SOUTH AFRICAN LAW AND THE CONSCIENTIOUS OBJECTOR

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SOUTH AFRICAN LAW AND THE CONSCIENTIOUS OBJECTOR

ANDREW SMAIL
B.A.(UCT), 2nd year LL.B.(UND)

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INTRODUCTION

The Committee of Investigation into Service in the SADF, Youth Preparedness Programmes and Alternative National Service (MILCOM), is a project established by the National Union of South African Students. Its aims as set out in the empowering resolution, are to —

"(a) investigate the influence of service in the SADF on —
(i) those facing such service
(ii) those undergoing such service, and
(iii) those who have completed such service

(b) investigate the influence of Youth Preparedness Programmes, and

(c) to explore official alternatives to service in the SADF in the fields of education, medical and community services and to press the Government for the implementation thereof."

The Committee realises that an investigation into such issues not only demands diligent research, but also requires that the information collected be compiled and made available to students and other interested persons. The decision to publish this booklet on SOUTH AFRICAN LAW AND THE CONSCIENTIOUS OBJECTOR falls in line with this approach.

This booklet is intended to be no more than an information guide on the basic legislative provisions relating to liability for service in the SADF and the failure to perform such service. In this sense it fills a need long felt by Church bodies and others who are either called upon to perform service in the SADF, or responsible for the counselling of such people. The possibility of the future publication of a more detailed analysis will be investigated once further research has been completed.

Finally, the Committee urges readers to forward to it all comments, suggestions and criticisms, however positive or negative, which are prompted by the contents of this booklet.

Andrew Smail
NATIONAL CO-ORDINATOR

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1. LIABILITY FOR SERVICE

The principle enactment governing military service in South Africa is the Defence Act, No.44 of 1957 as amended. This Act also empowers certain Government bodies and officials to make regulations in accordance with its provisions.

[a] Persons liable for military service:

Service in the South African Defence Force (SADF) is compulsoru for all White males between the ages of seventeen and sixty-five (both inclusive) who are South African citizens, and who do not fall into the limited categories of persons who are automatically exempted by the law (such as M.P.'s, M.P.C.'s and Senators). See Section 3(1) of the Act.

Certain categories of persons who are not South African citizens may also be required to undergo military service.

Proclamation 363 of 1967, issued in terms of the Defence Act, provides that any White male person who entered the RSA prior to 19th April 1978 and who is not a South African citizen, but who has been domiciled in the country for five years and who is still under the age of 25 years, must register for military service. When applying for registration, such person must indicate whether he intends becoming a South African citizen. If he does not intend to become a citizen but is still a minor, the registration form must be countersigned by his parent or legal guardian.

In terms of Section 11A of the South African Citizenship Amendment Act, No. 53 of 1978, any alien who is not older than 25 years, who by virtue of a permit issued in terms of the Aliens Act, No.1 of 1937, who after 18 April 1978 is entitled to permanent residence in South Africa or South West Africa, who has for two years after he so became entitled, been ordinarily resident in South Africa or South West Africa, and who has not been convicted of certain offences, shall be a South African citizen by naturalisation unless within those two years he makes an official declaration stating that he does not wish to become a citizen. Such a person, on becoming a citizen, shall be liable for service in the SADF in terms of the Defence Act. Should such a person make an official statement to the effect that he does not wish to become a South African citizen, he shall be deemed to be an alien, may not acquire a permanent residence permit, and shall be disqualified from acquiring South African citizenship in any manner.

Service rendered in the South African Police, South African Railway Police, Department of Prisons or the Merchant Navy, may exclude liability to render service in the SADF, subject to certain qualifications such as the completion of a substantially greater length of service in these organizations.

[b] Length of compulsory service:

The Defence Act requires active service in the Citizen Force or the Commandos over a period of **ten** years, commencing with an initial period of full-time service of 24 months. On completion of this period, you are liable to render subsequent periods, of which none shall exceed thirty days, and which shall not exceed 240 days in the aggregate. (Phenomena such as three-month camps occur as partial mobilisation in terms of Sections 91 or 92 of the Act). Should the abovementioned service not be rendered prior to the expiration of ten years, you shall remain a member of the Citizen Force or Commandos, until such time as you have rendered such service, even if this period should exceed the required ten years.

Thereafter, you are transferred to the Citizen Force/Commandos Reserve, where you are required to serve until your sixty-fifth year, such service at present demanding only that you notify the military authorities concerned of any change in your address, and that you report annually in June irrespective of whether your address has changed or not.

