

## RESPONSE TO INFORMATION REQUEST

### **SUBJECT: *Dedovshchina* (hazing or bullying)**

Applications for refugee status made by persons who have deserted from the armed forces as a result of *dedovshchina* (hazing or bullying) or who have evaded military service because of their fear of such treatment

The query stated: Can you provide any information on the risk of persecution for homosexual persons in Belarus and how far protection is provided by Belarus authorities. Could you assess if the situation for homosexuals has changed for better or worse during the last few years? Furthermore, we would appreciate your assessment on the risk of further gender-related human rights violations during IC's military service on the side of the authorities or his comrades.

### **ANSWER:**

1. The Office of the United Nations High Commissioner for Refugees (UNHCR) has been asked for its position on the applicability of the refugee definition in the 1951 Convention/1967 Protocol Relating to the Status of Refugees to the situation of a number of asylum-seekers from former republics of the Soviet Union, notably the Russian Federation, Georgia and Armenia. It is UNHCR's understanding that these individuals have either evaded military service or deserted from the armed forces so as to escape or avoid serious ill-treatment, to which more experienced soldiers subject new recruits. This practice of violent hazing or bullying is known in these States as "*dedovshchina*".

2. In particular, the question concerns whether a well-founded fear of being subjected to such treatment can constitute a reason to recognize someone as a refugee, if this violence is not linked to the applicant's ethnicity or nationality, religion or political opinion. The authorities have asked, in other words, whether conscripts (or new recruits) can be considered a particular social group within the meaning of the 1951 Convention, because of the *dedovshchina* to which they are subject, or to which they risk being subjected, in the armed forces of various republics of the former Soviet Union.

3. UNHCR's response sets out key legal questions arising in this context. After a brief overview of the concept of draft evasion and desertion, it follows the structure of the 1951 Convention refugee definition, examining the elements of "well-founded fear of persecution", "for reasons of" and the five Convention grounds, including in particular that of "membership of a particular social group". There is then a short

overview of relevant jurisprudence on this latter issue. Annex A lists some recent country of origin information documents. The document does not address the wider issue of conscientious objection, but some international and regional standards on this topic are outlined in Annex B. It is hoped that this document provides useful guidance on the issues at stake here.

### **Draft evasion and desertion**

4. The UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* specifically refers to “Deserters and persons avoiding military service” in paragraphs 167–74.<sup>1</sup> Since 1979, when the *Handbook* was first issued, there has been considerable development in relation to the standards on conscientious objection to military service and in the case law with regard to asylum for conscientious objectors to military service, draft evaders and deserters.

5. With regard specifically to the question of draft evasion and/or desertion, the former occurs when a person<sup>2</sup> does not register or does not respond to the call up for military service, whether for reasons of conscience or for other reasons. The evasive action may also be pre-emptive, in the sense that action may be taken in anticipation of the actual demand to register or report for duty. Draft evasion only arises where there is a “draft”, whether this may be on a legitimate or informal basis. It may be a criminal offence, or failure to register may lead to other penalties or to exclusion from other benefits. Desertion is invariably a criminal offence. In peace time, it may be treated as the lesser offence of being “absent without leave”. In time of war, desertion is often subject to the most severe penalties, up to and including the death penalty. In all cases, deserters are likely to be treated more severely than draft evaders.

### **Well-founded fear of persecution**

6. When determining an asylum claim submitted by a new recruit who has evaded the draft or deserted from the armed forces in order to avoid or escape *dedovshchina*, it is necessary to make an in-depth assessment of the potential consequences of the applicant being returned to his country of origin, including whether any ill-treatment feared would amount to persecution within the meaning of the 1951 Convention. This essentially involves the assessment of two sets of issues concerning (a) the treatment feared in the armed forces while doing military service and (b) the punishment feared for draft evasion or desertion.

7. These two sets of issues are identified in paragraph 169 of the UNHCR *Handbook* which states:

A deserter or draft-evader may also be considered a refugee if it can be shown that he would suffer disproportionately severe punishment for the military offence on account of his race, religion, nationality, membership of a

---

<sup>1</sup> Issued in 1979 and in a reedited form in January 1992 without change to this section (hereafter “UNHCR *Handbook*”).

<sup>2</sup> In the former Soviet republics, conscription only affects men. It is only in very few other countries that women are conscripted. The masculine is therefore used throughout here.



**UNHCR**

United Nations High Commissioner for Refugees  
Haut Commissariat des Nations Unies pour les réfugiés

particular social group or political opinion. The same would apply if it can be shown that he has well-founded fear of persecution on these grounds above and beyond the punishment for desertion.<sup>3</sup>

*(a) Is there a well-founded fear of ill-treatment in the armed forces amounting to persecution?*

8. In order to assess whether the applicant has a well-founded fear of ill-treatment in the armed forces amounting to persecution, it is necessary to determine in the individual case whether he fears becoming a victim of *dedovshchina* in the armed forces if returned to his country of origin and whether the conditions of military service, including for persons subject to *dedovshchina*, either *de jure* or *de facto*, amount to persecution. Bullying and hazing are evident in a number of armed forces around the world, but the treatment to which new conscripts and recruits are subject will not necessarily be so severe as to amount to persecution. If it is found, however, that there is ill-treatment and even torture by longer serving soldiers, including violent and at times fatal hazing and bullying, this would violate the individual's right to freedom from torture, inhuman or degrading treatment or punishment and threaten his right to life, liberty and security of person. In such circumstances, the serious harm inflicted upon an individual as a result of such human rights violations would amount to persecution.

