom of thought, conscience and religion is one of the most important human rights;
 3. Observes that the protection of freedom of conscience also includes the right to refuse, under certain circumstances, to perform military service under arms;
 4. Points out that no committee or tribunal can examine the conscience of the individual;
 5. Stresses that alternative forms of civilian service within the meaning of Article 4 of the ECHR should be exacted only in conjunction with safeguards for the human dignity of the individual concerned and in order to serve the public interests, primarily in the social field.
 6. Points to the need, in view of the increasing freedom of movement within the Community, to approximate the laws of the Member States on refusal to perform military service, the procedures applicable thereto and alternative forms of civilian service;

ANNEX 2 (cont'd)

7. Calls upon the governments and parliaments of the Member States to examine whether the existing national regulations in this field meet the requirements set out above;
8. Proposes a joint meeting between representatives of the European Parliament and the parliaments of the Member States with the object of defining common ground for legislation in this area;
9. Instructs its President to forward this resolution to the Commission and to the governments and parliaments of the Member States.

MOTION FOR A RESOLUTION (Doc. 1-796/80)

tabled by Mrs van den HEUVEL, Mrs ROUDY, Mr GLINNE, Mr COHEN, Mr ABENS, Mrs CLWYD, Mrs KROUWEL-VLAM, Mr ARNDT, Mr KLINKENBORG, Mr KEY, Mrs VIEHOFF, Mr SIEGLERSCHMIDT, Mr VETTER, Mr ENRIGHT, Mr SCHMID, Mr SCHINZEL, Mr van MINNEN, Mr MARTINET, Mr PELIKAN, Mr ALBERS and Mr SCHIELER,

with request for urgent debate
pursuant to Rule 14 of the Rules of Procedure
on the conscientious objector Christos Nounis

The European Parliament,

- whereas the European Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950) is in force in all the countries that signed and ratified it, including Greece,
 - whereas the International Covenant on Civil and Political Rights (New York, 19 December 1966) is in force in all the countries that signed and ratified it, including Greece,
 - whereas Article 3 of the European Convention states that 'No one shall be subjected to torture or inhuman or degrading treatment, or punishment',
 - whereas Article 7 of the Covenant states that 'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment',
- is of the opinion that the case of the Greek conscientious objector, Christos Nounis, described in annex, is a flagrant violation of this international ban on inhuman and cruel treatment, in circumstances that closely resemble torture,
1. Requests the Council to urge the Greek Government to take steps to release Christos Nounis immediately from prison, to drop the criminal proceedings against him and to quash his sentence;
 2. Instructs its President to forward this resolution to the Council and the governments of the Member States.

Justification

It is intolerable that a young man who has been declared by independent doctors to be suffering from a serious psycho-neurotic disorder should be imprisoned.

PETITIONS

pursuant to Rule 48 of the Rules of Procedure

Petition No. 14/80

by Svein BLOM on behalf of Norwegian section of
War Resisters International

Subject: On the question of Conscientious Objection

We have been informed that the following motion is being put to the European Parliament by 21 members around the middle of this month:

The European Parliament,

1. Considers that all those called up for military service who have objections of conscience on religious, ethical, moral, humanitarian or philosophical grounds have the right to decline to perform such service and to select alternative community service;
2. Calls on all countries to ensure that their legislation and practice are in accordance with Resolution 337 (1967) of the Council of Europe;
3. Requests the Commission to submit to the Council a proposal for a directive to this effect.

We - as an antimilitaristic, non-violent organization in Norway - wish to give our full support to this motion, but as our country is not represented in the European Parliament, we unfortunately do not see any other way to express our point of view than by this letter.

The legal right to conscientious objection on the grounds mentioned above has for a long time been accepted in Norway - both by authorities and opinion, and we consider it to be very important that those principles are fully recognized and respected in all European countries. For the moment this is not true - especially in countries like Spain, Switzerland, France, Italy and Greece.

Therefore we hope our small voice will be heard when the question of conscientious objection is being put on the agenda and that the European Parliament will support the evident right for man to refuse to kill.

Strasbourg, 14 April 1980

Svein BLOM
Folkereising Mot Krig
Norwegian Section of War Resisters International
Göteborggt. 8
OSLO 5

PETITIONS

pursuant to Rule 48 of the Rules of Procedure

Petition No. 19/80

by Mrs WESTGARTH-TAYLOR in the name of AMNESTY INTERNATIONAL

Subject: Conscientious objectors in Greece

We, the undersigned members of Amnesty International, petition the European Parliament on behalf of imprisoned conscientious objectors in Greece, where military service is compulsory for all men aged between eighteen and forty.