2. SOME IMPLICATIONS OF SERVICE IN THE SADF

Section 3(2) of the Defence Act provides that the —

'South African Defence Force or any portion or member thereof may at all times be employed —

(a) on service in defence of the Republic;

(aA) on service for the prevention or suppression of terrorism;

(b) on service in the prevention or suppression of internal disorder in the Republic.

(c) on service in the preservation of life, health or property or the maintenance of essential services; and

(d) on such police duties as may be prescribed.'

Section 1 of the Act defines 'service in defence of the Republic' as —

'military service and ''operations in defence of the Republic'' means military operations;

(a) in time of war; or

(b) in connection with the discharge of the obligations of the Republic arising from any agreement between the Republic and any other State; or

(c) for the prevention or suppression of any armed conflict outside the Republic which, in the opinion of the State President, is or may be a threat to the security of the Republic.'

This section also defines 'terrorism' as 'terroristic activities in the Republic or against the Republic or any authority in or inhabitants of the Republic'.

Furthermore, Section 95(1) enacts that —

'A member of the South African Defence Force may in time of war be required to perform service against an enemy at any place outside the Republic'.

And in terms of Section 95(2), for the purposes of subsection (1), 'service in time of war against an enemy' includes 'service for the prevention or suppression of terrorism or of any armed conflict contemplated in paragraph (c) of the definition of "service in defence of the Republic" in section 1'.

Thus at any time you may be called upon to defend the 'Republic'. Note that, in accordance with the provisions of Section 95, you may be required to defend the 'Republic' or prevent or suppress 'terrorism' at **any** place outside the 'Republic'.

It is suggested that you acquaint yourself fully with Section 3(2) and maintain a constant awareness of the possible and probable implications of its provisions.

3. RESTRICTIONS ON CONDUCT WITH REGARD TO LIABILITY TO RENDER SERVICE

Section 121 of the Defence Act has imposed a number of restrictions on the conduct of people towards conscientious objection.

In terms of Section 121(a), anyone who not only induces, but merely agrees with an SADF member that such member neglect his duty or that such member act in conflict with his duty in the SADF, is guilty of an offence. Consequently, any person, be it a priest or a Church official, who agrees with such action, even if only because it is an act of conscience on the part of a conscientious objector, may be guilty of this offence. In this manner any debate on conscientious objection may be severely curtailed or outlawed. (As to when membership of the SADF commences see the section on **Jurisdiction**].

Section 121(b) has the effect of rendering any action supportive of the conscientiously objecting SADF member, unlawful. It will therefore be an offence for anyone to lend support to such a person, whether financial or otherwise.

Section 121(c) excludes all forms (direct or indirect) of encouragement to any person liable to render service, to conscientiously object, However, if such encouragement is not intentional, no offence is committed.

The full text of Section 121 reads as follows —

'Any person who —

(a) agrees with or induces, or attempts to induce, any member of the South African Defence Force or any auxiliary service or voluntary nursing service established under this Act, to neglect or to act in conflict with his duty in that Force or service; or

(b) is a party to or aids or abets or incites to the commission of any act whereby any lawful order given to any member of that Force or service or any law or regulation with which it is the duty of any members of that Force or service to comply, may be evaded or infringed; or

(c) uses any language or does any act or thing with intent to recommend to, encourage, aid, incite, instigate, suggest to or otherwise cause any other person or any category of persons or persons in general to refuse or fail to render any service to which such other person or a person of such category or persons in general is or are liable or may become liable in terms of this Act;

shall be guilty of an offence and liable on conviction to a fine not exceeding five thousand rand or to imprisonment for a period not exceeding six years or to both such fine and such imprisonment.'

It would appear that the application of Section 121 is not limited to cases where a person is being encouraged to fall under the provisions of Section 126A of the Act, that is, where such person is encouraged to become a conscientious non-militarist. (For the definition of this term see the section on **WHAT IS CONSCIENTIOUS OBJECTION?**] It extends even to encouraging a person to refrain from combatant duty, unless such allowance has already been made in terms of Section 67(3). (See the section on **RECOGNITION OF CONSCIENTIOUS OBJECTION BY THE LAW**].

However, it is difficult to determine how this section will be applied, as to date there have been no prosecutions under it. But the Minister of Defence, Mr P.W. Botha gave some indication of his approach when he stated in 1974 that —

'I am not going to detail policemen to keep an eye on these people ..... We shall soon find out whether the opinions being exchanged between priests or clergymen and young people and between parents and their children are honest, or whether it is in fact something else that has crept in under the guise of priestly garb. For that reason I am not going to appoint people to keep an eye on parents to see that they do not speak to their children'.

