

Spain

Issues

- Conscription is suspended. The right to conscientious objection is not recognised for professional soldiers.



Military recruitment

Conscription

Conscription is allowed by Article 30 of the Spanish constitution from 1978, which reads:

“1. *Citizens have the right and the duty to defend Spain.*

2. *The law shall determine the military obligations of Spaniards ... with all due guarantees ...*”¹.

However, with Law 17/1999, the Armed Forces Personnel (Regulations) Act (*Régimen del Personal de las Fuerzas Armadas*)², the Spanish government in fact suspended conscription, originally aimed at ending conscription in 2003, but later brought it forward to 2001³. Since 2002 the armed forces consist of professional soldiers only⁴.

Still, conscription is only suspended. Article 4 paragraph 2 of Law 17/1999 allows for the call-up of all forms of reservists if the needs of the national defence can not be met by professional soldiers only. The call-up of “compulsory reservists” (according to Article 178 possibly all Spanish citizens between 19-25 years), which basically would reintroduce conscription, requires the approval of congress. According to the law, this possibility is not limited to an emergency or war.

Professional soldiers

Law 37/2007 “about the military career” (*de la carrera militar*)⁵ deals with the service of professional soldiers. Article 3 of the law provides for Spanish citizens and also for legally resident foreigners to join the Armed Forces, albeit under different conditions.

The Spanish Armed Forces maintain a joint recruitment website at <http://www.soldados.com/>, which also announces open positions for foreigners.

Conscientious objection

Conscientious objection for conscripts

The right to conscientious objection for conscripts is enshrined in Article 30 of the Spanish constitution. Paragraph 2 of this article requires that military obligations are only introduced “*with all due guarantees, conscientious objection as well as other grounds for exemption from compulsory military service; it may also, when appropriate, impose a community service in place of military service*”⁶.

Only one year before the law to suspend conscription was passed, the Spanish government passed a new law on conscientious objection (*Ley 22/1998, de 6 de julio, reguladora de la Objeción de Conciencia y de la Prestación Social*

1 Spanish Constitution 1978, <http://www.ejercito.mde.es/ingles/personal/constitucion/titulo1.html>, accessed 11 August 2008

2 Ley 17/1999 de Régimen del Personal de las Fuerzas Armadas, <http://www.derecho.com/l/boe/ley-17-1999-regimen-personal-fuerzas-armadas/>, accessed 12 August 2008

3 REAL DECRETO 247/2001, 9 de marzo, por el que se adelanta la suspensión de la prestación del servicio militar, <http://www.derecho.com/l/boe/real-decreto-247-2001-9-marzo-adelanta-suspension-prestacion-servicio-militar/>, accessed 12 August 2008

4 The Right to Conscientious Objection in Europe, Quaker Council for European Affairs, 2005, <http://wri-irg.org/co/rtba/spain.htm>, accessed 12 August 2008

5 Ley 39/2007, de 19 de noviembre, de la carrera militar, http://noticias.juridicas.com/base_datos/Admin/l39-2007.tp.html, accessed 13 August 2008

6 Spanish Constitution 1978, <http://www.ejercito.mde.es/ingles/personal/constitucion/titulo1.html>, accessed 11 August 2008

Sustitutoria)⁷. However, with the suspension of conscription, it seems that this law is no longer in force.

Article 180 of Law 17/1999 regulates the right to conscientious objection in the case of a call-up of compulsory reservists. According to this article, compulsory reservists can declare their conscientious objection to serving in the Armed Forces or other services in which they would need to bear arms. According to this article, “*this declaration, made by the interested party, will not require any other approval*”⁸.

Declared conscientious objectors can then only be assigned to services of general interest in which they do not have to bear arms. According to article 183 of the same law, conscientious objectors then have the same status as volunteers in the organisation, and do not have any military status.

However, from the law it is unclear whether a declaration for conscientious objection can only be made before the incorporation of a compulsory reservist into the Armed Forces, or whether such a declaration is also possible during service.

Conscientious objection for professional soldiers

Law 17/1999 does not include any regulation for conscientious objection of any soldier other than compulsory reservists. This means that professional soldiers and voluntary reservists do not have the right to conscientious objection according to Spanish law.

Article 117 paragraph 2 of Law 39/2007 has a provision for soldiers in a professional career for leaving the Armed Forces prematurely. According to this article, six months notice have to be given, and a compensation for training expenses has to be paid⁹.

Article 118 makes provisions for professional soldiers on a temporary contract. It allows for premature resignation within the first three years of a contract under “extraordinary circumstances”¹⁰.

None of this constitutes a right to conscientious objection.

Draft evasion and desertion

penalties

According to Article 102 of the Military Penal Code, disobeying orders can be punished with imprisonment from three months to two years.

If the disobedience persists and amounts to a non-fulfilment of military obligations, it can be punished with imprisonment from two years and four months up to six years¹¹.

Desertion is punishable from two years and four months up to six years of prison, and if committed during times of war with six to 15 years of imprisonment¹².

Practice

No information is available on practice.

7 Ley 22/1998, de 6 de julio, reguladora de la Objeción de Conciencia y de la Prestación Social Sustitutoria, <http://www.derecho.com/l/boe/ley-22-1998-reguladora-objecion-conciencia-prestacion-social-sustitutoria/>, accessed 12 August 2008

8 Article 180, Ley 17/1999 de Régimen del Personal de las Fuerzas Armadas, http://www.derecho.com/l/boe/ley-17-1999-regimen-personal-fuerzas-armadas/pag_6.html#A174, accessed 12 August 2008

9 Ley 39/2007, de 19 de noviembre, de la carrera militar, http://noticias.juridicas.com/base_datos/Admin/l39-2007.t5.html, accessed 13 August 2008

10 Ley 39/2007, de 19 de noviembre, de la carrera militar, http://noticias.juridicas.com/base_datos/Admin/l39-2007.t5.html, accessed 13 August 2008

11 Ley Orgánica 13/1985, de 9 de diciembre, de Código Penal Militar, http://noticias.juridicas.com/base_datos/ Penal/lo13-1985.l2t5.html, accessed 13 August 2008

12 Ley Orgánica 13/1985, de 9 de diciembre, de Código Penal Militar, http://noticias.juridicas.com/base_datos/ Penal/lo13-1985.l2t6.html, accessed 13 August 2008