In October 1977 the Greek government passed Law 731/77 which amended the law concerning military service to allow religious objectors to perform unarmed military service for a period twice as long as the normal period of military service, i.e. four and a half years as opposed to twenty-seven months. Although we welcome this recognition of the right to conscientious objection, the law does not recognize that even unarmed military service can be morally unacceptable to conscientious objectors because it is still concerned with military goals. Nor does Greece recognize conscientious objection on ethical grounds, although the Consultative Assembly of the Council of Europe, of which Greece is a member, adopted in 1967 Resolution 337, which states in part:

'Persons liable to conscription for military service who, for reasons of conscience or profound conviction arising from religious, ethical, moral, humanitarian, philosophical or similar motives, refuse to perform armed service shall enjoy a personal right to be released from the obligation to perform such service'.

Although this Resolution is not binding, Article 9 of the European Convention of Human Rights does bind member states to respect freedom of conscience as well as freedom of religion.

Not only does Law 731/77 fail to offer alternative non-military service to all conscientious objectors, but the present interpretation of it by the Greek authorities seems inconsistent with statements made by

./..

Greek cabinet ministers. There is no fixed upper limit to the length of prison sentences imposed on conscientious objectors who refuse unarmed military service. Although it has been said officially that courts have been careful not to pronounce sentences longer than four and a half years, in 1979 two longer sentences, of ten and eighteen years were pronounced.

We wish to draw your attention to the specific case of Paul PIPERAS, A Jehovah's Witness, who was sentenced in September 1979 in Athens to four and a half years imprisonment for refusing to perform military service.

We therefore request the European Parliament to investigate the adequacy of the law covering conscientious objection in Greece, and to work for the release of Paul PIPERAS and all the conscientious objectors imprisoned in Greece because of their refusal to perform armed or unarmed military service, which refusal we see as a basic human right, as guaranteed by the Universal Declaration of Human Rights, Articles 18 and 19.

Luxembourg, 24 April 1980

Sally Lester WESTGARTH-TAYLOR
AMNESTY INTERNATIONAL
Unemployed
British
7 Hendrewen Road
GWYNEDD LL57 4RY
Wales
United Kingdom

There were 21 signatures to this petition.

PETITIONS

pursuant to Rule 48 of the Rules of Procedure

Petition No. 26/80

by Mrs Eileen S. STEVENSON

Subject: Conscientious Objectors

The undersigned

Consider that all those called up for military service who have objections of conscience on religious, ethical, moral, humanitarian or philosophical grounds have the right to decline to perform such service and to select alternative community service,

Call on all countries to ensure that their legislation and practice are in accordance with Resolution 337 (1967) of the Council of Europe,

Request the Commission to submit to the Council a proposal for a directive to this effect.

Strasbourg, 20 May 1980

Mrs Eileen S. STEVENSON
Librarian
British
192 Vicarage Farm Road
Heston
HOUNSLOW
United Kingdom

There are 20 signatures to this petition.

PETITIONS

pursuant to Rule 48 of the Rules of Procedure

Petition No. 42/80

by AMNESTY INTERNATIONAL U.S. Group 151 Brookline

Subject: Appeal in favour of CONSTANTINE BOLOTOS and religious freedoms in Greece

We, the undersigned, are writing on behalf of CONSTANTINE BOLOTOS, a Greek Jehovah's Witness. Mr Bolotos, along with many co-religionists, has been imprisoned by the Greek government for his election of the status of conscientious objector. This imprisonment is a flagrant denial of the religious freedoms guaranteed to all people in the United Nations' Declaration of Human Rights, which Greece has affirmed.

To date, the government of Greece has ignored all international appeals for the release of these Jehovah's Witnesses and it appears, in fact, to view religious conviction as malevolent political manipulation.

We urge you to delay conferring upon Greece membership into the European Parliament until such time as her government ceases this practice of religious oppression.

Luxembourg, 27 June 1980

AMNESTY INTERNATIONAL
US Group 151
BROOKLINE, Mass.
Newton, Mass.
U.S.A.

There are 8 signatures to this petition.

COMPARATIVE EXAMINATION OF THE LEGISLATION OF THE MEMBER STATES OF THE
EUROPEAN COMMUNITY ON CONSCIENTIOUS OBJECTION

BELGIUM

Conscription for men aged between 18 and 45

Duration of military service: 10 Months

Duration of alternative service: 15-24 months (depending on type of service)

A. PRESENT LEGISLATION

1. The right to conscientious objection

This was first recognised in Belgium in the basic law of 3 June, 1964. Subsequent amendments have been made by the laws of 22nd January 1969, 3 July 1969, 13th February 1975 and 3 July 1975, and have been combined in the law of 20th February 1980. The legal status of conscientious objectors, then, is based on this legislation.

