

The Activity, Progressiveness and
Consistency of the Human Rights Policy
of Finland: Conscientious Objection to Military Service



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April 2008

Table of contents

Preface	ii
1 The Finnish practice is placed under severe scrutiny	1
1.1 A need to shorten a punitively long civilian service	3
1.2 Special treatment of one group amounts to discrimination of another	8
2 Preliminary observations: Finland has been really slow in its corrective measures	10

Bibliography

Preface

Finland, together with many other countries, has included the universal promotion and protection of human rights and fundamental freedoms as one of its central foreign policy goals. Accordingly, human rights are, allegedly, taken into account not only in the Finnish foreign human rights policy but in all sectors of the foreign policy. The aim of the Government of Finland is an active, competent, consistent and progressive human rights policy. According to the main priorities of its human rights policy, the Government of Finland has committed itself to promote and protect the rights of indigenous peoples, various minorities, including sexual and gender minorities, women, children and other vulnerable groups, actively and consistently.

The capacity and credibility of a government's action to promote the respect for human rights at the international level is inseparably related with the promotion and protection of human and fundamental rights at the national level. In the Government report to Parliament on the human rights policy of Finland of 2004, it is noted that Finland has the capacity and credibility needed to promote the respect for human rights at international fora. In line with its officially adopted position, Finland has worked actively for the development of structures and mechanisms for enhancing the international promotion and protection of human rights. The Finnish initiatives to create a European Roma and Travellers Forum and an office of a Commissioner for Human Rights, both within the framework of the Council of Europe, represent perhaps the most concrete examples of the activity of Finland in building international human rights structures.

Despite a relatively active international role when promoting respect for human rights, there are signs that indicate that the standard of the protection of human and fundamental rights at the national level does not always correspond to the standard promoted by Finland at international fora. Consequently, and despite the occasional statements commending its human rights record, human rights treaty monitoring bodies of the United Nations and the Council of Europe, including the European Court of Human Rights, have repeatedly reminded Finland of certain international treaty obligations that are inadequately taken care of.

It illustrates certain inconsistency or indeed ignorance towards recommendations issued by international human rights monitoring bodies that while receiving criticism Finland has simultaneously promoted actively all these questions at various international fora. However marginal, such inconsistency or ignorance does not go unnoticed and may eventually lead to a loss of a government's credibility.

In addition to the international monitoring bodies, also national courts and other national bodies constantly remind the Government of certain inconsistencies and failures in meeting its human rights obligations. In their decisions, the Parliamentary Ombudsman and the Ombudsman for Minorities, for example, both draw regularly the Government's attention to shortcomings in laws and regulations.

Despite the numerous bodies monitoring its human rights record, the Government of Finland has, occasionally, been, for a variety of reasons, relatively slow or sometimes even reluctant to take corrective measures. This is the case despite the fact that the Government has repeatedly emphasized the importance of human rights treaties and of the work carried out by the expert bodies monitoring the compliance of a state party with these treaties.

The present research report on conscientious objection to military service results from the author's ongoing study on the activity, progressiveness and consistency of the human rights policy of Finland. The Finnish Ministry for Foreign Affairs has granted the present author an extraordinary permit of access to any documentation produced by the Ministry for Foreign Affairs that may be of relevance for the carrying out of the research which will later result in a monograph. The author presents his gratitude to the trust placed on him. The author is also indebted to Kone Foundation for having awarded funding to carry out the study.

Helsinki, 18 April 2008

M.L.

1 The Finnish practice is placed under severe scrutiny

The Commission on Human Rights adopted resolutions addressing the issue of conscientious objection to military service ever since 1971.¹ The Commission's first resolutions on the issue were mainly procedural in nature with little if any substantive contents. The resolutions were mainly aimed at obtaining more information on the subject so that the question could be studied more thoroughly. This led, eventually, to a study prepared by the Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1983.² The study prepared by two members of the Sub-Commission, Asbjørn Eide and Chama Mubanga-Chipoya, compiled, among other things, recommendations recognizing the right to conscientious objection to military service and laid the basis for the subsequent debate on the question that was to take place at the Commission on Human Rights in the years to follow.

