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Conscientious Objection to Military Service: Issues for the Country Report Task Forces

CZECH REPUBLIC

Summary: Obligatory military service has been suspended in the Czech Republic since 2005. There are however outstanding questions concerning:

- a) the situation of conscientious objectors under the provisions enabling the reimposition of obligatory military service in time of national emergency, and
- b) the details of the recognition which is reportedly given to the right of conscientious objection on the part of regular servicemen.

Background

Before 1989, there was no recognition of the right of conscientious objection to military service in the then Czechoslovakia, although in practice conscripts known to have religious objections to bearing arms were often assigned to unarmed duties, and, as in other “Soviet bloc” states there were provisions allowing a certain period of heavy manual work, especially in mining, to be substituted for military service. It is believed that a number of Jehovah’s Witness conscientious objectors avoided military service in this way.¹ The penalty for the refusal of military service was imprisonment for up to ten years; there were reports of the imprisonment of Nazarenes, Adventists and Protestant theological students,² but above all of Jehovah’s

¹ Horeman, B. & Stolwijk, M., Refusing to Bear Arms, War Resisters International, London, 1998. (<http://wri-irg.org/co/rtba/archive/czechrepublic.htm>) ; see also Bebler, A., “Socialist Countries of Eastern Europe: The Old Orders Crumble”, pp. 167 - 174, and Nikolov, S.E., “Appendix B: Bulgaria”, pp. 212-214, both in Moskos, C. C. & Chambers, J.W. (II), The New Conscientious Objection: from Sacred to Secular Resistance, New York (Oxford University Press), 1993.

² Prasad, D. & Smythe, T., Conscription - a World Survey: Compulsory Military Service and Resistance to it, London, (War Resisters International), 1968, p.30.

Witnesses; it is estimated that in 1989 some 50 Jehovah's Witnesses were serving prison sentences for refusing military service.³

The government which came to power in December 1989 moved quickly to remedy this situation; the 1991 Charter of Basic Rights and Freedoms (subsequently incorporated into the Constitution of the Czech Republic) stipulated, at paragraph 15.3, "No individual may be forced to perform military duties if this is contrary to his or her conscience or religious conviction." This was followed by the 1992 Law on Civilian Service (Act No. 18/1992), which instituted arrangements for conscientious objectors to perform civilian service in place of military service - arrangements which were subsequently modified by Acts Nos. 135/1993, 118/1995, 151/1999 and 223/1999.⁴

With effect from 1994, Article 2 of the Act on Civilian Service was amended to stipulate that all declarations of conscientious objection must be made within 30 days of the receipt of call-up notices.⁵ Two Jehovah's Witnesses, Martin Novak and Martin Duda, who had failed to meet this deadline were given suspended sentences under Article 269 of the criminal code for failing to commence military service and were imprisoned, in March and June 1995, respectively, when each in turn refused a repeated call-up. Their case was taken up by Amnesty International, which argued "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... or after call-up. Amnesty International believes that conscientious objectors to military service... have the right to claim conscientious objector status at any time (and) that conscientious objectors who are denied the right to do so, and who are imprisoned as a consequence, are prisoners of conscience."⁶

Novak and Duda were both released shortly after a ruling by the Constitutional Court on 18th September 1995 that, under the principle of "non bis in idem", a repeated refusal to perform military service on grounds of conscience should not be treated as a new offence⁷, the Constitutional Court subsequently pronounced on their own cases in rulings dated 8th August and 17th October, 1997.

More generally, the Constitutional Court has taken a prominent role in developing the interpretation of the right of conscientious objection set out in the Charter of Basic Rights and Freedoms, emphasising that legislation must be interpreted in accordance with both the letter and the spirit of that Charter. Rulings to this effect on 3rd February 1999, concerning Martin Duda and Marek Prchal, and on 2nd June 1999, on a Recommendation from the District Court in Novy Jicin, were published in the Collection of Laws under Nos. 38/1999 and 151/1999, respectively.

The Court has also cited Article 18 of the Universal Declaration of Human Rights; in a ruling of 7th October 1998, concerning the case of Ladislav Koren, it found that the

³ Horeman & Stolwijk, op cit.

⁴ General Counsel of the Jehovah's Witnesses, unpublished evidence submitted on 1st August 2003 in response to the questionnaire on "best practices concerning the right of everyone to have conscientious objections to military service", circulated by the Office of the High Commissioner on Human Rights.

⁵ Horeman & Stolwijk, op cit.