2. Recognised reasons for refusing military service

Conscientious objector status is granted to those who feel unable to use arms, even in the case of national danger, on conscientious grounds. Reasons which challenge the fundamental institutions of the state, however, are not acceptable.

3. Alternative service

A recognised conscientious objector must work in some other capacity for the benefit of the community. It is possible for those conscientious objectors who object solely to the use of military weapons to perform a non-combatant service within the army. This is the same length as basic military training. Otherwise the conscientious objector has the choice between 4 different areas of activity; the length of these alternative services varies. A recognised conscientious objector can be employed for 15 months in civil protection. This work, under the authority of the Ministry of the Interior, involves action in emergency and relief services. Alternatively, he could spend 15 months working in health institutions or centres for disabled people. A conscientious objector could also work in a social, cultural or religious organisation; this service lasts 20 months. A further outlet for conscientious objectors is the third world, where people with the appropriate skills can serve for 2 years.

B. INTERPRETATION OF PRESENT LEGISLATION

1. Procedure for recognition

Application for conscientious objector status must be made by writing to the Ministry of the Interior, stating reasons for rejecting military service, enclosing a 'certificat de milice' and 3 references testifying to the pacifist behaviour of the applicant. There follows a routine enquiry from the police, and then the applicant will appear before a tribunal, composed of civilians: a magistrate, a lawyer, and an official from the Ministry of Justice. He has the right to appeal against the decision of this tribunal. The applicant may appeal by appearing personally before the tribunal to justify his demand. He is allowed legal counsel and witnesses to aid his defence. The trial is public.

2. Penalties

The refusal to perform a national service can result in imprisonment for a period of 2 years, although the second year of the sentence is spent in semi-freedom. Those who refuse to recognise the decision of a tribunal are sentenced to 2 years in prison.

3. Time delays encountered

Applications for conscientious objector status can be received by the Ministry of the Interior from 1st January of the year in which the conscript will have his 18th birthday until his call-up. A military conscript who has completed his active service has the chance to apply for conscientious objector status before his first recall to service.

There may be a delay of up to 2 months for the dossier to be sent to the President of the Council for conscientious objection. The applicant should know on the same day of his appearance before the tribunal whether his claim has been successful or not. He will receive written confirmation of the decision within a fortnight. Appeals against such a decision must be lodged within 2 weeks.

4. Availability of information

A conscript has easy access to information on his rights to refuse military service, as these are defined in his call-up papers. He has the additional advantage of being able to refer to several official publications, giving further details of his rights.

DENMARK

Conscription for all men from the age of 18.

Duration of military service: 9 months

Duration of alternative service: 11 months

A. PRESENT LEGISLATION

1. The right to conscientious objection

This was first recognised in Denmark by the law of 13 December 1917. This legislation was superseded by the laws of 20th May 1933 and 23 April 1952. These revisions provide for the right to conscientious objection and define the use of conscripts for civilian work.

2. Recognised reasons for conscientious objection

Conscientious objector status is granted to those who object to military service on genuine conscientious grounds. Religious, philosophical, and even implicitly political reasons are generally acceptable.

3. Alternative service

A recognised conscientious objector must perform some other kind of national service. A person who objects solely to the use of weapons may serve in non-combatant units of the armed forces. A conscientious objector has a choice of alternative employment available to him; he is free to choose the area in which he will work. He may work in social or cultural institutions. The duration of civilian service exceeds the length of military training by at least 2 months. Development service, which is purely voluntary, lasts at least 2 years and is open to anyone who has a proper qualification.

B. INTERPRETATION OF PRESENT LEGISLATION

1. Procedure for recognition

Application for conscientious objector status must be made in writing to the enrolment board. This board can request additional information, which must be presented by the conscientious objector before he is due for enrolment. The Ministry of the Interior then receives the papers and a recommendation from the enrolment board. The final decision rests with the Minister of the Interior after consultation with the Minister of Defence. The applicant for conscientious objector status does not normally have a personal hearing, but he can appeal against the decision. On appeal he may defend himself and he is allowed legal aid. It is possible for a conscript, who has already reported for military service but has not yet started it, to request a transfer

to civilian service and he would be invited to appear in person before the enrolment board. However, it is not possible for a conscript already serving in the forces to apply for exemption from military service. A man who has already completed his basic military service has the right to ask for a transfer to civilian work; he will then be expected to do civilian work for 3 months instead of reserve exercises.

2. Penalties

Those who refuse all forms of national service can be imprisoned for a maximum of 15 months.

3. Time delays encountered

Applications for conscientious objector status should be sent to the enrolment board at least 8 days before the date on which the candidate should normally attend for enrolment. Claims are dealt with at the meetings of the board, but the applicant will not know the decision of the board until after the enrolment sessions for the year are completed.

