

Poland

Issues

- Poland does not recognise the right to conscientious objection for professional soldiers.

Military recruitment

Conscription

According to article 85 paragraph 1 of the Polish constitution, “*it shall be the duty of every Polish citizen to defend the Homeland*”. However, paragraph 2 says: “*The nature of military service shall be specified by statute*”¹. While the constitution clearly allows for conscription, it does not require it.

According to the presently valid law on conscription, all men between the ages of 18 and 28 are liable for military service. Reservist obligations apply up to the age of 50, but in practice most conscripts are not called up for reservist training in peacetime. In 2005, military service was shortened from 12 months to 9 months².

Nevertheless, Poland presently maintains conscription, but it is to be suspended in 2009³. Already now, only 40% of the personnel of the Armed Forces is made up of conscripts⁴. Every year, approx. 330,000 young men reach conscription age; approx. 20 per cent are recruited⁵.

Professional soldiers

The service of professional soldiers is based on the law on military service of regular soldiers from 20 October 2003⁶. Men can only join the Armed Forces as professional soldiers once they have completed their military service as conscripts⁷.

Since 1 July 2004, professional soldiers sign up for a fixed period of time (from 1 to 3 years), which can be extended. While originally only officers and non-commissioned officers could join the Polish Armed Forces as professional soldiers, it is now also possible to join as privates, and the number of privates is to be increased to 24,000 by 2010⁸.



- 1 Constitution of Poland, <http://www.sejm.gov.pl/prawo/konst/angielski/konse.htm>, accessed 6 May 2008
- 2 CIA World Factbook: Poland, 1 May 2008, <https://www.cia.gov/library/publications/the-world-factbook/print/pl.html>, accessed 12 May 2008; Polen plant Abschaffung der Wehrpflicht, Tygodnik Powszechny, 6 November 2006, http://www.eurotopics.net/de/presseschau/medienindex/media_articles/archiv_article/ARTICLE11636-Polen-plant-Abschaffung-der-Wehrpflicht?EUTOPICS=fe6ddcea85f48362f0ba6b58146ce228, accessed 12 May 2008
- 3 Polish Army to go professional in 2009, Polskieradio.pl, 7 February 2008, <http://www.polskieradio.pl/zagranica/news/arttykul75369.html>, accessed 6 May 2008, The Telegraph: Poland ends army conscription, 5 August 2008, <http://www.telegraph.co.uk/news/worldnews/europe/poland/2505447/Poland-ends-army-conscription.html>, accessed 6 August 2008
- 4 GlobalDefence.net: Polen (Poland), 25 March 2008, http://www.globaldefence.net/projekt_streitkraefte_der_welt/europaeische_union_eu/polen_poland_470_26.html, accessed 12 May 2008
- 5 The Right to Conscientious Objection in Europe, Quaker Council for European Affairs, 2005, <http://wri-irg.org/co/rtba/poland.htm>, accessed 12 May 2008
- 6 USTAWA z dnia 11 września 2003 r. o służbie wojskowej żołnierzy zawodowych, Journal of Laws 03.179.1750, <http://bap-sip.lex.pl/serwis/du/2003/1750.htm>, accessed 6 May 2008
- 7 CIA World Factbook: Poland, 1 May 2008, <https://www.cia.gov/library/publications/the-world-factbook/print/pl.html>, accessed 12 May 2008
- 8 Department of Personnel MoND, Personnel policy of the Polish Armed Forces, <http://www.kadry.wp.mil.pl/arttykul.php?idartykul=210>, accessed 13 May 2008

Conscientious objection

Conscientious objection for conscripts

The right to conscientious objection is enshrined in article 85 paragraph 3 of the Polish constitution, which states: “*Any citizen whose religious convictions or moral principles do not allow him to perform military service may be obliged to perform substitute service in accordance with principles specified by statute*”⁹.

Both religious and non-religious grounds for conscientious objection are legally recognised.

Substitute service is based on the law on substitute military service from 28 November 2003, which entered into force on 1 January 2004 (Journal of Law no 223, item 2217)¹⁰.

