

Conscientious objection to compulsory military service

Abstract

The subject of this thesis is the institute of conscientious objection to compulsory military service. The aim of the thesis is to provide a comprehensive analysis of this topic, focusing on its development, identifying problematic aspects of conscientious objection and proposing changes that could be adopted to limit the risks that conscientious objection entails. The thesis responds to the increased media and public interest in topics such as military service and conscientious objection, which can be observed since the beginning of the war in Ukraine.

The thesis is structured in five parts. The first part deals with general aspects of conscientious objection as an external manifestation of one of the fundamental freedoms, namely freedom of conscience. This part explains the purpose of conscientious objection and describes its different types and possible divisions. It then compares conscientious objection with civil disobedience and the right of resistance, which have some similar features but are very different in their essence.

The second part deals with the history of conscientious objection to military service, from the earliest efforts to resist the obligation imposed, hundreds of years before the institution was named, to its explicit recognition and enshrinement in law.

The third part summarises the current legal regulation of conscientious objection at national and international level. An important difference between the various sources is whether conscientious objection to military service is explicitly enshrined or whether it is derived from the freedom of conscience provision.

The fourth part discusses the most important cases concerning conscientious objection that have been dealt with by the Constitutional Court of the Czech Republic, the European Commission on Human Rights, the European Court of Human Rights or the UN Human Rights Committee. It is the decision-making practice at the supranational level that has had a significant impact on the recognition of the right to conscientious objection as a right that is an integral part of freedom of conscience.

The last part analyses the current status of the institute of conscientious objection in the Czech legal system, explains the relationship between the state and the individual in the requirement to engage in military activities, identifies the problematic aspects and the positives and negatives of conscientious objection. Last but not least, presents the risks that the institute entails. This section then describes the review process, the incorporation of which into the legal

system is proposed as a possible solution to the significant risk of conscientious objection, namely opportunism.

Key words: conscientious objection, compulsory military service, refusal to fulfil an obligation