After having studied the above report, certain governments began introducing substantive draft resolutions for the Commission's adoption. The time was not yet, however, ripe, at the Commission's forty-first session in 1985 to recognize the right to conscientious objection to military service and the discussion on a draft resolution on the issue was deferred to the forty-third session.³ In 1987, at the Commission's forty-third session, the Commission managed to appeal to states that conscientious objection to military service should be considered a legitimate exercise of the right to freedom of thought, conscience and religion.⁴ In its resolution 1989/59, the Commission finally recognized the "right of everyone to have conscientious objections to military service as a legitimate exercise of the right to freedom of thought, conscience and religion as laid down in ... article 18 of the International Covenant on Civil and Political Rights".⁵

¹ The Commission's first resolution addressing the issue of conscientious objection to military service was resolution 11 B (XXVII) of 22 March 1971. At the Commission's 1131st meeting on 22 March 1971, the representative of Finland noted that "[I]t would be useful to have information on conscientious objection, as was requested in draft resolution E/CN.4/L.1176. Over the last few years, there had been developments in Finnish legislation in respect of conscientious objection, and the question of acceptable criteria for conscientious objection and of substitute service for objectors had been discussed at length". UN doc. E/CN.4/SR1131. Before 1971, resolutions addressing the responsibility among individuals with regard to peace and human rights had been adopted. See, in this regard, in particular, the study prepared by Asbjørn Eide and Chama Mubanga-Chipoya. UN doc. E/CN.4/Sub.2/1983/30/Rev.1.

² UN doc. E/CN.4/Sub.2/1983/30/Rev.1.

³ UN doc. E/CN.4/1985/SR.55, paragraphs 21-49. UN doc. E/CN.4/1985/SR.57, paragraphs 125-129 and Commission on Human Rights decision 1985/114. Draft resolution E/CN.4/1985/L.33, paragraph 1 read as follows: "Considers that *the right to conscientious objection* to military service is a legitimate exercise of the right to freedom of thought, conscience and religion recognized by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights". (emphasis added). The revised text of the draft (E/CN.4/1985/L.33/Rev.1), the consideration of which was deferred to the Commission's forty-third session, read as follows: "Considers that conscientious objection to military service is a legitimate exercise of the right to freedom of thought, conscience and religion...". With regard to the amendments of operative paragraph 1 of draft resolution L.33, see, in particular, UN doc. E/CN.4/1985/SR.55, paragraph 28.

⁴ Commission on Human Rights resolution 1987/46. When introducing draft resolution E/CN.4/1987/L.73, the representative of Austria orally revised operative paragraph 1 of the draft by replacing the word "Determines" with the words "Appeals to States to recognize". UN doc E/1987/18; E/CN.4/1987/60, paragraph 469. According to the summary records of that meeting, it was the word "Decides" that was replaced. UN doc. E/CN.4/1987/SR.54/Add.1, paragraph 105.

⁵ Commission on Human Rights resolution 1989/59, paragraph 1.

Neither the resolution of 1989 nor any later resolution adopted by the Commission does explicitly address the issue of the length of alternative civilian service. The resolutions do, however, note that the various forms of alternative service “which are compatible with the reasons for conscientious objection” should not be of “a punitive nature”.⁶ It would take the Human Rights Committee almost a decade before it was in a position to conclude the same.

At the fifty-fourth session of the Commission on Human Rights in 1998, the observer for Finland introduced the draft resolution on conscientious objections to military service.⁷ When introducing the draft resolution, the observer for Finland stated that the resolution attached increasing weight to the question of conscientious objection to military service in the efforts of States to revise and develop their national legislation. The resolution recognized – using the same wording as found in Commission resolution 1989/59 – the right of everyone to have conscientious objections to military service and States with compulsory military service were reminded that “they should provide for conscientious objectors various forms of alternative service which were *not of a punitive nature*”.⁸

This was the first time that Finland introduced a draft resolution on the issue. In fact, Finland had not once even co-sponsored any of the previous resolutions on the subject adopted by the Commission on Human Rights. In a statement already at the twenty-sixth session of the Commission on Human Rights in 1970, the representative of Finland had, nonetheless, noted that “[H]is delegation felt that conscientious objection to military service was a human right and welcomed the emphasis given that question in a statement made by a non-governmental organization in connexion with the item under discussion”.⁹

When the Government of Finland introduced the draft resolution on conscientious objection to military service at the fifty-fourth session of the Commission on Human Rights in 1998 calling for governments to revise and develop their national legislation, a national debate on the issue was, indeed, underway. It could, nonetheless, be seen as somewhat contradictory that the Government of Finland spoke for the need for governments to ensure that their national legislation with regard to alternative civilian service is not of a punitive nature when Finland itself had considerable difficulties to follow this principle. It was only in 2007 that the Government finally took one modest step that would help it to meet one, but not all, of its human rights obligations with regard to conscientious objectors.