(29 October 1974, Hansard, Col. 6880-6881)

Let it suffice to say that most groups involved in the debate on conscientious objection have become rather paranoic in their approach to the subject since Section 121 came into effect. This is evidenced by their diligent search for legal advice whenever the subject is discussed. At the very least then, Section 121 has emerged as a serious inhibiting factor in the debate on conscientious objection.

4. WHAT IS CONSCIENTIOUS OBJECTION?

A conscientious objector is any person, who, for reasons of conscience, objects in some way or another to service in the military.

Conscientious objection may occur in the following forms —

(a) where the person liable to render service, objects to performing such service as a combatant, but is prepared to serve in the military in a non-compatant capacity. Such an objector agrees to either —
   (i) serve in a non-combatant (as recognised by the Geneva Convention) unit or service only ; or
   (ii) serve in any unit, but in a non-combatant capacity.

(b) where the person liable to render service, objects to service in the military in whatever capacity, but is prepared to do some form of national service instead; or

(c) where the person liable to render service, objects to any form of conscription, either for military service or any other form of national service.

The type of conscientious objector which each category describes may be termed as follows:

(a) conscientious non-combatant;
(b) conscientious non-militarist; and
(c) conscientious non-conscriptee.

Furthermore, the conscientious objector of any category, objects either —

(a) in all cases where he is liable to render service; or
(b) only in certain cases.

Those persons who fall into category (a) have usually been called pacifists. But this is a misnomer, as objectors like Jehovah's Witnesses, who do not ascribe to pacifism, nevertheless object to military service in all cases. It is more correct to refer to these objectors as non-selective conscientious objectors. Those persons who fall under category (b) are known as selective conscientious objectors.

South African law only permits certain types of non-selective conscientious non-combatants.

5. ALTERNATIVE NATIONAL SERVICE

The Defence Act as amended, already embodies the principle that national service should not be equated with military service, and that national service can consist of some form of service other than service in the military. Section 16(2), which deals with the composition and organisation of the Citizen Force, stipulates that —

'nothing in this or any other section of this Act shall be deemed to preclude the training of any member of that Force or any depot or establishment which is not a unit of that Force.....or the attachment, on such conditions as may be prescribed, of any such member who belongs to any category of professionally qualified members whose services are not required in their mustering in that Force, to a Government Department, other Government service or other authority which the Minister may approve for the purpose.....'

But there are a number of important reasons why the type of service offered in Section 16(2) cannot qualify as a valid form of alternative national service. The most basic of these reasons is that such service is performed in a military context. As the Minister of Defence, P.W. Botha outlined in 1972 when introducing the amended form of Section 16(2), since the service of professionally qualified citizens 'in their respective professions will be required in time of emergency or war, they must undergo basic military training and gain professional experience in matters relating to the defence of the Republic'. And again: 'After completion of their basic military training of six weeks and after selection by the South African Defence Force for its own professional needs, they are allocated to a particular institution for the remainder of their compulsory service and their further military training is postponed.' And as further evidence of the acceptance of the principle that national service should not be equated with military service, we may quote the Minister's very next sentence in which he stated that, 'After the prescribed service has been completed outside the Defence Force, exemption from further national service is granted and the national servicemen involved are placed on the Citizen Force Reserve.'

(29 February 1972, Hansard, Col.2134-2135).

Finally, the availability of service in other Government Departments, services or authorities of which the Minister approves, is entirely dependent on Government discretion. Such service is not a right made available to persons who can meet certain criteria in order to qualify for alternative national service, and which criteria can be tested in a court of law. Nowhere in the provisions of Section 16(2) is conscientious objection even merely an influencing factor in determining the availability of this type of service.

Thus, while Section 16(2) embodies the principle that national service should not be equated with military service, it does not provide an alternative form of national service which would be acceptable to conscientious non-militarists. At present there is no alternative national service which exists outside the military, the various police services, the prisons service and the Merchant Navy.

(Further research is still to be done into existing forms of alternative service within the military. Once this information is obtained it will be made available).

6. RECOGNITION OF CONSCIENTIOUS OBJECTION BY THE LAW

Section 67(3) of the Defence Act provides that -

'The registering officer shall as far as may be practicable allot any person who to his knowledge bona fide belongs and adheres to a recognized religious denomination by the tenets whereof its members may not participate in war, to a unit where such person will be able to render service in the defence of the Republic in a non-combatant capacity'.