4. Availability of information

A potential conscientious objector does not automatically receive information on his rights to conscientious objection. There are also official "schools" for recognised conscientious objectors, which last 4 weeks and take place before the conscientious objector embarks on his civilian service. At this session the conscientious objector will learn about his rights and obligations as a non-military conscript.

* * * *

FRANCE

Conscription for men between the ages of 18 and 35

Duration of military service: 1 year

Duration of alternative service: 2 years

A. PRESENT LEGISLATION

1. The right to conscientious objection

This was first recognised in France by the Law No 63-1255 of 21st December 1963, and in addition by Law No 71.424 of 10th June 1971.

The decree of Brégançon (7th August 1972) has been incorporated into this law.

2. Recognised reasons for conscientious objection

Religious and philosophical reasons are considered as acceptable motives for refusing to perform military service.

3. Alternative service

A recognised conscientious objector is obliged to perform an alternative service which is double the length of military training. Conscripts have the chance to do their national service in the non-combatant units of the army, where they work for two years. Since 1972 (Decree of Brégançon) conscientious objectors are no longer allowed civilian work of their choice for the first year of their national service; they are placed instead at the service of the Ministry of Agriculture, often engaged in forestry work. In the second year of his national service, the conscientious objector has a wider scope for activity in social and cultural work as well as agricultural work.

B. INTERPRETATION OF PRESENT LEGISLATION

1. Procedure for recognition

Application for conscientious objector status must be made in writing to the Minister of Defence, expounding the reasons for objection to military service. The Juridical Committee (Commission Juridictionelle) will then examine the claim. If the claim is refused, an appeal may be lodged to the Minister for a second appeal. If the application is again refused, an appeal can be made to the State Council (Conseil d'Etat) and a further examination by the Juridical Committee follows. There is no legal provision for soldiers already doing their service and reservists to apply for conscientious objector status. The Juridical Committee is composed of a judge, three people nominated by the Prime Minister and three officers nominated by the Minister of Defence. The examination of a conscientious objector's claim is not public, although witnesses may be called for evidence where necessary. The decision is made in camera. The applicant does not, therefore, normally have a personal hearing.

2. Penalties

Defaulters who refuse to do alternative service can receive a prison sentence of two months - one year, although in practice only a small percentage (less than 10%) of defaulters are actually brought to trial. Deserters who leave civilian service prematurely run the risk of imprisonment of between 6 months-3 years. Defaulters and deserters are not allowed to work for the State in later life.

3. Time delays encountered

Demands for conscientious objector status must be made in the month after the call-up has been published. Delays can be met between stages of the recognition procedure. A candidate may have to wait a month after the refusal of his first letter before making an appeal to the Minister, and after subsequent refusals delays of up to two months may be met before further legal action can be taken. The appeal to the Minister of Defence suspends enrolment. The appeal to the State Council does not.

4. Availability of information

Article L50 of the law makes it illegal to propagate information on the status of conscientious objectors. Anyone who incites a person to resist military service, by the publication of information on conscientious objection for instance, is liable to a fine of between 400 and 10,000FF or a prison sentence of between 6 months and 3 years.

* * * *

The situation of conscientious objectors is expected, however, to improve with the coming into power of the Socialist Government in June 1981. According to Mr Hernu, the new Minister for Defence, the new conscientious objector Bill should be laid before Parliament in the spring of 1982. This new law would relax the requirements for the granting of conscientious objector status, reduce the length of civilian service in lieu, and increase the openings for employment of conscientious objectors, (Le Monde, 6 October 1981). In the meantime, the Minister for Defence has asked for the provisional release of those currently held in custody and called for a halt to prosecutions. He had previously accepted that those young people waiting for a decision in an action before the Conseil d'Etat be put in the same position as a deferred draft, reversing the previous situation in which such an action was not suspensive.

* * * *

FEDERAL REPUBLIC OF GERMANY

Conscription for men between the ages of 18 and 45.

Duration of military service: 15 months

Duration of alternative service: 16 months

A. PRESENT LEGISLATION

1. The right to conscientious objection

In the Federal Republic of Germany this is recognised in the Constitution of 1949, article 4, paragraph 3. Article 12a of the same constitution stipulates that an alternative service should be provided for conscientious objectors which does not involve military training. Further qualifications are given in the Law on compulsory military service (Wehrpflichtgesetz) and the Law on civilian service (Zivildienstgesetz), but this legislation is continuously under debate and has undergone many amendments.

2. Recognised reasons for conscientious objection

The constitution states that no man shall be forced to do military service against his conscience. To claim exemption from it, the applicant must define his conscientious reasons for refusing military service with reference to the relevant part of the constitution.

