

Supplementary report on best practices in relation to conscientious objection to military service for the 62nd session of the United Nations Commission on Human Rights, to be prepared pursuant to Commission on Human Rights Resolution 2004/35 on conscientious objection to military service.

Information supplied by *Evangelische Arbeitsgemeinschaft zur Betreuung der Kriegsdienstverweigerer (EAK)* (Protestant Churches Office to support Conscientious Objectors) on the situation of conscientious objection in Germany.

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1. Is the claim to be a conscientious objector accepted without inquiry?

No, but currently, in accordance with §2 of the Law on Conscientious Objection (*Kriegsdienst-verweigerungsgesetz - KDVG*) as amended on 1 November 2003, all claims, including those from serving soldiers and reservists, are considered on the basis of a **written application** only. The consideration is carried out centrally for the whole of Germany by the Federal Office for Civilian Service (*Bundesamt für den Zivildienst - BAZ*). Alongside the application, which must contain an appeal to Article 4, Paragraph 3 of the Constitution (*Grundgesetz*) of the Federal Republic of Germany, a complete tabular CV and a detailed personal justification are required. According to § 6 KDVG, even in doubtful cases a written declaration is provided for, and only when further doubts then remain may a personal oral interrogation ensue.

2. Is the decision-making process to decide on the claim for recognition as a conscientious objector independent (of the military), impartial and non-discriminatory?

The decision-making process, i.e. the proceedings for the recognition as conscientious objector are determined by a law, which does take military conditions and influences into consideration, but is otherwise of a civilian nature.

The most important stipulation for the decision about the application reads: "The applicant may be recognised as a conscientious objector without a personal hearing provided

1. the application is complete (§ 2 Abs. 2),
2. the motives provided to justify the claim to the right to conscientious objection are appropriate
3. the whole actual submission by the applicant and other facts known to the Federal Office give no reason to doubt the truth of the statements of the applicant, or any such doubts do not remain after a consideration under § 6 of this law." (§ 5 KDVG)

Independence from the military is demonstrated by the fact that the Federal Ministry for Family, Senior Citizens, Women and Youth has administrative responsibility for the Law, and by the role of its personnel in its implementation (supervision). The allocation to this ministry should also ensure the unbiased and non-discriminatory nature of the execution of all legal provisions.

3. Are individuals expected to make out a specific case for acceptance as a conscientious objector? If so, what grounds are accepted as legitimate?

In the prescribed written hearing and in the very few oral hearings the interpretation of conscientious reasons covers a wide spectrum of philosophical, ethical, religious, moral and also political motivations. A serious conviction that the conscience forbids participation in military service is by itself enough to legitimately lead to recognition.

4. At what time can the right be claimed? Before entry into the military service or also during the actual military service? Is it also available to reservists?

The right to conscientious objection in Germany is a component of the constitutional right to freedom of conscience, that can be claimed at any time, whether before, during or after the military service. The realisation of this right can take place from the age of 14 (the age of religious consent). From sixteen-and-a-half years until the completion of those years during which call-up for military service is possible (age 60 for officers, 45 for other ranks), there exists a right, “if it is confirmed that the applicant is eligible for military service”, to present a claim and obtain a ruling. (Preamble to the amended law, Bundestag-Drucksache 15/908, page 8.)

5. Are the various forms of alternative service compatible with the reasons for the conscientious objection?

Paragraph 1 of the Law on Civilian Service (*Zivildienstgesetz - ZDG*) states: “During alternative service recognised conscientious objectors fulfil tasks that serve the general good, primarily in the social sector.” The activities involved in alternative civilian service are predominantly conducted in establishments for the care of the elderly, disabled and sick. Belonging to this group of activities are: nursing and care, handicrafts, gardening/agriculture, maintenance activities, environmental work, vehicle operation, ambulance and rescue services, mobile social help and individual care of disabled people. The overwhelming majority of recognised conscientious objectors accept these opportunities to serve and see them as compatible with their decision on grounds of conscience. “Other (ie ‘alternative’) service abroad” (§ 14 b ZDG) and – since August 2002 – also a “voluntary social year” or a “voluntary ecological year” (§ 14 c ZDG) either at home or abroad can be substituted for Civilian Service. These voluntary services last longer than the state

compulsory service and are not so well compensated, but they offer the possibility of expressing a more independent lifestyle attuned to personal career perspectives, an independent (free) alternative to (statutory) civilian service, which is viewed as attractive by more than a few (so far approx. 3,500 recognised COs per year).

