



## QUAKER COUNCIL FOR EUROPEAN AFFAIRS

### The Right to Conscientious Objection in Europe: A Review of the Current Situation

#### Country Report: GERMANY

##### Conscription

Conscription is enshrined in Article 12.1 of the 1949 Constitution and is further regulated by the 1956 Law on Military Service.

The length of military service is 9 months.

All men between the ages of 18 and 23 are liable for military service. Reservist obligations apply up to the age of 45.

In recent years, the future of conscription has been discussed extensively in Germany. So far the government has decided to maintain conscription, but the size of the armed forces and the number of conscripts has been reduced significantly.

Consequently, fewer and fewer conscripts are actually called up for service. Since 2004, men who are married or who live together with a partner are legally exempt from service. In addition, the maximum drafting age has been reduced from 28 to 23 years. Men who have not yet been called up by the age of 23 thus get exempt from service. In previous years this was actual practice already, but in 2004 these grounds for exemption were included in the Law on Military Service.

##### Statistics

The armed forces comprise 190,000 troops, including 60,000 conscripts (2004). Every year approx. 415,000 young men reach conscription age.

In the next years the armed forces will be further reduced and the government plans to further reduce the number of conscripts to 47,000 by 2010. Consequently even fewer conscripts will be called up for service in the future. In 2005, 67,000 conscripts will be called up for military service; from 2007 onwards this will be 55,000.<sup>1</sup>

##### Conscientious objection

###### Legal basis

The right to conscientious objection is included in Article 4b of the 1949 Constitution. Legal provisions are laid down in the 2003 Law on Conscientious Objection (Kriegsdienstverweigerungsgesetz), which replaced the previous 1983 Law on Conscientious Objection.<sup>2</sup>

The new Law on Conscientious Objection entered into force on 1 November 2003.

###### Scope

Both religious and non-religious grounds for conscientious objection are legally recognized. According to Article 1 of the Law on Conscientious Objection, CO status is to be granted to those who refuse military service for reasons of conscience as described in the Constitution. Article 4b of the Constitution in fact states that "no one shall be compelled to perform armed war service contrary to his conscience".

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<sup>1</sup> Figures provided by the Ministry of Defence, quoted in: Zentralstelle KDV : KDV Aktuell 1/2004, 15 September 2004.

<sup>2</sup> Law on Conscientious Objection, [http://bundesrecht.juris.de/bundesrecht/kdvg\\_2003/inhalt.html](http://bundesrecht.juris.de/bundesrecht/kdvg_2003/inhalt.html)

### **Time limits**

There are no time limits for submitting CO applications. Applications can thus be made before, during and after military service, by both serving conscripts and reservists.

Applications that are made by serving conscripts are usually decided on in two to four weeks. Approx. 2,500 CO applications per year are actually made by serving conscripts. Approx. 1,000 applications per year are made by reservists.<sup>3</sup>

### **Procedure**

Applications must be made to the Federal Office of Civilian Service (Ministry of Youth, Family Affairs, Women and Health). Applications must include a reference to Article 4b of the Constitution. No personal interview takes place and applications are not individually examined. Consequently, almost all applications are automatically granted.<sup>4</sup>

If the application is rejected, there is a right to appeal to the administrative court

### **Professional soldiers**

The right to conscientious objection also applies to professional soldiers. Some provisions on conscientious objection for professional soldiers are laid down in a government decree of 21 October 2003. The application procedure for professional soldiers who wish to be discharged from the armed forces because of conscientious objection is comparable with the application procedure for conscripts.

Applications must be made to the local military commander and must include a motivation letter in which the applicant explains in more detail how and when his/her problems of conscience started. The application is forwarded to the Federal Office of Civilian Service (Ministry of Youth, Family Affairs, Women and Health), which makes a decision. The Federal Office may ask the opinion of the military commander or the personnel office. If the Federal Office has doubts about the application, it may order the applicant to attend for a personal interview. In practice, this does not seem to happen often. The Federal Office needs to make a decision on the application within 8 weeks.<sup>5</sup>

If a professional soldier is recognized as a conscientious objector he needs to be released from the armed forces immediately (2003 Government Decree, Article 3.2).

The application procedure is the same during wartime or time of emergency or during combat (2003 Decree, Article 3.6).

It is believed that every year approx. 80 professional soldiers ask for discharge from the armed forces because of conscientious objection. There are no detailed figures available about the number of applications granted, but most applications are reportedly being granted.

