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Algeria: Actions taken by the military in case of desertion; whether deserters are being ordered to report by the gendarmerie; time allowed to respond to such orders, if applicable; whether the reason for desertion appears on the order to report; the current situation of deserters (2006-September 2012)
Research Directorate, Immigration and Refugee Board of Canada, Ottawa

1. Draft Evasion

The National Service Code (Code du service national) of 1974 states the following regarding draft evasion in the Algerian army:

[translation]

Art. 16: Any citizen who was called up to fulfill his national service obligations and was properly notified of his marching orders will be considered a draft evader if he does not report to the designated site for his enlistment within thirty days after the date indicated in the marching orders referred to above unless the delay is caused by circumstances beyond his control.

Art. 17: Where a citizen who was properly notified of his call-up does not report to the designated site for his enlistment on the date indicated, the assigning unit shall immediately inform the applicable recruitment office.

Art. 18: The recruitment office shall

1. ask the darak el watani group [national gendarmerie] to conduct an investigation to determine why the conscript did not respond to the call-up order;
2. ten days after the deadline for enlistment in the service, establish marching orders in the name of the conscript in which he is required to report to his assigning unit on the date indicated in the marching orders. This date must correspond to the 30th day following the deadline for enlistment.

The darak el watani brigade shall notify the conscript of the marching orders or, in his absence, the president of the communal popular assembly in the location where he is assigned.

Art. 19: If the conscript does not report to his assigning unit within thirty days after the date indicated in the marching orders, the recruitment office shall send a report to the national security headquarters, the wilaya [administrative division], the darak el watani group, the communal popular assembly and the police station in the place where the conscript was born and where his parents most recently resided.

Art. 20: The status of draft evader ceases, inter alia, for one of the following reasons:

• arrest;
• voluntary reporting;
• declaration that draft evasion issued improperly or in error;
• death.

Art. 21: In the case of arrest or voluntary reporting, the conscript is sent to the military region to be dealt with under military law. (Algeria 1974)

The Military Justice Code states the following regarding the sentences imposed on individuals convicted of draft evasion:

[translation]

Art. 254: Any individual found guilty of draft evasion under the army recruitment laws may be punished by three months to five years’ imprisonment in peacetime.

In wartime, the penalty is two to ten years’ imprisonment; in addition, the guilty party may be completely or partly prohibited from exercising the rights set out in article 8 of the penal code for a minimum of five years and a maximum of twenty years.

In wartime, if the guilty party is an officer, discharge may also be imposed without prejudice to the provisions in the army recruitment laws (ibid. 2007). (ibid. 2007)

2. Desertion
2.1 Desertion Within the Country

The Military Justice Code (Code de justice militaire) defines desertion of the Algerian Army within the country as follows:

[translation]

Art. 255: Any soldier shall be considered a deserter within the country who, in peacetime,

1. is absent without leave from his unit or detachment, his base or formation, his ship or a civilian or military hospital where he was receiving treatment, for six days after the date his absence was recorded;
2. is travelling alone, his mission or leave has expired and has not reported to his base, formation or ship within ten days following the date set for his arrival or return;
3. is absent without leave in the national territory at the time of departure for a destination outside of this territory, from the ship or military aircraft to which he belongs or that he has boarded even if he reports to the authority before the expiration of the above deadlines.

However, in the situations described in (1) and (2) above, a soldier who does not have three months of service may not be considered a deserter until he has been absent for one month.

In wartime, all the deadlines in this article shall be reduced by two-thirds. (ibid.)

The Military Justice Code states the following regarding the sentences imposed on individuals convicted of desertion within the country:

[translation]

Art. 256: A soldier who is guilty of desertion within the country may be punished by six months’ to five years’ imprisonment in peacetime.

If the desertion occurred in wartime or in a territory in which a state of siege or a state of emergency has been declared, the penalty may be two to ten years.

In every case, if the guilty party is an officer, discharge may also be imposed.

Art. 257: Desertion by more than two individuals together is considered to be desertion with conspiracy. Desertion with conspiracy within the country is punishable by

a. one to ten years’ imprisonment in peacetime;
b. five to fifteen years’ imprisonment in wartime.

If the guilty party is an officer, discharge may also be imposed. (ibid.)

2.2 Desertion Abroad

The Military Justice Code defines desertion of the Algerian Army abroad as follows:
Art. 258: A soldier shall be declared a deserter abroad if he, in peacetime, without authorization, crosses the boundaries of the national territory or, outside this territory, abandons the unit, detachment, base or formation to which he belongs or the ship or aircraft he has boarded, for three days after the absence has been recorded.

Art. 259: A soldier shall be declared a deserter abroad if he, in peacetime, outside the national territory, at the expiration of six days after the date specified for his return from leave, mission or travel, does not report to the unit, detachment, base or formation to which he belongs or the ship or aircraft he has boarded.

