THE OBSERVATORY

for the Protection of Human Rights Defenders

L'OBSERVATOIRE
pour la protection
des défenseurs des droits de l'Homme

EL OBSERVATORIO
para la Protección
de los Defensores de los Derechos Humanos

Report

MISSION OF OBSERVATION

ISRAEL

CONSCIENTIOUS OBJECTION TACKLED BY MILITARY JUSTICE

Ben Artzi Trial

(7 - 10 October 2003)

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I. Introduction

The mission

Very much concerned about the situation of the conscientious objectors arbitrarily detained in Israel for refusing to serve in the Army and following up the tremendous debate that has taken place over the right to conscientious objection deriving from the right to freedom of conscience (universally recognized as stated in Article 18 of the Universal Declaration for Human Rights), the Observatory for the protection of human rights defenders (FIDH and OMCT joint venture) gave mandate, together with Avocats Sans Frontières/ Belgique, to Mrs. Benedetta Odorisio, a political scientist, to observe and report on the last hearing in the military trial of Jonathan Ben Artzi on October 8, 2003.

The mission was carried out in Israel by Benedetta Odorisio from 7 to 10 October 2003.

Executive summary

Jonathan (Yoni) Ben Artzi, a 20-year-old university student, has been in detention since 8 August 2002, when he refused to enlist for the military service. Yoni considers himself as a pacifist and total conscientious objector and therefore objects to serve in the army, in any capacity. He requested, however, that he be given the possibility of performing a civil service. After completing seven detention sentences, totaling 196 days, over 6 months, his case has been brought before the court martial in Jaffa.

The trial has reached the final stage. On 8 October 2003, defence counsel Adv. Michael Sfard argued that Yoni's had a sincere belief in pacifism and had a right to disobey an illegal military order. The last hearing took place after the Court had heard the testimonies of Yoni's sister, a prison mate, and Israeli Defence Forces (IDF) representatives who had been responsible for his enlistment. At the end of the hearing, the Court failed to set a date for announcing its verdict as it was scheduled to. It is now expected by the end of November.

Yoni is not the only Conscientious Objector (CO) who is being court martialled. The Military Court in Jaffa is also hearing the cases of Noam Bahat, Adam Maor, Haggai Matar, Shinri Tsameret and Matan Kaminer, who are among more than 300 "Shministim," or high school seniors, who refuse to serve in military forces involved in the occupation of Palestinian Territories. Unlike Yoni they are selective COs, a category of COs that is peculiar to Israel. They are not against war per se, but against the occupation war.

This is the first time since the 1970's that COs have been brought before a court martial. Previously, the usual practice was to avoid recognizing COs while exempting them from military service on other grounds after brief prison terms. This practice, however, seems to be changing. None of them has been dismissed like many other COs (total or selective) on other grounds; they have already spent from 11 to 18 months in military prisons and their trials are not over yet. It is believed that this new strategy may be the result of the sharp increase in the number of young refuseniks (those refusing to serve in the Occupied Palestinian Territories), which may become a threat to the image of the Israeli army and policy.

Concern has been expressed about the violation of the right to freedom of conscience, thought and religion enshrined in article 18 of the International Covenant on Civil and Political Rights (ICCPR), to which Israel is party. In its General Comment 22, the Human Rights Committee (the expert body overseeing the implementation of the Covenant by member States) stated that "the Covenant does not explicitly refer to a right to conscientious objection, but the Committee believes that such a right can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief. When this right is recognized by law or practice, there shall be no differentiation among conscientious objectors on the basis of the nature of their particular beliefs; likewise, there shall be no discrimination against conscientious objectors because they have failed to perform military service."

The use of military courts to try COs is also source of concern. Recommendations by human rights experts of the Sub-Commission for the Promotion and Protection of Human Rights indicate that civil courts should deal with similar cases to ensure impartiality and independence.

