

SUBMISSION
TO THE 37th SESSION OF THE UNIVERSAL PERIODIC REVIEW

AUSTRIA

EXECUTIVE SUMMARY:

1. This submission was prepared in June / July 2020, including the latest information available. It focusses on military recruitment and conscientious objection, but also raises concerns about Austria's continued recruitment of 17-year-olds, including, contrary to at least the spirit of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC), to opt to perform their obligatory military service early.
2. IFOR suggests three recommendations which might be made to Austria:
that it eliminates the punitive and discriminatory conditions of substitute civilian service for conscientious objectors.
that it extends to serving and recent members of the armed forces the right to apply for release from their duties and/or reserve obligations in the event that they develop objections of conscience to military service.
that it raises the minimum age for military recruitment to eighteen years in all circumstances.

Conscientious objection to military service

3. Obligatory military service in Austria was introduced by the 1955 Defence Act (*Wehrgesetz*). Implementing regulations permitted conscientious objectors to perform 12 months' non-combatant service in the medical or clerical corps, as against 9 months of normal military service.¹
4. Legislative recognition of conscientious objection came with the Civilian Service Act (*Zivildienstgesetz*) of 1974. 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 simultaneously increased the length of the Civilian Service to 10 months, the duration of military service then being 8 months. There were further increases to 11 months in 1994 and to 12 months in 1996. Most recently, Act No. 106/2005 reduced the duration of military and civilian service to six months and nine months respectively, thus maintaining the existing 150%

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

ratio.

5. In January 2013, Austrians voted by a margin of 59.8% to 40.2% to maintain conscription. Ironically, one of the arguments used in the campaign had been the threat to the social service sector if deprived of conscientious objectors performing alternative service. Such arguments had been used for years to justify keeping conscription in Germany, yet when this was suspended in 2010 the predicted crisis had not materialised.

6. Under the *Wehrgesetz*,² males are obliged to register for military service during the calendar year of their 17th birthday; thus, those born in 2003 are being registered in 2020. Section 18a mandates an obligatory medical examination in the year of the 18th birthday. The only absolute exemptions 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 that they are members of “recognised religions”³. In the cases of *Gütl v. Austria* and *Löffelmann v. Austria* the European Court of Human Rights⁴ found violations because the Jehovah’s Witnesses, having the status only of a “registered religious community” do not benefit from these exemptions.

7. Written information about civilian service for conscientious objectors is provided at the time of the medical examination.⁵

8. Applications to perform Civilian Service must incorporate a declaration of conscientious objection. Helpfully, the application form which may be downloaded from the website of the *Zivildienstverwaltung* provides a pre-printed declaration; all that the applicant must do is add his signature. The declaration translates:

“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.”

9. A conscientious objector is however free to make a declaration in his own words, and the application need not be made on the prescribed form; it may even in the first instance be registered orally.⁶ This could be important in view of the strict time limits which apply.

10. Under the *Zivildienstverwaltung*,⁷ application to perform Civilian Service must be made within six months of receiving notification of fitness for military service following first registration; there is no possibility of a transfer to Civilian Service after call-up. Moreover, those who have completed obligatory military service may subsequently declare themselves conscientious objectors to reserve service, but there is a twelve-month delay before this declaration takes effect.

11. Under Article 5a(1), those who have an unexpunged criminal record for an offence involving violence or the threat of violence with the use of a firearm or explosives are 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 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. Article 6(3)(3) implies that having held a firearms licence for any purpose debars a person from Civilian Service. Also, recognition as a conscientious objector is withdrawn if the person is known to have subsequently carried a firearm. Gamekeepers, for instance, are thus completely debarred from recognition.

² Section 10.1

³ See paras 290 - 320 of the Austria's Fourth Periodic Report under the ICCPR (CCPR/C/AUT/4). and the list at www.help.gv.at/Content.Node/82/Seite.820100.html

⁴ Applications nos. [49686/99](#) and [42967/98](#); judgements of 12 March, 2009.

⁵ *Zivildienstgesetz*, para 5.1

⁶ 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.

⁷ Article 1.2

12. Arrangements for alternative service placements are under the authority of the Ministry of Agriculture, not the Ministry of Defence.