The military authorities regard a release from the armed forces which is based on conscientious objection as a release on someone's own initiative. This means that a professional soldier who has been recognized as a conscientious objector, needs to pay back the costs of any courses that (s)he has followed in the military and that have a civilian use.<sup>6</sup>

### **Substitute service**

The length of substitute service is 9 months, which is the same length as military service. The length of substitute service was actually reduced from 10 months in 2004, meaning that after 40 years, substitute service now has the same duration as military service.

Substitute service is administered by the Federal Office of Civilian Service (Ministry of Youth, Family Affairs, Women and Health). Substitute service is mainly performed in social welfare institutions, such as hospitals, nursing and working with handicapped people. The salaries of

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<sup>3</sup> 'Informationen zur Kriegsdienstverweigerung', [www.zentralstelle-kdv.de](http://www.zentralstelle-kdv.de)

<sup>4</sup> Until 2003, applicants could be ordered to provide additional information or be ordered for a personal interview. Although this didn't happen very often in practice, this option was abolished in the new Law on Conscientious Objection of 2003.

<sup>5</sup> Information provided by Zentralstelle KDV, August 2004.

<sup>6</sup> Information provided by Zentralstelle KDV, August 2004.

COs are partially paid for by the employing organisation and partly by the government. A few placements are made with (non-profit) non-governmental organisations.

COs who have completed one year of voluntary work abroad, mostly ecological or social work, do not have to perform substitute service.

After completing substitute service, COs have no reservist duties. During wartime the right to conscientious objection is guaranteed and COs may not be called up for military service.

### **Practice**

In the previous ten years approx. 150,000 CO applications were made per year. Most applications (approx. 95 per cent) are granted.

The following table gives the number of granted CO applications in recent years:<sup>7</sup>

2000	146,099
2001	143,312
2002	153,925
2003	147,809
2004	115,779

The following table gives the number of COs performing substitute service in recent years:<sup>8</sup>

2000	124,063
2001	118,252
2002	112,378
2003	103,948
2004	82,046

The number of placements in substitute service is supposed to be similar to the number of conscripts in the armed forces - as laid down in the government agreement. However, in recent years there are actually more COs in substitute service than conscripts serving in the armed forces. For example, in 2004 78,343 conscripts performed military service and 82,046 COs were called up for substitute service.<sup>9</sup>

This inequality will, in fact, be increasing in the coming years. The Federal Office has stated in 2005, 90,000 COs will be called up for substitute service. By comparison, in 2005 only 67,000 conscripts will be called up for service in the armed forces.<sup>10</sup>

Still, the number of COs by far exceeds the number of available workplaces. Consequently, a considerable number of COs are not called up for substitute service and are in practice exempt from service altogether. This trend will continue in the coming years.

Most COs (approx. 80 per cent) perform their substitute service within the health sector. The contribution of COs to the German health sector has often been cited as an obstacle for the abolition of conscription. Charitable organisations regularly stated that the abolition of conscription would have serious consequences for the future of the health sector as it would be financially impossible to replace all COs by regular paid staff.

### **Total objection**

COs who refuse to perform both military and substitute service are usually sentenced to between 62 and 84 days of military arrest, over periods of 7, 14 and 21 days. Afterwards they

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<sup>7</sup> Bundesamt für Zivildienst:: Fortlaufende Statistik der anerkannten Kriegsdienstverweigerer in Deutschland seit 1971, [www.zivildienst.de](http://www.zivildienst.de)

<sup>8</sup> Bundesamt für Zivildienst: Jahresdurchschnittszahlen ZDL, [www.zivildienst.de](http://www.zivildienst.de)

<sup>9</sup> This figure does not include the 3,500 COs who were exempt from substitute service because they completed a year of voluntary work abroad.

<sup>10</sup> KDV: Es erinnert an ein Roulettespiel und an Willkür, 18 February 2005, [www.zentralstelle-kdv.de](http://www.zentralstelle-kdv.de)

may be prosecuted under Article 109 of the Military Penal Code for disobeying orders and “refusal to perform national military service”. They are sentenced by district courts, which mean that the sentences can vary.<sup>11</sup>

Those who have been granted CO status and state that they cannot perform substitute service for reasons of conscience, but who promise to work in social welfare institutions for a certain amount of time get exempt from substitute service. Obviously, this option was introduced to facilitate Jehovah’s Witnesses, who refuse to perform substitute service but comply with it if they are sentenced to do it.

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<sup>11</sup> War Resisters’ International: Two total objectors in military arrest, 22 October 2003.