9. It may also be that someone who has evaded the draft or deserted from the armed forces because of his exposure or fear of exposure to *dedovshchina*,<sup>4</sup> would be subjected to other discriminatory treatment in the armed forces if returned, which in itself or in combination with other factors amounts to persecution. For instance, he may be obliged to undertake or complete his military service and during that time may be subject to discriminatory treatment as regards other recruits, for instance, by being required to serve in punishment battalions,<sup>5</sup> because of he evaded the draft or deserted to escape or avoid being subjected to *dedovshchina*. Even during the enlistment process for such military service, he may be singled out or treated differently, for example by being discriminated against in relation to others who may have been called up but fail to appear for conscription proceedings or who appear for conscription proceedings in accordance with the law.<sup>6</sup>

10. In determining the well-foundedness of the fear of persecution, were the individual forced either to undertake or to complete military service if returned to his country of origin, it is necessary to assess first the individual's own statements and

---

<sup>3</sup> This paragraph clearly identifies membership of a particular social group as a potential ground for refugee status and has been affirmed as State practice, for instance, in the Netherlands by the Rechtseenheidskamer (Law Unity Chamber) AWB 94/12134, 12 April 1995; reaffirmed by Rechtbank, The Hague, sitting in Zwolle, AWB 99/5598, 25 May 2000.

<sup>4</sup> As paragraph 45 of the UNHCR *Handbook* notes: "[T]he word 'fear' refers not only to persons who have actually been persecuted, but also to those who wish to avoid a situation entailing the risk of persecution."

<sup>5</sup> See, for instance, Quaker Council for European Affairs, "The Right to Conscientious Objection in Europe: A Review of the Current Situation", April 2005, p. 31, available at <http://qcea.quaker.org/coreport/coreport.pdf>, entry on Georgia at p. 32.

<sup>6</sup> See, the Australian Refugee Review Tribunal case discussed in paragraph below.

experience and then to analyse available country of origin information, drawing, for instance, on that listed briefly but by no means comprehensively in Annex A to assess the extent to which this objectively supports the existence of the subjective fear.

11. As part of this analysis, it is necessary to examine whether the individual enjoys effective national protection from *dedovshchina* or other treatment which may amount to persecution. The situation is somewhat unusual in that *dedovshchina* is a practice carried out in the armed forces by members of the armed forces, whether conscripts or professional soldiers. It is therefore necessary to examine the extent to which the phenomenon of *dedovshchina* is systemic and in practice authorized, tolerated or condoned by the military hierarchy of the State concerned in order to assess whether this means the individual is unable to secure from the authorities protection or redress from the persecution feared or suffered.

12. Country of origin information can be used to supplement the individual's description of his experience so as to determine the extent to which the practice of *dedovshchina* is entrenched within the armed forces of the various former Soviet republics. It may, for instance, be that the problem is more prevalent in certain units in different republics, while public statements may or may not be followed in practice. Information regarding non-combat deaths and suicides in the armed forces in the country concerned may also be indicative of the extent to which new conscripts or recruits may be exposed to torture, inhuman and degrading treatment or punishment. Where a specific and widely recognized term ("*dedovshchina*") exists, this may suggest that the practice is an institutionalized phenomenon rather than merely a number of isolated incidents of bullying. It may be that the risk of exposure to *dedovshchina* is higher for draft evaders or deserters who are returned and obliged to undertake or complete their military service than for other conscripts or recruits.

*(b) Is there a well-founded fear of punishment constituting persecution?*

13. It is also necessary to assess whether a draft evader or deserter has a well-founded fear of being subjected to excessive or disproportionately severe punishment contrary to international standards and, if so, whether this may amount to persecution within the meaning of the refugee definition.<sup>7</sup> (Such punishment could be instead of or in addition to being forced to undertake or complete the required period of service.)

14. As paragraph 167 of the *Handbook* states:

In countries where military service is compulsory, failure to perform this duty is frequently punishable by law. Moreover, whether military service is compulsory or not, desertion is invariably considered a criminal offence. The penalties may vary from country to country, and are not normally regarded as persecution. Fear of prosecution and punishment for desertion or draft-evasion does not in itself constitute well-founded fear of persecution under the definition...

In certain situations, however, punishment for draft evasion or desertion may amount to persecution.

---

<sup>7</sup> See, UNHCR *Handbook*, paragraphs 57 and 169. See also paragraph 5 above.



**UNHCR**

United Nations High Commissioner for Refugees  
Haut Commissariat des Nations Unies pour les réfugiés

15. In the first place, someone guilty of draft evasion or desertion may be liable to excessive punishment, which may amount to persecution within the meaning of the refugee definition.<sup>8</sup> To do so, it is necessary to assess the nature and extent of the punishment, including, for example, the period of imprisonment imposed and the conditions of such imprisonment, in relation to international human rights and criminal law standards. The precise motivation of the individual for evading or deserting and the “interest” which such an individual asserts – his right not to be subject to torture, inhuman or degrading treatment or punishment – need also to be taken into consideration when determining whether or not a punishment is excessive in relation to the offence committed.<sup>9</sup> Hence, the fact that an individual evades or deserts from the military service in order to avoid being subjected to *dedovshchina*, i.e. to torture, inhuman or degrading treatment, should be taken into consideration.