Art. 260: A soldier shall be declared a deserter abroad if he is absent without leave outside the national territory at the time of departure of the ship or aircraft even if he reports to the authority before the deadline under article 258 above has expired.

Art. 261: In peacetime, in the situations referred to in articles 258 and 259 above, a soldier who does not have three months of service may not be considered a deserter until he has been absent for fifteen days.

In wartime, the deadlines set out in articles 258 and 259 above and in the preceding paragraph shall be reduced, respectively, to one day, two days and five days. (ibid.)

The Military Justice Code states the following regarding sentences imposed on individuals convicted of desertion abroad:

[translation]

Art. 262: Any soldier guilty of desertion abroad may be punished by two to ten years' imprisonment in peacetime.

If the guilty party is an officer, he may be punished by five to ten years' criminal imprisonment.

Art. 263: Any soldier who has deserted abroad in one of the following circumstances may be punished by five to ten years' imprisonment:

1. If the guilty party took weapons or equipment from the state;
2. If he deserted while on duty;
3. If he deserted with conspiracy.

If the guilty party is an officer, he may be punished by ten years' criminal imprisonment.

Art. 264: If the desertion abroad took place in wartime or in a territory in which a state of siege or a state of emergency has been declared, the penalty is ten to twenty years' criminal imprisonment.

If the desertion abroad took place in wartime, with conspiracy, the penalty is criminal imprisonment for life.

In the situation in (1) above, if the guilty party is an officer, the maximum penalty shall be imposed. (ibid.)

Articles 265 to 270 of the Military Justice Code also indicate the prescribed prison sentences for [translation] “desertion to an armed group” and “desertion to the enemy or in the presence of the enemy” (ibid.).

Information on the enforcement of prescribed sentences for desertion or draft evasion could not be found among the sources consulted by the Research Directorate.

3. Notice to Appear

A news release on the War Resisters’ International (WRI) website reports the case of an Algerian citizen who had refused to complete his military service on grounds of conscientious objection; the WRI stated that it fears this citizen was forcibly recruited on 30 January 2011 (WRI 31 Jan. 2011). The news release states that the citizen received a notice to appear at the Mers el Kebir military tribunal in Oran on 13 January 2011 (ibid.). According to the news release, the Algerian citizen had also received a notice from the gendarmerie on 27 January 2011, which stated “draft evasion” as the reasons for his summons before the Mers el Kebir military tribunal (ibid.). He reported to the Mers el Kebir military tribunal on the date scheduled and did not return from there (ibid.; ARC Project 7 Dec. 2011). No information as to the outcome or the notices to appear could be found among the sources consulted by the Research Directorate.

4. Situation of Deserters and Draft Evaders

The National Service Code states the following regarding the employment of an individual wanted for draft evasion:
Art. 15: Anyone found guilty of knowingly harbouring, employing or procuring employment for a citizen who is being sought for draft evasion or found guilty of assisting in his evasion, is subject to the military court system (Algeria 1974).

According to a document prepared by Conscience and Peace Tax International (CPTI), a not-for-profit organization with special consultative status at the UN that recognizes the right to conscientious objection with respect to the use of fiscal contributions for armament and war (CPTI n.d.), conscientious objectors who are not registered for military service in Algeria suffer disadvantages akin to those which the European Court of Human Rights has (with regard to Turkey) recently described as a form of “civil death”. If non-registration had already led to charges of draft evasion (insoumission), the option of “regularising” his military status would not be available. (CPTI July 2007)

Corroborating information or information on the situation of deserters and draft evaders could not be found among the sources consulted by the Research Directorate within the time constraints of this response.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

References


Additional Sources Consulted

Oral sources: Attempts to contact representatives of the following organizations were unsuccessful: Embassy of Algeria in Ottawa, Embassy in Washington, National People’s Assembly, Consulate General in Montréal, Consulate General in New York; Algeria Watch; Human Rights Watch; Public policy professor at the University of Michigan. Professors from the following universities were unable to provide information: Fordham University, Tufts University and California State University. A representative of the Embassy of Canada in Algiers did not respond within the time constraints for this response.

Internet sites, including: African Court on Human and Peoples’ Rights ; Amnesty International; Algeria – Embassy in Oslo, Embassy in Ottawa, Consulate in London, Australia – Refugee Review Tribunal; Child Soldiers International; Country of Return Information Project; ecoli.net; Factiva; Freedom House; GlobalSecurity.org; Human Rights Watch; Institute for War and Peace Reporting; International Institute for Strategic Studies; Ireland – Refugee Documentation Centre; Jane’s Defense and Security; Journal officiel de la République algérienne démocratique et populaire, Ministry of National Defense, Ministry of Youth and Sports; National Gendarmerie; Organization for Migration; United Nations (UN) Refworld; United Kingdom (UK) Home Office; United States – Central Intelligence Agency, Department of State.

Tips on how to use this search engine.