II. Conscientious objection in Israel

A. Legislation

Military service and conscientious objection in Israel are regulated by the Defence Service Law of 1986. It requires all Israeli citizens and residents to perform military service, three years for men and two years for women. Section 36(1) of the Defence Service Law gives the Minister of Defence a general discretion to exempt anyone from military service. The Minister of Defence has used his powers to exempt general categories of people as well as specific individuals. Israeli citizens of Palestinian origin have been exempted from compulsory military service since the establishment of the State of Israel. This exemption was withdrawn from male members of the small Druze and Circassian communities in 1956 and Druze and Circassian men have been subject to conscription since then.[1]

The law also provides for various types of exemption from the military service, discriminating between men and women. Women are exempted:

a. on the ground of religious conviction, in which case no inquiry is needed;
b. on reasons of conscience, in which case the woman requesting the exemption will have to present her case to a Committee composed of civilians.

While the 1986 law explicitly recognizes conscientious objection for women, it does not contain a similar provision for men. The law provides for the exemption from the military service of anyone "for reasons connected with the requirements of education, security, settlement or the national economy, or for family or for other reasons". It is under "other reasons" that the category of conscientious objectors (CO) falls. Conscientious objection is therefore admitted but is not recognized as a right.

On 20 December 2002, the Supreme Court passed an important judgment on the Zonschein case reaffirming the possibility of granting exemptions from military service for reasons of conscientious objection. It noted that "*all agree that exemptions for conscientious reasons are included in those 'other reasons', which allow exemption from regular or reserve service.*" It refers to total conscientious objection only.

In fact, it ruled out the possibility of selective objection (that is the exemption from service deriving from an objection to a specific war or military operation) for reasons of national security. The Court held that "*the phenomenon of selective conscientious objection would be broader than 'full' objection, and would evoke an intense feeling of discrimination 'between blood and blood'. Moreover, it affects security considerations themselves, since a group of selective objectors would tend to increase in size. Additionally, in a pluralistic society such as ours, recognising selective conscientious objection may loosen the ties, which hold us together as a nation. Yesterday, the objection was against serving in South Lebanon. Today, the objection is against serving in Judea and Samaria. Tomorrow, the objection will be against vacating this or that settlement. The army of the nation army may turn into an army of different groups comprised of various units, to each of which it would be conscientiously acceptable to act in certain areas, whereas it would be conscientiously unacceptable to act in others. In a polarised society such as ours, this consideration weighs heavily. Furthermore, it becomes difficult to distinguish between one who claims conscientious objection in good faith and one who, in actuality, objects to the policy of the government or the Knesset, as it is a fine distinction - occasionally an exceedingly fine distinction - between objecting to a state policy and between conscientious objection to carry out that policy.*"

The Defence Service Law does not provide for an alternative form of civil service for conscientious objectors. COs are allowed to carry out functions in the army not requiring the use of weapons or are completely exempted from performing any service. But in no case are they given the possibility of performing a civilian national service. Such an option is reserved for religious Jewish women only.

In order to determine who is a genuine CO and who is just trying to avoid the military service for reasons of personal comfort, the Minister of Defence set up, within the Israeli Armed Forces (IDF), a Conscientious Objection Committee (hereafter "Committee" or "CC"), in 1995. This move was considered necessary after the State of Israel adhered to the International Covenant on Civil and Political Rights in 1991.

The discrimination existing between men and women is again evident. While women are reviewed by an entirely civilian Committee, the Conscience Committee for male COs was composed solely of five army representatives. Recently it was decided to include a civilian. Since its inception, the

Conscience Committee for male COs has been working without any formal legal status, with no precise definition of who is a CO. No official document of its methods of work has ever been published.

Conscientious objection is not considered to be a civil issue, and trials against COs are dealt with by military tribunals. Under Israeli law, every Israeli citizen becomes an IDF member as soon as he/she receives the draft. Anyone who refuses to enlist is thus subject to court martial.

B. In practice

Although a number of Israeli youngsters drafted every year declare themselves to be conscientious objectors (total or selective), almost none of them is recognized to fall in that category by the CC. A number of them are forced through psychological threats to enlist in the army. According to testimonies of COs, members of the IDF draft board and of the CC try to scare them or accuse them of being traitors in order to convince them to join the army. Those who decide not to give in, usually receive short consecutive prison terms (14 to 28 days). If they endure some three or four consecutive prison terms, they are usually brought before an "Incompatibility Committee", which usually gets rid of the stubborn COs by declaring them unfit for the military service. Another option often used is to exempt applicants on grounds of physical/mental health.