There is a time limit for submitting CO applications. Applications can only be made before starting military service, at the latest by the time of receiving the call-up order for military service. Applications can thus not be made by serving conscripts or reservists.

Applications must be made to the local 'voivod' (local government) commission. The commission consists of five members, three of whom must be present in order to make a decision. At least two of the commission members are specialists in ethical or religious issues. The commission conducts a personal interview with the applicant, after which it makes a decision.

If the application is rejected, it is possible to make a new CO application within six months of the first decision. If the application is rejected again, an appeal can be made to the alternative service commission at a higher level and then to the administrative court.

When military service was 12 months, the length of substitute service was 18 months, and 6 months for university graduates. The present length of substitute service is not clear.

Substitute service is administered by the Ministry of Labour, in cooperation with local governments. It can be performed in government institutions in areas like health care, nursing, social work and environmental protection. Substitute service may also be performed with religious organisations that have received public benefit status, and with non-governmental organisations that have been approved by the Ministry¹¹.

After completing substitute service, COs are not called up for reservist duties in peacetime. According to the 1999 Law on the Obligation to Defend Poland, the right to perform substitute service is suspended during wartime. Consequently, COs may be called up for military service during wartime¹².

Conscientious objection for professional soldiers

The right to conscientious objection is not recognised for professional soldiers. However, according to information provided by Poland to the Human Rights Committee, in 2004 it was envisaged to create the possibility to dissolve the employment contract of a professional soldiers without specifying a reason at an appropriate notice. However, this would require the repayment of relevant training and accommodation costs.

A judgement of the Constitutional Court from 16 February 1999 on the case of a professional soldier who wished to leave prematurely, which gave rise to the consideration of changes, made clear that it did not want the lawmakers to consider a right to conscientious objection for professional soldiers. It states: “*There is no doubt that departures from the army of professional soldiers, also those motivated by significant religious considerations, must be subject – as in all other cases – to rigours, since this is required by the public interest connected with the functioning of the armed forces of each state. Consequently, even in the situation of the plaintiff, when the character of the professed religion excludes the performance of military service since the values of this religion stand in stark contradiction to the very essence of the duties of a professional soldier – it cannot be expected that the regulations at work will contribute to an automatic and free departure from military service. Such a solution would, in turn, remain in contradistinction to the important public interest connected with the security of the State. The problem of the clash of interests existing here should be, however, as has been indicated before, resolved on a different plane than the protection of the freedom of religion. What is in the foreground here is the principle of equal treatment of all soldiers being in the same legal position, which means irrespective of particular motives for the intention to leave the army. Therefore, only within such a context, rather than in connection with the question about the limits of religious freedom, can be properly evaluated the public interest*

9 Constitution of Poland, <http://www.sejm.gov.pl/prawo/konst/angielski/konse.htm>, accessed 6 May 2008

10 Department of Public Benefit: Substitute military service in the public benefit organizations, 14 July 2005, <http://www.pozytek.gov.pl/Links.544.html>, accessed 13 May 2008

11 Information provided by Amnesty International Polish Section, August 2004.

12 Amnesty International Polish section (2004).

*that comes into play here, as a justification of possible limitations and differentiation of the situation of individual categories of soldiers*¹³.

At stake in the case was the then requirement of repayment of costs prior to the dissolution of the contract, without the possibility to do so afterwards and in instalments.

It is presently not clear what changes have been implemented, and if those were included in the law on military service of regular soldiers from 20 October 2003.

Draft evasion and desertion

Refusal to perform military service or to carry out a task inherent in such service is punishable by 6 months' to 5 years' imprisonment - 3 to years' in wartime (Criminal Code, art. 305)¹⁴.

No information on practice is available.

13 Judgement of the Constitutional Tribunal of 16 February 1999, Journal of Laws of 1998 no. 20 item 182, quoted from Fifth Periodic Report, CCPR/C/POL/2004/5, <http://daccess-ods.un.org/access.nsf/Get?Open&DS=CCPR/C/POL/2004/5&Lang=E>, accessed 13 May 2008

14 One World Association 1998. Corrections to the draft report, 20 February 1998.