



# Conscience and Peace Tax International

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NGO in Special Consultative Status with the Economic and Social Council of the UN

International non-profit organization (Belgium 15.075/96)

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## **Submission to the 89th Session of the Human Rights Committee: March 2007 Conscientious Objection to Military Service: Issues for the Country Report Task Forces AUSTRIA**

**SUMMARY: Conscientious objection to military service has been recognised in law for as long as obligatory military service has existed in the modern Austrian state. There are however a number of serious concerns with the details of the current legislative provisions.**

### Background

Under the 1919 Treaty of Versailles, Austria was prohibited from maintaining conscription. From 1938 to 1945 conscription into the German Army was imposed. Opposition generally went underground, but, as in Germany itself, an unknown number of conscientious objectors openly declared themselves. Most were shot.

Obligatory military service in Austrian armed forces was introduced only by the Defence Act (*Wehrgesetz*) of 1955, which expressly recognised conscientious objection and permitted recognised conscientious objectors to perform non-combatant service in the medical or clerical corps; this service was 12 months, as against 9 months in the military.<sup>1</sup> This Act has been revised several times - most recently in 1990 and 2001.

A civilian “substitute” service<sup>2</sup> for conscientious objectors was introduced in the Civilian Service Act (*Zivildienstgesetz*) of 1974. The legislation currently in force is the revised Act, No 679/1986, with subsequent amendments, most recently in Act No. 106/2005. Initially, the duration of civilian service was the same as that of military service. All claims of conscientious objection were scrutinised individually and involved a personal appearance in front of the investigating commission. The amending Act (*ZDG-Novelle*) of 1991 abolished this process, but at the same time

<sup>1</sup> Prasad, D. & Smythe, T. , Conscription - a World Survey: Compulsory Military Service and Resistance to it, London, (War Resisters International), 1968, pp 10, 11.

<sup>2</sup> Although the usual term in English is “alternative service”, Austrian sources stress that their civilian service is an “*Ersatzdienst*” - a substitute or replacement service. “*Alternative*” in German is seen as implying an option open to all, not just conscientious objectors.

increased the length of the Civilian Service from 8 to 10 months. There were further increases to 11 months in 1994 and to 12 months in 1996. Amending Acts of 2005 reduced the duration of military and civilian service to six months and nine months respectively, thus maintaining the 150% ratio.

Under the current arrangements all resident male Austrian citizens are obliged to register for military service during the calendar year of their 18<sup>th</sup> birthday; thus those born in 1989 are being registered in 2007. The only absolute exceptions are for priests, members of holy orders, theological students training for a career in the ministry, or those who following such studies are engaged in pastoral work or spiritual teaching - provided in all cases that they are members of “recognised religions”<sup>3</sup>. The Human Rights Committee has in the past had occasion to criticise states which afford a discriminatory total exemption to Jehovah’s Witnesses, most recently Finland.<sup>4</sup> In this instance, however, and notwithstanding their well known position of conscientious objection to military service, the Jehovah’s Witnesses, having the status only of a “registered religious community”<sup>5</sup>, do not benefit from the complete exemptions granted to members of recognised churches. Two full-time Jehovah’s Witness ministers, Philemon Löffelmann and Markus Grützl, have lodged Applications at the European Court of Human Rights over this issue.<sup>6</sup>

A citizen liable for military service who has his principal residence outside Austria must report the fact to the nearest embassy or consulate. Should he return to live in Austria before the age of 35 he has three weeks in which to report to the provincial military headquarters. Dual nationals “who fulfil the requirements of the Hague Protocol” are required to supply proof that they have already performed obligatory military service in the forces of another contracting State.

Those in the appropriate age cohort are summoned to register on a specific date according to commune of residence and alphabetical order of name. The summons also applies in principle to anyone liable to military service who has for any reason not perviously registered. Identity documents and a considerable amount of medical information must be supplied; the principal function of this process is to identify any medical hindrances to recruitment. Devout Islamic and Jewish recruits must provide certification from the appropriate religious authorities (which are both on the list of “recognised religions”); special arrangements will be made for their call up so that their military duties will not conflict with their religious observances; if this information is not provided until after call-up and it is impossible to make suitable arrangements the recruit concerned will be stood down and called up the following year.

From his seventeenth birthday, a citizen may anticipate the summons to register and, subject to the consent of his parent or guardian, may choose to enlist for his obligatory military service before his eighteenth birthday. No recruit is subject to mandatory call-up until after his eighteenth birthday. The Committee on the Rights of the Child, in its concluding observations on Austria’s initial report under the Optional Protocol to the Convention on the Rights of the Child on children in armed conflict (OP/CAC), noted “that Section 9, paragraph 2, of the National Defence Act, sets the minimum age of voluntary recruitment at 17 years.” and recommended “that the State

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<sup>3</sup> See paras 290 - 320 of the State Report (CCPR/C/AUT/4) and the list at [www.help.gv.at/Content.Node/82/Seite.820100.html](http://www.help.gv.at/Content.Node/82/Seite.820100.html)

<sup>4</sup> Concluding observations on the Fifth Periodic Report of Finland (CCPR/CO/82/FIN), Para 14.

<sup>5</sup> The same is true of two other churches whose members have traditionally refused military service, the Mennonites and the Seventh Day Adventists.