⁶ Amnesty International (www.amnesty.org), Out of the margins: the right to conscientious objection to military service in Europe, London, 1997. (AI Document Ref. EUR 01/002/1997)

⁷ This decision, regarding the case of Jiri Rimanek, was subsequently published in the Collection of Laws under No. 32/1997.

right of conscientious objection to military service predated the Charter of Basic Rights and Freedoms, being grounded in Article 18. This principle was re-emphasised in the decision of March 2003 in the case of Vladimir Wais⁸, which overturned a judgement of the Supreme Court, and led to the retrospective cancellation of Wais' 1954 conviction for his refusal of military service and his complete exoneration, notwithstanding the lack of any legislative provision for the recognition of conscientious objection in the Czechoslovak Socialist Republic at that time.⁹

In 2001, the Czech government decided to move towards a suspension of obligatory military service and the "professionalisation" of the armed forces. The completion of this process was originally planned for 2007, but in the event the transformation was achieved more rapidly than expected, and the last intake of conscripts completed their service at the end of 2004.¹⁰

Issues arising from the State Report¹¹

The State Report indicates that in the event of a war or national emergency leading to the reinstatement of obligatory military service the previous provisions for the declaration of conscientious objection, which it outlines in Para.384, would not be reinstated. Instead the relevant legislation would be the Conscription Act (Act No. 585/2004) and the Act on the Defence of the Czech Republic (Act No. 222/1999), the provisions of which are summarised in Para 385, and further explained (with reference to Article 8.3) in Para 110.

Various questions which arise might usefully be taken up with the State Party:

1. Para. 385 refers to "a reservist" who is called up to military service in time of war or national emergency. ***Is the implication that as part of the professionalisation of the armed forces all reserve duties have been abolished in time of peace - and with them also the previous stipulation (see Para 384) that a reservist might declare conscientious objection prior to the 31st January in any year?***

2. Two time limits of 15 days for declaring conscientious objection are quoted: "within 15 days of the date on which the decision... issued in the conscription procedure, is delivered, or within 15 days of the effective date of the declaration of a national emergency or state of war." (Para 385). ***How do these two time limits relate to each other? Does each person affected have two separate opportunities to declare a conscientious objection? Moreover, is the implication that the procedure to register those liable for conscription continues even during a time of peace, when the implementation of obligatory military service is suspended?*** (If so, the retention of the possibility of declaring conscientious objection at this stage is a commendable practice which ought to be followed by other states in the same circumstances.)

⁸ Published in the Collection of Laws under No.106/2003.

⁹ All details of Constitutional Court jurisprudence are drawn from the previously-referenced Jehovah's Witnesses submission to the OHCHR.

¹⁰ Stolwijk, M., The Right to Conscientious Objection in Europe: A Review of the Current Situation, Quaker Council on European Affairs, Brussels, 2006, p.23.

¹¹ CCPR/C/CZE/2

3. A fifteen-day time limit would represent a halving of the thirty-day limit which was so strongly criticised by Amnesty International in the cases of Novak and Duda:

The State Party should be asked what measures it would take, in the event of the reactivation of conscription, to respect the right to develop a conscientious objection to military service at any time.

4. Under the Act on Defence of the Czech Republic all conscientious objectors would apparently be required to perform “work duty”, defined as the performance of “specific work tasks, which are necessary to ensure the State’s defence at a time of risk to the State or in time of war”.(Para 110). ***The State Party should be reminded of the standard set out in OP4 of UN Commission on Human Rights Resolution 1998/77 that it should in such circumstances “provide for conscientious objectors various forms of alternative service which are compatible with the reasons for conscientious objection, of a non-combatant or civilian character”, and should be asked what would be the position of an objector who refused on grounds of conscience to perform service which, even if unarmed, was directly related in this way to the “war effort”.***

5. Para 384 of the State Report makes it clear that under the previous legislation “soldiers whose military service had been interrupted” were, like conscripts and reservists, able to refuse further service on grounds of conscientious objection (albeit within even tighter time limits). Indeed, the Czech Republic was listed in the background paper accompanying the draft of Resolution 1518/2001 of the Parliamentary Assembly of the Council of Europe¹² as being one of the very few countries which “recognise regular servicemen's right of conscientious objection... In other countries, regular servicemen’s only option is to denounce their service contract.” ***Has the recognition of this right been maintained under the new legislation? Does it apply only when there is an “interruption” in service - and if so what nature of interruption is referred to? Have any regular servicemen in the Czech Republic in fact pleaded conscientious objection in order to seek a general or partial release from their military obligations; what procedures were followed, and with what result?***

13th January, 2007.

¹² “Exercise of the right of conscientious objection to military service in Council of Europe member states”, Report of the Committee on Legal Affairs and Human Rights to the meeting of the Standing Committee of the Parliamentary Assembly of the Council of Europe in Istanbul, 22nd and 23rd March, 2001 (Document 8809, revised 4 May, 2001), para 42.