16. Second, as mentioned above, “a deserter or draft evader may also be considered a refugee if it can be shown that he would suffer disproportionately severe punishment for the military offence” on one or more of the five Convention grounds.<sup>10</sup> Thus, even if it has been determined that the punishment feared for draft evasion or desertion is not objectively excessive, it is also necessary to assess whether the individual in question fears being subjected to disproportionately severe punishment in comparison to other draft evaders or deserters in that country. In the cases concerned, it would be necessary to examine whether individuals, who have evaded the draft or deserted in order to avoid being subjected to (further) *dedovshchina*, may be discriminated against in the prosecution proceedings and/or receive disproportionately long prison sentences compared to other persons who have committed the same offence but for different reasons. It is also necessary to examine whether the punishment to which the individual in question risks being convicted may be implemented or enforced in a discriminatory and/or disproportionately severe manner.<sup>11</sup>

17. Above and beyond any punishment for draft evasion or desertion, someone who has committed such an offence in order to avoid being subjected to (further) *dedovshchina* may fear continued discriminatory punishment and/or treatment, for instance, if he is denied access to education, employment or other social benefits, such as housing or student loans. In combination with other factors and in the light of all the circumstances of the case, such discrimination could amount to persecution.

18. These various different circumstances under which punishment in the context of draft evasion or desertion may in itself constitute persecution were summarized by the English Court of Appeal in 2001 and affirmed in 2004, when it noted:

... it is plain (indeed uncontroversial) that there are circumstances in which a conscientious objector may rightly claim that punishment for draft-evasion

---

<sup>8</sup> UNHCR *Handbook*, paragraphs 56–57.

<sup>9</sup> UNHCR *Handbook*, paragraph 168, reads: “A person is clearly not a refugee if his only reason for desertion or draft-evasion is his dislike of military service or fear of combat. He may, however, be a refugee if his desertion or evasion of military service is *concomitant with other relevant motives for leaving or remaining outside his country.*” (emphasis added)

<sup>10</sup> UNHCR *Handbook*, paragraph 169. See also paragraph above.

<sup>11</sup> See, for instance, *Applicant S. v. Minister for Immigration and Multicultural Affairs*, High Court of Australia, [2004] HCA 25, 27 May 2004, P52/2003, paragraph 42, available at <http://www.austlii.edu.au/au/cases/cth/HCA/2004/25.html>.

would amount to persecution: where the military service to which he was called involves acts, with which he may be associated, which are contrary to basic rules of human conduct; where the conditions of military service are themselves so harsh as to amount to persecution on the facts; where the punishment in question is disproportionately harsh or severe.<sup>12</sup>

19. In determining the well-foundedness of the applicant's fear of being subjected to excessive or disproportionately severe punishment amounting to persecution, it would again be necessary to assess the individual's own statements and experience as well as relevant country of origin information.

### **The nexus with (“for reasons of”) one of the five Convention grounds**

20. As with all claims for international protection, persecution related to military service obligations will give rise to eligibility for refugee status only if it is linked to one or more of the five 1951 Convention grounds. An assessment of the applicability of each of the five grounds needs to be made both *vis-à-vis* the applicant's fear of being subjected to *dedovshchina* should he be forced to undertake or complete the required period of service if returned to his country of origin and *vis-à-vis* any persecutory punishment for non-compliance with military service requirements. UNHCR's response here focuses primarily on the potential application of the particular social group ground should other grounds not apply, although this ground may indeed overlap with others as mentioned in paragraph 30.

#### *Membership of a particular social group*

21. UNHCR's Guidelines on International Protection on membership of a particular social group acknowledge that State practice, particularly in common law but also in civil law jurisdictions, has adopted varying interpretations of what constitutes a particular social group within the meaning of the 1951 Convention. The Guidelines seek to reconcile these different approaches and therefore define such a group as

a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one's human rights.<sup>13</sup>

---

<sup>12</sup> *Krotov v. Secretary of State for the Home Department (SSHD)*, English Court of Appeal, [2004] EWCA Civ 69, 11 February 2004, paragraph 8, citing with approval *Sepet and Bulbul v. SSHD*, Court of Appeal, [2001] EWCA Civ 681, 11 May 2001, paragraph 61. See also the 1996 Joint Position of the Council of Ministers cited in Annex B below. UNHCR's response here focuses on whether punishment may be excessive or disproportionately severe, but this quotation also acknowledges that punishment for draft evasion or desertion could, as also stated in paragraph 171 of the UNHCR *Handbook*, “in itself be regarded as persecution” where “the type of military action, with which an individual does not wish to be associated, is condemned by the international community as contrary to basic rules of human conduct”. This latter issue is not developed further here, as the query has not raised it, although there is considerable jurisprudence on the subject.

<sup>13</sup> UNHCR, “Guidelines on International Protection: ‘Membership of a particular social group’ within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol

22. Further, as noted in UNHCR’s Guidelines:

[A] particular social group cannot be defined exclusively by the persecution that members of the group suffer or by a common fear of being persecuted. Nonetheless, persecutory action toward a group may be a relevant factor in determining the visibility of a group in a particular society. To use an example from a widely cited decision, “[W]hile persecutory conduct cannot define the social group, the actions of the persecutors may serve to identify or even cause the creation of a particular social group in society. Left-handed men are not a particular social group. But, if they were persecuted because they were left-handed, they would no doubt quickly become recognizable in their society as a particular social group. Their persecution for being left-handed would create a public perception that they were a particular social group. But it would be the attribute of being left-handed and not the persecutory acts that would identify them as a particular social group.”<sup>14</sup>

23. Article 10(1)(d) of the European Union “Qualification Directive”<sup>15</sup> adopts a slightly different approach, stating that

a group shall be considered to form a particular social group where in particular:

- members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, *and*
- that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society.

