

## Conscientious objection in Europe – an overview

by Sam Biesemans

The first European Institution, indeed the first international organization of states, to formally recognize conscientious objection to military service was the Parliamentary Assembly of the Council of Europe.

In September 1965 Amnesty International raised with the Council the question of conscientious objection in relation to Article 9 (freedom of conscience, thought and religion) of the European Convention on Human Rights. The Council asked the Max Planck Institute for Comparative Public Law and International Law, Germany, to prepare a study of the situation in the member states, as a result of which the Consultative Assembly on 26 January 1967 adopted Resolution 337, including the following 'basic principles':

"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. 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."

The concept of conscription - compulsory military service by all able-bodied males on behalf of the state - dates back to mediaeval obligations to monarchs and overlords, and then was formalized as a permanent institution in the Revolutionary France of 1793, whence it spread throughout continental Europe during the 19th century. The international recognition of the right to conscientious objection in 1967 is, by contrast, a relatively recent phenomenon. European recognition of conscientious objection began to emerge at the beginning of the 20th century and became more widespread after the Second World War.

Conscientious objection, however, has historical roots going back much further, and linked with the major religious movements which have left their mark on the history of Europe.

Countries with a Protestant tradition, with the exception of Switzerland, were the first to make provision for conscientious objectors. Exemptions from service were granted in Holland as early as 1549 and 1580. In 1757 a British law allowed exemption from compulsory militia service, and in the early 19th century Napoleon granted exemption to Protestant Anabaptists.

The Protestant countries of continental Northern Europe were the first to incorporate this right into their legislation. Norway did so in 1900, Denmark in 1917 (it was not involved in the First World War), Sweden in 1920, the Netherlands even wrote it into their constitution in 1922, and Finland enacted it in 1931.

Anglo-Saxon tradition stood further apart. The former militia system in Britain fell into disuse in the early 19th century, and the continental system of universal male conscription was not adopted. The former British colonies, such as the USA, Canada, Australia, New Zealand, likewise did not adopt universal conscription, which may be contrasted with the former Spanish colonies of Latin America, where conscription became, and largely remains, the norm.

In 1916 the British government felt constrained to introduce military conscription, because voluntary recruitment could not keep pace with the ever-increasing casualties of the First World War. It was acknowledged, however, to be an extremely controversial measure, and it was seen essential, as a compromise, to incorporate provision for conscientious objection from the beginning. The whole island of Ireland, then part of the United Kingdom, was exempted from conscription, for fear of a popular revolt. Conscription, with the right of objection, was reintroduced in Britain from 1939 to 1960. The issue in the UK has been whether conscription should exist at all, in contrast to continental Europe, where conscription has traditionally been taken for granted, and the issue has been controversy over conscientious objection.

The Catholic countries of Europe - apart from Ireland, where conscription has never been adopted - took half a century longer than their Protestant counterparts to recognize the right to object. France and Luxembourg recognized it in 1963, Belgium in 1964, Italy in 1972, and Spain in 1976, after the

death of Franco (confirmed in the new constitution of 1978). Portugal included the right in its new 1976 constitution, following the "carnation revolution". The religiously "mixed" country of West Germany had the issue decided for it by the occupying Allies, who insisted, at British instigation, upon recognition of conscientious objection being incorporated into the post-war re-introduction of conscription in 1955.

The difference between countries with Protestant and Catholic traditions may be explained by the political consequences of different theological perceptions of the role of the faithful, and therefore of the individual citizen. Under Protestantism, Christians see themselves as having a direct relationship with God, to whom they are individually and personally responsible, under conscience, for their actions. In Catholicism, the Church seeks to be the mediator with God, and to take corporate responsibility, by papal decree, for moral issues.

Protestants, moreover, include a number of different churches, each with its own characteristics derived from the conscientious belief in a particular view of doctrine and organization. These include, especially, the historic 'peace' churches - the Anabaptists, the Mennonites, the Nazarenes, the Dukhobors, and the Quakers. Religious freedom and the freedom of conscience are the foundations, which guarantee the equilibrium of these societies.

Catholicism, on the other hand, has imbued societies where it is the dominant religion with a more submissive attitude towards the hierarchy and dogma of the Church. Thus, Pope Pius XII proclaimed, in his 1956 Christmas message, that a Catholic citizen "cannot invoke his or her own conscience in order to refuse to render the services and perform the duties established by law". This did not, however, prevent certain young Catholics, such as the Belgian Jean van Lierde, from declaring themselves conscientious objectors. It may be that such a stand influenced the Second Vatican Council, in 1962-63, to pronounce that "it seems equitable that the laws should provide with humanity for those who, for reasons of conscience, refuse to use weapons, provided, however, that they agree to serve the human community in another way".

