

SUBMISSION

TO THE 133rd SESSION OF THE HUMAN RIGHTS COMMITTEE

GERMANY

Military service, conscientious objection and related issues

Updated August 2021

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1. GERMANY BASIC INFORMATION

Population (July 2021 est.)¹ 79,903,481

Military expenditure

In millions of US \$ at current prices and exchange rates: 49,276.8 m.²

Per capita \$: 590.³

As percentage of gross domestic product: 1.3% of GDP (2019), 1.5% of GDP (2020 est.)⁴. The percentage has been increasing since 2011.

Military service

In July 2011, compulsory military service was suspended but not abolished.

Military service is still compulsory in case of state of emergency and for national defence (wartime).

Underage recruitment

Minimum recruitment age⁵: 17 years old.

Recruitment of 17-year-old in 2019: 1.706 17-year-old recruits.

(In 2019, they represent the 8,5 % of the total number of commencements of duties).

Armed forces

Active strength (2020): approximately 180,000 (62,000 Army; 16,000 Navy; 28,000 Air Force, 27,000 Joint Support Service; 20,000 Medical Service, 13,000 Cyber and Information Space Command; 14,000 other). Germany in 2020 announced it planned to increase the size of the military to about 200,000 troops by 2024.⁶

¹ Central Intelligence Agency (CIA), The World Factbook (2021), available here: <https://www.cia.gov/the-world-factbook/countries/germany/#people-and-society>.

² Stockholm International Peace Research Institute (SIPRI), Database on military spending available here: www.sipri.org/databases/milex.

³ *Ibidem*.

⁴ Central Intelligence Agency (CIA), *op. cit.*

⁵ Child soldier initiative, Child Soldiers World Index, available here: www.childsoldiersworldindex.org.

⁶ Central Intelligence Agency (CIA), *op. cit.*

2. CONSCIENTIOUS OBJECTION OF PROFESSIONAL MEMBERS OF THE ARMED FORCES (ARTICLE 18 OF THE COVENANT)

Recognition of the right to Conscientious objection

Despite the fact that since 2011 military service is no longer compulsory, the right to refuse to render military service involving the use of arms on grounds of conscience remains enshrined in Article 4 (3) of the Basic Law:

“No person shall be compelled against his conscience to render military service involving the use of arms. Details shall be regulated by a federal law.”

Indeed, military service is suspended during peacetime, but it is still compulsory in case of state of emergency and for national defence (wartime).

Procedural aspect: the application

Decisions on whether an individual is entitled to recognition as a conscientious objector are taken by the Federal Office of Family Affairs and Civil Society Functions upon application.

The application must contain reference to the fundamental right to conscientious objection as defined in the first sentence of Article 4 (3) of the Basic Law. A full Curriculum vitae must be enclosed with the application, as a detailed description of the person’s reasons for refusing to render military service.

Procedural aspect: decision making process and timing issue

The Federal Office of Family Affairs and Civil Society Functions will recognise the applicant as a conscientious objector if:

- the application is complete,
- the reasons set out can support the right of conscientious objection, and
- the application as a whole and any other facts known to the Federal Office do not provide any reason to doubt the correctness of the details provided.

If there is any doubt as to the correctness of the details, the applicant will be given one month’s time to respond to the issues raised. If doubts remain, an oral hearing (interview) may be held. This interview is not open to the public.

If an application is rejected, the applicant may file a complaint with the Federal Office. The decision taken by the Office following such a complaint may be appealed in the courts. An appeal should be lodged with the competent administrative court.

In 2018, 127 requests for discharge on grounds of conscience were accepted: 41 basic soldiers, 63 non-commissioned officers and 23 officers. The acceptance rate of requests is 60-70%.⁷

Similarly, in 2019, 126 requests for discharge on grounds of conscience were accepted; and of these only 25 were approved in first instance and others are still in process. In 2019, 27 recognized conscientious objectors have been dismissed officially from the army.⁸

⁷ European Bureau for Conscientious Objection (EBCO), Annual report Conscientious objection in Europe 2019, February 2020.

⁸ European Bureau for Conscientious Objection (EBCO), Annual report Conscientious objection in Europe 2020, February 2021, based on the answer that was given on 30 June 2020 by the German Government to a request of the parliamentary group DIE LINKE available here (in German): <https://dipbt.bundestag.de/doc/btd/19/204/1920480.pdf>.