Besides the length of alternative civilian service, another issue with regard to conscientious objection to military service that has, or should at least have, caused grey hair to the Government of Finland is the preferential treatment granted to Jehovah's Witnesses. Although this arrangement that entered into force in 1985 solved the problem that young men belonging

⁶ Commission on Human Rights resolution 1989/59, paragraphs 1 and 4. This is also the position that the Commission maintained until its sixtieth session in 2004 when the Commission adopted its last resolution on the issue of conscientious objection to military service. Commission on Human Rights resolution 2004/35. In their report of 1983 on conscientious objection to military service, Asbjørn Eide and Chama Mubanga-Chipoya had recommended, with regard to alternative civilian service, that this service “should be at least as long as the military service, but not excessively long so that it becomes in effect a punishment”. UN doc. E/CN.4/Sub.2/1983/30/Rev.1, chapter III, paragraph 153.3.

⁷ Draft resolution E/CN.4/1998/L.93, subsequently becoming Commission on Human Rights resolution 1998/77.

⁸ UN doc. E/CN.4/1998/SR.58, paragraph 54 (emphasis added). The fifty-eighth meeting was held on 22 April 1998.

⁹ UN doc. E/CN.4/SR.1085.

to Jehovah's Witnesses and that refused to serve any national service were sentenced to prison that would follow such refusal, the law has been seen as amounting to discrimination and differential treatment of individuals belonging to any other group of conscientious objectors.

1.1 A need to shorten a punitively long civilian service

In 1985, when the length of alternative civilian service had been lengthened for a trial period of five years to 16 months, which was twice as long as the regular military service, the argument given for a longer civilian service was that civilian service was a less strenuous alternative to military service.¹⁰ A civilian service that was twice as long as the regular military service was, nonetheless, considered by a number of legal experts to be punitive in nature.¹¹ No consideration was given to provisions on equal treatment in the Government Bill or in the opinions prepared by the Constitutional Law Committee¹² or the Defence Committee of Parliament.¹³ The new trial law of 1985 did indeed abolish the Investigative Board which previously had, somewhat arbitrarily, decided whether or not to confer the status of conscientious objector. The Government reasoned that the Board was possible to abolish since the considerably longer duration of alternative service – which was extended to 480 days – would guarantee that those who chose alternative service had a sufficient objection to military service that was based on conscience.¹⁴ When the five year trial period ended in 1991, the duration of alternative civilian service was shortened with 85 days to 395 days.¹⁵ The length of alternative service was no longer, allegedly, to measure the conscience of the individual.¹⁶

Only few months after having introduced the draft resolution on conscientious objection of military service at the fifty-fourth session of the Commission on Human Rights in 1998, the Government of Finland decided not to include a proposal of a shortening in the length of alternative service in a Government Bill on alternative civilian service that was at the time under preparation.¹⁷ This was done despite the fact that experts had suggested, during the preparation of the Government Bill, that such a shortening might not only serve the provision of equal treatment as found in the national legislation but also constitute such a promotional

¹⁰ Government Bill HE 8/1985 vp. For the representative of Finland introducing the third periodic report of Finland in 1990, see UN doc. CCPR/C/SR.1014, paragraph 15. See also UN doc. CCPR/C/SR.646, paragraphs 31-32.

¹¹ See *e.g.* Jukka Kekkonen, 1987 and Martin Scheinin, 1988. The national working group responsible for the preparation of the third periodic report of Finland to the Human Rights Committee was also well aware of this concern and attention was given to it when the report. See, in particular, the protocols of the working group's meetings of 18 February 1988, 22 April 1988 and 25 January 1989.

¹² PeVL 10/1985 vp.

¹³ PuVM 2/1985 vp.

¹⁴ Government Bill HE 8/1985 vp, chapter 3.1 and chapter 1.1 of the detailed reasoning.

¹⁵ Law on alternative civilian service, Act No. 1723/1991.

¹⁶ Government Bill HE 149/1991 vp, chapter 1.1 of the detailed reasoning.

