

Netherlands

Issues

- Conscription is suspended. Little is known about the situation of professional soldiers who want to apply for conscientious objection.

Military recruitment

Conscription

The Dutch Constitution (art. 98) states: "1. *The armed forces shall consist of volunteers and may also include conscripts.*

2. *Compulsory military service and the power to defer the call-up to active service shall be regulated by Act of Parliament.*"¹.

Formally, conscription exists in the Netherlands, but in 1992 parliament decided to suspend the call-ups. On 29 February 1996 the last conscripts were called up to perform six months' service. After January 1997 there are no more conscripts. The Netherlands armed forces are now completely professional.

However, there is still a law on conscription (*Kaderwet dienstplicht*)², which includes regulations for the compulsory registration of all young male Dutch citizens³.



Professional soldiers

Service of professional soldiers is regulated in the law on military personnel (*Militaire Ambtenarenwet*) from 1931⁴, and the general military personnel regulations (*Algemeen militair ambtenarenreglement*) from 1982⁵. Since conscription has been suspended, all branches of the Armed Forces recruit volunteers, and do so using a variety of promotion tools. The Dutch army has its own recruitment website (<http://www.werkenbijdelandmacht.nl/>), as has the Air Force (<http://www.werkenbijdeluchtmacht.nl/>) and the navy (<http://www.werkenbijdemarine.nl/>).

Little is known about the recruitment practice of the Dutch Armed Forces.

Conscientious objection

Conscientious objection for conscripts

Conscription is suspended in peace time, but registration for conscription continues. In case conscription would be enacted again, the right to conscientious objection exists. The right to conscientious objection is enshrined in article 99 of the constitution: "*Exemption from military service because of serious conscientious objections shall be regulated by Act of Parliament*"⁶.

Conscientious objection is regulated with Law on conscientious objection to military service of 27 September 1962 (*Wet gewetensbezwaren militaire dienst*, Stb. 370⁷), last amended on 1 September 2003.

1 The Constitution of the Kingdom of the Netherlands 2002,

<http://www.legislationline.org/upload/legislations/4b/2b/28baad0cac8029e57aa9bc495538.pdf>, accessed 11 August 2008

2 Kaderwet dienstplicht, 13 March 1997, http://www.st-ab.nl/wetten/0161_Kaderwet_dienstplicht.htm, accessed 11 August 2008

3 Kaderwet Dienstplicht, 13 March 1997, http://www.st-ab.nl/wetten/0161_Kaderwet_dienstplicht.htm, accessed 11 August 2008

4 Militaire Ambtenarenwet, 19 December 1931, http://www.st-ab.nl/wetten/0205_Militaire_Ambtenarenwet_1931_MAW.htm, accessed 11 August 2008

5 Algemeen militair ambtenarenreglement (AMAR), 25 February 1982, http://www.st-ab.nl/wetten/01/0033-001_Algemeen_militair_ambtenarenreglement_AMAR.htm, accessed 11 August 2008

6 The Constitution of the Kingdom of the Netherlands 2002,

<http://www.legislationline.org/upload/legislations/4b/2b/28baad0cac8029e57aa9bc495538.pdf>, accessed 11 August 2008

7 Wet gewetensbezwaren militaire dienst, http://www.st-ab.nl/wetten/0520_Wet_gewetensbezwaren_militaire_dienst_WGMD.htm, accessed 11 August 2008

Procedure

All conscripts who have been declared fit may apply for CO status. This means that registered conscripts can not apply, as they have not had a medical examination.

Art. 2 of the Law on CO states: "*Serious conscientious objection, in terms of the law, is insurmountable conscientious objection to the personal performance of military service bound up with the employment of violence means inherent in service in the Dutch armed forces*"⁸.

This means that anyone seriously objecting to the use of violence in the Dutch armed forces, on religious, moral, ethical or even political grounds, can be recognised as a CO.

Application for CO status involves submitting a written notice. The applicant has to appear before a one-person committee, which considers the application, then advises the Minister of Defence, who makes the decision. If applicants are not recognised as COs, they receive a psychiatric examination and must appear before a three-person committee, which makes the final decision.

Conscientious objection for professional soldiers

The law on conscientious objection to military service is drafted in a way that it only applies to conscripts (*dienstplichtige*), but it has been reported that voluntary recruits can also apply for conscientious objection⁹.

According to '*Aanwijzing inzake Gewetensbezwaren militaire dienst*' from 1 January 1994, volunteers will be dealt with in the same way as conscripts¹⁰, which means that the procedure as outlined before should also apply to voluntary soldiers.

However, little is known about recent practice.

