

SUMMARY REPORT "CONSCIENCIOUS OBJECTION IN THE FIRST YEAR OF APPLICATION OF THE NEW LAW OF RECRUITMENT AUGUST 2017- OCTOBER 2018" Prepared by ACOOC and Justapaz

1. General Background

On August 4, 2017, Law 1861 was passed, through which the Recruitment, Reserve Control and Mobilization Service is regulated. The approval process took two years from the filing of Bill 101 of 2015, presented by the Ministry of Defense, until the final text was sanctioned.

The initial text submitted by the Ministry of Defense contained different worrying elements, since it was receding or affecting the guarantee of fundamental rights of young people in their process of defining the military situation and the economic solvency of the country. Some examples of this are:

- The intention to unify periods for the provision of military service in 18 months.
- The increase of the monthly bonus to soldiers by 70% of the minimum wage.
- Not include the right to conscientious objection as grounds for exemption, nor the procedure to define the military situation as conscientious objector.
- Maintain compulsory military service.

The aforementioned and the commitment of different organizations to advance in the demilitarization of life, minds and territories in Colombia, led to the articulation between these and the Legislative Technical Units, of different Representatives to the House and Senators of the Republic, to modify and to include diverse articles adjusted to the national and international framework of human rights, the jurisprudence of the Constitutional Court and some elements based on the positioning of a culture of peace. We can say that progress was achieved through the joint interposition of different proposals, specifications of modifications and negative reports to the draft law of the Ministry of Defense.

2. Achievements

- The legal recognition of conscientious objection as grounds for exoneration from the compulsory military service (article 12, subparagraph N).
- The exclusion of conscientious objectors from the reserves of the Military Forces as a guarantee of their rights at all times (paragraph of article 52).
- The inclusion of a procedure for the definition of the military situation of conscientious objectors with the participation and intervention of delegates from the Public Ministry (articles 77, 78, 79 and 80).
- The legal prohibition of the realization of arbitrary detentions for recruitment purposes, popularly known as "batidas" (paragraph 2 of article 4.)
- Inclusion of the obligation to speak about the right to conscientious objection to military service in educational establishments (paragraph 1 of article 17).

3. Conscientious objection in the recruitment law

What are the requirements to resolve the military situation as a conscientious objector?

According to Law 1861 of 2017, the current conscription law, conscientious objection is always a cause of exoneration from military service, as indicated in article 12, literal N:

Requirements to define the military situation

- Be of legal age (18 years old in Colombia)
- Have religious, ethical, philosophical, moral or political reasons to refuse to perform military service.
- The reasons must be deep, fixed and sincere, that is, not trivial, easy to modify or used only to evade the provision of military service.

It should be noted that different social organizations defending human rights consider that conscientious objection is not only a right to refuse to perform military service, but also a conscious decision of the youth that contributes to the construction of peace in Colombia.

What is the procedure to define the military situation as a conscientious objector?

1. Registration
2. Request for recognition as a conscientious objector in a verbal or written manner: The conscientious objector must submit his verbal or written request to the Interdisciplinary Conscientious Objection Commission, which will have to be attended to and resolved within a maximum term of 15 days.
3. Citation to the Territorial Interdisciplinary Commission: In accordance with the new law of recruitment, once the application for recognition as conscientious objector is filed, the Military District where the process is being conducted will summon the young man to a Territorial Interdisciplinary Commission, an organ that will decide the applications of conscientious objectors in the first instance. The decision must be made between the following people: commander, doctor, psychologist and legal adviser of the corresponding Military District, accompanied by a delegate from the Public Prosecutor's Office (may be the Ombudsman or General Attorney) from the analysis of the documents presented and the result of the interview made to the young man to confirm that his reasons are fixed, deep and sincere.
4. Review of the decision of the First Instance by the National Commission of Conscientious Objection: In case the decision of first instance is negative, the young man can make use of the resources of replacement and the subsidy of appeal to the National Commission of Objection of Conscience that decides, in second instance, the conscientious objector's request.

4. Balance of the recognition of conscientious objection

How many requests of conscientious objectors have been filed since the law entered into force in October 2018?

Between August 2017 and October 2018, 422 applications were submitted, distributed as follows:

- 332 belong to conscientious objectors who refuse to perform military service for religious reasons.
- 90 for ethical, moral, philosophical or political arguments.

In what places were there the largest and least number of applications?

- The areas in which the highest number of requests were presented by conscientious objectors were Cali (97), Bogotá (80), Cundinamarca (42), Neiva (40), Bucaramanga (39) and Medellín (33), and in those that there wasn't any request were Barranquilla and Montería.

How many young men were recognized as a conscientious objector?

- Between August 2017 and October 2018, 422 applications were submitted, of which at the time of the response to Petition Law, 371 had already been resolved and 51 were pending resolution.
- The total of young men recognized as conscientious objectors in that period was 266 and therefore the unrecognized were 105, corresponding to 28%. This percentage of requests with negative answers is very high and worrisome.

The high number of denied requests is due to the lack of objective and technical criteria applicable by the interdisciplinary commissions, to analyze whether the arguments of conscientious objectors are fixed, deep and sincere. This causes that in different Military Districts the decisions are taken unilaterally or prioritizing the recruitment interest on the part of the Military Forces.

However, it cannot be ignored that the inclusion of a procedure to define the military situation of conscientious objectors in the new law of recruitment has contributed to the increase of favorable responses to requests.

5. Conclusions

Advances

- The legal recognition of conscientious objection as grounds for exemption from military service. Although the Congress had been exhorted by the Constitutional Court since the sentence C-728/2009 to regulate the right to conscientious objection.
- The increase in requests by conscientious objectors to the territorial interdisciplinary commissions.
- The involvement of the Public Ministry in interdisciplinary commissions, mainly of the Ombudsman Offices.
- The increase in the recognition of young men as conscientious objectors to military service.

Difficulties

- There is no impartial, technical and legal instrument that guarantees neutrality in the decisions of the Interdisciplinary Commissions. This issue was not addressed in Regulatory Decree 977 of 2018.
- Territorial Interdisciplinary Commissions are not being carried out in all the cities. In some areas of the country they only issue administrative acts indicating whether the request is favorable or unfavorable. An example of this is the city of Cali.
- Human Rights Organizations report that delegates from the Public Ministry are not always invited, which is worrisome because this body has the task of ensuring the protection of the rights of conscientious objectors before the Commission.
- Applications are not being resolved within the legally established 15 days, there are processes that have been accompanied by JUSTAPAZ and ACOOC that have taken up to 6 months.
- The lack of greater disclosure of the right by educational entities, Public Ministry and Military Forces.

- The lack of awareness on the part of young conscientious objectors of administrative resources (replenishment and subsidy appeal), which may be filed if they deny their request in the first instance.
- The type of document certifying the definition of a military situation as conscientious objectors is not yet clear. It cannot continue being the military card, because by getting it young men becomes part of the reserves and the exclusion of objectors of this category is always part of the guarantees of protection of its right.
- The lack of definition of the times that each of the stages can last to resolve the military situation, since this gap has made possible the implementation of arbitrary detentions with invitation or "batidas by incitement". From this new modality, the young men are not being taken to the truck and recruited on the same day, but they are cited in the Military Districts for the next day or week. There they perform psychophysical exams and formalize the incorporation of young men.