

**COUNCIL OF EUROPE  
COMMITTEE OF MINISTERS**

RECOMMENDATION No. R (87) 8

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES

**REGARDING CONSCIENTIOUS OBJECTION  
TO COMPULSORY MILITARY SERVICE<sup>1</sup>**

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

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

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

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

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

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

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

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

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

1. When this recommendation was adopted:

— in application of Article 10 2.c of the Rules of Procedure for the meetings of the Ministers' Deputies, the Representative of Greece reserved the right of his Government to comply with it or not, and the Representative of Cyprus reserved the right of his Government to comply or not with paragraph 9 of the text;

— in application of Article 10 2.d of the Rules of Procedure for the meetings of the Ministers' Deputies, the Representative of Italy recorded his abstention and in an explanatory statement said that his Government was of the opinion that the text as adopted fell short of the suggestions made by the Assembly, and therefore appeared to be deficient;

— in application of Article 10 2.d of the Rules of Procedure for the meetings of the Ministers' Deputies, the Representatives of Switzerland and Turkey recorded their abstentions and in explanatory statements said that their Governments would be unable to comply with the text.

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**HUMAN RIGHTS**

**Conscientious objection to compulsory military service**

Recommendation No. R (87) 8  
adopted by the Committee of Ministers  
of the Council of Europe  
on 9 April 1987

and  
Explanatory report

Strasbourg 1988



## EXPLANATORY REPORT

### I. INTRODUCTION

1. Recommendation No. R (87) 8 is the result of work carried out within the Council of Europe since 1966. In that year, following an Amnesty International initiative, Mr Richard and nine other parliamentarians tabled in the Assembly a motion for a recommendation on the right of conscientious objection (Doc. 2076). On the basis of a report by its Legal Affairs Committee, prepared by Mr Bauer (Doc. 2170), the Assembly adopted, on 26 January 1967, Resolution 337 and Recommendation 478, both "on the right of conscientious objection".

2. In Resolution 337 the Assembly set out the principles, procedure and rules applicable to alternative service, which, in its opinion, should be followed in the matter.

3. In Recommendation 478 the Assembly recommended the Committee of Ministers:

"a. to instruct the Committee of Experts on Human Rights to formulate proposals to give effect to the principles laid down by the Assembly in its Resolution 337 by means of a convention or a recommendation to Governments so that the right of conscientious objection may be firmly implanted in all member States of the Council of Europe;

b. to invite member States to bring their national legislation as closely as possible into line with the principles adopted by the Consultative Assembly".

4. Subsequently, the problem was raised on several occasions:

- At the Parliamentary Conference on Human Rights (Vienna, 18-20 October 1971) Amnesty International invited the Conference "to reaffirm the principles outlined in Resolution 337 of the Assembly" and to "request the Committee of Ministers to re-instate this item in the next Intergovernmental Work Programme". The latter suggestion was reproduced in the conclusions of the Conference and was included in the Appendix to Recommendation 683 (1972) containing proposals for a Council of Europe programme in the field of human rights;

- The question was submitted for an opinion by the Committee of Ministers to the Committee of Experts on Human Rights, which proposed, in July 1974, that the question of conscientious objection be included in the next medium-term Plan. The same proposal was subsequently made by the Assembly in its opinion on the draft Plan;

- The Assembly considered the question again and, on the basis of a report by its Legal Affairs Committee (Doc. 4027) prepared by Mr Pèridier, adopted, on 7 October 1977, Recommendation 816 on the right of conscientious objection to military service. In this text, the Assembly recommended that the Committee of Ministers:

"a. urge the Governments of member States, insofar as they have not already done so, to bring their legislation into line with the principles adopted by the Assembly [principles contained in Resolution 337 and appended to Recommendation 816];

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

- As in its reply to Recommendation 478, the Committee of Ministers notes, in its reply of March 1978, that "several member States have already settled the question of conscientious objection to military service within the framework on their own law in keeping with the majority of the principles included in the Appendix to Recommendation 816 or in Resolution 337, whilst other States, for various reasons, could not envisage amending their law on this matter".

5. It was in this context that the question of conscientious objection to military service was finally included in the Intergovernmental Programme of Activities for 1981.

6. The Steering Committee for Human Rights (CDDH) was assigned the task of studying these problems and duly considered them at its 10th to 19th meetings (November 1981 to May 1986).

