

Veterans' Benefits for Non-Citizens

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FRANCE

VETERANS' BENEFITS FOR NON-CITIZENS

Executive Summary

In 1959, the French Parliament adopted Law 59-1959, which in article 71 redefined as retirement allowances the pensions received by its colonial military veterans on the ground of their countries' accession to independence. This process is often referred to as the "crystallization" (freezing) of pensions of colonial military veterans. Hundreds of thousands of veterans saw their pension rates frozen. In 2001, the Conseil d'Etat, France's highest administrative court, ruled that article 71 of Law 59-1959 violated article 14 of the European Convention for the Protection of Human Rights, which prohibits discrimination. This ruling started a partial "de-crystallization" process achieved by the French government through several finance laws. A draft law aimed at fully ending the discrimination between French veterans and colonial military veterans prepared by members of the Socialist and Communist groups of the National Assembly is currently pending before the Assembly.

I. Introduction

As requested by the Board of Veterans' Appeals, this report addresses the provision contained in Law 59-1454 on Finances for 1960,¹ which redefined pensions attributed to veterans who were nationals of countries that were part of France's former colonial empire, and resulted in what is often referred to as the "crystallization" of pensions of colonial military veterans. It then reviews a decision of the *Conseil d'Etat*, which found that the difference in treatment between French nationals and non-citizen veterans under the 1959 Law violates article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedom.² Finally, it assesses the current status of the "de-crystallization" process.

II. Law 59-1454

Law 59-1454, and complimentary provisions contained in other finance laws, provided several mechanisms to freeze or "crystallize" the pension rights of nationals of former colonies and bar them from any new rights on the ground of their countries' accession to independence.

¹ Loi 59-1454 du 26 décembre 1959 portant loi de finances pour 1960 [Law 59-1454 of December 26, 1959, on Finance for 1960], Journal Officiel de la République Française [J.O.] [Official Gazette of France], Dec. 29, 1959, p. 12363.

² Conseil d'Etat, N° 212179, 212211, Nov. 30, 2001, *Ministre de la Défense c/M.D.-Ministre de l'économie, des finances et de l'industrie c/M.D.*, http://www.conseil-etat.fr/ce/jurisprd/index_ac_ld0112.shtml (last visited May 21, 2009).

The 1959 Law redefined the pensions as allowances. This crystallization applied to both military retirement and disability pensions. It affected hundred of thousands of veterans. The allowances amounts were sporadically adjusted by the French government.³

Article 71 of the Law states:⁴

I. Starting January 1st 1961, the pensions, annuities or life annuities imputed to the budget of the state or of a public establishment, whose holders are nationals of countries or territories that used to be part of the *Union Française* or the *Communauté*⁵¹ or placed under French protectorate or trusteeship, are replaced during the normal period of entitlement by a yearly allowance calculated on the basis of tariffs in force for the said pensions, or annuities at the date of their reclassification.

II. The conditions and deadlines under which the beneficiaries of the allowance established in paragraph I will be allowed to opt for the substitution of this allowance by a one-time lump sum equal to the quintuple of the yearly allowance will be set forth by decrees.

III. Exemptions to the above provisions may be granted for one year by decrees; this period will be susceptible to extension also by way of decrees.

III. Decision of the Conseil d'Etat

A. Facts and Procedure

The Conseil d'Etat summarized the facts of the case as follows:⁶

Amadou Diop, a Senegalese national, served in the French army from February 4, 1937, until April 1, 1959, at which date, he started to receive a pension from the French government for his services. He lost his French citizenship upon Senegal's accession to independence in 1960. His military pension was replaced as of January 2, 1975, by an allowance that could not be indexed to the cost of living based upon the application of article 71 of Law 59-1454 of December 1959.⁷ This article became applicable to Senegalese nationals per article 14 of Law

³ Assemblée Nationale, Rapport 3363 fait au nom de la commission des finances, de l'économie générale sur le projet de loi de finances pour 2007, Annexe 6: Anciens Combattants, Mémoire et Liens avec la Nation, <http://www.assemblee-nationale.fr/12/budget/plf2007/b3363-a6.asp> (last visited May 21, 2009).

⁴ Loi 59-1454 du 26 décembre 1959 portant loi de finances pour 1960, J.O., Dec. 29, 1959, p. 12372 (translation by the author, N.A.).

