



QUAKER COUNCIL FOR EUROPEAN AFFAIRS

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

Country Report: AUSTRIA

Conscription

Conscription is enshrined in Article 9(a) and 19(a) of the Constitution and is further regulated by the 1990 Defence Law (Wehrgesetz).

The length of military service is 8 months. Conscripts may also serve for 6 months and serve the remaining two months at a later stage in reservist units.

All men between the ages of 18 and 35 are liable for military service. Reservist duties apply for 15 years after completion of military service, and up to the age of 50 or 65 for officers.¹

In 2004, a government commission concluded a review of the future of the Austrian armed forces. The report of the commission includes several proposals, including a reduction of the duration of military service to six months, possibly by 2007. Chancellor Schüssel has proposed reducing it to 6 months by 2006 already. The reform commission has also discussed the possible abolition of conscription by 2010. As the report of the reform commission still needs to be discussed by the Austrian Parliament, no decisions have been made yet.²

Statistics

The armed forces comprise 40,000 troops, including 17,000 conscripts. Every year approx. 49,000 young men reach conscription age. Approx. 75 per cent are recruited.

Conscientious objection

Legal basis

The right to conscientious objection has been legally recognized since 1974. The right to conscientious objection is included in Article 9(a) of the Constitution, which states that citizens who refuse to perform military service for reasons of conscience must perform an alternative service. Its further legal basis is laid down in the 1986 Law on Civilian Service (Zivildienstgesetz).³

Scope

Both religious and non-religious grounds for conscientious objection are legally recognized. According to Article 2 of the Law on Civilian Service, the right to conscientious objection applies to "those who can't perform military service because they - except in cases of personal emergency - denounce for reasons of conscience to use armed violence against people and performing military service may get them into conflict with their conscience".

¹ www.bmlv.gv.at/rekrut (Ministry of Defence)

² 'Cuts proposed for Austrian Forces, Draft', www.defensenews.com, 14 February 2005.

³ Law on Civilian Service, www.zivildienstverwaltung.at/material/zdg.pdf

Time limits

There are several time limits for submitting CO applications (Law on Civilian Service, Article 2.2).

Applications must be made within six months of receiving the notification of fitness for military service, but at least two days before receiving call-up papers for military service.

Applications cannot be made by serving conscripts. Applications can be made after completion of military service, but in this case the application needs to be made within three years of the first day of military service. After this period, reservists can no longer make a CO application.

There are no legal provisions for the right to conscientious objection for professional soldiers.⁴ The Law on Civilian Service only applies to conscripts and does not contain provisions for professional soldiers.

Procedure

Applications must be made to the Ministry of Interior. The Ministry has produced a standard form, which basically states that the applicant agrees with the wording of Article 2 of the Law on Civilian Service.

Since 1991, no personal interviews take place. Consequently, applications are almost automatically granted, provided they are submitted within the time limits. An application may be rejected if the applicant has been convicted for a criminal offence, if the applicant is employed by the state police, if the applicant has a gun licence, or if the applicant's objections to the use of violence are considered to be conditional and politically motivated (Law on Civilian Service, Article 5(a)).

If the application is rejected, there is a right of appeal to a civil court.

Substitute service

The length of substitute service is 12 months. This is one and a half times the length of military service.⁵

Substitute service is administered by the Ministry of Interior. Substitute service may be performed in several institutions in the public sector, such as hospitals, social work and emergency relief. It may also be performed with non-governmental organisations, such as the Austrian Red Cross.

COs may also perform a 14 month voluntary service abroad. COs who have completed such service, which usually consists of peace work or social work, are exempt from substitute service.

After completion of substitute service, COs have reservist duties up to the age of 50. During time of war or emergency, COs may be called up for "extraordinary civilian service", which consists of several unarmed duties such as emergency aid (Law on Civilian Service, Article 21). So far, COs have never been called up for reservist duties in practice.

In 2000, the government greatly reduced the payment of COs. Before 2000, COs were paid by the government and received approximately the same payment as conscripts in the armed forces. Now, the salaries of COs have to be partially paid for by the employing organisations themselves. The government has set guidelines on appropriate payment, but as these are very low this effectively means that CO salaries have been cut by half. Austrian CO groups have lodged several complaints with the Constitutional Court, which has in fact ruled that the new payment regulations are a violation of the constitutional right of free choice between military and civilian service. As the Constitutional Court did not rule which body is to be responsible for increasing CO salaries, the issue has still not been settled. Consequently, in practice the payment of COs remains far below the payment of conscripts in the armed forces.⁶

⁴ Exercise of the right of conscientious objection to military service in Council of Europe member states, Report Committee on Legal Affairs and Human Rights, Doc. 8809 (Revised), 4 May 2001.

⁵ Before 1991, substitute service was of the same duration as military service. When the Austrian government abolished individual examinations of CO applications in 1991, it apparently wanted to make substitute service less attractive by increasing its duration. Consequently, substitute service was increased to 10 months in 1991, to 11 months in 1994 and to 12 months in 1996.

⁶www.zivildienst.at (Austrian Union of Conscientious Objectors).

Practice

The following table gives the number of granted CO applications in recent years:⁷

1999	7,348
2000	6,326
2001	8,249
2002	8,932
2003	9,596
2004	10,335

Parallel to the review of the armed forces and the planned reduction of the length of military service, the future of substitute service is also the subject of political debate. In 2004 the government installed a commission, chaired by the president of the Austrian Red Cross, to draw up a proposal for the future of substitute service and its consequences for the Austrian health and social sector. The commission presented its final report in January 2005 and proposes reducing the length of substitute service to 9 months. The commission has also proposed models for the development of voluntary or compulsory service for young people, in case conscription is abolished.⁸ The report of the commission will be further discussed by the Austrian Parliament during 2005.

Background

During the 1990s there were several cases of COs whose applications had been rejected because they were not submitted within the time limit. They continued to refuse military service and were consequently sentenced to up to one year's imprisonment under the Military Penal Code for "failure to comply with call-up orders". Around 1997 this attracted considerable international attention and some of the COs concerned were in fact adopted as prisoners of conscience by Amnesty International. In 1997, Schwechat District Court acquitted a CO of these charges and ruled that he could not be reproached for not knowing about the time limits, especially because the authorities had made no particular efforts to inform the public about the introduction of the time limits.

Since 1998, there have been no known cases of COs being imprisoned after not submitting their CO applications within the time limit.⁹

⁷ '2004 Wieder ein neuer Zuweisungsrekord', www.zivildienstverwaltung.at (Ministry of Interior).

⁸ Zivildienstreformkommission: Endbericht, www.zivildienstreform.at

⁹ Amnesty International: Conscientious objection to military service: A summary of current concerns (EUR 13/001/1997).