7. The CDDH based its discussions on a report written by Mr. Zanghi, a member (and subsequently consultant) of the Committee, and took into account other documentary material produced either in the Council of Europe or in other international organisations. The CDDH also had before it the views of Amnesty International on the Draft Recommendation during its preparation.

8. At the end of its considerations the CDDH finalised the draft Recommendation and transmitted it to the Committee of Ministers. After having consulted the Assembly (see Opinion No. 132 of 30 January 1987), the Committee of Ministers adopted the text of Recommendation No. R (87) 8 on 9 April 1987 at the 406th meeting of the Ministers' Deputies.



## II. SUBJECT OF THE RECOMMENDATION

9. The CDDH found, after a detailed study of domestic laws and practices, that many Council of Europe member States had adopted provisions on the right of conscientious objection to compulsory military service, but that solution adopted were extremely diverse.

10. Consequently, the CDDH considered that what was required was a harmonisation of these domestic law and practice on the basis of certain rules and principles. Given the present situation, it seemed that a Committee of Ministers' Recommendation to Council of Europe member States was the most appropriate means of achieving that end.

11. In that spirit, and on the basis of the Assembly proposals, the CDDH undertook this work. The Recommendation affirms the principle that "anyone liable to conscription for military service who, for compelling reasons of conscience, refuses to be involved in the use of arms, shall have the right to be released from the obligation to perform such service". It also specifies principles and rules to be followed with regard to the procedure for recognising conscientious objector status, as well as to alternative service. This Recommendation applies only to compulsory military service, but this does not preclude the adoption of these principles and rules by States with a system of voluntary military service.

## III. COMMENTS ON THE PROVISIONS OF THE RECOMMENDATION

### Preamble

12. The Preamble restates the reasons for the drawing up of the Recommendation as well as the purpose of this text: recognition of conscientious objection in all Council of Europe member States and harmonisation of domestic law and practice on the basis of certain common principles.

13. The Recommendation forms part of the constant endeavours of Council of Europe member States to secure greater respect for, and promote the development of, human rights and fundamental freedoms, the cornerstone of which is the European Convention on Human Rights.

However, unlike the Assembly, the authors of the Recommendation did not wish to refer specifically to Article 9 of the Convention, since this involved a problem of interpretation (1).

14. Account was taken of the position in States which have not yet recognised conscientious objection but have taken ad hoc measures to improve the situations of the persons concerned (for example by authorising them to perform unarmed military service or by decriminalising offences committed in this regard).

### Paragraph 1

15. The principle which forms the very basis of the Recommendation has as its essential element the reasons which may be stated in support of an application for conscientious objector status. In this respect, the States' domestic law varies enormously: reasons of conscience, reasons of a religious, ethical, moral, humanitarian, philosophical nature, etc... In these circumstances, the experts rejected a solution consisting of giving a list of possible reasons, because (a) such a list could not be exhaustive and (b) it might well obscure the fundamental idea, namely that the very notion of freedom of conscience implies that all compelling reasons dictated by conscience against being involved in any use of arms are to be considered as a basis for granting conscientious objector status.

16. By choosing from the different reasons listed in the previous paragraph only the reasons of conscience, the Recommendation aims to encourage States not to take too restrictive an attitude and not to use a precise definition of the reasons as a means of weakening the effectiveness of the right of conscientious objection.

However, only reasons involving a conflict of conscience can be taken into consideration and such reasons must, moreover, be "compelling" i.e. impossible to resist. It should be noted that the Recommendation does not cover cases of so-called "selective" or "partial" objections of conscience that is, those limited to the use of arms in certain cases only.

1. In several decisions the European Commission on Human Rights has stated that "the right of conscientious objection is not included among the rights and freedoms guaranteed by the Convention". See, in particular, the decisions on the admissibility of Applications Nos. 5591/72 (Collection of Decisions 43, p. 161), 7565/76 (D.R. 9, p. 117), 7705/76 (D.R. 9, p. 196), 10410/83 (D.R. 40, p. 203) and 10600/83 (not yet published). It should however be noted that in the decision 10410/83, the Commission "accepts that the applicant's complaint falls into the realm of at least Article 9 of the Convention, although the Convention does not guarantee as such a right to conscientious objection".