⁵ The 1946 Constitution reorganized the French Empire. It created the French Union, a political entity created to replace the old colonial system. It comprised France, overseas departments, territories, settlements, United Nations trusteeships, and French colonies and protectorates. The Constitution ended the various special statuses applicable to the natives of the former colonies, as it declared that all French nationals and nationals of the other member countries of the French Union had the status of citizens of the French Union and as a result enjoyed the rights and freedoms guaranteed by the Constitution's Preamble. The 1958 Constitution replaced the French Union with the French Community.

⁶ Conseil d'Etat, N° 212179, 212211, Nov. 30, 2001.

⁷ Loi 59-1454 du 26 décembre 1959 portant loi de finances pour 1960, J.O., Dec. 29, 1959, p. 12372.

79-1102 of December 21, 1979,⁸ as amended by article 22 of Law 81-1179 of December 31, 1981.⁹

Amadou Diop filed an action before the Paris Administrative Tribunal against the Ministry of Defense to contest the Ministry's refusal to adjust his military pension. On July 17, 1996, the Paris Administrative Tribunal found in favor of the Ministry of Defense. Amadou Diop then appealed the Tribunal's judgment before the Paris Administrative Court of Appeal, which found in his favor. The Court found that article 71 of Law 59-1959 violated article 14 of the European Convention for the Protection of Human Rights and article 1 of the First Additional Protocol to this Convention. The Ministry of Defense and the Ministry of Economy appealed the decision of the Court of appeal before the *Conseil d'Etat*.

B. Decision of the *Conseil d'Etat*

The Conseil d'Etat let stand the judgment of the Paris Court of Appeal.¹⁰ It found:

Whereas...article 14 of the same Convention [European Convention for the Protection of Human Rights] provides that "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status;" that article 1 of the first Additional Protocol to the Convention states the following: "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law." The preceding provisions do not infringe upon the right of a state to enact laws it judges necessary to regulate the use of possessions in conformity with the general interest or to insure the payment of taxes or other contributions or fines.

Whereas, in conformity with article L.1 of the Civil and Military Pension Code, as worded by the Law of September 20, 1948, which is applicable in the case at hand,...pensions constitute claims that must be regarded as possessions within the meaning of article 1st of the First Additional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms.

Whereas, a distinction between persons placed in a same situation is discriminatory, within the meaning of article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms, if it is not objectively and reasonably justified, that it to say

⁸ Loi 79-1102 du 21 décembre 1979 de finances rectificative pour 1979 [Law 79-1102 of December 21, 1979, amending the finance law for 1979], art. 14, J.O., Dec. 22, 1979, p 3228. The 1979 Law originally stated that article 71 was applicable to nationals of the French Community as of January 1, 1980. The 1981 Law replaced that date with January 1, 1975.

⁹ Loi 81-1179 du 31 décembre de finances rectificative pour 1981 [Law 81-1179 of December 31, 1981, on amending finance for 1981] art. 22, J.O., Jan. 2, 1982, p 5.

¹⁰ Conseil d'Etat, N° 212179, 212211, Nov. 30, 2001, *Ministre de la Défense c/M.D.-Ministre de l'économie, des finances et de l'industrie c/M.D* (translation by the author, N.A.).

if it does not have a public utility purpose, or is not based on objective and rational criteria in keeping with the goals of the law;

Whereas it results from the wording of article 71 of the Law of December 26, 1959, that the nationals of the countries mentioned receive, in place of their pensions, an allowance whose value is not adjustable...; that, therefore, and whatever the initial intent of the legislator was...the court did not commit an error of law in finding that this article creates a difference of treatment between retirees due solely to their nationality.

Whereas retirement pensions constitute, for public servants, a deferred remuneration destined to insure material life conditions in accordance with the dignity of their past functions; that the difference in the situations existing between former public servants of France, whether they have French citizenship or are nationals from states that became independent, does not justify a difference in treatment in the matter of pensions; that, if it results from the preparatory work on article 71 of the Law of December 26, 1959, that this provision had for its objective to take into account the consequences of the independence of the countries mentioned in it and of the evolution of their economies, which differ from the evolution of the French economy,... the difference in treatment the provision creates based solely on nationality, between the beneficiaries of the pensions, cannot be regarded as a criterion in keeping with this objective; that the provision [article 71], being incompatible with article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the appeal court did not commit any error of law in finding that the provision could not justify the Ministry of Defense refusal to adjust the pension of M. D.