A special case in Europe is that of Greece, which delayed until 1997 before enacting a law allowing alternative civilian service for religious conscientious objectors, after many calls from the European Parliament and other international pressure. Even then, the law applies only to members of the Orthodox Church, which has never supported conscientious objectors - not surprisingly, in view of the close links between Greek nationalist fervor, the Greek state and the Greek Orthodox Church.

Conscientious objection arising from non-religious - humanist, socialist, anarchist - motives developed in Europe from the early 20th century, particularly in the aftermath of World War I. It found concrete expression in the establishment in 1921, at Bilthoven, Netherlands, of the War Resisters' International (WRI), with its founding Declaration, "War is a crime against humanity. We are therefore determined not to support any kind of war and to work for the abolition of all causes of war". The WRI (named in conscious imitation of the Socialist and Communist Internationals) soon began to collaborate with another international organization, this time with Protestant motivation and ecumenist aims, the International Fellowship of Reconciliation (IFOR), founded in 1919, also at Bilthoven.

Two Belgian nonviolent anarchists, Lio Campion and Hem Day (pseudonym for Marcel Dieu) caused a great stir in 1933 when they were tried for refusing conscription, and contributed to increased commitment in humanist circles to recognition of conscientious objection. This was the background to a common parliamentary struggle by humanists and Christians when Jean van Lierde began his conscientious objection in 1949, which culminated in legalization for conscientious objection in 1964. The freethinker Louis Lecoin underwent a long hunger strike to bring about recognition of conscientious objection in France in 1963.

In the former Soviet bloc of Central and Eastern Europe conscientious objection was not allowed. The needs of a totalitarian militarist state were incompatible with recognition of freedom for citizens expressing opinions at variance with official doctrine, as was the case with conscientious objectors.

There had originally been a decree of the Council of People's Commissars in Soviet Russia, signed by Lenin on 4 January 1919, which established conscientious objection for those with a religious motivation, but under Stalin it ceased to be applied from 1929-30 onwards. Exceptionally, conscientious objection was recognized in East Germany by a decree of 7 September 1964, which allowed the performance of unarmed military service. The Protestant Church, often the focus of resistance to East German state oppression, was undoubtedly influential in this decision.

Since the dismantling of the Soviet bloc, Poland (1988), Hungary (1989), Lithuania (1990), Estonia (1991), Czech Republic and Slovakia (1992), Ukraine (1996), Bulgaria (1998) have begun to implement a right to conscientious objection.

To return to international pronouncements: the Human Rights Commission of the UN first formally recognized the right to conscientious objection on 10 March 1987, and appealed to states to implement it. In a later resolution of 22 April 1998 the Commission welcomed "the fact that some states accept claims of conscientious objection as valid without inquiry". This was in line with a European Parliament resolution of 7 February 1983, which acknowledged "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". West Germany acted upon such a principle for a short period, but the only state in Europe now putting it into effect is Sweden, where there is a free choice for all young men between military service and civilian service.

The question of attempting to test the validity of a particular conscientious objection serves to highlight the fact that legal provision for objection by no means prevents hardships and injustice. Although Britain can claim some credit for refusing to bring in conscription without simultaneous provision for conscientious objection, almost a third of objectors in the First World War - 6000 out of 16000 - ended up in prison because of the way the system was administered. Injustices in other countries have included the running of tribunals by the military, with an obvious in-built bias, putting 'alternative service' schemes under the control of the military, and setting the period of alternative service up to twice as long as military service. At the other extreme, conscientious objectors in Germany (including the annexed Austria) were executed during the Second World War, and as late as 1949 two objectors were executed in Greece.

The Council of Europe Parliamentary Assembly returned to the issue of objection to military service in Resolution 1518 of 23 May 2001, recommending that the right of conscientious objection be formally incorporated into the European Convention on Human Rights. A particular factor influencing the Council was that five member states, Albania, Armenia Azerbaijan, Macedonia and Turkey had no provision at all for conscientious objection, and two others, Cyprus and Russia, had no effective provision.

Real liberty of conscience is to be gained only by the abolition of military conscription. In Europe, apart from Ireland, where it has never existed (not even in Northern Ireland), and Britain, where it has been an emergency measure only, conscription has now been abolished in Luxembourg, Belgium the Netherlands and Spain, and is being phased out in France and Italy.