It should be pointed out that in addition there is a small number of total objectors (sometimes called *Wehrpflichtsverweigerer* - “objectors to military duty”, as opposed to the usual word *Kriegsdienstverweigerer* - literally “objectors to war service”) who, sometimes in the course of the conscription system’s procedures for recognition of conscientious objectors, sometimes later as recognised conscientious objectors, refuse to perform (boycott) the civilian service organised as an alternative to compulsory military service: they have conscientious scruples about compulsory military service and about the militarist trappings of Civilian Service as set out in the *Zivildienstgesetz*. For their refusal to fulfil the service stipulated they face a judicial sentence and fine (for absence without leave, or “desertion”).

6. *Can the non-fulfilment of military service be repeatedly punished?*

As a general rule, no, if the non-fulfilment – e.g. due to ineligibility for conscription – is legally grounded or there exist other reasons (military service exemptions) for this. But complete conscientious objectors, who refuse to fulfil a service within the framework of conscription, are fined. The level of fine corresponds on the whole to the length of the remaining service. The Military Penal Code (*Wehrstrafgesetz*) provides for prison sentences due to absence without leave (§ 15, up to 3 years) and desertion (§ 16, up to 5 years), as does the Law on Civilian Service for “desertion of the service” (ZDG § 53, up to 5 years). If the considerations of conscience regarding obligatory service are not made explicit at the time of first conviction, persistence in refusal to serve will be viewed as a new offence, which can lead to a second conviction. On the other hand, article 103, paragraph 3 of the Constitution of the Federal Republic of Germany lays out that nobody may receive multiple punishments for the same deed.

7. *Are the conditions of service and the economic, social, cultural, civic and political rights for conscientious objectors free from discrimination?*

Fundamentally, yes: the basic military service lasts 9 months, and since 1 October 2004 civilian service is of the same length (2. ZDG ÄndG v.27.09.2004; BGBl. I, p. 2358). Both services can be carried out in two separate blocks (6 + 3 months). The conditions and possibilities are equal regarding economic (pay, accommodation, board, health care, state equalisation payments for pension and unemployment insurance, consideration of the working hours for child benefit), social, cultural, civic and political rights. The curtailment of basic rights associated with conscription applies to soldiers and COs performing alternative service to the same extent. These

restrictions do not apply to conscientious objectors who are performing an alternative voluntary service, due to the fact that in comparison they are economically disadvantaged (in terms of pay, accommodation and equalisation payments). 'Restrictions' or 'advantages' for those who have performed military or civilian service in applying for a job are officially precluded, ie not allowed. While it cannot be ruled out that a private employer may assign different value to military or alternative service when making an employment decision, no problems relating to this have been reported for a long time. One analysis by a pro-business newspaper concluded a long time ago that firms seeking creative, committed and communicative workers are happy to employ those who have completed civilian service.

8. Does the law and practice provide for the granting of asylum to those conscientious objectors compelled to leave their country of origin because they fear persecution owing to their refusal to perform military service?

No, generally not and not with the openness offered to those seeking asylum for humanitarian reasons. But in individual cases it is possible that the so-called 'small right to asylum' (*Kleine Asylrecht*) can be enforced and that a residence permit and minimal material protection may be granted. In individual cases there is also the possibility of granting conscientious objectors and deserters asylum for political reasons, if the political circumstances and motives are made sufficiently clear. On the whole the invocation of freedom of conscience to cover objection to military service will be sufficient as a barrier to deportation if the right is unavailable in the country concerned and persecution and punishment are threatened. Whether the new EU guideline 2004/83 EG of 29.04.2004 concerning the minimum standard for the recognition for refugees who see themselves to be conscientious objectors will improve the situation regarding their situation and rights in EU states remains to be seen.

9. Are all those faced with conscription informed about the right to conscientious objection and the means of obtaining the status of a conscientious objector?

Information about the right to conscientious objection is disseminated less by means of state information than by private means, e.g. by fathers, mothers, siblings and friends. There is as before a scarcity of advice and assistance as to exactly how state recognition can be achieved, given the formal requirements of the practice of a written hearing process. This also applies to information about the possibilities of alternative service placement, which is or can be more useful for a young man's career development.