<sup>6</sup> Applications No 42967/98 and 49686/99, both declared admissible on 1<sup>st</sup> February, 2005.

party consider the possibility to increase the minimum age for voluntary recruitment to 18 years”<sup>7</sup>; the Committee did not address the questionable assumption that an option regarding the timing of enlistment for obligatory military service made this “voluntary recruitment”, and thus, subject to certain conditions, permissible under the OP/CAC.

It is believed that the summons to register is accompanied by written information about the possibility of civilian service for conscientious objectors.<sup>8</sup> No mention of conscientious objection nor of civilian service can however be traced in the section of the Ministry of Defence website<sup>9</sup> containing information for recruits; for such information a conscientious objector would have to find the website of the Civilian Service Agency (*Zivildienstverwaltung*).

The requirement to perform military service applies until the acceptance of an application to perform Civilian Service, which must incorporate a declaration of conscientious objection which fits the description in the Act. Helpfully, the application form which may be downloaded from the website of the Civilian Service Agency gives the recommended wording in a preprinted declaration; all that the applicant needs to do is add his signature. The declaration reads:

“I hereby expressly declare: a) that I am unable to perform military service because I refuse on grounds of conscience to resort to armed force against other human beings - except in self-defence or in emergency to protect others - and thus the performance of military service would present me with a crisis of conscience b) for that reason I wish to perform civilian service.”<sup>10</sup>

The Austrian authorities have made it clear, however, that a conscientious objector is free to make a declaration in his own words, and that the application need not be made on the prescribed form; it may even in the first instance be registered orally.<sup>11</sup> This could be important in view of the very strict time limits which apply. Under Article 1(2) of the Civilian Service Act application to perform Civilian Service must be made within six months of receiving notification of fitness for military service following first registration; the right to apply for Civilian Service is however suspended from two days before the receipt of call-up notice until military service is performed or the call-up notice is rescinded; there is no possibility of a transfer to Civilian Service after call-up. Moreover reservists may not declare themselves conscientious objectors until three years have elapsed from the day of their first call-up. There are no legislative provisions to allow the release of regular members of the armed forces who declare a conscientious objection.

Under Article 5a(1) of the Act those who have been convicted and sentenced to more than six months imprisonment for an offence involving violence or the threat of violence with the use of a firearm or explosives are permanently debarred from performing Civilian Service. In the case of a genuine character reform or conversion the requirement thereafter to perform armed military service would seem a bizarre

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<sup>7</sup> UN Document Ref. CRC/C/OPAC/CO/2, January 2005, paras 5 and 6.

<sup>8</sup> Ibid.

<sup>9</sup> [www.bmlv.gv.at/rekrut](http://www.bmlv.gv.at/rekrut)

<sup>10</sup> “Ich erkläre hiemit ausdrücklich, a) die Wehrpflicht nicht erfüllen zu können, weil ich es - von den Fällen der persönlichen Notwehr oder Nothilfe abgesehen - aus Gewissensgründen ablehne, Waffengewalt gegen andere Menschen anzuwenden und daher bei Leistung des Wehrdienstes in Gewissensnot geraten würde, b) deshalb Zivildienst leisten zu wollen.”

<sup>11</sup> Reply of the Austrian Government to the questionnaire on “best practices concerning the right of everyone to have conscientious objections to military service”, circulated by the Office of the High Commissioner on Human Rights, 2003.

form of double punishment for past misdemeanours. Members of the constabulary (*Wachkörper*) of regional authorities are also debarred from Civilian Service (Article 5a(2); presumably on the grounds that they will have carried weapons. It is indeed implied in Article 6(3)(3) that having held a firearms licence for any purpose debars a person from Civilian Service.

It is reported<sup>12</sup> that in 2000 under new payment arrangements the remuneration of those performing Civilian Service were reduced to approximately half that received by military conscripts; that this discrimination had been found by the Constitutional Court to be unconstitutional, but that as of early 2006 the situation had not been resolved.

### **Suggestions for the list of issues:**

- 1) The State Party should be asked to explain why clergy and students training for the ministry, or their equivalents, in the “registered religious communities” (most if not all of which are part of trans-national faith communities of long standing<sup>13</sup>) do not enjoy the complete exemption from military and any substitute service afforded to their counterparts in “recognised religious communities”.**
- 2) The State Party should be asked to explain the discrepancy in length between military service and substitute civilian service for conscientious objectors.**
- 3) The State Party should be asked how it reconciles the strict time limits on applications to be excused military service on the grounds of conscientious objection, and some of the other exclusions, with the freedom of those affected to change their religion or beliefs.**
- 4) The State Party should be asked for information on the current situation regarding remuneration in civilian and military service and whether it has now been possible to give effect to the rulings of the Constitutional Court in this respect.**

22<sup>nd</sup> February 2007.

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<sup>12</sup> Stolwijk, M., The Right to Conscientious Objection in Europe: A Review of the Current Situation, Quaker Council on European Affairs, Brussels, 2006, p8.

<sup>13</sup> Registered religious communities as at 2.1.2007, according to the list on the Austrian government website at [www.help.gv.at/Content.Node/82/Seite.820100.html](http://www.help.gv.at/Content.Node/82/Seite.820100.html), were: the Bahá’i community; the Baptist Union; the Evangelical Union; the Christian Community (movement for religious renewal in Austria); the Free Christians /Pentecostals; the Hindu community; the Jehovah’s Witnesses; the Seventh Day Adventist Church; the Mennonites and the Pentecostalist Church of God.