This is the only form of conscientious objection which is recognized by the law in South Africa. The requirements for recognition under this section are —

(a) The religious denomination must officially demand of its members non-participation in war, that is, it must demand non-selective objection;

(b) Such religious denomination must be recognized as such - what constitutes recognition and by whom such denomination must be recognized, is uncertain;

(c) The person in question must, to the knowledge of the registering officer, bona fide belong and adhere to such religious denomination — membership for convenience is therefore not a qualification.

Although this section is couched in the imperative, 'shall .....allot' is qualified by the phrase 'as far as may be practicable'. Presumably the person who determines whether such allotment is practicable or not is the registering officer. Consequently an application for allotment in terms of Section 67(3) may be refused on the grounds that such allotment is impracticable.

It must be noted that the registering officer may allot a person to a non-combatant unit, such as the Medical Service (i.e. a non-combatant unit recognized as such by the Geneva Convention), but need not do so. He may allot the person to a combatant unit, where such a person will be able to render service in a non-combatant capacity.

The Minister of Defence, P.W. Botha, has stated that —

'in the implementation of section 67(3) of the Act the following policy has been formulated, namely —

(a) Conscientious objectors are allotted to non-combatant units;

(b) They are trained without weapons.'

(28 August 1970, Hansard, Col.6847)

But in 1974 the Minister informed Parliament that the conscientious non-combatant —

' need not necessarily be placed in the Surgeon-General's division and neither does he necessarily have to serve in an administrative capacity at Head Office. His unit commander can use him in that unit in a non-combatant capacity. There is nothing in the Act to prevent that. In fact, that is the policy being adopted at present.'

(29 October 1974 , Hansard, Col. 6847)

In addition evidence has shown that applicants are not necessarily assigned to the Medical Service. The general practice is not for the 'registering officer' to make a suitable allotment, but for the applicant to present himself to his unit and only once there claim his non-combatant status. The privileges accorded to the non-combatant under Section 67(3) differ from unit to unit. Consequently, in some units the holder of non-combatant status may be entitled to do no more than literally not bear arms — such person is issued with a broomstick (as a substitute rifle) to perform the required parade-ground drill. In other units non-combatants will usually be assigned the duties of a cook or a clerk, or some other sort of service duty. Thus, in determining the scope of the privileges accorded to the non-combatant under Section 67(3), each unit is virtually a law unto itself.

However, the Minister has given quite a generous interpretation to Section 67(3) with regard to who qualifies under its provisions —

'The existing Defence Act states very clearly that if a Church entertains a certain religious belief which calls upon its members to abstain from violence on the grounds of honest theological consideration, these people can be given a choice of work in the Defence Force. Let me spell this out very clearly again. Such a person can make his choice known to his commanding officer. He can tell his commanding officer that his church does not allow him to serve in a combatant capacity and for that reason he is requesting to serve as a non-combatant. The commanding officer can then assign him to non-combatant duty in the unit.....In fact an individual does not even have to tell his commanding officer that he is bound by his church's theological tenets. If he says that he truly has conscientious objections to serving in a combatant capacity, his commanding officer can assign him to

a non-combatant post.....It is, therefore, already the customary procedure, apart from the provisions referring to the doctrines of the various churches, to assign individuals, who come forward with real conscientious objections, to non-combatant posts.'

(29 October 1974, Hansard Col. 6847-6848)

Despite the Minister's statement that it is his Department's policy to grant all applications under Section 67(3), there is no evidence to support the conclusion that any officer in the SADF associated with the implementation of Section 67(3) is even aware of such an administrative directive. Moreover, it is uncertain as to whether all applications under Section 67(3) are in fact granted.

It would appear, therefore, that, apart from the fact that persons who apply for non-combatant units recognised as such by the Geneva Convention, conscientious non-combatants (selective or non-selective, religious or non-religious) are adequately provided for by the Law. But it should be borne in mind that any allowance made in terms of Section 67(3) may be withdrawn at any time. Section 67(3A) provides that –

'Whenever the registering officer has allotted any person under this section (Section 67) he may cancel the allotment, whereupon such person shall be deemed not to have been so allotted.'

Furthermore, the Minister may at any time demand the literal interpretation (and therefore strict application) of Section 67(3).

7. UNLAWFUL CONSCIENTIOUS OBJECTION

(a) **Section 126A**

All forms of conscientious objection not provided for in terms of Section 67(3) of the Defence Act, are unlawful.