¹⁷ Government Bill HE 152/1998 vp on alternative civilian service of 2 October 1998.

act that the authorities were expected to take under the then Constitution Act of Finland.¹⁸ In addition to legal experts, also, for instance, the Ministry for Foreign Affairs noted in a written statement prepared during the preparatory process of the Government Bill that, in light of its international human rights obligations, it would be useful if the Government reconsidered the issue of the length of the alternative service.¹⁹

The decision not to include a proposal that would have shortened the alternative service rested decisively, however, on the assumption that it was not possible to draw with certainty the conclusion that international monitoring bodies would consider the Finnish practice to be incompatible with Finland's international human rights treaty obligations.²⁰ The Finnish legislation with regard to the length of alternative civilian service for conscientious objectors remained, on that occasion, thus, unchanged.²¹

Indeed, this conclusion was – at the time at least – in conformity with the interpretation of the Human Rights Committee. Although the Committee had on several occasions developed its interpretation of the question on conscientious objection to military service and on the length of alternative civilian service in relation to that of military service²² it did still not consider the Finnish practice incompatible with the treaty provisions. Accordingly, the issue was not raised by the Committee during its consideration of the fourth periodic report of Finland in April 1998.²³

If the Human Rights Committee did not consider the Finnish practice with regard to conscientious objection to military service and the length of alternative civilian service as being in contradiction with the provisions of the Covenant when considering the fourth periodic report of Finland in 1998,²⁴ a different view was adopted in its concluding observations on the fifth periodic report of Finland considered in October 2004 when the Committee noted that “the civilian alternative to military service is punitively long”. The Committee also requested the Government of Finland to “end the discrimination inherent in the duration of alternative civilian service”.²⁵

¹⁸ Constitution Act of Finland Section 16 (a), paragraph 1.

¹⁹ Document prepared at the legal department of the Ministry for Foreign Affairs to the Foreign Affairs Committee of Parliament, dated 22 October 1998. Statement on file with author.

²⁰ See *e.g.* written statement by Martin Scheinin of 3 February 1998 submitted to the Ministry of Labour and the Advisory Board of Civilian Military Service. Statement on file with author.

²¹ Although the Government did not see it necessary to propose a shortening of alternative civilian service, such a proposal was initiated by individual members of Parliament. The Parliament defeated, however, that initiative. See initiative 95/1998 vp.

²² See *e.g.*, CCPR/C/79/Add.86 (Belarus); CCPR/C/79/Add.80 (France); CCPR/C/79/Add.87 (Lithuania); CCPR/C/79/Add.79 (Slovakia).

²³ UN docs CCPR/C/79/Add.91; CCPR/C/SR.1659; CCPR/C/SR.1660.

²⁴ When considering Finland's fourth periodic report, the Human Rights Committee did express its concern about the special treatment granted to Jehovah's Witnesses.

²⁵ UN docs. CCPR/CO/82/FIN, paragraph 14; CCPR/C/SR.2226; CCPR/C/SR.2227; CCPR/C/81/L/FIN, paragraph 15.

The issues of conscientious objection to military service and the length of alternative civilian service illustrate well the manner in which the Human Rights Committee's interpretation of the provisions found in the Covenant has developed over time. A definite turning point in the Committee's position took place in 1993 by the adoption of its General Comment No. 22 on article 18 of the Covenant.²⁶ In the General Comment, the Committee notes that the Covenant "does not explicitly refer to conscientious objection" but, in the Committee's view, "such a right can be derived from article 18".²⁷ The Committee narrowed, however, this interpretation to cases of objecting the use of "lethal force". As noted by Manfred Nowak, later decisions on individual cases have confirmed this hesitant approach.²⁸

Until the adoption of its General Comment No. 22, it was not uncommon for the Human Rights Committee, when dealing with individual cases concerning questions relevant to conscientious objection to military service, to note either that "the question whether article 18, paragraph 1, guaranteed a right of conscientious objection to military service did not have to be determined by the Committee in the present case"²⁹ or that the Covenant "does not provide for the right to conscientious objection".³⁰

With regard to the duration of alternative civilian service, the Human Rights Committee still noted in 1990 when considering whether the duration of alternative civilian service that was twice as long as military service constituted discrimination, that "the extended length of alternative service is neither unreasonable nor punitive".³¹ Before declaring that alternative civilian service that was twice as long as military service was "punitively long", as was stated in 2004 when adopting its concluding observations on the fifth periodic report of Finland,³² the Human Rights Committee noted that such a practice "may raise issues of compatibility

²⁶ When drafting paragraph 11 of what was to become General Comment No. 22 of the Human Rights Committee, Mrs Elisabeth Evatt raised the following issue: "The text as now worded appeared to refer to a right to conscientious objection derived from article 18. Was the intention to state that a person could claim that right, and a violation of that right, under article 18? She understood that some years previously the Committee had decided the exact opposite; in that case, it should perhaps indicate its awareness that it was now departing from a previous decision". UN doc. CCPR/C/SR.1237, paragraph 36. See also UN doc. CCPR/C/SR.1247, paragraphs 62-84.