In fact, it seems that any pretext is preferred rather than accepting that a growing part of the Israeli society opposes in principle any war or the specific occupation of Palestinian territories.

Not surprisingly, only on few occasions has the Committee recognized applicants' conscientious objection. People who have been questioned by the Committee have had the clear impression that, rather than detecting elements of a genuine conscientious objection, its members tried to find a possible alternative way for the conscript to serve the army.

The scarce statistical data available indicates the anti-COs policy practiced in Israel. In 8 years, from 1995 until 2003, there have been 148 18 years old applicants for conscientious objection, of which only 9 exempted (of those, 3 were exempted this year). If we do not include 2003, between 1995 and 2002 (7 years), out of 137 applicants, only 6 were exempted, i.e. 4,3% of the applicants.[2]

Officially, the number of COs in Israel is extremely low. However, the number of draftees who are exempt from the military service is rising, following an increasing opposition among many young conscripts and soldiers to participate in a war which they consider illegal.

In the 1980s members of the army who refused to serve in the occupation of Lebanon formed a movement called "Yesh Gvul" (There is a limit). It is the eldest "Israeli peace group, campaigning against the occupation by backing soldiers who refuse duties of a repressive or aggressive nature."[3]

In recent years a number of new movements have emerged. In 2001, the Shministim (hebrew for "high-school") youth refusal movement was founded by 62 groups of young political activists who refused to serve the occupation and war crimes committed by the Israeli Forces in the occupied territories. In 2002, a second letter addressed to Prime Minister Sharon was signed by over 300 students.

In January 2002, new reserve combat officers and soldiers of the IDF complained openly against the occupation war and refused to fight outside Israel's pre-1967 borders "in order to dominate, expel starve and humiliate an entire people". Called "Courage to refuse", they gathered over 500 signatories and their initiative was publicly supported by over 300 Israeli academics.[4]

The latest initiative was undertaken in September 2003 by a group of 27 Air Force pilots. In an open letter submitted to their Chief, but intended for the political authorities, they declared their refusal to take part in Air Force attacks against civilian population centers resulting from the ongoing occupation which they said is corrupting all of Israeli society.

At present, for the first time since the 1970s, a number of conscientious objectors are been tried by a court martial:

- Jonathan Ben Artzi, a pacifist or total conscientious objector,
- Noam Bahat, Adam Maor, Haggai Matar, Shinri Tsameret and Matan Kaminer, who declared themselves against the war of occupation and are therefore regarded as selective conscientious objectors,
- Dror Boymel, another selective CO who is being tried separately.

1. Amnesty International report, MDE 19/049/1999.
2. Data provided by the Defence lawyer at the hearing of Ben Artzi trial held on 29/7/2003.
3. www.yesh-gvul.org
4. www.seruv.org.il

III. International human rights norms

The Universal Declaration of Human Rights and the International Covenant for Civil and Political Rights do not explicitly mention the right to conscientious objection to military service. However, in 1993, the Human Rights Committee, the body of experts monitoring the implementation of the Covenant, adopted General Comment N. 22 on the right to freedom of thought, conscience and religion, and affirmed that the right to conscientious objection to military service can be derived from article 18. Paragraph 11 states that :

"Many individuals have claimed the right to refuse to perform military service (conscientious objection) on the basis that such right derives from their freedoms under article 18. In response to such claims, a growing number of States have in their laws exempted from compulsory military service citizens who genuinely hold religious or other beliefs that forbid the performance of military service and replaced it with alternative national service. The Covenant does not explicitly refer to a right to conscientious objection, but the Committee believes that such a right can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief. When this right is recognized by law or practice, there shall be no differentiation among conscientious objectors on the basis of the nature of their particular beliefs; likewise, there shall be no discrimination against conscientious objectors because they have failed to perform military service. The Committee invites States parties to report on the conditions under which persons can be exempted from military service on the basis of their rights under article 18 and on the nature and length of alternative national service."[5]

In its concluding observations published after reviewing the second Israeli periodic report in August 2003, the Committee expressed its concern about the law and criteria applied and generally adverse determinations in practice by military judicial officers in individual cases of conscientious objection (art. 18). It recommended that "the State party should review the law, criteria and practice governing the determination of conscientious objection, in order to ensure compliance with article 18 of the Covenant."[6]

