International Fellowship of Reconciliation (IFOR) and Conscience and Peace Tax International (CPTI)

Submission to the 111th Session of the Human Rights Committee for the attention of the Country Report Task Force on France

(Military service, conscientious objection and related issues)


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History:

Population (November 2013, estimated) 65,952,000

Military recruitment: except during the period of German occupation, conscription was enforced from 1793 until suspended at the end of 2001. Although the provisions enabling conscription have not been repealed, all recruitment is currently on a voluntary basis.

Minimum age: 17 (but 16 for certain specified purposes, see text)

Conscientious objection: first recognised in the “Act regarding certain modalities of fulfilling the obligations imposed by the law on recruitment” of 21st December 1963.

Males reaching “militarily significant age” in 2010: 396,050

Armed forces: active strength, November 2013: 222,200

as a percentage of the number of men reaching “military age” 56.1%

Military expenditure US $ equivalent, 2013: $61,228m

Per capita $928
As % of GDP 2.2%

1 Source: The Military Balance 2014 (International Institute of Strategic Studies, London), which bases its estimate on “demographic statistics taken from the US Census Bureau”.

2 Source: Child Soldiers International (formerly Coalition to Stop the Use of Child Soldiers), Louder than words: an agenda for action to end state use of child soldiers, London, September 2012.


5 Stockholm International Peace Research Institute (SIPRI), April 2014
Militarisation within the education system

Act No. 97-1019 of 28 October 1997 “on reform of national service” suspended conscription into military service from the beginning of 2003 - in the event this deadline was brought forward by one year. “Article 1 of the Act added a new article L. 112-2 to the National Service Code, which suspends conscription [but] specifies, however, that conscription “shall be reinstated at any moment by law, when the conditions for the defence of the nation or the objectives laid down for the armed forces so require”." 6 Technically, the Act created a new Book 1 of the National Service Code, relegating most of the existing provisions to Book 2, which remained in force although suspended indefinitely.

A most disturbing feature of the Act is that in exchange for the suspension of obligatory military service, it instituted a far greater military involvement in the education system.

The new Book 1 of the National Service Code includes revised registration (recensement) requirements (L113). Formerly applicable only to males at the age of seventeen, they now apply to all persons at the age of sixteen. A new Chapter (L114) deals with “Defence education and the call-up for defence preparation” (L’enseignement de la défense et l’appel de préparation à la défense). This quotes from the Education Code: “The principles and organisation of national and European defence and the general organisation of the reserves” are an obligatory part of the secondary school curriculum “in order to reinforce the army-Nation bond and sensibilise youth to their duty of defence.”7 This teaching is to be complemented by the one-day “Call-up for defence preparation” which all are required to attend between registration and the eighteenth birthday; the obligation to make good any failure to fulfil this obligation persists until the 25th birthday. Both registration and attendance at the “Call-up day” are preconditions for admission to all public examinations and competitions. (L113-4, L114-6). The “Call-up day” gives an overview of the aims and organisation of the national defence system, together with the possibilities of enlistment in the armed forces or the reserves. Those attending are required to provide proof of a recent medical examination. (L114-3). The one day course can be extended into a period of military training, at the request of the candidate, and subject only to medical clearance. (L114-12) The military training is open to all between the ages of 16 and 30 (L115-1); it does not entail admission to the armed forces as a volunteer, for which application can be made only after the age of 18 (L121-1).

Among the items of information handed out at the “Call-up day” is an explanation of the procedures to produce consent forms for organ donations, and the possibility of registering one’s objection to this.(L114-3) This would appear to be the only form of conscientious objection mentioned; despite the direct relationship of the registration procedures to the suspended system of obligatory military service, and the overt function of the “call-up day ” as a military recruitment exercise, there is no provision to allow either those affected to register themselves as conscientious objectors to military service, still less for them, or (as they are generally minors) their parents, to express a conscientious objection to participation in the day.

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6 CRC/C/OPAC/FRA/1, 6th October 2006, para 6.
7 “Les principes et l’organisation de la défense nationale et de la défense européenne ainsi que l’organisation générale de la réserve font l’objet d’un enseignement obligatoire dans le cadre de l’enseignement de l’esprit de défense et des programmes de tous les établissements d’enseignement du second degré. Cet enseignement a pour objet de renforcer le lien armée-Nation tout en sensibilisant la jeunesse à son devoir de défense.”
Juvenile recruitment and military schools

France ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict on 5th February 2003, depositing a declaration that “France declares that it recruits only volunteers aged at least 17 who have been informed of the rights and duties involved in military service, and that the enlistment of recruits under the age of 18 is valid only with the consent of their legal representatives”.

