

UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



Distr.
GENERAL
E/CN.4/1419/Add.1
15 December 1980
ENGLISH
Original: VARIOUS

COMMISSION ON HUMAN RIGHTS

Thirty-seventh session
2 February-13 March 1981
Item 18 of the provisional agenda

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

Report of the Secretary-General

Addendum

CONTENTS

REPLIES FROM GOVERNMENTS	Page
Brazil	2
Denmark	6
Germany, Federal Republic of	7
Kuwait	8
Mexico	8
Sweden	9

[Original: Portuguese]

[12 November 1980]

BRAZIL

LEGISLATION CONCERNING CONSCIENTIOUS OBJECTION TO MILITARY SERVICE

FEDERAL CONSTITUTION (1979):

"Article 92. Military service and other duties necessary for national security shall be compulsory for all Brazilians, in accordance with the law.

Sole proviso. Women and clergymen shall be exempted from military service in times of peace, but shall be subject to any other duties assigned to them by law."

"Article 147. Electors shall be Brazilians over 18 years of age who register as prescribed by law.

...

3. The following may not register as electors:

...

(c) Any persons temporarily or permanently deprived of political rights".

"Article 149. Loss or suspension of political rights may be declared only when full defence of the person concerned is guaranteed.

1. The President of the Republic shall order loss of political rights:

(a) ...

(b) For refusal, on grounds of religious, philosophical or political conviction, to perform the duty or service that is compulsory for Brazilians in general; or

(c) ...".

"Article 150. Non-registered persons shall not be eligible for election".

"Article 153. The Constitution guarantees the inviolability of the rights to life, liberty, security and property of Brazilians and aliens resident in Brazil, in the following terms: ...

...

2. No one may be obliged to do or refrain from doing anything, except by virtue of law.

...

6. No one shall be deprived of any of his rights by reason of religious belief or philosophical or political conviction, unless such belief or conviction is invoked for the purposes of exemption from the legal obligation imposed on all persons, in which case the law shall rule upon the loss of rights that are incompatible with exemption on the grounds of conscience".

"Article 185. In addition to the cases provided for in this Constitution and the supplementary law, a citizen shall be ineligible for any public or trade union office for as long as his political rights are suspended".

MILITARY SERVICE ACT (Act No. 4375, of 17 August 1964)

"Article 2. Military service, as provided for in this Act and the Regulations thereto, is compulsory for all Brazilians".

"Article 69. Military tax equivalent to the minimum fine shall be levied on persons who are called up and obtain deferment of their enlistment in conformity with the regulations to this Act and on persons who are granted a certificate of exemption from service".

"Article 73. For the purpose of military service, the civil incapacity of a minor shall cease as of his 17th birthday".

REGULATIONS TO THE MILITARY SERVICE ACT (Decree No. 57654, of 20 January 1966)

"Article 3. For the purposes of these Regulations, the following concepts and definitions are established:

...

(17) "Fulfilment of military obligations" means that a Brazilian has regularized his military situation with regard to the various military service requirements. To this end, he must be in possession of a document attesting to his military status and containing the particulars specified in these regulations concerning the fulfilment of obligations subsequent to receipt of the document. This term shall have the same meaning as "completion of military service" contained in previous ordinary legislation".

The following constitute proof that a Brazilian has fulfilled his military obligations (article 75 of the Military Service Act and article 209 of the relevant regulations);

- (a) Valid certificate of Enlistment (CAM);
- (b) Reservist Certificate;
- (c) Certificate of Exemption, for physical or mental disability, or moral disqualification;
- (d) Certificate of Exemption from Service, on the grounds of over-qualification for the Armed Forces;
- (e) Certificate of Military Status, to prove the status of persons who have lost their grade or rank;
- (f) Identity Card for officers on active service, reservists and retired officers;
- (g) Discharge papers for other ranks who have completed their service;
- (h) Military Service Certificate, where necessary, for persons performing military service; and
- (i) Attestation of release from military service in the following cases:
 - Up to the date of signature of a document in which a person opts for Brazilian nationality; and
 - as of 1 January of the year of a person's 46th birthday, when requested".