The Commission on Human Rights has been considering the issue of conscientious objection to military service since 1985, based on the work carried out in the Sub-Commission. Resolution 1998/77 is particularly important, since it:

- Defined the right of everyone to have conscientious objections to military service as a legitimate exercise of the right to freedom of thought, conscience and religion, as laid down in article 18 of the Universal Declaration of Human Rights and article 18 of the International Covenant on Civil and Political Rights;

- Recognized that persons performing military service may develop conscientious objections;

- Called upon States that do not have such a system to establish independent and impartial decision-making bodies with the task of determining whether a conscientious objection is genuinely held in a specific case, taking account of the requirement not to discriminate between conscientious objectors on the basis of the nature of their particular beliefs;

- Reminded States with a system of compulsory military service, where such provision has not already been made, of its recommendation that they provide for conscientious objectors various forms of alternative service which are compatible with the reasons for conscientious objection, of a non-combatant or civilian character, in the public interest and not of a punitive nature;

The use of military tribunals has also been thoroughly considered by the Sub-Commission on the Promotion and Protection of Human Rights. In his first report to the Sub-Commission, Mr. Emmanuel Decaux examines the administration of justice through military tribunals, analysing the jurisdiction *ratione persone, temporis and materie*. His recommendation N.11 focusing on conscientious objection to military service reads as follows:

"Conscientious objector status should be determined under the supervision of an independent and impartial civil court when the 'conscientious objectors' are civilians. When an application for conscientious objector status is made during the course of military service, it should not be punished as an act of insubordination or desertion but considered in accordance with the same procedure."[7]

The reasoning behind it, is that military tribunals are both judges and parties in a case of military conscientious

objection and cannot, therefore, uphold the principles of independence and impartiality.

The detention of COs has also been considered by the Working Group on Arbitrary Detention (WGAD) set up by the Commission on Human Rights to monitor the issue worldwide. In its 2001 report to the Commission, the WGAD noted that:

"....conscientious objection - which has its theoretical basis in the freedom of conscience and thus of opinion - gives rise, particularly in countries that have not yet recognized conscientious objector status, to repeated criminal prosecutions followed by sentences of deprivation of liberty which are renewed again and again.

The question before the Working Group was whether, after an initial conviction, each subsequent refusal to obey a summons to perform military service does or does not constitute a new offence capable of giving rise to a fresh conviction. If it does, deprivation of liberty, when applied to a conscientious objector, is not arbitrary, provided that the rules governing the right to a fair trial are respected. If it does not, detention must be considered arbitrary as being in breach of the principle of non bis in idem, a fundamental principle in a country where the rule of law prevails, as born out by article 14, paragraph 7, of the International Covenant on Civil and Political Rights, which states that no one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or punished. This principle is the corollary of the principle of *res judicata*.

Notwithstanding the above, repeated incarceration in cases of conscientious objectors is directed towards changing their conviction and opinion, under threat of penalty. The Working Group considers that this is incompatible with article 18, paragraph 2, of the International Covenant on Civil and Political Rights, under which no one shall be subject to coercion, which would impair his freedom to have or adopt a belief of his choice.

Accordingly, the Working Group recommends that all States that have not yet done so adopt appropriate legislative or other measures to ensure that conscientious objector status is recognized and attributed, in accordance with an established procedure, and that, pending the adoption of such measures, when de facto objectors are prosecuted, such prosecutions should not give rise to more than one conviction, so as to prevent the judicial system from being used to force conscientious objectors to change their convictions."[8]

5. CCPR General Comment 22, Right to freedom of thought, conscience and religion (Art. 18): 30/07/93, para. 11.
6. United Nations document, CCPR/CO/78/ISR, para. 24.
7. United Nations document, E/CN.4/Sub.2/2003/34, para 84.
8. Report of the Working Group on Arbitrary Detention to the Commission on Human Rights, E/CN.4/2001/14, para. 91-94.