3. Alternative service

A recognised conscientious objector is obliged to perform an alternative civilian service of at least 16 months' duration. This service usually involves work for the general welfare of the community; for instance, work in hospitals, homes for the handicapped and with charitable organisations, such as the Red Cross. Service abroad for 18 months is also generally accepted as a viable alternative as is a development service of 2 years' duration. A person who objects solely to the use of weapons may serve in non-combatant units of the armed forces.

B. INTERPRETATION OF PRESENT LEGISLATION

1. Procedure for recognition

Application for conscientious objector status must be made in writing to the regional office for draft service (Kreiswehrersatzamt), claiming exemption from military service. The written arguments are studied by an examining committee (Prüfungsausschuss) before whom the applicant must appear, which decides in camera whether to accord conscientious objector status or not. The applicant may appeal against the decision

to the examining chamber (Prüfungskammer) as may the military authority. The examining committee and the examining chamber are composed of a chairman without voting rights nominated by the Ministry of Defence, 2 elected honorary members and a member nominated by the Land government. A further chance of appeal is possible to the Administrative Tribunal (Verwaltungsgericht) and in the final instance to the Federal Administrative Tribunal (Bundesverwaltungsgericht). Neither of the first two examinations of the claim are public. The legal proceedings in these stages are free and the applicant has the right to receive legal advice. The tribunal is a body made up of professional and lay judges. The applicant is obliged to pay for the appeal to the Tribunal, if his claim is again refused.

2. Penalties

Refusal to recognise the judgment of the Tribunal may result in a fine of up to 1,000 DM.

Refusal to respond to call-up obligations can lead to a prison sentence of 5 years.

3. Time delays encountered

Application for conscientious objector status can be made at any time. The call-up of the applicant is automatically delayed if the claim was made before or during medical examination until his case has been examined but no later than after the second examination. After a negative decision of the examining committee, the applicant has two weeks to appeal to the examining chamber. A second appeal to the Tribunal must be made within 4 weeks of the decision of the examining chamber.

4. Availability of information

A conscript does not usually receive information on his rights to conscientious objection. When appearing before the examining committee, an applicant will receive details of future proceedings:

* * * *

GREECE

Compulsory conscription for all men aged between 20 and 40

Duration of military service: 26-30 months

Duration of alternative service: 4 years (still within army)

A. PRESENT LEGISLATION

1. The right to conscientious objection

This was first recognised in Greece in October 1977, Law 731/77, which came into force on 14 October 1977, offers a limited provision for those refusing to perform military service. Under this law, an alternative non-combatant service is offered. This law also granted an amnesty to those religious conscientious objectors who were still imprisoned having already served a sentence of 4 years or more. They were discharged from military obligations on receipt of a temporary release paper. Those, however, who had been imprisoned for less than 4 years were released, but remained under military jurisdiction and were recalled to perform their military or alternative service, as newly provided by the law, or to complete such service if they had served before.

2. Recognised reasons for conscientious objection

Only religious reasons are accepted, for refusing to perform military service and only religious conscientious objectors were released from prison by the amnesty of law 731/77.

3. Alternative service

Conscientious objectors are offered an alternative service twice the duration of military service and always within the military context.

B. INTERPRETATION OF PRESENT LEGISLATION

1. Procedure for recognition

From our information, it appears that to date, the only conscientious objectors in Greece are Jehovah's Witnesses and, as such, they feel themselves unable to perform any sort of compulsory service. Consequently, they refuse to fulfil both their military obligations and to perform the alternative service now offered to them. Hence there are at present no Greek conscripts who have applied for conscientious objector status, nor are there any conscientious objectors carrying out the alternative service.

2. Defence proceedings

Little is known of the actual defence process, as no one has applied for conscientious objector status as yet.

3. Penalties

Because of the wording of Law 731/77, a few conscientious objectors have received repeated prison sentences. This concerns those who, not having completed their sentence by October 1977, were released from prison and then recalled to perform their military or alternative service. They then refused to do this and were subsequently resentenced, because earlier service counts, but earlier imprisonments do not. They are practically all free now (summer 1980). In addition to a prison sentence, conscientious objectors usually suffer 5 years' loss of civil rights. Law 731/77 contains no restraint on the courts to regulate the length of sentences passed. Statistics show that, generally, conscientious objectors are not condemned to a period of longer than 4½ years and this length of sentence that has been exceeded on some occasions, has up to now always been reduced after an appeal to 4-4½ years.

4. Time delays encountered

Not applicable.

5. Availability of information

As far as we know, information concerning the rights to recognition as a conscientious objector is not withheld, but no one has as yet tested the proceedings.

* * * *

IRELAND

No conscription.