24. This definition reflects the two main schools of thought as to what constitutes a social group under the 1951 Convention (the “protected characteristics approach” and the “social perception approach”). While the results under the two approaches may frequently converge, this is not always the case. To avoid any protection gaps, UNHCR therefore recommends that Member States reconcile the two approaches to permit the alternative, rather than the cumulative, application of the two concepts.

25. Bearing these factors in mind, the assessment with regard to those asylum-seekers who are deserters could lead to the identification of the particular social group as “new conscripts in the armed forces” of the country concerned, “young, male, first-year conscripts” in those forces, or, more specifically, “new conscripts deserting from the armed forces”. The members of such a group share the common, innate and unchangeable characteristics of being young, male and about to be, or newly, conscripted into the armed forces and cannot, as individuals, change the obligation to

---

relating to the Status of Refugees” (hereafter “UNHCR Guidelines on membership of a particular social group”), HCR/GIP/02/02, 7 May 2002, paragraph 11.

<sup>14</sup> UNHCR Guidelines on membership of a particular social group, paragraph 14, citing McHugh, J., in *Applicant A v. Minister for Immigration and Ethnic Affairs*, High Court of Australia, (1997) 190 CLR 225, 264, 142 ALR 331.

<sup>15</sup> Council Directive on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted”, 2004/83/EC, 29 April 2004.

perform military service if this is required in their country of origin. In addition, their having deserted from the armed forces also represents an unchangeable characteristic uniting the members of this group since their action took place in the past. Further, they are readily perceived as a cognizable group in societies, such as those of the former Soviet republics, where military service is compulsory. Like the left-handed men referred to in the example above, they are also recognizable because of the risk they face of being subjected to *dedovshchina*, although this is not their sole or even primary defining feature.

26. A similar logic applies to persons who have evaded the draft in order to avoid being subject to *dedovshchina* amounting to persecution. As the UNHCR *Handbook* notes in paragraph 43: “What for example, happened to [the applicant’s] friends and relatives and other members of the same racial or social group may well show that his fear that sooner or later he also will become a victim of persecution is well-founded.” In this case, the particular social group could be defined as “young men liable to conscription” or “young men of draft age who have evaded military conscription” in the country concerned. The members of such a group share common, innate and unchangeable characteristics of being young, male and liable to conscription and of having evaded the draft. This group is smaller than that of all new conscripts but would nevertheless generally be recognized by the society concerned.

27. Likewise, voluntary recruits to the armed forces who subsequently desert as a result of the *dedovshchina*, to which they have been subjected or fear being subjected, could have a well-founded fear of persecution for reasons of their membership of the particular social group of “new conscripts and recruits in the armed forces” or “young men recently recruited to the armed forces”. Such individuals likewise share the common, innate and unchangeable characteristics of being young and male and have deserted from the armed forces. They can be seen as belonging to the same cognizable group in society as new conscripts.

28. In each case, it would be necessary to determine the applicant’s individual circumstances, including his reasons for evading the draft or deserting. Depending on whether the applicant has a well-founded fear, if returned and obliged to undertake or complete the required period of service, of being subjected to *dedovshchina* amounting to persecution or of being subjected to excessive or discriminatory punishment or treatment amounting to persecution, this could be seen as being “for reasons of” his belonging to one or other of the particular social groups outlined above.

29. For instance, if a draft evader or deserter were identified as having a well-founded fear, if returned, of persecution as a result of exposure to *dedovshchina* then this could be seen as being for reasons of his membership of the particular social group of “new conscripts in the armed forces” of the country concerned. Where the applicant is found to have a well-founded fear, if returned, of being subject to other discriminatory treatment as compared with other recruits because of his earlier draft evasion or desertion, then this can be seen as being for reasons of his membership of the particular social group of either “new conscripts deserting from the armed forces” or “young men of draft age who have evaded military conscription”. One or other of these last two particular social groups could also apply to persons with a well-founded



fear, if returned, of being subject to excessive punishment because of their evasion or desertion from military service. Finally, if the fear, if returned, is of being subject to disproportionately severe punishment amounting to persecution as compared with other evaders or deserters who may have acted for different reasons, this could be as a result of membership of the particular social group of “persons evading the draft or deserting in order to avoid being subject to *dedovshchina*”. Depending on the circumstances, the well-founded fear of persecution may be for a combination of reasons, including fear of exposure to *dedovshchina* or other discriminatory treatment, lack of effective national protection from such treatment, or of excessive or disproportionately severe punishment.

*Race, religion, nationality and/or political opinion*

30. It may also be necessary to examine whether a draft evader or deserter has a well-founded fear of persecution for reasons of his race, religion,<sup>16</sup> nationality and/or political opinion. Indeed, the five different grounds will frequently overlap, including with membership of a particular social group.<sup>17</sup> For example, the act of evading military service may in itself be interpreted, whether by the persecutor or by the authorities as an expression of political opinion, whether or not the applicant would describe it as such. A draft evader or deserter may also be an unrecognized conscientious objector. It is for this reason that the reasons the individual took such action need to be examined, as it may, for instance, be that such objections have arisen as a result of his experience in the armed forces. In addition, it may be that the treatment, including *dedovshchina* in the armed forces, or the punishment to which he would be subjected would be particularly harsh because of his ethnicity, origin, religious or political beliefs.