"Article 210. Between 1 January of the year of his 19th birthday and 31 December of the year of his 45th birthday, no Brazilian shall be entitled, without producing proof of fulfilment of his military obligations:

- (1) To obtain or renew a passport;
- (2) To become an official, employee or associate in an official, approved or subsidized institution, enterprise or association whose existence or operation depends on authorization from or recognition by the Federal Government or the State, Territory or municipal governments;
- (3) To sign a contract with the Federal Government or the State, Territory or municipal governments;
- (4) To take an examination or enrol in any educational establishment;
- (5) To obtain a labour permit, a diploma in a liberal profession, registration to engage in any occupation, or an industrial or occupational permit;
- (6) To enter a competition for appointment to a public post;
- (7) To hold any public office or post, elective or appointive, in whatever capacity, regardless of the category or form of payment, whether it is paid from public Federal, State or municipal funds or whether it is in a para-State body which is subsidized or maintained by the State;
- (8) To receive any prize or privilege from the Federal, Government or the State, Territory or municipal governments".

"Article 224. Military tax shall be levied on Brazilians who obtain permission to defer enlistment or a certificate exempting them from military service in accordance with the provisions of these Regulations (article 69 of the Military Service Act)".

"Article 244. The Minister of War shall be responsible for processing and settling cases in which Brazilians obtain exemption from military service with loss of political rights, in accordance with article 141, paragraph 8, and article 135, paragraph 2 (II) of the Constitution of the Republic (1946).

Sole proviso. If a person is exempted and subsequently wishes to regain his political rights, he must be drafted into an active military unit with the first group to be called up for initial military service, after he has passed a medical examination and provided he is under 45 years of age".

DECREEE No. 562 - GB-B, of 8 June 1967, of the Minister of State for the Army, approves the "Instructions for the processing and settlement of cases in which Brazilian citizens obtain exemption from military service on the grounds of religious belief".

In accordance with article 244 of the Regulations to the Military Service Act, the Decree governs the status of Brazilians who, on religious grounds, claim the right to exemption from military service and are therefore subject to the penalty prescribed in article 73, paragraph 1 (b), of the Military Service Act.

NOTICE 56 DF - DIF, of 8 June 1980, of the Minister of State for the Army, makes the Director of Military Service responsible for processing applications for exemption from military service on religious grounds.

[Original: English]

[6 November 1980]

DENMARK

A conscript who objects on grounds of conscience to military service of any kind may, upon application, be exempted from military service against doing alternative service in the form of civilian work (conscientious objector service). The relevant Danish legislation on this subject is contained in Act No. 427, promulgated by the Ministry of the Interior on 30 September 1980. (A copy of the Act, in the Danish language, is enclosed).

A conscript who does not on grounds of conscience object to military service involving limited use of arms may apply for enrolment in the medical corps. Applications to that effect are dealt with according to the same rules as applications for transfer to civilian work (see below).

A conscript who has been transferred to civilian work may apply for enrolment in the civil defence corps.

In his application for transfer to civilian work the conscript shall state on what grounds of conscience he wants to be exempted from service in the armed forces or in the civil defence corps.

Applications for transfer to civilian work shall be submitted within four weeks after receipt of the call-up order. If this time-limit is not observed, the application will be rejected. If the conscript does not in his application state the grounds on which he objects to military service he will be required to account for these grounds within a specified time-limit. If he fails to do so, his application will be rejected. Applications for transfer to civilian work submitted after commencement of service in the armed forces or in the civil defence corps cannot be granted. A conscript can be transferred to civilian work only once.

Applications for transfer to civilian work shall be submitted to the Directorate for Conscientious Objector Service, whose decisions may be appealed against to the Ministry of the Interior.

The periods of service are 11 months for civilian work, nine months for service in the armed forces, and eight months for service in the civilian defence corps.

Conscripts transferred to civilian work start their service with a stay of two weeks and two days at a school where, in addition to being given a general briefing on the terms of service and the possibilities of assignment, they receive instruction in subjects of relevance to assignment.

[Original: English]

[19 November 1980]

GERMANY, FEDERAL REPUBLIC OF

Conscientious objection is a fundamental right embodied in Article 4 (3) of the Basic Law (Constitution) for the Federal Republic of Germany, which reads: "No one may be compelled against his conscience to render war service involving the use of arms. Details shall be regulated by a federal law." Not even in peace time may a person who has been formally recognized as a conscientious objector be called up for military service. The Basic Law says that he may be required to complete a period of alternative civilian service. This matter has been regulated by federal laws, namely the Conscription Act and the Civilian Service (Conscientious Objectors) Act.

