

YEARBOOK OF INTERNATIONAL HUMANITARIAN LAW — VOLUME 16, 2013
CORRESPONDENTS' REPORTS

IRELAND¹

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In the course of the Second World War, it is estimated that up to 60,000 men from the Republic of Ireland enlisted in the British army. The strength of the Irish Defence Forces was approximately 42,000 personnel during this period, which is commonly known as ‘the Emergency’. Pay and conditions in the Defence Forces were poor. In the course of the war, it is estimated that over 7000 members of the Defence Forces deserted. At the time, this was a major issue as there was a very real threat of invasion and the State relied on the Defence Forces for its defence and security. It could not afford to countenance soldiers leaving their posts at home to fight in the war on mainland Europe. Even during peacetime, such action is unacceptable and regarded as a serious violation of military law. In hindsight it is difficult to determine if the motivation of the men concerned was idealism or economic necessity. The majority of those who deserted joined with the Allied forces, especially the British forces, fighting Nazi aggression in Europe. Of these, around 2500 personnel returned to their military units in Ireland. Some others were later apprehended and subsequently they were tried by military tribunal. This left approximately 5000 remaining personnel who were the subject of dismissal under the *Emergency Powers (No. 362) Order 1945* and the *Defence Forces (Temporary Provisions) Act 1946*.

The *Emergency Powers (No. 362) Order 1945* provided for the automatic dismissal from the Defence Forces of certain deserters and other personnel absent without official leave. The order also provided for the forfeiture of their pay and allowances. The order included a condition that every person to whom the order applied should be disqualified for seven years from holding any office or employment remunerated from the Central Fund of the State. This was subsequently enacted as the *Defence Forces (Temporary Provisions) Act 1946*.

As a result of the order, many individuals and families endured significant hardship. It deprived those subject to the order of the right to be tried for the offences of which they stood accused or to offer a defence in respect of the alleged crime. A number of the individuals were ostracized socially when they returned to Ireland and many others remained in the United Kingdom. A number of others subject to the order died in combat during the course of the war.

In seeking to address the question of desertion during the Second World War, the Irish government has already acknowledged that the war gave rise to circumstances that were grave and exceptional. Ireland remained neutral during the Second World War and the experience of these men has been ‘politically airbrushed’ out of contemporary Irish history.

In 2012, the government apologised for the State’s treatment of members of the Defence Forces who fought for the Allied Forces during the Second World War. The government wished to acknowledge the sacrifice and contribution these men had made in the course of

¹ Information provided by Professor Ray Murphy, Irish Centre for Human Rights, National University of Ireland Galway, Ireland.

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the war. By the time this legislation was proposed, most of those directly impacted had died and those surviving were very elderly.

The purpose of the *Defence Forces (Second World War Amnesty and Immunity) Act 2013* ('the Act') was to provide a legal mechanism that would allow for an amnesty to those who absented themselves from the Defence Forces. Desertion from the Defence Forces has always been regarded as a very serious offence. As expressed by the Minister for Defence:

It is at the heart of the system of military discipline that when an individual takes the solemn oath at the commencement of his or her career that he or she cannot decide to just up and leave or fail to be available to perform duties. While this is very much the case today, it would especially have been the case at a time when the world was at war and our troops were on standby to defend our country from invasion.²

The Minister for Defence went on to say that he considered that most people today accepted that the majority of those who deserted the Defence Forces during the Second World War and who went on to fight against fascism did so out of a sense of idealism and with a commitment to protect democracies from tyranny and totalitarianism. Had there been a different outcome to the Second World War, there is no reason to believe Ireland would have been immune to invasion.

When outlining the purpose of the legislation, Minister Shatter emphasised that the government did not condone desertion and acknowledged the contribution of all those who remained part of the Defence Forces to defend the State during the so called Emergency Period of the war.

As to a brief summary of the contents of the Bill, section 1 outlines the definitions for the Bill.

Section 2 provides an amnesty for members of the Defence Forces who deserted or were absent without leave during the course of the Second World War. In order to be eligible, they are required to have subsequently served with forces fighting on the Allied side during the war and to have been dismissed from the Defence Forces pursuant to the *Emergency Powers Order 1945*. Alternatively, they need to have been convicted of desertion or of being absent without leave, or be liable to prosecution for either offence arising from participation in the war on the side of the Allies. It is noteworthy that the section also provides an apology for what is considered to have been unduly harsh treatment.

In addition to the amnesty, the government envisaged the granting of a pardon. However, legal advice provided during the drafting process by the Attorney General pointed out that a pardon would require that each case be individually processed. This was neither practical nor feasible in the circumstances. For this reason the legislation provides for an amnesty in respect of those convicted of desertion or of being absent without leave but does not provide for a pardon.

Section 3 provides for an immunity from prosecution for members of the Defence Forces who deserted or were absent without leave during the course of the Second World War and who subsequently served with forces fighting on the Allied side in that war.

Section 4 provides that no right, liability or any cause of action shall arise as a result of the enactment of the legislation. Section 4 also provides that the amnesty in section 2 will not have the effect of a Presidential pardon under Article 13.6 of the *Irish Constitution*.

² Ireland, *Parliamentary Debates*, Senate (Seanad Éireann), 6 February 2013, p. 22 (Mr. Alan Shatter TD, Minister for Defence).

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