According to the Ministry of Defence in 2004, professional soldiers who have conscientious objection to particular campaigns of the armed forces, for example deployment in Iraq, do not have the right to claim conscientious objection to participation in these particular campaigns. According to the Ministry, professional soldiers who have conscientious objection to a particular army campaign may only seek discharge from the armed forces¹¹.

In addition, military personnel can apply to resign from service. However, according to article 12m of the law on military personnel, the Minister of Defence can turn down such an application under certain conditions¹². This does not constitute a right to resign from service, as especially in times of war it can be expected that applications for resignation from service will be denied.

Draft evasion and desertion

penalties

Art. 36 of the new Law on military service (*Kaderwet Dienstplicht*) prescribes a maximum two-year prison sentence or a fourth category fine for failure to respond to the call-up. In wartime - when a call-up might be re-introduced - a five-year prison sentence or a 4th category fine¹³.

Art. 139 of the Military Penal Code (*Wetboek van Militair Strafrecht*) states: "*1. A member of the military who refuses to or deliberately refrains from performing any service, of whatever sort, will be punished with a maximum of 2 years' imprisonment or a fourth category fine. 2. When the crime is committed in wartime the convicted person will be punished by a maximum of 5 years'*

8 Wet gewetensbezwaren militaire dienst, http://www.st-ab.nl/wetten/0520_Wet_gewetensbezwaren_militaire_dienst_WGMD.htm, accessed 11 August 2008

9 War Resisters' International: Refusing to bear arms, country report Netherlands, 15 April 1997, <http://wri-irg.org/co/rtba/archive/netherlands.htm>, accessed 11 August 2008; Quaker Council for European Affairs: The Right to Conscientious Objection in Europe, 2005, <http://wri-irg.org/co/rtba/netherlands.htm>, accessed 11 August 2008. Voorlopig verslag van de vaste Commissie voor buitenlandse Zaken, Defensie en Ontwikkelingssamenwerking, 27 May 2008, <http://www.eerstekamer.nl/9324000/1/j9vvggh5ihkk7kof/vhv9pnyyxxhb/f=x.doc>, accessed 11 August 2008

10 Aanwijzing inzake Gewetensbezwaren militaire dienst, 1 January 1994, http://mpbundels.mindef.nl/31_serie/31_112/31_112_1150.htm, accessed 11 August 2008

11 Information provided by the Netherlands Ministry of Defence, November 2004, referenced in Quaker Council for European Affairs: The Right to Conscientious Objection in Europe, 2005, <http://wri-irg.org/co/rtba/netherlands.htm>, accessed 11 August 2008.

12 Militaire Ambtenarenwet, 19 December 1931, http://www.st-ab.nl/wetten/0205_Militaire_Ambtenarenwet_1931_MAW.htm, accessed 11 August 2008

13 Kaderwet Dienstplicht, 13 March 1997, http://www.st-ab.nl/wetten/0161_Kaderwet_dienstplicht.htm, accessed 11 August 2008

imprisonment or a fourth category fine"¹⁴.

Desertion in peacetime can be punished by a maximum 2 years' imprisonment or 4th category fine. In wartime the punishment is a maximum of 7.5 years' imprisonment or a 5th category fine. Often the maximum penalty can be doubled. (Military Penal Code, art. 100 and 101).

Practice

Not much is known about practice. However, in 2007 the appeal court in Arnhem acquitted a soldier who refused to deploy to Afghanistan¹⁵, after he had initially been sentenced to two months imprisonment¹⁶. There was also a second case of refusal, which led to a prosecution¹⁷. However, a second person has also been finally acquitted in December 2007¹⁸.

14 Wetboek van Militair Strafrecht 1903, http://www.st-ab.nl/wetten/0473_Wetboek_van_Militair_Strafrecht_WvMS.htm, accessed 11 August 2008

15 Militair vrijgesproken van dienstweigering, nu.nl, 12 April 2007, <http://www.nu.nl/news/1040668/15/Militair+vrijgesproken+van+dienstweigering.html>, accessed 11 August 2008

16 Dienstweigeraar krijgt twee maanden celstraf, nu.nl, 29 December 2006, <http://www.nu.nl/news.jsp?n=929680&c=15>, accessed 11 August 2008

17 Nieuw onderzoek dienstweigeraar Afghanistan, nu.nl, 12 March 2007, <http://www.nu.nl/news.jsp?n=1005028&c=15>, accessed 11 August 2008

18 Hof spreekt 'dienstweigeraar' Afghanistan vrij, nu.nl, 28 December 2007, http://www.nu.nl/news/1370945/10/rss/Hof_spreekt_%27dienstweigeraar%27_Afghanistan_vrij.html, accessed 11 August 2008