According to the Conscription Act, any person liable to military service may at any time apply for recognition as a conscientious objector. The decision on his application is taken in the first instance by an Examination Committee, in the second instance, if the applicant lodges an objection, by an Examination Board, in the third instance, if he institutes legal proceedings, by an Administrative Court, and in the last instance, if he appeals, by the Federal Administrative Court. If the application is submitted before the end of the induction period, the person concerned may only be called up for military service before the matter has been incontestably settled if the Examination Board or the Administrative Court has rejected the application.

The conscientious objector may lodge a complaint with the Federal Constitutional Court against a decision by the Administrative Courts rejecting his application for recognition if he considers that the Court has not taken sufficient account of the importance of the fundamental right of conscientious objection.

A person who has been formally and incontestably recognized as a conscientious objector must, in accordance with the Conscription Act in conjunction with the Civilian Service Act, complete a period of alternative service with a civilian agency. That period corresponds to the average length of service of persons liable to compulsory military service, which at the moment is 16 months. His civilian service must be for the benefit of the public at large and the social sphere has priority.

[Original: Arabic]
[17 October 1980]

KUWAIT

In Kuwait, the purpose of doing military service and of bearing arms is solely to defend the homeland, since offensive war is prohibited under article 68 of the Constitution. Hence, there are no legal provisions under which a Kuwaiti national who satisfies the conditions specified in the Compulsory Military Service Act No. 13 of 1976 may be relieved from his responsibility to bear arms in defence of the integrity of his country. In fact, article 47 of the Constitution stipulates defence of the homeland is a sacred duty and that the performance of military service is an honour for citizens, while article 157 stipulates that preservation of the integrity of the homeland is the inherent obligation of every citizen.

[Original: Spanish]
[11 November 1980]

MEXICO

I am pleased to inform you that, under articles 5 and 31 of the Political Constitution of the United Mexican States, military service is compulsory.

With regard to the possibility of employing such personnel in other services, I am pleased to inform you that, in Mexico, national military service is eminently social in significance since, together with the military training called for under the Constitution, conscripts are given theoretical and practical information on jobs and skills, literacy classes and classes on other secondary and advanced educational subjects, as well as talks to raise morale and promote esprit de corps and a spirit of patriotism, a combination of skills which enables the Mexican Armed Forces to train citizens that are useful to themselves and to the country.

[Original: English]

[11 November 1980]

SWEDEN

The Swedish military defence system is based on compulsory military service. Swedish males between the ages of 18 and 47 are required to undergo compulsory military training and other military duty both in peacetime and wartime.

The obligation to do military service is, however, not absolute. For a number of years Sweden has had legislation to the effect that a person who, for reasons of conscience, does not wish to carry arms, may do non-military service. The relevant legislation was amended most recently in 1978.

Non-military service

An application for non-military service may be submitted at any time, irrespective of whether a conscript has been called up or not; an application should be made in writing and contain the reasons why the applicant objects to military service. The applicant should also list his preferences for certain types of non-military service.

Once a conscript has applied the first time for non-military service, he may not be called up; any call-up order which has been issued is rescinded. If the conscript has already begun serving, he must be discharged immediately. He may not be called up for military service again until his application has been finally considered. However, if there are good grounds for believing that a conscript has submitted an application chiefly in order to postpone his military service which may be imminent or already in progress, he must serve while his application is being considered. However, such a conscript may not be trained in the use of arms or be required to carry arms or ammunition.

Anyone applying a second time for non-military service is obliged to carry out the duties he is ordered to perform during the time his current application is being dealt with. If such a person has completed basic military training since his previous application, he is treated as a first-time applicant.

When the military authorities receive an application for non-military service, they must forward it without delay to a civilian board set up to consider such applications, referred to as the Board in the following. The Board then appoints an investigator, who talks to the applicant and subsequently presents a written report on these talks, with his own comments to the Board. The applicant himself is then given an opportunity to comment on the report. The Board makes its decision on the basis of the written material. In doubtful cases the Board may summon the applicant to appear before it.

The requirements which have to be fulfilled by a conscientious objector in order for him to be granted non-military service are difficult to define. The relevant statute requires that the Board is satisfied that the use of arms against another human being is so incompatible with the applicant's deeply felt personal convictions that he will not do military service under any circumstances. The preparatory material of the statute regulating non-military service indicates how the statute is to be interpreted. Briefly, the interpretation is as follows.