A professional army exists, but enrolment is purely voluntary for men over 18.

This situation would be reviewed in the event of war.

A. PRESENT LEGISLATION

1. The right to conscientious objection

There is no obligatory national service in Ireland, but universal compulsory military service can be introduced under Irish law, if

the government declares a state of national emergency. This is stated in the constitution (art. 28. sec.23) and the Defence Act of 1954 sec. 4(1). There is no current provision for conscientious objectors in this law, as the question has not arisen.

2. Recognised reasons for conscientious objection

There are no known cases of conscientious objection amongst soldiers presently serving in the Irish professional army, but all reasons would be given consideration.

3. Military service

People can enrol freely in the Irish army for a certain period of time. The army is a small peace-keeping force, which has served mainly abroad, under the United Nations.

B. INTERPRETATION OF PRESENT LEGISLATION

1. Procedure for recognition

A soldier could request a discharge from the army, should he develop conscientious objection after enrolment, simply by informing the authorities of this position.

2. Penalties

Not applicable.

3. Time delays encountered

Not applicable.

4. Availability of information

There is no reason to believe that information on the rights of a soldier is withheld, although terms may not always be readily available.

* * * *

ITALY

Conscription for all men aged between 18 and 30
Duration of military service: 12 months
Duration of alternative service: 20 months

A. PRESENT LEGISLATION

1. The right to conscientious objection

This was first recognised in Italy by Law No 772 of 15 December 1972 revised on 19 December 1974.

2. Recognised reasons for conscientious objection

Conscientious objector status is granted to those who, for reasons of conscience or profound convictions, feel themselves unable to use arms. Thus religious, moral and philosophical motives are accepted for refusing military service.

3. Alternative service

A recognised conscientious objector is obliged to perform an alternative service which is 8 months longer than military service. Conscripts have the chance to serve within the army in a non-combatant unit if they object solely to the use of military weapons. For those conscientious objectors who do not want to serve in the military context, there exists a civilian service organised within the framework of voluntary agencies and national bodies involving work in civil defence, forestry, education and social assistance, by agreement with the Ministry of Defence.

B. INTERPRETATION OF PRESENT LEGISLATION

1. Procedure for recognition

Application for conscientious objector status must be made by the conscript to the authorities responsible for recruitment. The Ministry of Defence decides whether to recognise the applicant's claim or not. The Minister will be advised by a committee, set up by ministerial decree and composed of military and civil personnel, presided over by a judge. The applicant does not normally have a personal hearing.

2. Penalties

The refusal to perform national service can result in imprisonment for 2-4 years.

3. Time delays encountered

A prospective conscientious objector can apply for exemption from

military service during the 2 months following his call-up. The Minister of Defence is expected to deliver his decision within 6 months of the submission of the application, but this period has been exceeded on many occasions and the Ministry had to issue a special circular exempting from all service those applicants who had been waiting for more than 26 months.

4. Availability of information

A prospective conscientious objector does not automatically receive information on his rights to conscientious objection.

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LUXEMBOURG

No conscription

There is a small professional body of soldiers, but enrolment is purely voluntary for young men from the age of 17-25.

A. PRESENT LEGISLATION

1. The right to conscientious objection

There has been no obligatory national service in Luxembourg since 1967. The right to conscientious objection was first introduced in Luxembourg in 1963, when those refusing active involvement in the army were obliged to perform an alternative service.

A battalion of volunteer soldiers exists to satisfy the obligations of membership of NATO, but there is no special provision for conscientious objectors in this force. The basic law dealing with this army is the "Loi militaire du 23.7.1952", as modified on 29th June 1967 and 25th February 1980. The remaining sections relate to soldiers serving in the professional army.

2. Recognised reasons for conscientious objection

There are no known cases of conscientious objection amongst soldiers presently serving in the Luxembourg army, but all reasons would be given consideration.

3. Military service

Officially, the volunteer force consists of 430 young men, although in practice, the number is about 500. About 2/3 of them are assigned to NATO. Volunteers sign up for 3 years.

B. INTERPRETATION OF PRESENT LEGISLATION

1. Procedure for recognition

A soldier could request a discharge from the army, should he develop conscientious objection to the role of the army after enrolment, simply by informing the authorities of this position.

2. Penalties

Not applicable

3. Time delays encountered

Not applicable.

4. Availability of information

There is no reason to believe that information on the rights of a soldier is withheld, although terms may not always be readily available.

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THE NETHERLANDS

Conscription for men between the ages of 18 and 35

Duration of military service: 14 months

Duration of alternative service: 18 months

A. PRESENT LEGISLATION

1. The right to conscientious objection

This is recognised in the Dutch constitution of 1922, Article 196 (189). Subsequent laws and decrees have been enacted, the most recent being the revised conscientious objector decree of 14 December 1979 (Stbl 1980, 5).