IV. Status of the 'De-crystallization' Process

The government took a first step towards a de-crystallization process in 2002. The Amended Finance Law for 2002,¹¹ completed by Decree 2003-1044 of November 2003¹² and a regulation of November 3, 2003,¹³ set forth complex mechanisms that resulted in the partial adjustment of pensions. The 2002 Law takes into account the residence of the veteran and the benefits adjustment relies on the purchasing power parities published yearly by the United Nations. The benefits received cannot be higher than those received by a French citizen. It also provides for the right to request the review of disability pensions for aggravation of infirmities or to renounce one's pension and opt for a lump sum that will take into account the age and the family situation of the veteran.

In one of its 2006 opinions, the *Haute Autorité de Lutte contre les Discriminations et pour l'Égalité des Chances* (High Authority for the Fight against Discrimination and for Equality

¹¹ Loi 2002-1576 du 30 décembre de finances rectificative pour 2002 [Amended Finance Law for 2002 of December 30, 2002], art 68, J.O., Dec. 31, 2002, p. 22070.

¹² Décret 2003-1044 du 3 novembre 2003 pris en application de l'article 68 de la loi de finances rectificative pour 2002 instituant un dispositif de réversion des prestations versées aux ressortissants des pays places antérieurement sous la souveraineté française résidants hors de France [Decree 2003-1044 implementing article 68 of the Amended Finance Law for 2002], J.O., Nov. 4, 2003, p 18755.

¹³ Arrêté du 3 Novembre 2003 pris pour l'application du décret 2003-1044 du 3 novembre 2003 [Regulation of November 3, 2003, implementing Decree 2003-1044], J.O., Nov. 4, 2003, p 18758.

or HALDE), an independent agency that monitors discrimination in France, stated that the 2002 Amended Finance Law imposes a residence criterion only on nationals of countries that used to be under French sovereignty and have lost their French citizenship, and therefore, still maintains a distinction based on nationality.¹⁴ The HALDE recommended that the government set forth a mechanism to adjust veterans' pensions without any discrimination based on nationality.¹⁵

The government did not entirely follow the 2006 HALDE opinion. Law 2006-1666 of December 21, 2006, on Finance for 2007¹⁶ aligned the war veterans allowances and military disability pensions with those received by French Nationals. The measures were not retroactive and took effect on January 1, 2007. In addition, veterans who receive these benefits must apply for the adjustment, as it is not automatic. As far as survivor benefits relating to disability pensions, they are adjusted only for those persons who reside in France or in its overseas *départements*. The civil and military pensions received by civil servants and career military personnel who have served at least fifteen years or more, or the pensions received by veterans mobilized in the French army who have completed between five and fifteen years of service and who were struck from the rolls due to service-related disability are not covered by the 2006 Finance Law.¹⁷

In another opinion rendered on March 5, 2007, the HALDE stated that the fact that veterans have to apply for the adjustment of their pensions raises the legal question of access to a right, in particular, where these veterans are domiciled abroad. The purpose of the 2006 Law can only be fulfilled if the veterans are informed of the modification of their pensions' legal regime. It also noted that the Finance Law for 2007 does not include a de-crystallization of the civil and military pensions and of survivor benefits, and that the Law sets forth a domicile condition for the survivor benefits in the case of disability pensions. The HALDE recommended that the government end the discrimination.¹⁸

Finally, on October 15, 2008, the Bordeaux Administrative Tribunal ordered the de-crystallization of the pensions of six Moroccan veterans.¹⁹ In addition, a draft law prepared by members of the Socialist and Communist groups of the National Assembly has been pending since November 14, 2008, before the Assembly. It aims at ending the discrimination by proposing a complete de-crystallization process.²⁰

¹⁴ Gisti, Haute Autorité de Lutte contre les Discriminations et pour l'Égalité des Chances: Délibération 2006-217 du 9 octobre 2006, http://www.gisti.org/IMG/pdf/halde_20061009.pdf (last visited May 26, 2009).

¹⁵ *Id.*

¹⁶ Loi 2006-1666 du 21 décembre 2006 de finances pour 2007 [Law 2006-1666 of December 21, 2006, on Finance for 2007], art. 100, J.O., Dec. 27, 2006, p. 19641.

¹⁷ *Id.*

¹⁸ Catred, *Anciens combattants: la loi de finances pour 2007*, <http://www.catred.org/Anciens-combattants-la-loi-des.html> (last visited May 26, 2009).

¹⁹ Philippe Leymarie, *Revalorisations des pensions d'anciens combattants marocains*, RADIO FRANCE INTERNATIONALE, http://www.rfi.fr/actufr/articles/106/article_73598.asp (last visited May 26, 2009).