**Jurisprudence on particular social group in the context of draft evasion and desertion**

31. Decision-making bodies in various jurisdictions have addressed the question whether the ground of membership of a particular social group can be applied in cases of draft evasion or desertion. In the late 1980s, such a ground tended not to be recognized.<sup>18</sup> Both then and more recently, however, it has explicitly not been ruled out as a possibility, for instance, in cases of continuing discrimination (such as, in

---

<sup>16</sup> For the situation of persons objecting to military service on grounds of religion or conscience, see UNHCR, “Guidelines on International Protection: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol Relating to the Status of Refugees”, HCR/GIP/04/06, 28 April 2004, paragraphs 25–26.

<sup>17</sup> See generally, UNHCR *Handbook*, paragraph 67.

<sup>18</sup> See the decisions in the United States of *Matter of Vigil*, Interim Decision 3050, US Department of Justice, Board of Immigration Appeals, 17 March 1988 (group of young, male, urban, unenlisted Salvadorans does not constitute a “particular social group”); *Sanchez-Trujillo v. Immigration and Naturalization Service*, US Court of Appeals, 9th Circuit, 1986 (young working class, urban males of military age who have not served in the military are not a particular social group), affirming *Matter of Sanchez and Escobar*, Interim Decision 2996, Board of Immigration Appeals, 1985.

relation to employment, education or social benefits) as a result of the past failure or refusal to perform military service.<sup>19</sup>

32. Furthermore, in 2004, in the case of *Applicant S. v. Minister for Immigration and Multicultural Affairs*, the High Court of Australia allowed the appeal of an Afghan man of Pashtun ethnicity who feared forced conscription by the Taliban, finding that the Refugee Review Tribunal had erred in not considering whether legal, social, cultural and religious norms prevalent in Afghan society meant that “able-bodied young men” comprised a particular social group and remitted the case for redetermination.<sup>20</sup> The link with the persecution ground was established as a result of the nature of recruitment by the Taliban, which was found to involve “forcibly apprehending members of the particular social group in an ad hoc manner that constituted persecution by the standards of civilised society”.

33. The reasoning set out in *Applicant S.*, was subsequently applied by the Australian Refugee Review Tribunal in the case of a Russian citizen who did not have any moral or ethical or religious objection to military service but who did not want to participate in the war in Chechnya.<sup>21</sup> The particular social group was defined as “Russian men of draft age who have evaded service of summonses”. The decision determined that “the differential treatment afforded to this group by the Russian authorities has created the situation where the members of the group form a cognisable group within their society”. It went on to conclude:

*Prima facie*, conscription or the obligation to perform compulsory military service in accordance with the laws of one’s country will not amount to persecution for the purposes of the Refugees Convention. This is because the laws imposing the obligation will ordinarily be laws of general application. ... However the protection afforded to laws of general application will be lost if the different treatment of different individuals and groups is not appropriate and adapted to achieving some legitimate government object. ...

By giving the young men in this situation only superficial medical examinations, for example, and by denying them rights of appeal, the accelerated conscription procedure applied in such cases is arbitrary and no longer bears the character of a policy or law that is appropriate and adapted to achieving a legitimate national objective. I consider, therefore, that the

---

<sup>19</sup> *Marco Antonio Valladares Escoto*, Immigration Appeal Board of Canada, Decision T87-9024X, 29 July 1987, at 6, per D. Davey: “if the allegations were well-founded, the Board could find Mr Escoto to be a Convention refugee by reason of his having belonged to a particular social group, young men of eligible age for military duty, who were subject to mistreatment after indiscriminate recruitment, a distinct group which make it the object of persecution”. In *Israeli v. Minister for Immigration and Multicultural Affairs* (High Court of Australia), 31 May 2001, the majority accepted that the claim of membership of a particular social group consisting of draft evaders and/or deserters can arise independently of the issue of conscientious objection where the social group is identified by its avoidance of military service and not for the reasons for that avoidance.

<sup>20</sup> See *Applicant S.*, above footnote 11, especially paras. 50–51, 70–77.

<sup>21</sup> Reference N04/48879, Refugee Review Tribunal, 31 August 2004, available at <http://www.austlii.edu.au/cgi-bin/disp.pl/au/cases/cth/rrt/N0448879.html?query=%22conscientious%22+and+%22objection%22+and+%22afghanistan%22+and+%22and%22+and+%22on%22> .



**UNHCR**

United Nations High Commissioner for Refugees  
Haut Commissariat des Nations Unies pour les réfugiés

accelerated conscription procedure applied to the “particular social group” of Russian men of draft age who have evaded service of summonses amounts to “persecution” for the purposes of the Convention.

## **Annex A – Country of origin information regarding draft evasion and desertion in former Soviet republics**

Please note that the information provided below is by no means comprehensive.