IV. Ben Artzi's trial

A. Background

Jonathan (Yoni) Ben Artzi, is a-20-year-old maths and physics university student who has been in detention since 8 August 2002, after he refused to enlist for the military service. Yoni considers himself a pacifist and therefore objects to serve in the army in any capacity.

In an interview with the Guardian newspaper, he explained that from the time he was old enough to be familiar with the army, he has known he would never wear its uniform. But he did not really know why until he went to Verdun, where more than 700,000 men died in the First World War. "I always knew I wouldn't go into the army but I came to realise why when I was 14. We visited France and some of the battlefields and I saw the rows and rows of graves," he says. "Then I realised the stupidity of it. So many lives sacrificed and they didn't really know what they were fighting for. They were never told the truth."[9]

Yoni requested, however, that he be given the possibility of performing a civil service for the three-year length of the national service. The Israeli Defence Forces (IDF) countered with a proposed alternative service in the army that would not require the use of weapons and the obligation to wear the uniform.

The IDF refused to recognize his pacifism and brought him before a military court. According to the Israeli law, he may be sentenced up to three years in prison for his conscientious objection. Meanwhile, pending a decision by the court, Yoni spent almost 200 days in harsh military detention, and since February 2003 has been held in "open detention" in a military camp, in nothern Israel.

B. The long fight against enlistment

The recruitment process for the army started in 1999 when, still a school student, Yoni was requested to pass an army test. Yoni had already stated his intention not to enlist. March 2001 should have been the initial date for his military service.

The Conscience Committee (CC) first reviewed his case in May 2000. No decision was taken on the veracity of Yoni's objection to serve the army, and the Committee decided to postpone his enlistment to July 2001.

In May 2001, the CC summoned Yoni again and rejected his request after a brief conversation. Following an appeal, in July 2001 the Supreme Court, sitting as an administrative court, decided that the Committee should review the case and that the claimant be allowed to have a lawyer and witnesses.

In November 2001, for the third time, Yoni appeared in front of the CC defended by a lawyer. His claim was rejected again on the grounds that he is a conflictive person and therefore not a true pacifist. It was also stated that Yoni could not conform to the military system.

Yoni Ben Artzi appealed the Committee's decision to the Supreme Court on the grounds that the CC lacked expertise and had ignored written testimonies. In May 2002, the Court, deciding on the form and not on the substance, ruled that the Committee had acted according to the law.

On 8 August 2002, Yoni began the first of seven consecutive prison sentences at military prison N. 4. As soon as he was released, he would receive a new draft order, refuse to serve the army, and be sent to prison again.

On 17 February 2003, IDF decided to bring Yoni before a court martial for refusing to serve in the army. At the claimant's request to have a lawyer, the hearing was postponed to 19 February. On that same day, after 196 days of detention, Yoni is put in "open detention" in a military base in Northern Israel, meaning that he is obliged to reside there, with the authorization to leave it every third weekend.

On 11 March 2003 the first hearing took place at the Jaffa Military tribunal, with military judge Colonel Avi Levi presiding. The Court was supposed to hear the charges against Yoni. However, the defence raised the objection of "double jeopardy", claiming that the consecutive prison sentences are contrary to the fundamental principle according to which one cannot be prosecuted for the same crime twice (non bis in idem principle). The trial was therefore delayed until 13 April 2003, when the Court informed the defence that the objection of "double jeopardy" was rejected without giving any reasoning. The following day, 14 April, the prosecutor, Captain Yaron Kostelitz, proceeded to read the formal indictment of denial of obeying a military order issued against Yoni. He held that Ben Artzi is not a true conscientious objector, but rather an "ideological" one since he opposes to serve in the army because of his political views. Thus, he

could not be considered a real pacifist but only a selective CO.

Meanwhile, on 8 April 2003, Ben Artzi's defence counsel, Adv. Michael Sfard and Adv. Avigdor Feldmann, on behalf of other conscientious objectors, appealed to the Supreme Court that cases against COs should be heard in a civil court, because, as people refusing to serve in the army, they could not be charged with the crime of disobeying a military order. They should rather be charged with violating the duty to enlist, which is a civil duty, and their cases should therefore heard by a civil court. On 15 April, the petition was rejected, the reasoning being that there are no substantive differences between procedures of civil and military courts, both are professional and impartial, and military courts' decisions can be appealed to the Supreme Court. Ultimately, a civilian court would, therefore, rule over the case.