²⁰ Assemblée Nationale, No 1228, Proposition de loi relative à la reconnaissance, aux conditions de vie et à l'accueil des anciens combattants originaires des États antérieurement liés à la France et ayant accédé à l'indépendance, <http://www.assemblee-nationale.fr/13/propositions/pion1228.asp> (last visited May 26, 2009).

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ISRAEL

VETERANS' BENEFITS FOR NON-CITIZENS

Executive Summary

Israel does not distinguish between Israeli citizens and foreigners who have volunteered to serve in the Israeli Defense Forces (IDF) in determining issues related to the receipt of veterans' benefits. The receipt of veterans' benefits depends on eligibility criteria that do not include place of residence or citizenship.

Former members of the South Lebanon Army who fought alongside IDF and their families are entitled to the same benefits as those accorded to IDF veterans upon death or injury. They are also entitled to special grants and assistance in finding residence and employment.

I. Introduction

Israeli law provides benefits to all veterans. While most veterans are Israeli nationals or permanent residents who were subject to mandatory military draft,¹ some veterans are foreigners who either chose to return to their countries or decided to remain in Israel. The law permits foreigners to volunteer for military service in the Israel Defense Forces (IDF).² Those volunteers who become members of the IDF military forces enjoy the same benefits as members of the IDF who were drafted. Foreign volunteers who choose to return to their native countries after the end of their service may not, however, enjoy benefits that are designed to facilitate the absorption of discharged soldiers into civilian life in Israel. These benefits include academic tuition participation and special government loans for the payment of rent, purchase of a residential apartment, and for opening a business.

A special law regulates the legal status and eligibility for benefits for former members of the South Lebanese Army (SLA) who fought with Israeli forces prior to the IDF withdrawal from Lebanon on May 23rd, 2000.³

¹ See Defence [sic] Service Law (Consolidated Version), 5746-1986 §1 & 45, 40 Laws of the State of Israel (hereafter LSI) 112 (5746-1985/86).

² Defense Service (Volunteering for Defense Service) Regulations, 5734-1974, Kovetz Hatakanot (Subsidiary Legislation) No. 3168 p. 1156 (1974).

³ South Lebanon Army (SLA), Global Security.Org website, available at <http://www.globalsecurity.org/military/world/para/sla.htm> (last visited May 21, 2009).

This report discusses and describes the eligibility criteria for veteran benefits for both foreign volunteers serving in the IDF, and of the SLA members who served independently but in close association with IDF during the Lebanon War.

II. Rights of Foreign IDF Volunteers

Foreign volunteers, both Jewish and non-Jewish, served in the IDF during Israel's 1948 War of Independence, and prior to that as well, in assisting the more than 31,000 Holocaust survivors with entering Palestine in violation of the British blockade against Jewish immigration.⁴

A special volunteer program is currently available for foreign Jewish youth ages 18-23, who are not Israeli citizens or children of Israeli citizens and who wish to volunteer "for a combat and significant military service in the Israel Defense Force."⁵ The program is based on the general authorization provided to the Minister of Defense in accordance with the Defense Service (Volunteering for Defense Service) Regulations, 5734-1974.⁶ The special volunteer program generally lasts 18 months, or 12 months in combination with 9 months of *yeshiva* (religious school) study.⁷

An examination of the definitions provided for the terms "soldier" and "discharged soldier" in the laws that bestow benefits on veterans and their families does not indicate any distinction between Israelis who were subject to the general national draft and foreigners who volunteered. Both the Fallen Soldier's Families (Pensions and Rehabilitation) Law, 5710-1950⁸ and the Discharged Soldiers (Reinstatement in Employment) Law, 5709-1949⁹ generally define a "soldier" as "a person in military service." The Invalids (Pensions and Rehabilitation) Law, 5719-1959 (Consolidate Version)¹⁰ defines a "discharged soldier" as "a person who has served in military service and has been discharged from the service."¹¹

The Fallen Soldier's Families (Pensions and Rehabilitation) Law, 5710-1950¹², as well as the Discharged Soldiers (Reinstatement in Employment) Law, 5709-1949,¹³ both bestow benefits on soldiers and the families of soldiers who were in military service on November 30,

⁴ Volunteers from Abroad, Israel Defense Force website, available at <http://www.aka.idf.il/giyus/general/?catID=58464> (last visited May 21, 2009).

⁵ *Id.*

⁶ Defense Service (Volunteering for Defense Service) Regulations 5734-1974, Kovetz Hatakanot No. 3168 p. 1156, *as amended*.