### **The situation in the Russian Federation**

The request refers to UNHCR's June 2004 report entitled "Basis of Claims and Background Information on Asylum-seekers and Refugees from the Russian Federation". This reads:

*h) Main Reasons for Draft Evasion and/or Desertion*

136. The institutionalized culture of "dedovshchina"— whereby more experienced soldiers bully and often torture new recruits — has made suicide a major problem for the army. In 2001, the military prosecutor's office admitted to dealing with some 2,000 conscript deaths a year, but independent human rights organisations put the annual toll at nearer 3,000. According to Defense Minister Sergei Ivanov, 337 servicemen were killed in combat or died in accidents in 2003; about 35 per cent of non-combat deaths in the military were suicides. According to estimates, there are 40,000 deserters at any given time in the Russian Federation. Regarding mistreatment, it should be noted that 30 per cent of the complaints (when they are formulated) are against military officers who mistreat their subordinates. Reportedly, there are also instances of extortion of soldiers by officers. No accurate figures are available regarding how many civilians died due to the ongoing hostilities in Chechnya; the figures vary depending on the source consulted. To a lesser extent, lack of adequate medical care or malnutrition is cited as a reason for deserting the armed forces.<sup>22</sup>

A number of reports by other organizations, including reports very recently published, appear to confirm this general analysis, although some efforts are being made to address the problem. See, for instance:

Human Rights Watch, "The Wrongs of Passage: Inhuman and Degrading Treatment of New Recruits in the Russian Armed Forces", October 2004, available at <http://www.hrw.org/reports/2004/russia1004/index.htm>

US Department of State, Country Reports on Human Rights Practices, Russia, 2004, released by the Bureau of Democracy, Human Rights, and Labor, 28 February 2005, available at <http://www.state.gov/g/drl/rls/hrrpt/2004/41704.htm>

Quaker Council for European Affairs, "The Right to Conscientious Objection in Europe: A Review of the Current Situation", April 2005, p. 31, available at <http://qcea.quaker.org/coreport/coreport.pdf>

"How are the mighty fallen", *The Economist*, 30 June 2005

---

<sup>22</sup> UNHCR, "Basis of Claims and Background Information on Asylum-seekers and Refugees from the Russian Federation", June 2004, p. 56 (footnotes omitted), available at <http://www.unhcr.ch/cgi-bin/tehis/vtx/home/opendoc.pdf?tbl=RSDLEGAL&id=40a88b60a>.

Council of Europe, Report Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), “Honouring of Obligations and Commitments by the Russian Federation”, Doc. 10568, 3 June 2005, paragraphs 13(iv), as well as paragraphs 295–310 of the explanatory memorandum, available at <http://assembly.coe.int/Documents/WorkingDocs/Doc05/EDOC10568.pdf>

The latter urges the Russian authorities

with regard to the ill-treatment and deaths in the armed forces outside military conflicts, [to] apply a zero tolerance approach to the continuously endemic problem of hazing, through educational programmes for officers and systematic, credible and transparent investigation and prosecution of abuses.<sup>23</sup>

The explanatory memorandum to the report examined the issue at some length, stating in paragraphs 295–310:

#### **F. Hazing in the army**

295. Upon accession to the Council of Europe Russia undertook to reduce, if not eliminate, incidents of ill-treatment and deaths in the armed forces outside military conflicts (Opinion No. 193 (1996), § 10.xix.)

296. Ill-treatment of young conscripts (also sometimes referred to as "dedovshchina", hazing) remains a major problem of human rights. In a recent report issued in October 2004, Human Rights Watch stated that dozens of conscripts are killed every year as a result of these abuses, and thousands sustain serious – and often permanent – damage to their physical and mental health. Hundreds commit or attempt suicide and thousands desert their units.

297. Although international law requires the Russian authorities to take immediate measures to end these abuses, it has thus far failed to take the appropriate steps. Instead of taking a clear and public stance against the abuses, government officials have largely ignored the issue in their numerous speeches about military reform. The authorities have yet to adopt a clear and comprehensive strategy to deal with the abuses. Instead of vigorously examining the reasons why first-year conscripts flee their units, military officials routinely threaten runaways with prosecution for unauthorised departure from their bases. Military commanders and the military Prokuratura shield perpetrators from justice, rather than investigate reported incidents of abuse. The government's position is all the more puzzling because dedovshchina so clearly undermines the military effectiveness of Russia's army.

298. Dedovshchina exists in military units throughout the Russian Federation. It establishes an informal hierarchy of conscripts, based on the length of their service, and a corresponding set of rights and duties for each group of the hierarchy. Second-year conscripts, called the "dedy" (literally "grandfathers"; its singular is "ded"), have practically unlimited power with respect to their junior colleagues. While dedovshchina may once have served the purpose of initiation, it has in the past twenty years degenerated into a system in which

---

<sup>23</sup> See paragraph 13(iv) of this document.



**UNHCR**

United Nations High Commissioner for Refugees  
Haut Commissariat des Nations Unies pour les réfugiés

second-year conscripts, once victims of abuse and deprivation themselves, enjoy unlimited power to abuse their juniors without rule, restriction, or fear of punishment. The result is not enhanced esprit de corps but lawlessness and gross abuse of human rights.

299. Horror stories about dedovshchina motivate tens of thousands of Russian parents every year to try to keep their sons out of the armed forces. As the most affluent families do so successfully, the armed forces increasingly draw recruits from poor segments of the population, and many of the recruits suffer from malnutrition, ill health, alcohol or drug addiction, or other social ills even before they start to serve. Moreover, as mentioned above, thousands of the young men who are drafted each year run away from their units and hundreds commit suicide.

300. In its response to the HRW report on hazing, the Russian Federation Ministry of Defence noted that the "measures taken in the last few years by the bodies of military command, commanders of all levels, and personnel management officers have consolidated the trend in a steady decrease in the number of crimes and accidents in military units. This also fully applies to the problem of violations of statutory rules of service between servicemen. According to the Ministry's statistics, for a number of years the crime rate in the armed forces has been 2-2.5 times lower than overall national level. During 2002, 2003 and 2004, 90% of units experienced no dedovshchina, and 80% had no violations whatsoever. The fact that "hooliganism" in the barracks does not take place on a massive scale is also proven by the findings of Human Rights Watch's rights-defenders, who found only 100 victims of dedovshchina in the 3 years of research, on whose statements they rely on for their report."