In its initial report under the Optional Protocol, France subtly qualifies this declaration: “Accordingly, under article 20, paragraph 4, of the Members of the Armed Forces (General Regulations) Act, “no one who is not at least 17 years of age may become a member of the armed forces - 16 years of age in order to receive general and vocational training as a volunteer in the armed forces or as a pupil in a military school”. Persons aged under 16 cannot, under any circumstances, take part in activities other than those which form part of general and vocational training.”8

From the information given later in the report, it would seem that the only “military school” concerned is the Air Force Technical Training School, which “accepts minors who wish to become air force NCO technicians. The school is open to pupils from the age of 15, but they can sign up for military recruitment only from their sixteenth birthday” In both 2004 and 2005 177 “under-age members of the armed forces were recruited to the School.”9 “A draft decree (...) currently in course of ministerial scrutiny, increases by one year to age 16 the minimum age of entry for such education.”10

The Act also governs recruitment into the Foreign Legion. Article 83, paragraph 1 of the Act stipulates that persons wishing to serve in the Foreign Legion are eligible only if they are aged at least 17.11 The following sub-paragraph states that “in principle” such recruits must produce proof of identity and of the consent of their legal representative. The military authorities can accept the enlistment of a candidate in the absence of the necessary supporting documents only in exceptional cases and after detailed administrative inquiry into the candidate’s background, in collaboration with the authorities of the country of origin.12 A candidate who makes a false statement of age in order to by-pass this requirement is, if detected, subject to automatic termination of the contract and being debarred from ever reapplying.13

“Around 7,500 candidates on average apply for recruitment each year to fill the 1,000 posts available. The recruitment of minors accounts for at most only two to four enlistments a year.”14 No one under the age of eighteen was currently serving at the time of the report.

In its concluding observations, the Committee on the Rights of the Child “encourages the State party to raise the minimum age for recruitment into the armed forces and Foreign Legion to 18 in order to fully comply with the spirit of the Optional Protocol and provide full protection to children. The Committee also encourages the State party to provide by law for a special status, different from that of the military, for 16 to below 18 years old children enrolled in military schools and for those in the Foreign Legion.15

8 CRC/C/OPAC/FRA/1, para 9.
9 Ibid, para 20
10 CRC/C/OPAC/FRA/Q/1/Add.1, para 2.2
11 CRC/C/OPAC/FRA/1, para 10
13 Ibid,para 17
14 Ibid,para 19.
15 CRC/C/OPAC/FRA/CO/1, 15th October 2007, para 8.
Serving members of the military

France is a member of the Council of Europe, whose Committee of Ministers recommended in 2010:
“42. Professional members of the armed forces should be able to leave the armed forces for reasons of conscience.
43. Requests by members of the armed forces to leave the armed forces for reasons of conscience should be examined within a reasonable time. Pending the examination of their requests they should be transferred to non-combat duties, where possible.
44. Any request to leave the armed forces for reasons of conscience should ultimately, where denied, be examined by an independent and impartial body.
45. Members of the armed forces having legally left the armed forces for reasons of conscience should not be subject to discrimination or to any criminal prosecution. No discrimination or prosecution should result from asking to leave the armed forces for reasons of conscience.
46. Members of the armed forces should be informed of the rights mentioned in paragraphs 41 to 45 above and the procedures available to exercise them.”

Paragraph H.4 in the Council of Europe's follow-up questionnaire on the implementation of this recommendation, which was circulated early in 2012, asked “Can professional members of the armed forces leave the armed forces for reasons of conscience? If so, please explain the conditions and the procedure, and in particular whether the requests can be reviewed by an independent and impartial authority. If not, please explain why and whether any measure is in preparation.”

In reply to this question, France quotes Article L4139-13 of the Defence Code, which states that professional members of the armed forces may request the resiliation of their contracts for “exceptional reasons”, and adds “Grounds of conscience, if firmly based, could constitute such a reason.” Under Article R4125-1 of the Defence Code, in the case of refusal an appeal could be made in the first instance to the military appellate tribunal and ultimately challenged in a civil court. The precise conditions would vary as to the status (“career” or “contract”) of the person, and on the training received in the course of the service and funded by the Ministry of Defence. (If this means that the full imputed costs of training would have to be refunded, it could in many cases represent a possibly unsurmountable obstacle to the implementation of the right.) Dealing with a sizeable military such as that of France, it would be useful to know how many such applications there have been in recent years.

16 CM/Rec(2010)4, 24th February 2010
Suggestion for the list of issues

Please give details of how many persons have requested the resiliation of their contracts in accordance with Article L4139-13 of the Defence Code, citing reasons of conscience and what the results of such requests have been, including the financial terms of any severance.