²⁷ General Comment No. 22, paragraph 11. UN doc. CCPR/C/21/Rev.1/Add.4. With regard to the drafting of General Comment No. 22 and the issue of a more general right to religious conscientious objection, see UN doc. CCPR/C/SR.1237 and Opinion No. 4-2005: The right to conscientious objection and the conclusion by EU Member States of Concordats with the Holy See. EU Network of independent experts on fundamental rights, 14 December 2005, pp. 15.

²⁸ Manfred Nowak, 2005, p.421-425.

²⁹ UN doc. CCPR/C/24/D/89/1981, paragraph 3. Views adopted by the Human Rights Committee on 8 April 1985 on communication No. 89/1981 (Muhonen v. Finland).

³⁰ Communication No. 185/1984 (L.T.K. v. Finland) was declared inadmissible on 9 July 1985. UN doc. CCPR/C/25/D/185/1984, paragraph 5.2. See also views adopted on Communication No. 295/1988 (Järvinen v. Finland). UN doc. CCPR/C/39/295/1988. See also UN doc. CCPR/C/SR.1015, paragraphs 13-21.

³¹ Communication No. 295/1988 (Järvinen v. Finland). View adopted on 25 July 1990. UN doc. CCPR/C/39/D/295/1988, para. 6.6.

³² UN doc. CCPR/CO/82/FIN, paragraph 14. On the same occasion, the Human Rights Committee also regretted that the right to conscientious objection is acknowledged only in peacetime and that the preferential treatment accorded to Jehovah's Witnesses has not been extended to other groups of conscientious objectors.

with article 18 of the Covenant”.³³ In views adopted in more recent years, the Human Rights Committee has found a violation of article 26 on the basis of the complainant’s conviction of conscience.³⁴

When considering the second periodic report of Finland in November 1985 only few months after the Human Rights Committee had concluded that the Covenant did not provide for the right to conscientious objection, the members of the Committee wished to know how conscientious objection – a right that was, according to the members of the Committee, suddenly recognized in the Covenant – was given recognition under Finnish legislation.³⁵ With regard to the length of alternative service, it was, at that occasion, noted that “Finnish legislation was not very favourable towards conscientious objectors, who had to perform long and unpleasant service”.³⁶ Within only seven months, the Human Rights Committee adopted, in other words, no less than three different positions concerning the question of whether the Covenant on Civil and Political Rights guaranteed a right of conscientious objection to military service or not.³⁷

Opinions on Finland’s practice with regard to conscientious objection to military service have been expressed by other organs as well. In his report on his visit to Finland in 2001, the Commissioner for Human Rights of the Council of Europe, Alvaro Gil-Robles, notes that the Government of Finland should take into consideration the decisions by the European Parliament³⁸, the Committee of Ministers of the Council of Europe³⁹ as well as the United

³³ Concluding observations of the Human Rights Committee on the third periodic report of France adopted on 31 July 1997. UN doc. CCPR/C/79/Add.80, para. 19. See also *e.g.*, CCPR/C/79/Add.86 (Belarus); CCPR/C/79/Add.80 (France); CCPR/C/79/Add.87 (Lithuania); CCPR/C/79/Add.79 (Slovakia).

³⁴ See, *e.g.* the Committee’s views on Communication No. 682/1996 (Paul Westerman v. the Netherlands) adopted on 3 November 1999 (UN doc. CCPR/C/67/D/682/1996) as well as on Communication No. 689/1996 (Richard Maille v. France) adopted on 10 July 2000 where alternative service that was twice as long as military service was considered discriminatory. A similar view was adopted in Communication No. 690/1996 & 691/1996 (Marc Venier and Paul Nicolas v. France) (UN doc. CCPR/C/69/D/690/1996) also on 10 July 2000.