301. Chief Military Prosecutor Alexander Savenkov has reported that 25 conscripts died as a result of abuses associated with hazing during the first half of 2004. A total of 109 servicemen committed suicide during this period, an increase of 38% compared to the same period last year. Savenkov said that 60 of those conscripts who killed themselves had been "driven to suicide" by hazing. Accordingly, an 85 death toll in the armed forces outside military conflicts was reported as official statistics for the first six months of 2004. Taking into account that these statistics reflect only those cases brought to the courts, the real scope of the problem is truly alarming. However, in the Ministry of Defence we were told that the Russian rate of suicides on 100,000 of population is much less than in some European countries.

302. The Military Prokuratura that is in charge of dealing with soldiers' complaints and investigating abuses in the armed forces also reported that 3,200 servicemen were convicted of hazing ('non-statutory relations') in the first nine months of 2004, including 400 officers. About 3,000 servicemen suffered from hazing and 31 died over the same period. In 2003 a total of 3,400 servicemen, including 500 officers, were convicted for hazing; 4,500 servicemen were recognised victims of the hazing ('non-statutory relations'), 38 died.

303. The rise in the number of the reported ill-treatment cases is claimed by the Ministry of Defence and Military Prokuratura to be due to increased transparency in dealing with violations in the army. This resulted, according to the officials, in a significant decrease of the so-called latent crime in the army. In the list of measures for combating ill-treatment in the army Ministry of



**UNHCR**

United Nations High Commissioner for Refugees  
Haut Commissariat des Nations Unies pour les réfugiés

Defence officials mention gradual transformation into voluntary contract-based recruitment, cutting down of the service term to one year (instead of one and half), additional educational and awareness raising campaigns.

304. The Soldiers' Mothers Committee in the Sverdlovsk region reported that the number of ill-treatment cases is not decreasing, and that, as a result, desertion is still common. However, better co-operation was established with the office of the military prosecutor and military units' commanders (e.g. special positions of deputy commanders in charge of educational work were introduced to co-operate with non-governmental organisation and deal with ill-treatment cases). Also the Ministry of Defence decided that conscripts who deserted should not return to the same unit from which they have escaped as they can be subject to harassment.

305. In April 2005, Defence Minister Sergei Ivanov promised to punish those who are guilty, including senior officers after twelve conscript sailors fled the navy base in Lomonosov and filed complaints about hazing alleging that they had been beaten up by older sailors shortly after their arrival.

306. One of the reasons of this widespread phenomenon is the way ill-treatment cases are dealt with after the complaint has been lodged. It appears that such a complaint (except for murder cases), whoever it was lodged with, is first investigated by the commander of the corresponding military unit who is interested in silencing such facts. And this obviously has an impact on the number of cases that reach the military prosecutor's attention.

307. Human rights NGOs also report that ill-treatment of conscripts starts even from the very moment of their drafting when the draftees are kept in the so-called conscription centres waiting for their detachment to the military units. Not much attention was paid so far to the bad conditions in these centres, where draftees are kept in poorly heated premises without proper food. The same concerns the conditions during transport of the conscripts to the military units. In December 2003, after transportation of the conscripts to the Far East town of Magadan, nearly 100 fell ill with pneumonia, one conscript froze to death.

308. We agree with the HRW conclusion that the Russian government cannot wait for the creation of professional armed forces in order to successfully fight abuses linked to ill-treatment of conscripts, and that it does not have to do so. We cannot but repeat the call on the Russian authorities to take without delay all effective measures to address this endemic problem properly, in order to significantly reduce the number of ill-treatment cases.

309. Welcoming the fact that more light was cast on hazing in the army, we believe however that this problem should be dealt with on a federal level as one of the priorities of the army reform. Clear messages of the highest state authorities stating that this is an unacceptable practice and that the government will do its utmost to eradicate it should be issued without delay. A policy of zero tolerance for such abuses should be put in place, with educational programmes for officers, enhanced controlling mechanisms, bringing to justice those responsible for such abuses, etc.

310. The same should also be applied to the practice of "conscript leasing" to private institutions with remuneration paid to the officers, commanders of the military units (see below). [footnotes omitted]

## **The situation in other former Soviet republics**

The abovementioned review of the right to conscientious objection in Europe issued by the Quaker Council for European Affairs covers the law and practice in Council of Europe member States, including therefore several former Soviet republics.

One earlier report is War Resisters International, “The Broken Rifle”, Newsletter, Special Focus on the Caucasus and Central Asia, No. 56, November 2002, p. 3, available at <http://www.wri-irg.org/pdf/pfp02-en.pdf>.

In the Georgian context, draft evasion and desertion are punishable under administrative law and under the Criminal Code. Material provided by the UNHCR Protection Unit in Tbilisi (the report “Bullying in the Georgian Army” by Irakli Sesiashvili of the association Justice and Liberty on 14 April 2005) suggests the situation has changed since the “rose revolution” of November 2003. The 2004 research conducted by the Humanitarian Technologies Development Centre for the Ombudsman’s Office in mid-2004 and entitled “Identification of Reasons of Violence and Desertion in Georgian Military Forces for the Purposes of Protecting Soldiers’ Rights” suggests, however, that *dedovshchina* is continuing, though not as the main reason for desertion. Significantly, this report states that many of those questioned were afraid of speaking out on this issue for fear of reprisals.<sup>24</sup>

---

<sup>24</sup> In addition, to examining the law and practice in Georgia itself, one would also need to bear in mind the situation in Abkhazia and/or South Ossetia, should the applicant come from those regions of the country.