About the timing issue, there are not official figures about the duration of the recognition procedure for professional members. It has been estimated that it lasts between 9 and 10 months, at least for cases without complaint or appeal procedures.⁹

Indeed, it has been reported a case of a female member of the armed forces that was successfully helped by a law firm to enforce her application without any appeal. The process for her application lasted 9 months to come to an end.¹⁰

Generally, applicants have to remain within the armed forces until their application is accepted.

Even if during this long period they should perform a type of military service that does not bring them into conflict with their conscience, they are exposed to a high psychological pressure because comrades and superiors are usually informed about the application. This can lead to a long period of cutting ties and avoiding in an environment disapproving their decision.

In order to improve the situation of professional members of armed forces that develop a conscientious objection, it would be necessary to reduce the time for the recognition and possibly grant an (unpaid) leave starting from the filing of the application.

Financial aspect of the recognition

Conscientious objectors who are recognized during their contract period of serving as professional soldier meet regularly financial problems.

Indeed, recruits have to pay back their training costs. The army can insist that this is done as a lump sum, rather than in staged payments.

In this context a judgement has been pronounced in September 2019 by the administrative court of Halle/Saale: the court ruled that the army had been overstating the repayments legally due.¹¹ The maximum repayment required is the amount fixed by the federal law concerning the promotion of education and training, that students, pupils and trainees can apply for (in 2019 it was 853€ per month).¹²

3. THE NEW VOLUNTARY MILITARY SERVICE IN THE AREA OF HOMELAND SECURITY

Beginning on 1st September 2020, Germany started a new Voluntary military service in the area of homeland security ("Freiwilliger Wehrdienst im Heimatschutz").

Whereas the *traditional* voluntary military service can be done for a duration between 7 and 23 months and requires the readiness to serve out of area, the new homeland security service is to be fulfilled exclusively in Germany: 7 months of military and civil training followed by 5 months of reserve duties in 6 years.

As for the normal voluntary military service, this new type of service is open for 17 years old under-aged recruits (see para 4 of this submission).

Many grassroot associations have expressed their concern about this new military service. For in-

⁹ Information from Mr. Friedhelm Schneider (DE), member of the European Bureau for Conscientious Objection (EBCO), January 2021.

¹⁰ German Law firm "Korzus und Partner", blog post available here (in German): <https://korzus-partner.de/erfolgreicher-kdv-antrag-ohne-widerspruchs-oder-klageverfahren-neues-aus-dem-soldaten-und-wehrrecht/>.

¹¹ European Bureau for Conscientious Objection (EBCO), op cit., p. 15.

¹² Verwaltungsgericht Halle/Saale: Judgement 5 A 621/17 HA of 24 September 2019.

stance, the Action Committee Service for Peace (AGDF) and the Protestant association for conscientious objection and Peace (EAK) stated that the new voluntary service is being created with the aim to increase the recruitment of minors in the German armed forces.¹³ In addition, this service includes training of firearms for underage volunteers and increases the mix between military and civilian duties and responsibilities which may lead to an expansion of military activities in domestic territory.

Moreover, it is not clear if and how the right to conscientious objection would be recognised to those who will develop an objection during the training or after as a reservist.

On 1st July 2021 the second contingent of participants started to do their voluntary military service in homeland security¹⁴.

4. RECRUITMENT OF 17-YEAR-OLD VOLUNTARY CHILDREN AND CASES OF ALLEGED SEXUAL-RELATED CRIMES AGAINST CHILD RECRUITS (ARTICLES 7 AND 24 OF THE COVENANT)

In Germany, the minimum age for voluntary recruitment into the armed forces is 17 years.

This issue has been already raised the concern of the UN Committee on the Rights of the Child (CRC) in its Concluding Observations to the Germany initial report under the Optional protocol on the involvement of children in armed conflict (CRC/C/OPAC/DEU/CO/1, para. 11), and as well in its List of issues in relation to the combined third and fourth periodic reports of Germany (CRC/C/DEU/3-4, para. 17).

In 2019, 1,706 17-year-old recruits enrolled in the armed forces, the ratio of underage soldiers represented 8.5 % of the total number of commencements of duties (compared to 8.4 % in 2018).¹⁵ The total number of under-18s entering the Bundeswehr (German army) per year rose from 1,2 in 2012 to 2,1 in 2017.¹⁶

Remarkably, there has always been a significant number of underage recruits who quit the army during their 6 months long probationary period, usually at their own request.¹⁷ Indeed, military legislation allows recruits of any age to request discharge within the first six months of training, but child recruits have no ongoing right to leave after this point, even if they are still below the age of 18.