2. Recognised reasons for conscientious objection

The constitution recognises the right to refuse military service on genuine reasons of conscience.

3. Alternative service

A recognised conscientious objector must perform an alternative service. For those objecting exclusively to the using of weapons, there exists the opportunity for non-combatant service in the army. Others have the choice of work in social, cultural or welfare organisations. The length of such service is at least 18 months.

B. INTERPRETATION OF PRESENT LEGISLATION

1. Procedure for recognition

Application for conscientious objector status must be made in writing to the Minister of Defence asking for consideration as stipulated in the law on conscientious objectors. A serving soldier can also apply for conscientious objector status by giving a reasoned written argument to his commanding officer. The applicant must provide written details of his grounds for refusing military service. He then appears before one member of the advisory committee, (Comissie van Advies). If his claim is not recognised at this stage he has another hearing with 3 members of the advisory committee. He also has to undergo a psychological examination. The objector - if again refused - receives a report of the hearing and he can appeal to the Queen. He will then have a public hearing by the Council of State (Raad van State). The applicant is free throughout this procedure to receive legal counsel and to consult suitable organisations for advice. He is also allowed a companion to aid his defence in public hearings.

2. Penalties

Refusal to perform national service can lead to a prison sentence of $1\frac{1}{2}$ years or a fine.

3. Time delays encountered

Application for conscientious objector status can be made at any time after receipt of the call-up papers. The applicant is informed by post after a delay of a few weeks of the decision of the Advisory Committee. There are often considerable delays for the objector if his claim is not accepted at the first interview with the Advisory Committee. The appeal to the queen has to be made within 30 days after the refusal of the applicant's second hearing.

4. Availability of information

A prospective conscientious objector does not automatically receive information on his rights to conscientious objection. However he will receive details of his legal rights and how to make an appeal, should his claim be unsuccessful.

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UNITED KINGDOM

No conscription

A professional army exists, but enrolment is purely voluntary for men and women between the ages of 16 and 35.

This situation would be reviewed in the event of war.

A. PRESENT LEGISLATION

1. The right to conscientious objection

There has been no obligatory national service in force in the United Kingdom since November 1960. The last group of conscripts was demobilised in 1963. Conscientious objectors were, however, recognised in both world wars by the Military Service Act of 1916, which went as far as to give total exemption from all forms of conscription to many of those refusing to do alternative service during the 1939-45 war.

As regards the professional army in existence today, young men sign a contract to serve for a certain period; (the longer their contract, the higher their starting pay). It is possible for a soldier to break this contract before it officially expires, on either conscientious grounds, grounds of incompatibility or compassion, or by buying his way out of the force.

2. Recognised reasons for conscientious objection

All reasons for rejecting military activities are given consideration, although being sent to Northern Ireland, for example, cannot in itself be accepted as a motive for discharge from the army.

3. Military service

Professional soldiers have to sign a contract and they determine for how long they will remain in the army.

B. INTERPRETATION OF PRESENT LEGISLATION

1. Procedure for recognition

Application for conscientious objector status is addressed to the soldier's Commanding Officer, who, with the aid of the Chaplain, will examine the candidate's sincerity. Their judgement is then communicated to the Personnel Board of the Ministry of Defence, which reaches its decision on this evidence. If the claim is refused, the serviceman has the right to appeal to an Advisory Committee, by submitting a form (obtainable from the Commanding Officer) giving reasons for his request to be discharged from the army. He will then appear and have to put his case before an Advisory Committee (civilian) which will pass on its decision to the Ministry of Defence. If his application is again refused, a serviceman is allowed to make an unlimited number of further applications through his Commanding Officer, provided he has collected fresh evidence for his defence. The appearance before the Advisory Committee is a public trial. The serviceman is allowed legal counsel and representation. He is free to call witnesses to aid his defence.

2. Penalties

A serviceman is still subject to military discipline if he disobeys an order or is absent without leave, albeit for reasons of conscience and even while his application is being considered.

3. Time delays encountered

There may be delays of 3 months to one year before a serviceman can be recognised as a conscientious objector. This largely depends on the Commanding Officer's first approach to the Ministry. If rejected, the whole procedure of appeal has to be initiated and the time delays depend on the next meeting of the Advisory Committee.

4. Availability of information

Terms regarding the possible breaking of a contract are not always readily available.