The conviction of the applicant must be based on respect for the inviolability of human life. The applicant must also have renounced personally the use of arms against human beings, whatever the purpose. His convictions may spring from his religious beliefs or some other factors and may be combined with a pacifist, or similar, attitude to life. In order to qualify for non-military service, an applicant must show that these convictions relate to his own use of arms; his renunciation of the use of arms must, therefore, not depend on political or other considerations. His convictions must also be reasonably firm. The fact that in certain situations an applicant might instinctively and unpremeditatedly use force to defend himself or others, need not disqualify him for non-military service.

Should the Board decide to reject an application, the applicant can appeal to the Government against the decision. Should the Board allow the application, responsibility for the applicant is transferred from the Armed Forces to the National Labour Market Board, a governmental authority whose functions include the training of conscientious objectors doing non-military service.

Non-military service should be done in fields of vital importance to the community in times of war and of national emergency. Conscientious objectors should therefore do their service under a public authority or with certain private associations and foundations which have been approved by the Government. A conscientious objector cannot be ordered to serve in the Armed Forces against his will.

Non-military service may currently be done in the following sectors:

- (a) civil defence;
- (b) the repair and maintenance sectors on the railways, at power stations and on the telephone network;
- (c) the health service;
- (d) agriculture;
- (e) fire-fighting and rescue services at airports;
- (f) the social services;
- (g) schools;
- (h) messenger and porter duty at civil service authorities; and
- (i) social and office duty with the Swedish Red Cross and the Swedish Christian Youth Council.

The regulation length of duty is 420 days. A reduction is made for any military service already completed. The length of service is roughly equal to the training periods for certain conscripted Army privates and non-commissioned officers.

Conscientious objectors receive the same benefits as ordinary conscripts.

Refusal to do any kind of service

If a conscript refuses to carry out his prescribed duties, he is informed of the possibility of applying for non-military duty and of the consequences of his refusal to do compulsory military service. Should the conscript persist in his refusal, he is commanded, in the presence of witnesses, to perform his military service. In the event that he disobeys the order, giving such reasons for his refusal to serve that the refusal can be regarded as final, he is discharged immediately.

If a conscript does not report for duty, he is liable to be fetched by the police. When a certain period of time has elapsed without the conscript reporting for service, he is automatically discharged in absentia. The same rules apply to conscientious objectors on non-military service.

In all the cases mentioned above the prosecuting authorities and the Governments must be notified. A fresh call-up order may not be issued without prior authorization by the Government.

Conscripts or conscientious objectors on non-military service who are Jehovah's Witnesses and who declare that they will refuse to perform any kind of duty are discharged forthwith, and the Government is notified in each case. After considering each specific case, the Government then decides whether a second call-up order is to be issued. According to current practice, if the person refusing to serve is a bona fide Jehovah's Witness, the Government will defer the issue of a second call-up order until further notice. Such decisions are reviewed after a certain period.

Sanctions for refusal to serve

A refusal to do either military or non-military service is an offence which is dealt with by the civil courts. For a first refusal, current court practice is to impose a suspended sentence and a fine. A second call-up order will then be issued. A reasonably severe prison sentence is imposed for a second refusal to serve, but no further call-up orders are issued. A term of four months' imprisonment is regarded as reasonably severe. A person thus sentenced can be released upon good behaviour after three months. Sentences are served in an open prison.

Additional comments

As has already been mentioned, the legislation concerning conscientious objection was revised in 1978. However, it can be stated now that the number of applications for non-military service has increased markedly since 1977, the year in

which the legislative changes were announced. Furthermore, a large percentage of all applications for non-military service are approved today. In comparison with the preceding year, applications in 1977 increased by 21.9 per cent, in 1978 by 14.4 per cent and in 1979 by 10.5 per cent. Thus, the number of applications in 1979 was 50 per cent higher than the annual average for the 1972-1976 period. In 1979 the Board refused 15 per cent of all the applications submitted. The corresponding average figure for the 1972-1976 period was 35 per cent. Where the number of absolute refusals to serve in any capacity are concerned, statistics show a decrease, but these figures should be followed up for a number of years before an evaluation can be made.

In connection with the 1978 amendments to the legislation, it was stated that the previous Swedish legislation on conscientious objection did not violate the rules of the European Convention on Human Rights, nor the provisions of the Swedish constitution. The legislative revision of 1978 has naturally not changed anything in this respect.