On 28 May 2003, the Jaffa Military Court heard evidence from the Military Drafting Unit Commander, Colonel Dvora Hassid, on the fact that Yoni Ben Artzi was given a military order to respond to duty and that he refused to obey this order. Colonel Hassid gave evidence that Yoni was given various alternatives to serve within the military system in tasks compatible with his beliefs, including serving in a military hospital, or not serving in a combat unit within the military. However, he refused all alternatives on the basis that they still involved service for the army. He opposed any military service that he believed would support the "militarisation of the State", and that he would be prepared to serve alternative, non-military civilian service during his necessary three years compulsory State service. During her testimony, Colonel Hassid made it clear that her only duty was to make sure by any means available that the youth enlist and it was not her duty comprehend their conscience.

The Prosecutor attempted to deny Ben Artzi the right to present his oral evidence regarding his beliefs, arguing that the military court should simply uphold the previous decision of the Conscience Committee. However, Adv. Sfard emphasised that the High Court did not reject outright Ben Artzi's claim to be a pacifist and specifically said that: "we perhaps would have ruled differently from the Conscience Committee but we did not consider it our role to interfere." The military judge allowed Ben Artzi to give direct evidence of how his pacifist beliefs were formed from an extremely young age.

Ben Artzi gave detailed evidence of his beliefs, stating that his objection to the military, military service and militarisation of the State did largely derive from his political ideology and beliefs as they developed from a young age as well as specific incidents. However, he considered that his total conscientious objection or pacifism were separate from his political ideolog. Having a distinct political ideology should not mean that he cannot be considered to also hold genuine beliefs of total conscientious objection or pacifism, he said.[10]

On 23 June 2003, the Court heard the testimony of Yoni's sister and of Yoni Yechezkel - a refuser who shared prison terms with his namesake. Ruti Ben-Artzi, 12 years older than her brother, reported on how closely she had followed his development. She recalled that already in the high school he objected to lectures by officers who came to the school to prepare children for military service. Nor did he want to take part in school outings to such places as the Mount Herzl National Cemetery. She witnessed how deeply he was moved when the family visited Verdun, France and saw cemeteries with hundreds of thousands of mostly anonymous tombstones. 'How futile, the Germans and French killing each other, and now they use both the same currency.' She saw that he came back from France a determined pacifist.[11]

Yoni Yechezkel, a refusenik who declared to be close to Buddhist beliefs and ready to make all kind of compromises (even seeing a psychologist) rather than serving the army, and that, surprisingly, was the first applicant ever to be recognized as a CO. The defence questioned, once again, the objectivity and professionalism of the CC's work.

On 29 July 2003, the Court heard the testimony of Colonel Schlomi Simchi, Chairman of the Conscience Committee. During a long cross examination, the witness replied often in an embarrassing manner, showing and acknowledging his complete lack of interest in and knowledge of the issue of conscientious objection. He admitted that the had never read any publication on this subject and he knew very little. Despite that, he and the other Committee members felt confident enough to make their own decision without taking into consideration the opinions of two experts provided by the defence.

Colonel Simchi started by saying the Committee had never exempted any conscript from the military service for reasons of conscience. With vague replies, the witness stated that in the Committee's views: Yoni was not pacifist, since he was an argumentative and conflictive person, and the Committee believed that he was acting out of his comfort and interest, rather than pacifism. He noted that Yoni could not explain logically the reasons for his pacifism, which proved that he was not a true pacifist. Rather obscurely, Colonel Simchi

argued that Yoni was sincere in declaring his pacifism, but the real issue was that he thought he was a pacifist, but in reality he did not know he was not.

The defence succeeded in pointing out that the Committee had neither a clear definition of who a pacifist is nor defined work procedures, which explains in part the low figure of young conscripts who apply each year.

The defence then sought the witness's views on the huge difference existing between Israeli men and women COs, and between conscientious objection in Israel and other parts of the world. The witness was not aware of any existing statistical data on the matter and could not see their relevance. To the argument that in Israel 95 % of the applications were rejected, while in other countries an average of over 90% were accepted, he replied that the Committee has nothing to learn from other countries.