	LENGTH OF MILITARY SERVICE	MINIMUM LENGTH OF ALTERNATIVE SERVICE	TYPE OF ALTERNATIVE SERVICE AVAILABLE		NUMBER OF ELIGIBLE CONSCRIPTS	NUMBER OF APPLICANTS FOR CO-STATUS	% OF COs IN RELATION TO MILITARY CONSCRIPTS	YEAR FROM WHICH STATISTICS ARE TAKEN
			within army	outside army				
BELGIUM	10 months	15 months	X	X	42,000	1,317	3%	1977
DENMARK	9 months	11 months	X	X	73,799	2,255	3%	1976*
FRANCE	12 months	24 months	X	X	n.k.	n.k.	approx 0.3%	+
FEDERAL REPUBLIC OF GERMANY	15 months	16 months	X	X	305,400	29,749	9.7%	1976*
GREECE	26 months	48 months	X	O	n.k.	none	n.a.	-
REPUBLIC OF IRELAND	NO CONSCRIPTION		n.a.	n.a.	n.a.	none	n.a.	-
ITALY	12 months	20 months	X	X	535,314	628	0.1%	1976*
LUXEMBOURG	NO CONSCRIPTION		n.a.	n.a.	n.a.	none	n.a.	-
THE NETHERLANDS	14 months	18 months	X	X	122,324	3,091	2.5%	1979
PORTUGAL	18 months	none provided	no alternative service provided		n.k.	n.k.	n.k.	-
SPAIN	15 months	36 months	X	X	n.k.	n.k.	n.k.	-
UNITED KINGDOM	NO CONSCRIPTION		n.a.	n.a.	n.a.	n.k.	n.k.	-

KEY: n.a. = not applicable * = Official Government Statistics
n.k. = not known + = Annual National Average

OPINION OF THE POLITICAL AFFAIRS COMMITTEE

The motions for resolutions Docs. 1-803/79 by Mr Van Minnen and others and 1-244/80 by Mr SIEGLERSCHMIDT and others, on conscientious objectors, were referred to the Political Affairs Committee on 10 March and 18 June 1980 respectively.

Under the agreement between the chairman of the Political Affairs Committee, Mr RUMOR, and the chairman of the Legal Affairs Committee, Mr FERRI, of 19 June 1980 on the division of responsibilities between the two committees the Legal Affairs Committee was the committee responsible and the Political Affairs Committee was asked to deliver an opinion on these motions for resolutions.

On 21 January 1981 the Political Affairs Committee appointed Mrs van den HEUVEL draftsman of an opinion on the two motions for resolutions.

The Political Affairs Committee considered the draft opinion at its meetings of 26 and 28 May 1982 and 23 and 25 June 1982. At the latter meeting it adopted this opinion by 22 votes to 9 with 2 abstentions.

The following took part in the vote: Mr Rumor, chairman; Mr Barbi, Mr Berkhouwer, Mr Beyer de Ryke (deputizing for Mr Donnez), Mr Cottrell (deputizing for Lord Bethell), Mr De Gucht (deputizing for Mr Bettiza), Mr Deschamps, Mr Ephremidis, Mr Fellermaier (deputizing for Mr Brandt), Mr B. Friedrich, Mrs Gaiotti de Biase (deputizing for Mr Bournias), Mr Ghergo (deputizing for Mr Diligent) Mr Habsburg, Mrs van den Heuvel, Mr Hutton (deputizing for Lord Douro), Mr Katzer (deputizing for Mr von Hassel), Mrs Lenz, Mrs Lizin (deputizing for Mr Motchane), Mrs Macciocchi (deputizing for Mr Cariglia), Mr Majonica (deputizing for Mr Mr Schall), Mr van Minnen (deputizing for Mr Hänsch), Mr Narducci (deputizing for Mr Antoniozzi), Mrs Tove Nielsen (deputizing for Mr Haagerup), Mr Normanton (deputizing for Mr Fergusson), Mr Penders, Mr Plaskovitis, Mr Prag (deputizing for Lady Elles), Mr Radoux (deputizing for Mr van Miert), Sir James Scott-Hopkins, Mr Taylor, Mr Vandemeulebroucke (deputizing for Mrs Hammerich), Mr Walter (deputizing for Mr Schieler).

As, during the course of the vote, the Political Affairs Committee adopted amendment No. 1 by Mrs Lenz, Mr Deniau and Mr Haagerup, which radically amended the draft opinion submitted by Mrs van den Heuvel, she decided to resign as draftsman.

Having noted this resignation, the Political Affairs Committee, after a vote, instructed its chairman to submit the opinion in his name.

1. The Political Affairs Committee has noted the draft report by Mrs MACCIOCCHI (PE 76.198/rev.) . as submitted to the Legal Affairs Committee.
2. The Political Affairs Committee considers that, in view of the fundamental differences between the Ten on this matter, it would not be wise to take action of this sort at present. It therefore proposes that the MACCIOCCHI report be withdrawn.