⁷ *Id.*

⁸ 4 LSI 115 (5710-1949/50), *as amended*.

⁹ 3 LSI 10 (5709-1949).

¹⁰ 13 LSI 315 (5719-1958/59), *as amended*.

¹¹ *Id.* §1.

¹² 4 LSI 115 (5710-1949/50), *as amended*.

¹³ The Discharged Soldiers (Reinstatement in Employment) Law, 5709-1949, 3 LSI 10 (5709-1949).

1947, fighting for the independence of the State of Israel, and on soldiers who were drafted into the IDF after that day.¹⁴

Similarly, the Absorption of Discharged Soldiers Law, 5754-1994¹⁵ does not distinguish between veterans based on their place of residence as long as they served for at least 12 months or were released prior to 12 months for reasons of health or disability.

Although no express exclusion from eligibility based on foreign residence was located, certain benefits accorded to veterans in accordance with the latter law may be interpreted as being only applicable domestically. For example, the Absorption of Discharged Soldiers Law authorizes the grant of special tuition subsidies for discharged soldiers who wish to complete their pre-university, university, or advanced level *yeshiva*. The law further authorizes the grant of government subsidies for the purpose of either renting or purchasing a residential apartment and for establishing a new business. The law also establishes special grants for the provision of personal deposits into veterans' bank accounts. Even if monetary deposits can possibly be used from anywhere, it seems that the subsidies for tuition, residence and business expenses were meant to be used for the absorption of discharged soldiers into Israeli society.

III. Rights of SLA Veterans

Although members of the SLA are not recognized as IDF veterans, they are entitled to many of the same rights. Members of the SLA fought with Israel for over twenty five years. The SLA was dismantled upon the withdrawal of the IDF from its self declared "security zone" in South Lebanon on May 23rd, 2000.¹⁶ More than 8,500 former SLA soldiers (approximately 2,300 families) arrived in Israel following the withdrawal. By 2004, 3,500 former SLA soldier (approximately 740 families) remained. It was believed that they were unable to return to Lebanon.¹⁷

In recognition of their contribution to Israel's security and their cooperation with the IDF, the Knesset (Israel's Parliament) passed the South Lebanon Army Persons and their Families Law, 5765-2004,¹⁸ (hereafter "the SLA Law"). The SLA Law regulates the status of SLA persons and their families who resided in Israel on December 15, 2004.

According to the SLA Law, former SLA members may be granted a permit for permanent residence, and Israeli citizenship upon their request.¹⁹ In addition, for the purpose of

¹⁴ *Id.* §2. The Fallen Soldier's Families (Pensions and Rehabilitation) Law, 5710-1950, 4 LSI 115 (5710-1949/50), as amended §1.

¹⁵ Sefer HaHukim (Book of Laws, Official Gazette, hereafter S.H.) 5754 No. 1461 p. 132 (1994).

¹⁶ South Lebanon Army (SLA), Global Security.Org, available at <http://www.globalsecurity.org/military/world/para/sla.htm> (last visited May 21, 2009).

¹⁷ *The Knesset Approved: Citizenship will be granted to SLA people*, YNET ONLINE NEWS, available at <http://www.ynet.co.il/articles/1,7340,L-3015146,00.html> (last visited May 27, 2009).

¹⁸ S.H. 5765 No. 1965 p. 36 (2004).

¹⁹ *Id.* §3.

grants and benefits under the Fallen Soldier's Families (Pensions and Rehabilitation) Law, 5710-1950,²⁰ relatives of SLA members who died in battle are subject to the same rules that apply to the family members of IDF fallen soldiers.²¹ Similarly, for the purpose of determining the level of disability, compensation and payments under the Invalids (Pensions and Rehabilitation) Law, 5719-1959 (Consolidate Version),²² the status of disabled SLA members is the same as that of IDF disabled veterans.²³

The SLA Law authorized the grant of special recognition awards to SLA members,²⁴ and ordered the government “to act for finding solutions to their residential and employment needs.”²⁵

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²⁰ 4 LSI 115 (5710-1949/50), *as amended*.

²¹ South Lebanon Army Persons and their Families Law, 5765-2004, S.H. 5765 No. 1965 p. 36 (2004),§6.

²² 13 LSI 315 (5719-1958/59), *as amended*.

²³ South Lebanon Army Persons and their Families Law, 5765-2004, S.H. 5765 No. 1965 p. 36 (2004),§7.

²⁴ *Id.* §8.

²⁵ *Id.* §14.