On 10August 2003, the trial went on with the summation of the Prosecutor. Unexpectedly, after the defence had started with its summation, the Court recommended that the Conscience Committee review Ben Artzi's case, on the grounds of the "new circumstances" that had arisen. In fact, a few months earlier, a civilian had joined the CC.

On 31 August, the IDF draft board rejected the court's recommendation, arguing that the convening of a new hearing would set a negative precedent, making it possible for other COs to appeal to the CC's decision.

C. 08.10.2003 hearing

On 8 October 2003 the last hearing before the final verdict of Yoni's trial took place before the court martial in Jaffa. The whole hearing was devoted to the reply by the defence to the accusations brought up by the prosecution. During three hours the defence articulated the following points to prove the sincerity of Yoni's pacifism:

i. Lack of professionalism by the Conscience Committee (CC), charged with determining whether Yoni is a real pacifist deserving exemption from the military service, based on reasons of conscience. The defence underlined that the CC's members were not knowledgeable about the issue of conscientious objection and had not any written, clear policy/criteria guiding the CC's work;

ii. The parameter of sincerity was not taken into consideration. Although the CC chairman recognized that Yoni was not lying, he thought that Yoni was making a mistake in believing he was a pacifist;

iii. If Yoni was accused of not being able to defend his position in a systematic and logical way, it is not for his lack of conviction, but more probably due to the fact that pacifism is more an instinctive principle than a rational one, as stated by pacifist Albert Einstein;

iv. The discriminatory practice between men and women conscientious objectors. The defence submitted statistical data on female and male conscientious objectors recognized by the Israeli army, proving an indirect discrimination. 95% of women COs applicants are accepted every year, compared to 5% of men COs applicants;

v. Different and unfair treatment that Yoni received compared to other conscientious objectors. The defence cited the example of a conscientious objector who had agreed to do his military service in the army by carrying out civilian duties role and was exempted. He then questioned the real criteria behind the CC's decisions.

After providing to the court the elements to prove Yoni's genuine conscientious objection qualifying for the exemption from the military service, as provided for in the 1986 Defence Service Law, Yoni's lawyer proceeded to analyze the legal consequences of Yoni's refusal to enlist in the army. The defence argued that the order to enlist given to a pacifist is illegal since it violates a person's dignity and fundamental rights. Therefore, disobeying such an order is legal. Adv. Michael Sfard underlined how, out of necessity, one can violate a value in order to preserve another one.

D. The ruling

On 12 November 2003, the military court in Jaffa read out its verdict in Jonathan Ben Artzi's trial, recognizing him as being a pacifist whilst convicting him for failing to follow his draft orders by acting on his beliefs.

The Military court, voiced by presiding judge Colonel Avi Levi, stated as follows:

"We have become convinced of the sincerity of Jonathan Ben Artzi's pacifist convictions, and we are far from feeling that the Conscience Committee acted by its best when it rejected his request for exemption.

The assertion that he wanted to avoid military service for

personal convenience does not stand up to the proven record of his spending more than a year behind bars...

...A pacifist can have political opinion too. Objecting to Israel's rule behind the Green Line is exactly the opinion which we would expect a pacifist to hold and we would have been surprised to find him holding a different one.

...The Conscience Committee is the constituted authority entrusted with determining whether or not a person liable for military service would or would not get an exemption. This court is not empowered to act as a court of appeal upon the Conscience Committee...

Nevertheless, we strongly call upon the military authorities and the minister of defence to review the facts of the case and to reconvene the Conscience Committee to discuss once again the issue of whether or not Yoni Ben Artzi should get an exemption from military service."

Therefore, Yoni Ben Artzi is now waiting to appear before the Conscience Committee once again (no date being set for the moment). Meanwhile, he is still standing in open detention.

9. The Guardian, 11 March 2003.
10. Report by Avocats sans Frontières, www.refusersolidarity.net/content/asfreport.html
11. www.refusersolidarity.net/default.asp?content=courtmartials

V. Conclusions

For the first time after many years, the IDF has decided to bring conscientious objectors before a court martial, rather than finding an alternative way out. Despite the fact that Yoni has a very strong case, there is a feeling that his case is being used to set an example.