³⁵ UN doc. A/41/40, paragraphs 210-213. See also UN doc. CCPR/C/SR.646, paragraph 30 (Mr. Torkel Opsahl, member of the Human Rights Committee). See also Martin Scheinin, 1988, p. 92. During the examination of the supplementary report of Finland in 1979 (UN doc. CCPR/C/1/Add.32), members of the Human Rights Committee had requested for information on conscientious objection to military service, information that would be irrelevant, unless the issue was covered by the Covenant. UN doc. A/34/40, paragraph 412.

³⁶ Mr Prado Vallejo, member of the Human Rights Committee. UN doc. CCPR/C/SR.646, paragraph 28.

³⁷ On the contents and the Human Rights Committee’s interpretation of Article 18 of the Covenant on Civil and political Rights, see, *e.g.*, Manfred Nowak, 2005, pp. 421-425.

³⁸ Resolution on conscientious objection adopted by the European Parliament on 7 February 1983. Official Journal of the European Communities No. C 68, volume 26 (14 March 1983), pp. 13-15. See also European Parliament resolution A3-0411/93 of 19 January 1994. Official Journal of the European Communities No. C 44, p. 103-105, 14 February 1994. For a brief description of the debate on military conscientious objection within the Council of Europe since 1966, see Hammer, Leonard (2001), p. 201-204.

³⁹ Recommendation No. R(87)8 of the Committee of Ministers to Member States regarding conscientious objection to compulsory military service adopted on 9 April 1987 at the 406th meeting of the Ministers’ Deputies.

Nations Commission on Human Rights⁴⁰ concerning conscientious objection and alternative civilian service. The Government should, according to the Commissioner for Human Rights, “reconsider its treatment of conscientious objectors with reference to the duration of civilian service”.⁴¹ In his follow-up report of 29 March 2006, the Commissioner for Human Rights reiterates his regret that the long-standing issue with an alternative civil service that is punitive and discriminatory has still not been resolved.⁴² The European Court of Human Rights and the former European Commission of Human Rights, on the other hand, have been more reluctant to recognize conscientious objection as a right falling under the European Convention for the Protection of Human Rights and Fundamental Freedoms.⁴³ In a decision of 1991 concerning Finland, the European Commission of Human Rights found no reason of concern in the alternative civilian service that was twice as long as the military service as the different treatment was considered proportional.⁴⁴

It took years before the attention given to the question of conscientious objection to military service bear fruit. Consequently, the issue of the duration of alternative civilian service was again before the Parliament in 2000. In the Government Bill of 6 October 2000, it was proposed that the length of alternative civilian service be shortened. The reasoning given for this amendment was to further the principle of equality as found in the Finnish Constitution and in the international human rights conventions.⁴⁵ A reference was also made to the resolution introduced by Finland and adopted by the Commission on Human Rights in 1998. Despite the Government’s intentions to meet its obligations under international human rights treaties, the majority of the members of Parliament did not – contrary to the opinion by the Employment and Equality Committee of Parliament⁴⁶ – find reason to place sufficient weight on the possible human rights concerns that the Finnish practice with an alternative civilian service twice as long as the shortest military service might raise.⁴⁷

Seven years later, in October 2007, the Government submitted a similar proposal on the shortening of the civilian service to Parliament. Again it was proposed that the duration of the civilian service would be shortened from 395 to 362 days and again human and fundamental

⁴⁰ Commission on Human Rights resolution 1998/77 of 22 April 1998. The Commissioner for Human Rights did not, however, make any reference to the Human Rights Committee which by 1998 had adopted a strong position on the issue.

⁴¹ CoE doc. CommDH (2001)7, concluding remarks and recommendations.

⁴² CoE doc. CommDH (2006)9, paragraph 46.

⁴³ Leonard Hammer, 2001, p. 202-203. See, e.g., 2299/64 Grandrath v. FRG; 5591/72 X. v. Austria; 7565/76 conscientious objectors v. Denmark; 10640/83 A. v. Switzerland; G. v. The Netherlands.

⁴⁴ Autio v. Finland. Application No. 17086/90.

⁴⁵ Government Bill HE 160/2000 vp. According to the Government’s proposal, the duration of alternative civilian service would have been shortened from 395 days to 362 days. See also Government report to Parliament on Human Rights and Finland’s Foreign Policy, 2000, p. 134-135.

⁴⁶ TyVM 12/2000 vp.