The armed forces, in their recruiting campaigns, systematically play down the risks of military actions. In 2019 out of underage persons recruited by the army 467 terminated their contract already during their probationary period (6 months). In 2020 (reduced recruitment rate because of Covid) out of 1,148, 236 17-years old military newcomers resigned during the first months of their service¹⁸.

¹³ Action Committee Service for Peace (AGDF) and the Protestant association for conscientious objection and Peace (EAK), Press release of 27/08/2020 is available here (in German): www.evangelische-friedensarbeit.de/artikel/2020/evangelische-friedensarbeit-neuer-freiwilliger-wehrdienst-ist-ein-taeschungsmanoever.

¹⁴ Press release of EAK Westfalen - Evangelische Arbeitsgemeinschaft für Kriegsdienstverweigerung und Frieden, Region Westfalen (Protestant Association for Conscientious Objection and Peace, Westphalia region): <https://www.evangelische-friedensarbeit.de/artikel/2021/schiessuebungen-fuer-17-jaehrige>.

¹⁵ Parliamentary Commissioner for the Armed Forces, Annual Report 2019 (Printed paper 19/16500), 28 January 2020, pp. 31-32, available here (in English): <https://www.bundestag.de/en/parliament/commissioner>.

¹⁶ Fifth and Sixth Periodic Reports of the Federal Republic of Germany on the United Nations Convention on the Rights of the Child, Annex 1, Para 280.

¹⁷ Concerning the last published figures see Bundestag paper 19/3965 of 24/08/2018 (in German): <http://dip21.bundestag.de/dip21/btd/19/039/1903965.pdf>.

¹⁸ <https://www.evangelische-friedensarbeit.de/artikel/2021/hohe-abbrecherquoten-bei-minderjaehrigen-bundeswehr-rekruten>.

Instead of moving in the direction of avoiding the recruitment of minors, the State party has decided to recruit minors under the age of 17 also for the new voluntary military service in the area of homeland security (see para. 3 of this submission).

Cases of alleged sexual-related crimes against child recruits

In Germany, in 2016 an investigation began into the sexual abuse of army recruits, including children, at Pfullendorf barracks. ‘Sadistic sexual practices’, which were filmed and alleged to be widespread.¹⁹ Criminal charges were subsequently filed against seven soldiers for grievous bodily harm, sexual assault and false imprisonment. At least four soldiers were dismissed as a result of the incidents, but the criminal case was eventually dropped as the Court was unable to establish definitively who was responsible for the abuse.²⁰ In a different case in 2017, 14 military personnels were under investigation in relation to the sexual harassment of a soldier (age unspecified).²¹

In November 2017 two female recruits (aged 18 and 22) were allegedly raped at the Toderdorf barracks in north Germany. In total at least 187 allegations of sexual assault were recorded by the German armed forces in 2017, and 11 allegations of rape.²²

In 2019, there have been at least 345 reportable events on the grounds of suspected offences against sexual self-determination (2017: 235, 2018: 288). In addition to this, the Parliamentary Commissioner received 32 submissions with indications of sexual assaults.²³

The increase of the mentioned figures and the high number of minors that leave the armed forces prematurely, make it even more evident how the context of the armed forces is not suitable for minors.

5. GRANT ASYLUM TO CONSCIENTIOUS OBJECTORS THAT FLEE THEIR COUNTRIES (ARTICLE 18 OF THE COVENANT)

Asylum status to Eritrean conscientious objectors

Germany, along with other Western European countries, currently receives large numbers of asylum claims from Eritreans.

In Eritrea, there is no recognition of conscientious objection, liability for military service is universal and imposed by random forcible recruitment; the duration of the service is indefinite, as it can be the incarceration of conscientious objectors and those attempting to leave the country to avoid military service put their lives at risk.

The indefinite conscription into national military service has been identified as amount to enslavement by the UN Special Rapporteur on the situation of human rights in Eritrea.²⁴

The 2018 Peace agreement between Eritrea and Ethiopia, formally ending the border war, has not changed the human rights situation in the country.

Nevertheless, fewer and fewer asylum seekers from Eritrea receive refugee recognition in Germany.

¹⁹Child Soldiers International, “Why18 matters, A Rights-Based Analysis of child recruitment”, published in 2018, p. 36.

²⁰ Arab A, “Investigations into torturous admission rituals suspended”, 09.02.2018, on Welt (German free-to-air television news channel), available here (in German): <https://www.welt.de/politik/deutschland/article173379094/Bundeswehr-Ermittlungen-gegen-Verdaechtige-in-Pfullendorf-eingestellt.html>.