As a veteran CO noted in an article, "it appears, at this point, that the army continues to pursue the Ben Artzi case mainly for reasons of prestige, since the case, which has received so much media attention cannot be dropped inconspicuously."[12]

So far, Yoni spent 16 months in detention for his pacifist beliefs. As reported by a journalist of the Guardian, he has spent more time in prison "than any soldier jailed in recent times for the "illegal killing" of an innocent Palestinian.[13]

As he was found guilty by the military court in Jaffa, Jonathan Ben Artzi is allowed to appeal before a higher military court and then to the Supreme Court. Should it be necessary to appeal to the Supreme Court, Yoni might have to stay in open detention, possibly for another year. His lawyer is waiting for the next potential examination by the Conscience Committee before taking any further legal step.

By refusing him the right to conscientious objection, Israel is violating the right to freedom of thought, conscience and religion enshrined in article 18 of the International Covenant on Civil and Political Rights to which Israel is party.

The Israeli system set up to determine who is a conscientious objector has proved to be inefficient and unprofessional. In accordance with the recent recommendation by the Human Right Committee[14], the authorities "should review the law, criteria and practice governing the determination of conscientious objection".

The fact that the case is being heard by a military court is also reason for concern. Although no binding norm exists on the issue, the doctrine developed in international human rights fora has recommended that similar cases be dealt with by civil courts in order to ensure that independence and impartiality are truly respected.

The Observatory for the protection of Human Rights defenders and ASF/B support the recommendation by the Human Rights Committee that the Israeli Government review the law governing conscientious objection. In line with the Human Rights Commission resolutions, the new legislation should:

a. recognize the right to conscientious objection as a legitimate exercise of the right to freedom of thought, conscience and religion as contained in article 18 of the International Covenant for Civil and Political Rights;

b. eliminate the discriminatory procedures existing for men;

c. review the composition and methods of work of the Conscience Committee so as to ensure that it acts impartially and independently;

d. establish a true alternative civil service which is not of a punitive nature;

e. inform all persons affected by military service about their right and the procedures to follow to acquire conscientious objector status.

12. "Saga of the court martials" by Adam Keller.
13. The Guardian, 11 March 2003.
14. United Nations document CCPR/CO/78/ISR.

THE OBSERVATORY

for the Protection of Human Rights Defenders

L'OBSERVATOIRE
pour la protection
des défenseurs des droits de l'Homme

EL OBSERVATORIO
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Activities of the Observatory

The Observatory is an action programme, based on the conviction that strengthened co-operation and solidarity among defenders and their organisations, will contribute to break the isolation of the victims of violations. It is also based on the necessity to establish a systematic response from NGOs and the international community to the repression against defenders.

With this aim, the priorities of the Observatory are:

a) a system of systematic alert on violations of rights and freedoms of human rights defenders, particularly when they require an urgent intervention;

b) the observation of judicial proceedings, and whenever necessary, direct legal assistance;

c) personalised and direct assistance, including material support, with the aim of ensuring the security of the defenders victims of serious violations;

d) the preparation, publication and diffusion at a world-wide level of reports on violations of human rights and of individuals, or their organisations, that work for human rights around the world;

e) sustained lobby with different regional and international intergovernmental institutions, particularly the United Nations, the Organisation of American States, the Organisation of African Unity, the Council of Europe and the European Union.

The activities of the Observatory are based on the consultation and the co-operation with national, regional, and international non governmental organisations.

With efficiency as its primary objective, the Observatory has adopted flexible criteria for the examination and admissibility of cases that are communicated to it. It also targets action based interpretations of the definition of "Human Rights Defenders" applied by OMCT and FIDH.

The competence of the Observatory embraces the cases which correspond to the following "operational definition" : "Each person victim or risking to be the victim of reprisals, harassment or violations, due to its compromise exercised individually or in association with others, in conformity with internatio-nal instruments of protection of human rights, in favour of the promotion and realisation of rights recognised by the Universal Declaration of Human Rights and guaranteed by several international instruments".

An FIDH and OMCT venture - Un programme de la FIDH et de l'OMCT - Un programa de la FIDH y de la OMCT

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