⁴⁷ EV 206/2000 vp (Parliament’s reply to the Government Bill). See also statements by the Defence Committee (PuVL 8/2000 vp) and the Grand Committee of Parliament (SuVM 1/2000 vp). The Constitutional Law Committee of Parliament was not, in 2000, requested for a statement.

rights were given as one of the principal reasons for this initiative.⁴⁸ As in 2000, also in 2007 the Defence Committee of Parliament was not in favour of the proposed amendment⁴⁹ whereas the Constitutional Law Committee and the Employment and Equality Committee of Parliament both gave their support to the proposal to shorten the alternative civilian service to 362 days thus corresponding to the longest military service.⁵⁰ This time also the majority of the members of the Finnish Parliament finally saw the need to amend the legislation concerning the duration of alternative civilian service that had been subject to such heavy criticism.⁵¹

1.2 Special treatment of one group amounts to discrimination of another

When the Human Rights Committee was drafting its General Comment No. 22 on the right to freedom of thought, conscience and religion in 1993, one of its members, Vojin Dimitrijevic, noted that “any differentiation among conscientious objectors was unacceptable”.⁵² No such provision on non-discrimination was, however, included in the General Comment. Nonetheless, five years later when considering Finland’s fourth periodic report, the Human Rights Committee expressed its concern about the fact that Jehovah’s Witnesses are granted preferential treatment as compared to other groups of conscientious objectors. The Committee recommended that the Government of Finland review its legislation in order to bring it into full conformity with article 26 of the Covenant on Civil and Political Rights.⁵³ The Committee reiterated its concern when considering the fifth periodic report of Finland in 2004.⁵⁴

Jehovah's Witnesses had been granted exemption from all national service in 1985.⁵⁵ The Law on Jehovah's Witnesses aimed at solving the problem caused by the fact that Jehovah's Witnesses were sentenced to prison because of an act regulated by their religious belief. The discriminatory nature of the law exempting Jehovah's Witnesses from all national service was

⁴⁸ Government Bill HE 140/2007 vp; Ministry of Labour, press release 18 October 2007, "Hallituksen lakiesitys: Uusi siviilipalveluslaki lyhentää palvelusajan 362 vuorokauteen".

⁴⁹ PuVL 4/2007 vp.

⁵⁰ PeVL 18/2007 vp and TyVM 9/2007 vp.

⁵¹ Act No. 1446/2007. Besides a shortening of the alternative civilian service, the new law contains also provisions for alternative civilian service during a state of emergency. The lack of such regulation would not necessarily have meant that conscientious objectors would have been ordered military duties in case of war. Rather, the concern was more about the fact that the position of conscientious objectors in time of war was unregulated. See, for example, the written statement by Martin Scheinin of 8 November 2007 submitted to the Constitutional Law Committee of Parliament concerning the Government Bill on alternative civilian service (HE 140/2007 vp).

⁵² UN doc. CCPR/C/SR.1237, paragraph 10.

⁵³ UN docs. CCPR/C/79/Add.91, paragraph 21; CCPR/C/SR.1659, paragraph 50; CCPR/C/SR.1660, paragraph 32. When the Human Rights Committee considered the third periodic report of Finland, a lengthy debate had taken place concerning the special treatment given to Jehovah’s Witnesses, but the Committee did not explicitly express its concern about the issue. UN docs. CCPR/C/SR.1015, paragraphs 13-21; A/46/40, paragraph 117.

⁵⁴ UN doc. CCPR/CO/82/FIN, paragraph 14.

⁵⁵ Law on Jehovah's Witnesses, Act No. 645/1985. Government Bill 7/1985 vp.

recognized already when the law was drafted in 1985. In its opinion of 31 May 1985, the Constitutional Law Committee of Parliament had noted with regard to the special treatment granted to Jehovah's Witnesses – but not to other conscientious objectors – that because the Constitution Act of Finland then in force provided that an individual cannot, due to his or her religious belief, be granted special treatment by a normal act of law any such arrangement would require an act that is passed, in accordance with Section 67 of the Parliament Act, as an exception to the Constitution Act.⁵⁶ The special treatment granted to an individual belonging to one religious community but not to another was made even more striking when the alternative civilian service was extended with 120 days at the same time with the law exempting Jehovah's Witnesses from all national service.⁵⁷

When revising the law on alternative civilian service in 2007, the Government Bill⁵⁸ did not touch upon the preferential treatment granted Jehovah's Witnesses. Besides the concern expressed by the Human Rights Committee,⁵⁹ the Council of Europe Commissioner for Human Rights considered, in his follow-up report on Finland in 2006, that "a similar provision should also be applied to other persons objecting to military and civilian service on the ground of belief".⁶⁰ The discriminatory nature of the preferential treatment granted to Jehovah's Witnesses was also recognized in the Government Bill of 2007 on revising the legislation on alternative civilian service although it did not deal with the issue any further. Instead, a commission was set up by the Ministry of Defence on 14 March 2007 to consider the appropriateness of the Law on Jehovah's Witnesses and whether its provisions are violating the constitutional provision of non-discrimination and equal treatment.