Section 126A covers conscientious non-militarists, conscientious non-conscriptees and those conscientious non-combatants who are not dealt with in terms of Section 67(3) making such types of conscientious objection illegal and punishable by law.

Section 126A provides as follows —

'(1) Any person liable to render service in terms of Section 22 (service in the Citizen Force) or 44 (service in the Commandos) who without good reason —

(a) when called up fails to report for such service ; or

(b) having reported for service, fails to render military service or to undergo military training

shall be guilty of an offence.

(2) Any person charged with a contravention of subsection (1) -

(a) who at his trial proves that he bona fide belongs to and adheres to a recognised religious denomination by the tenets whereof its members may not participate in war, shall upon conviction be liable —

(i) if he failed to report for service of twelve months or longer or, having reported for service, failed to render military service or to undergo military training, to be sentenced to detention for a period of thirty-six months; or

(ii) if he failed to report for service of less than twelve months or, having reported for service, failed to render military service or undergo military training, to be sentenced to detention for a period of eighteen months —

Provided that a person who is serving or has served detention referred to in this paragraph, may not again be charged with a contravention of this subsection;

(b) shall in any other case be liable on conviction to a fine not exceeding two thousand rand or to imprisonment for a period not exceeding two years or both such fine and such imprisonment.

(3) Notwithstanding anything to the contrary contained in any law, courts martial shall have jurisdiction to impose the sentences provided for in subsection (2) (a).

(4) If in any prosecution for a contravention of subsection (1) it is proved that the accused failed to report for the service referred to therein, or having reported for service, failed to render military service or to undergo military training, it shall be presumed, unless the contrary is proved, that this said failure was without good reason'.

(5) **Distinction between categories of unlawful conscientious objectors -**

Under section 126A an unlawful conscientious objector, who at his trial can prove that he bona fide belongs to and adheres to a recognised religious denomination by the tenets whereof its members may not participate in war, is placed in a more favourable position than any other unlawful conscientious objector. This is done in the following ways —

(i) In the case of unlawful conscientious objectors belonging to recognised conscientiously non-selective religious sects, the Act effectively distinguishes between the initial period of military service

and the subsequent camps. Where the failure to render service involves a period of twelve months or more, such failure may render the objector liable to be sentenced to detention for a period of thirty-six months. But where the failure involves a period of less than twelve months, the objector is liable to be sentenced to a period of eighteen months.

This distinction does not apply in the case of any other unlawful conscientious objector. The latter is liable to a fine of R2000 or imprisonment for up to two years or both such fine and imprisonment, irrespective of whether his failure was a failure to do the initial period of service or a failure to attend camps.

(ii) Subsection 126A(1)(a) provides that an unlawful conscientious objector belonging to recognised conscientiously non-selective religious sect, who is not serving or has served detention referred to in this subsection may not again by charged 'with contravention of this subsection'.

However, no such provision is made for any other unlawful conscientious objector. The latter may be charged again and again for the same offence conceivably until such time as he is no longer liable to render service, i.e. until he is sixty-five years old.

[c] **Good reason -**

Although the Act only penalises failure to render service '**without good reason**', subsection 126(4) enacts a presumption that the said failure was without good reason. To obtain a conviction the State need only prove the said failure. The onus of proving such failure was not without good reason, rests on the accused.

What constitutes good reason is left almost entirely to the discretion of the Court. It has been held in at least one previous case **S** v **Lovell** (1972(3)SA760(AD)@766) that religious conviction, even such as that for a Jehovah's Witness, does not constitute good reason within the meaning of the Act. There is nothing to suggest that the Courts will depart from this view in future.

8. ENFORCEMENT AND JURISDICTION

[a] **Enforcement -**

Recent occurrences indicate that section 126A will be strictly enforced. In early June 1978, barely a month and a half after the new section was

promulgated, six Jehovah's Witnesses were each sentenced to the full sentence of three years in terms of subsection 126A(2)(a)(i) of the new law. Commenting at the time, Brigadier Neels Pretorius, director of military law in Pretoria, said that Jehovah's Witnesses were previously entitled to three months remission for good behaviour. But he continued,

> 'We have done away with the remission. They will have to stay in in detention until they have completed the full thirty-six months now.'

Brigadier Pretorius also stated that,

> 'Citizen Force men who do not turn up for camps, no matter how short, are likely to be sent to the detention barracks. And they will probably end up having to serve up to two years.'

