

EXTERNAL



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POLAND

Draft law concerning alternative service is at variance with internationally recognized principles on conscientious objection to military service

Amnesty International's concern:

In November 1998 the Polish Government proposed for adoption to the Sejm¹ the Draft Law Amending the Law on the Obligation to Defend the Republic of Poland and the Law on Soldiers' Wages (*Projekt ustawy o zmianie ustawy o powszechnym obowiązku obrony Rzeczypospolitej Polskiej oraz o zmianie ustawy o uposażeniu żołnierzy*, hereafter referred to as the Draft Law). Following discussions in the National Defence Commission on 21 January and 3 March 1999, the Draft Law was adopted by the Sejm on 18 March 1999 and will now be debated in the Senate. This law includes *inter alia* provisions concerning alternative service to military service².

Amnesty International is concerned that certain provisions of the Draft Law are at variance with internationally recognized principles on conscientious objection. The organization is also concerned that the Draft Law did not propose amendments to the provisions of the law in force which are at variance with the international principles.

Background:

The Draft Law³ amends the length of alternative service from 24 to 21 months. It also reduces the length of military service from 18 to 12 months. Should these provisions be adopted in their present form the length of the alternative service would be almost twice the length of military service. Amnesty International believes that the length of alternative service should not be such as to constitute a punishment for a person's conscientiously held conviction. Recommendation No. R (87) 8 of the Committee of Ministers to Member States of the Council of Europe (hereafter referred to as the 1987 Council of Europe Recommendation) emphasizes that alternative service "shall not be of a punitive nature. Its duration shall, in comparison to that of military service, remain within reasonable limits". The United Nations Commission on Human Rights (CHR) in its Resolution 1989/59 of 8 March 1989 (reaffirmed in

¹ The lower house of Polish parliament.

² In July 1988 the Sejm adopted amendments to this law which introduced alternative service for conscientious objectors in non-military institutions. The length of alternative service of 36 months was reduced to 24 months in November 1992.

³ Article 1 (27) of the Draft Law presented to the Sejm by the Government, which is identical to Article 1 (30) of the Draft Law in the version adopted by the Sejm's National Defence Commission.

its Resolution 1993/84 of 10 March 1993) also states that alternative service should not be of a punitive nature. In the light of Poland's associated status to the European Union and aspirations to join this organization it is also important to take into consideration the European Parliament's Resolution A3-0025/92, paragraph 51, which stresses that "an alternative civilian service should be provided for, of the same length as military service, so that it is not seen as a sanction or deterrent".

The provisions of Article 190 of the Law on the Obligation to Defend the Republic of Poland limit the time period for the submission of the application for alternative service to "the time of receiving a call-up order for military service". By imposing a time limit for the submission of an application for alternative service, the law effectively disqualifies from alternative service all those people who develop a conscientious objection to military service after the call-up and induction into the armed forces, or even after completing armed service, when people are obliged to carry out armed service in the reserve units. The Draft Law does not envisage any amendments to these provisions. The need for national legislation to recognise that a person's conscientiously-held beliefs may change over time has been recognised in Resolution 84/93 on Conscientious Objection to Military Service, adopted by the United Nations Commission on Human Rights on 10 March 1993. This resolution calls for "minimum guarantees to ensure that...conscientious objector status can be applied for at any time...". Similarly, Paragraph 26 of the Explanatory Report to the 1987 Council of Europe Recommendation states that:

"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."

In this respect it is important to note that the Council of Europe's Steering Committee for Human Rights has convened the Group of Specialists on Conscientious Objection. This body was set up to promote full implementation of the principles included in the 1987 Council of Europe Recommendation. Amnesty International, in recognition of its work in this field, has been invited to participate in the work of this group as an observer.

Amnesty International's Recommendations:

Amnesty International urges all members of the Senat and the Sejm to ensure that the final version of the Draft Law is consistent with all of the cited international principles on conscientious objection. Poland's compliance with these principles in the Law on the Obligation to Defend the Republic of Poland would be an important confirmation of the country's commitment to promote conscientious objection to military service as a fundamental human right.