17. In the interests of the community, for reasons of equality of treatment, and also to ensure the applicant's good faith, most European States which have recognised the right of conscientious objection have considered it appropriate to set up an alternative service. The Recommendation takes into account this practice without obliging States to follow it (see also paragraphs 9 to 11 of the Recommendation).

#### Paragraph 2

18. Most Council of Europe member States have made provision in their current legislation for special procedures and appropriate bodies to deal with applications and decide on their admissibility. Paragraph 2 reflects this situation but at the same time encourages States to take into account that in some countries a declaration giving reasons by the person concerned is sufficient for obtaining conscientious objector status.

#### Paragraph 3

19. Effective exercise of the right of conscientious objection presupposes the provision of relevant information. To that end, paragraph 3 lays down the principle that all persons concerned must be informed sufficiently in advance for them to be able to exercise their rights at an appropriate stage.

20. The second sentence specifies how that information may be given: either directly by the State or by the non-governmental organisations concerned. In the latter case, the State may lay down conditions, in particular to avoid the furnishing of information that is contrary to public order.

#### Paragraph 4

21. Regardless of the system adopted by the State, the objector's application constitutes, in all cases, a necessary element for the granting of conscientious objector status. Paragraph 4 leaves it to domestic law to determine the procedural details and any time-limits. However, it recommends that, as a rule, the procedure for examination of the application should be completed before the person is actually enlisted in the forces.

#### Paragraph 5

22. In order to ensure, as far as possible, the effectiveness of the right of conscientious objection, the examination of applications must afford all the necessary guarantees for a fair procedure. In this regard, the importance of the impartiality of the different bodies involved, both at the first instance and appeal stages (see paragraphs 6 and 7 of the Recommendation) deserves particular mention.

#### Paragraph 6

23. This paragraph establishes the principle that the applicant shall have the right to appeal against the decision at first instance. The nature of the appellate authority is not specified, but, its composition must be such as to ensure its independence.

#### Paragraph 7

24. The question of who is to give a decision on the objector's application is naturally of cardinal importance. The authors of the Recommendation made a point of taking into account both the diversity of the systems adopted by the States in this regard and the need to provide for certain guarantees.

25. The Recommendation does not require that the first instance authority be separate from the military administration. On the other hand, such a separation must in all cases exist at the level of the appellate authority.

#### Paragraph 8

26. To prescribe an absolute time-limit in the rules to which applications are subject could be considered as contrary to the very purpose of the Recommendation. If refusal to perform military service is acknowledged as being based on a conflict of conscience, it follows that this conflict might occur at any moment in a person's life. Indeed there is nothing to prevent this type of conflict arising during military service.

For that reason, paragraph 8 gives the State the possibility of permitting the exercise of the right of conscientious objection even during military service, or during periods of military training following initial military service.

27. It is understood that if a State utilises this possibility, all the guarantees mentioned in paragraphs 5 to 7 and 9 to 11 will be applicable in such cases also.

#### Paragraph 9

28. Recommendation provides that alternative service shall in principle be civilian in character. However, that does not prevent States that so wish from providing also for unarmed military service, to be reserved for persons whose objections are restricted to the personal use of arms.

29. The stipulation that alternative civilian service must be in the public interest is intended as an exhortation to States to see that conscientious objectors are employed on work of benefit to society, such as hospital service or work within the social services, as well as technical assistance to developing countries.

Paragraph 10

30. This paragraph stresses that alternative service shall not be of a punitive nature. It is on the basis of that principle that the question of the length of such service is examined. In most countries, alternative service is longer than military service. This can be explained, inter alia, by the desire to take into account the time involved in periodic recalls following the initial spell of military service or - insofar as civilian service is concerned - by the nature of the service to which the conscientious objector is assigned.

The text does not state any specific duration; however, in the light of the earlier mentioned principle, it is stipulated that the service duration shall remain within reasonable limits.

Paragraph 11

31. As already stated, one of the reasons for instituting an alternative service is to guarantee equality of treatment between those performing military service and conscientious objectors. On the other hand, alternative service must not, in its turn, engender discrimination, whether social or financial, between these two categories.

32. In the same spirit, the second sentence of this paragraph refers to States which provide, for example, for jobs to be kept open during military service or for periods of military service to be counted for purposes of seniority in employment or in a career or for pension purposes. Wherever such provisions exist, they must be applied also to alternative service performed by conscientious objector.

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