²¹ Deutsche Welle (DW German public state-owned international broadcaster), Available here: <http://www.dw.com/en/german-prosecutors-investigate-mountain-ranger-recruit-abuse/a-38040032>.

²² Sputnik News (Russian state-owned news agency), Available here: <https://sputniknews.com/europe/201711191059236784-german-bundeswehr-sexual-abuseclaims/>.

²³ Parliamentary Commissioner for the Armed Forces, Annual Report 2019, p. 78, available here: <https://www.bundestag.de/en/parliament/commissioner>.

²⁴ Human Rights Council, Report of the Special Rapporteur on the situation of human rights in Eritrea, 24 July 2017 (A/HRC/35/39).

In 2015 the Federal Office for Migration and Refugees (BAMF - Bundesamt für Migration und Flüchtlinge) recognized 95.5% of Eritrean asylum seekers as refugees.²⁵ In the following years this rate of protection has fallen massively. Increasingly, Eritreans are only granted subsidiary protection, which goes hand in hand with a much less favourable legal status. The number of persons who simply receive a so-called “prohibition on deportation” (*Abschiebungsverbot*) or even a refusal of permit altogether has also increased considerably. In 2018, a reduced number of 39.5% of Eritreans received refugee protection, and 49.7% received subsidiary protection.²⁶

Therefore, two German grass-root associations PRO ASYL and Connection e.V. concluded that the changed situation in Eritrea is in no way a reason for the increasingly restrictive decision-making practice for Eritrean refugees. Rather, it seems to be based on the political will to significantly reduce the recognition rates in Germany.²⁷

Moreover, those who have not been recognised as refugees and have only been granted subsidiary protection or protection against deportation are requested to obtain their passports from the Eritrean embassy. This means that the persons concerned must again submit completely to the requirements of the Eritrean regime services such as the issuing of a passport which is only provided by the Eritrean mission abroad if a letter of repentance is signed beforehand.²⁸ In this letter, the person signing has to state that: “I regret having committed an offence by failing to fulfil my national obligation and that I am willing to accept the appropriate measures when decided.”²⁹ The undersigned thereby surrenders to imprisonment and punishment without any legal basis.

6. FAR-RIGHT EXTREMISM IN THE ARMED FORCES (ARTICLE 20 OF THE COVENANT)

In the last few years, the issue of right-wing extremism in the armed forces was the subject of broad public debate in Germany.

In its 2019 annual report, the Parliamentary Commissioner for the Armed Forces stated that the number of relevant “reportable events” in the category of right-wing extremism rose to 197 compared to previous years (167 in 2017 and 170 in 2018).³⁰

Beyond “reportable events”, the Federal Office of Military Counterintelligence (FOMCI) reviews cases of suspected extremism within the scope of its legally defined remit. In the category of right-wing extremism there were 363 new suspected cases during 2019 (270 in 2018).³¹

In June 2020, the President of the Military Counterintelligence Service (Militärischer Abschirmdienst

²⁵ German Federal Office for Migration and Refugees (BAMF- Bundesamt für Migration und Flüchtlinge), The Federal Office in figures for 2015 (2016), available here (in German): <https://www.bamf.de/SharedDocs/Anlagen/DE/Statistik/BundesamtinZahlen/bundesamt-in-zahlen-2015.html?nn=284738>

²⁶ German Federal Office for Migration and Refugees (BAMF- Bundesamt für Migration und Flüchtlinge), Statistics on Asylum for the year 2018 (2019), available here (in German): https://www.bamf.de/SharedDocs/Anlagen/DE/Statistik/Asylgeschaeftsbericht/201812-statistik-anlage-asyl-geschaeftsbericht.pdf?__blob=publicationFile&v=5.

²⁷ PRO ASYL and Connection e.V., Statement on the occasion of the hearing “Conscientious Objection. on the Run - the Human Rights Situation in Eritrea and Germany”, December 9, 2019, in the Bundestag in Berlin. Translated from German, original available here: https://www.proasyl.de/wp-content/uploads/PRO_ASYL_Broschuere_EritreaimFokus.pdf.

²⁸ European Asylum Support Office (EASO European Union agency), “Eritrea –National service, exit, and return”, September 2019, p. 56, available here: <https://www.easo.europa.eu/news-events/easo-publishes-country-origin-information-coi-report-eritrea>.

²⁹ For the letter of repentance in Tigrinya and English see: Tilburg School of Humanities, Discussion paper: “The 2% Tax for Eritreans in the diaspora – Appendices”, June 2017, p. 24, available here: <https://www.dsp-groep.eu/wp-content/uploads/The-2-Tax-for-Eritreans-in-the-diaspora-Appendices.pdf>.