## **Annex B – International and regional standards regarding conscientious objection more generally**

Conscientious objection to military service has been recognized in some States for many decades, but its recognition in international law is a relatively recent development. It is not specifically included in any of the existing international or regional human rights treaties. In 1989, however, the United Nations recognized conscientious objection to military service as a legitimate exercise of the right to freedom of thought, conscience and religion.<sup>25</sup> Since 1993, it has also been accepted as being included within the 1966 International Covenant on Civil and Political Rights (ICCPR) by the Human Rights Committee, the supervisory body for this treaty.<sup>26</sup>

The right to freedom of thought, conscience and religion is an unqualified and non-derogable right, even during times of national emergency threatening the life of the nation.<sup>27</sup> The right to manifest one's religion or belief may be restricted, although it too is non-derogable, but it is subject "only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others".<sup>28</sup> Unlike some other human rights provisions, no limitation is permitted on the grounds of national security.

At the European level, the 1950 European Convention for the protection of Human Rights and Fundamental Freedoms (ECHR) recognizes in Article 9 the right to freedom of thought, conscience and religion, and to manifest these in terms which are almost identical to those of the ICCPR. Like the ICCPR, the limitations on the manifestation of one's religion or belief do not include national security. Like the ICCPR and indeed the 1969 American Convention on Human Rights, the ECHR prohibits forced or compulsory labour and excludes as not being forced or compulsory labour "for the purpose of this article ... any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service" (Article 4(3)).

The question of conscientious objection has been raised repeatedly under the ECHR. Most of these cases have not, however, been raised, or addressed, under Article 9 (on the right to freedom of thought, conscience and religion), because in 1966, the European Commission on Human Rights, in *Grandrath v. Federal Republic of Germany*, stated that the ECHR did not require recognition of a right of conscientious objection. This statement was based on the wording of Article 4(2) – "in countries where they are recognised" – which was taken as implying that there was no obligation under the Convention to provide for conscientious objection.

---

<sup>25</sup> UN Commission on Human Rights, resolution 1989/59, reinforced and developed in succeeding resolutions 1993/84, 1995/83, 1998/77, 2000/34, 2002/45 and 2004/35.

<sup>26</sup> Human Rights Committee, General Comment No. 22(48).

<sup>27</sup> See Article 18 of the 1948 Universal Declaration of Human Rights; Article 18(1) of the ICCPR.

<sup>28</sup> See Article 18(3) of the ICCPR. For further analysis on this issue, see also UNHCR, "Guidelines on International Protection: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees", HCR/GIP/04/06, 28 April 2004.

It is nevertheless important to note that none of the decided cases brought under the ECHR to date, including *Grandrath*, have involved straightforward pacifist conscientious objectors to personal military service who were willing to undertake an alternative service. They were either "total objectors", i.e. refusing to perform alternative service as well as military service, or were claims of discrimination in treatment following refusal to serve and so brought in Article 14 in conjunction with Article 9 of the ECHR.<sup>29</sup>

Thus, in fact neither the Commission nor Court has decided a case of conscientious objection to military service as such. In every case, the respondent State granted conscientious objection and the applicant was challenging some function of the alternative service. The Commission's comments on conscientious objection are therefore *dicta* and not central to the decisions.

In the **European Union** context, Article 10 of the Charter of Fundamental Rights of the European Union<sup>30</sup> recognizes the right to freedom of thought, conscience and religion, including the freedom to change religion or belief, and to manifest it in worship, teaching, practice and observance. It continues, in Article 10(2), "The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right." Article II-70 of the draft Constitution for Europe echoes these provisions.

The Qualification Directive<sup>31</sup> recognizes that "acts of persecution" can, *inter alia*, take the form of "prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under the exclusion clauses" (Article 9(2)(e)). Further, the 4 March 1996 Joint Position adopted by the Council of the European Union on the harmonized application of the term "refugee" in Article 1 of the 1951 Convention sets out in more detail provisions on "Conscientious objection, absence without leave and desertion". Paragraph 10 reads:

The fear of punishment for conscientious objection, absence without leave or desertion is investigated on an individual basis. It should in itself be insufficient to justify recognition of refugee status. The penalty must be assessed in particular in accordance with the principles set out in point 5.

In cases of absence without leave or desertion, the person concerned must be accorded refugee status if the conditions under which military duties are performed themselves constitute persecution.

Similarly, refugee status may be granted, in the light of all the other requirements of the definition, in cases of punishment of conscientious objection or deliberate absence without leave and desertion on grounds of conscience if the performance of his military duties were to have the effect of

---

<sup>29</sup> See *Thlimmenos v. Greece*, Application no. 34369/97, Judgment of 6 April 2000. There were also some cases of objection to payment of taxes for military purposes.

<sup>30</sup> Solemnly proclaimed by the European Parliament, the Council and Commission in December 2000.

<sup>31</sup> Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, 29 April 2004.



**UNHCR**

United Nations High Commissioner for Refugees  
Haut Commissariat des Nations Unies pour les réfugiés

leading the person concerned to participate in acts falling under the exclusion clauses in article 1F of the Geneva Convention.

10 August 2005  
Protection Policy and Legal Advice Section,  
Department of International Protection,  
UNHCR Geneva,