The increasing instability in South Africa and the growing prospects of large-scale guerilla warfare, are also factors which point to a stricter enforcement of section 126A.

[b] Jurisdiction

Section 108 of the Defence Act provides that,

> 'A military court may try any person to whom the Military Discipline Code applies, for any offence under this Act as if the offence were an offence under the Military Discipline Code — provided that such Court shall not impose in respect of any such offence a penalty which is beyond the jurisdiction of such a Court in terms of the Military Discipline Code or exceeds the penalty prescribed for that offence by this Act.'

The Military Discipline Code in terms of 104(5), applies inter alia

> 'to members of the Citizen Force, Commandos and the Reserve in relation to any service, training or duty undertaken or to be undertaken by them in pursuance of this Act'.

And in accordance with the provisions of section 146A, for the purpose of Section 104(5) a person becomes a member of the Citizen Force or Commandos from the date upon which he is required to commence service, if such a person has been notified of this date in terms of Section 67(4).

An ordinary Court has jurisdiction to try any person for any contravention of Section 126A. But in terms of section 108 a military court also has jurisdiction by virtue of the fact that unlawful conscientious objectors are, in accordance with the provisions of Section 146A, members of the Citizen Force or Commandos. But the objector is more likely to be tried by a military court as indicated in a case in 1961 **R v Grobler** (1961(1)SA67(CPD)@65), where the court held that an eminently military offence could, even should, be dealt with by the military. In any event the recent trend is trial by a military court for members of conscientiously non-selective religious sects, as in the case of the six Jehovah's Witnesses referred to above. In all other cases, the objector is tried in a civilian court, having jurisdiction over the area in which the objector was required for service.

In terms of the Military Discipline Code a military court does not have the jurisdiction to impose a penalty of imprisonment in excess of two years. Although this covers objectors under subsection 126A(2)(b), it does not provide for unlawful conscientious objectors who are members of recognised conscientiously non-selective religious sects, who have failed to report for service of twelve months or more. However, the latter category of persons is provided for by subsection 126A(3), which extends the powers of courts martial, giving the latter jurisdiction to impose the sentences provided for in subsection 126A(2)(a).

But it must be remembered that the jurisdiction of the ordinary courts has not been ousted. However, in terms of Section 106, any person subject to military law, who has been tried by an ordinary court, shall not be liable to be tried in respect of the same offence by a military court But a person who has been sentenced by a military court may be tried and sentenced for the same offence in an ordinary court (Section 54 of the Military Discipline Code).

However, such court shall, in imposing punishment, have regard to the punishment imposed for the offence by the military court.

In terms of section 107 there is no right of appeal from the finding or sentencing of a military court. But the common law right of review has not been excluded - the court may review such findings or sentence and set it aside, if there has been any irregularity or illegality or if the military court acted in bad faith.

9. DETENTION

The sentence of imprisonment imposed by the Court in accordance with

the provisions of section 126A is, as precedent indicates, more likely to be detention in Detention Barracks (DB). The objector would therefore be subject to DB Regulations (promulgated as Government Notice R119 on December 8 1961, in terms of sections 87(1))g) and 120(3) of the Military Discipline Code),

In terms of these regulations it is an offence to disobey any lawful command issued by a staff member. Such disobedience would incur a variety of punishments including solitary confinement for a maximum period of 14 consecutive days, which may be repeated after a 48-hour interval. Spare diet may be imposed on two out of every six consecutive days. Under the regulations, 'lawful commands' includes ordinary military commands. Consequently, if the objector continued his resistance while in detention he could spend virtually the whole period of his detention in solitary confinement. This procedure of additional punishments has been sanctioned by the Courts. (**S** v **Schoeman, A** v **Martin en Andere** 1971(4)SA248(AD)@225).

In the past the above procedure was adhered to rather strictly and it was not uncommon that objectors were repeatedly punished. Since 1972, however, conditions have improved as objectors under Section 126A have almost exclusively been Jehovah's Witnesses, and once this was realised by the authorities, the procedure was considerably lightened. It has been suggested that, because more favourable treatment is meted out to these objectors, the authorities are keen to limit the number of servicemen dealt with in this way.

Although a person who is serving or has served detention under subsection 126A(2)(a)(i) may not be charged again under this subsection, it is quite conceivable that this period of detention could be lengthened should he contravene certain sections of the Military Discipline Code during his initial period of detention. This could also hold true for objectors sentenced under subsection 126A(2)(a)(ii).

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