The Commission gave its report to the Minister of Defence on 20 December 2007.⁶¹ According to the Commission's view, the law exempting Jehovah's Witnesses from all national service is problematic especially with regard to the constitutional provision of equal treatment but also with regard to Finland's international human rights obligations although, as was noted, such a conclusion cannot directly be drawn from the case law of international monitoring bodies. The commission was not, however, able to write its report in the form of a government bill, although it had been requested to do so. Instead, the commission recognized the complexity of the issue at hand – something that had been done already in 1985 – and proposed that the different options available would be subject to a wide hearing before proceeding any further.⁶² The commission did not, in other words, contribute all that much, if at all, to the Government's efforts to find an acceptable solution to the issue.

⁵⁶ PeVL 9/1985 vp.

⁵⁷ See Government Bill 8/1985 vp.

⁵⁸ Government Bill HE 140/2007 vp.

⁵⁹ UN docs. CCPR/C/79/Add.91, paragraph 21; CCPR/C/SR.1660, paragraph 32; CCPR/CO/82/FIN, paragraph 14.

⁶⁰ CoE doc. CommDH(2006)9, paragraph 46.

⁶¹ Ministry of Defence, Committee report 2007:1.

⁶² In preparing its report, the commission had already heard the leading national experts on constitutional law, relevant authorities, representatives of Jehovah's Witnesses, as well as representatives of other relevant stakeholders.

2 Preliminary observations: Finland has been really slow in its corrective measures

The issue of the duration of alternative civilian service compared to military service has been before the Government of Finland and the Finnish Parliament a number of times during the last twenty years. At the international level, the Government of Finland has promoted a view according to which alternative service that is provided conscientious objectors should not be punitive in nature. With regard to its own record, the Government has, however, remained rather passive despite the fact that its practice has caused international concern. Although the Government has proposed on three occasions, in 1991, in 2000, and in 2007 a shortening of alternative service, it is evident that its activity has not met international expectations.

The negative attention that Finland received during a number of years did not seem to have affected the Government enough and even less so the members of Parliament. In light of the international critique that the issue of the length of alternative civilian service caused, it was somewhat surprising that the issue was ruled out of the mandate of the working groups set up by the Ministry of Labour in September 2005 to update the legislation concerning alternative civilian service in Finland.⁶³ The decision to rule out the question of the length of alternative civilian service does not become less surprising by the fact that this decision was taken at the Ministry of Labour, the Ministry concerned with workers' rights, only one year after the European Committee of Social Rights had issued its conclusion according to which the situation in Finland with regard to alternative civilian service “is not in conformity with Article 1§2 of the Charter [European Social Charter]” and thus constitutes “a disproportionate restriction on workers’ right to earn their living in an occupation freely entered upon”.⁶⁴ However, although the issue of the length of alternative civilian service had been ruled out of the working group's mandate, and had thus not been dealt with in the working group's report, the Ministry of Labour did, due to some extensive public debate, ask for statements on a separate proposal on the issue prepared by the Ministry when preparing the Government Bill.⁶⁵

Writing in 1988, Martin Scheinin made the assumption that in case the Human Rights Committee would find the practice in Finland concerning the length of alternative civilian service as discriminatory, Finland would, most likely, adjust its legislation rapidly with a necessary amendment.⁶⁶ As the present chapter has illustrated, Scheinin's prediction was far too optimistic. A modest legislative adjustment took indeed place, but it was anything but rapid.

⁶³ For the report of the working group, see Komiteamietintö 2006. Siviilipalveluslainsäädännön uudistaminen – työryhmän mietintö, and for the decision to set up the working group, see Ministry for Labour, TM 017:00/2005, 28.9.2005.

⁶⁴ European Committee of Social Rights. Conclusion XVII-1-Finland (2004).

⁶⁵ Government Bill HE 140/2007 vp., 26.

⁶⁶ Martin Scheinin, 1988, p. 162.

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