³⁰ Parliamentary Commissioner for the Armed Forces, Annual Report 2019 (Printed paper 19/16500), 28 January 2020, p. 9, available here: <https://www.bundestag.de/en/parliament/commissioner>.

³¹ Ivi p. 55.

MAD)³², Mr Christof Gramm, said at a public hearing of the Parliamentary Control Panel on Intelligence (PKGr) that there is a “new dimension” in the problem of right-wing extremism in the German armed forces (Bundeswehr).³³

Indeed, the year 2020 has seen more than 600 suspected cases of right-wing extremists and so-called “Reich citizens” in the armed forces.³⁴

More specifically, the focus in the defence against extremism is that Special Forces Command (Kommando Spezialkräfte KSK) is a secretly operating unit composed by around 1400 commandos and support personnel. In the KSK, one could not only assume isolated cases, although the shielding service had not discovered any underground army. There is a pronounced corps spirit with the Special Forces Command, something like a “wall of silence”.³⁵

In recent years, the KSK has always been more right-wing extremist and incidents related to neo-Nazi ideas hit the headlines.³⁶

As an example, from the news³⁷, in June 2020 there have been accusations levelled by KSK members against one of their trainers. In Afghanistan, the trainer, Lieutenant-Colonel W., allegedly said that the situation, there, was "like the Holocaust." Later, during a discussion about rising milk prices in the country, he allegedly wondered "what Jewish swine" was behind the increase.

The lieutenant-colonel in question, as head of the training department, was in charge of drilling incoming KSK troops, so his tasks were in direct contact with younger members of the armed forces.

³² Since its transformation in 2017 into a civilian higher federal authority reporting directly to the Ministry of Defence, the Military Counterintelligence Service (MAD) has had new tasks, such as pre-employment screening for military personnel and bolstering cyber defence.

³³ Opening Statement from President Christof Gramm on the occasion of the public hearing of the President of the Federal Intelligence Service by the Parliamentary Control Committee in the German Bundestag on June 29, 2020. Original statement available here (German): <https://www.bundeswehr.de/resource/blob/271684/758dfb109395658ceb09b1a60011ffb8/eingangsstatement-pkgr-2020-data.pdf>.

³⁴ *Ibidem*.

³⁵ *Ibidem*.

³⁶ World Today News, “Bundeswehr: MAD sees “new dimension” of right-wing extremism”, 29 June 2020 available here: www.world-today-news.com/mad-on-bundeswehr-new-dimension-of-right-wing-extremism/.

³⁷ Der Spiegel International, Investigation “Exploring Right-Wing Extremism in Germany's Police and Military”, 13 August 2020, Available here: <https://www.spiegel.de/international/germany/the-dark-side-of-state-power-exploring-right-wing-extremism-in-germany-s-police-and-military-a-0600aa1e-3e4e-45af-bfc9-32a6661e66ef>.

7. RECOMMENDATIONS

IFOR kindly requests the Committee to consider the inclusion of the following recommendations in its Concluding Observations to the Seventh Periodic Review of Germany:

Conscientious objection (Article 18 of the Covenant)

- Implement the right to conscientious objection for contracted members of the armed forces in a manner that it is not punitive in all aspects, and, in particular, on timing and the financial aspects.
- Adopt the best practice of accepting applications for status of conscientious objection to military service without examination, enquiry or interview.
- Adopt the best practice of granting a leave for applicants, in order to avoid situation of high psychological pressure on them.
- Provide information on the applicability of the right to conscientious objection for those who are going to perform the voluntary military service in the area of homeland security.

The rights of the child (Article 24 of the Covenant)

- Raise the minimum age for voluntary recruitment into the armed forces to 18 years.
- Raise the minimum age for the Voluntary military service in the area of homeland security to 18 years.
- Undertake efforts to include peace education in the school curricula and in teachers' training courses.

Claim of refugee status for Eritrean conscientious objectors (Article 18 of the Covenant)

- Consider persons from Eritrea who refuse military service, desert or evade national/military service as a social group in the meaning of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees. Their persecution must therefore lead to recognition as refugees.

Far-right extremism in the armed forces (Article 20 of the Covenant)

- Take more effort to prevent the rising of far-right extremism in the armed forces, by means of, on one hand, including specific training on human rights and violent extremism for the members of the armed forces, on the other hand, implementing a realignment and increase in personnel that could lead the authorities to being able to counter extremism even more effectively.

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