13. In 2000 the remuneration of those performing Civilian Service was reduced to approximately half that received by military conscripts, meaning that over nine months they received less than for six of military service. This was raised with the Constitutional Court, which found that there was a right of free choice between military and civilian service, and that this difference in pay rates constituted an interference with the right. However, by 2008 the situation had not been resolved,⁸ and we are not aware of any subsequent changes.

14. In the List of Issues on Austria's Fifth Periodic Report under the International Covenant on Civil and Political Rights, the Human Rights Committee asked, "Please provide information on the justification for the differentiation between the length of substitute civilian service for conscientious objectors and that of military service, in particular indicating whether such differentiation is based on reasonable and objective criteria."⁹

16. Austria's reply was:

"The amendment to the Civilian Service Act of 1991 facilitated access to alternative civilian service by eliminating the examination of conscientious objection. Following this amendment, alternative civilian service became more attractive and easier to access. Young men who choose to perform alternative civilian service, are not subject to Military Criminal Law and Disciplinary Law, do not have to wear uniforms and most importantly do not have to live in barracks. In order to address these advantages compared with military service, the Austrian legislature extended the duration of alternative civilian service compared with the length of conscript military service.

"Military and civilian service are mandatory public services in line with Article 9a of the Federal Constitutional Law. This service is based on compulsory military service – regardless of the fact that the activity performed by the person doing civilian service is not a military one. The difference in terms of length between basic military service and civilian service (service time of 6 and 9 months respectively) must be considered from a holistic perspective taking account of the level of exertion involved in the two services and – according to the supreme courts – does thus not violate the principle of equality.

17. To explain the increase in the duration of civilian alternative service by saying that civilian service became more attractive once there was no longer an examination of claims of conscientious objection implies that the increase was indeed intended to discourage applications for civilian service. It is hard to see how this can be achieved without creating discriminatory and punitive conditions for alternative service. That Austria abandoned the individual examination of claims of conscientious objection is welcome – there is an inherent impossibility in probing the inner motivations of another person. However, to substitute a form of trial by ordeal is not satisfactory. Austria itself before 1991 did not find that the facts it listed necessitated requiring conscientious objectors to serve for longer. Other States¹⁰ where similar differences in the conditions of service apply have not felt precluded from equalising the durations. Nor is it clear that the examples quoted really contribute to "the level of exertion". Does being provided with a free uniform really involve extra exertion? Are no civilian service placements residential? In any case, equally significant to the individuals involved is the length of time which the service takes from the rest of life, from education, career development and earning potential. All that changed in 1991 was that whether to perform military or civilian service became a free choice, and as already noted the constitutional court has defined this as a right, so there should be no interference with the unimpeded exercise of this choice.

18. Whenever governments impose punitive conditions on civilian service, this seems to be

⁸ Professional soldiers and the right to conscientious objection in the European Union (Information against war, repression, and for another society No 5: Documentation produced for Tobias Pflüger, MEP) Versingte Europäische Links / Nordische Grüne Links, Brussels, Berlin, Tübingen, October 2008, p.11 (also to be found on the website of War Resisters International at: http://www.wri-irg.org/programmes/world_survey/country_report/en/Austria)

⁹ CCPR/C/AUT/Q/5, 28th April 2015, para 18.

¹⁰ Denmark, Estonia, Moldova and (before they suspended conscription) also Albania, Germany, Italy and Sweden.

based on the misconception that otherwise no one will opt for military service. In fact, only for a minority of young men would the classic caring placement in a mental or geriatric institution seem more attractive than military activities. It might also be observed that those who freely opt for military service will almost certainly make more satisfactory soldiers than those who serve reluctantly.

19. In its Concluding Observations, the Committee “notes that the length of the civilian alternative service to military service for conscientious objectors is longer than military service and may be punitively long if not based on reasonable and objective grounds”, and recommends that “The State party is encouraged to ensure that the length of service alternative to military service required for conscientious objectors is not punitive in nature.”¹¹

Serving members of the military

20. Austria is a member of the Council of Europe, whose Committee of Ministers recommended in 2010:

“Professional members of the armed forces should be able to leave the armed forces for reasons of conscience.

Requests by members of the armed forces to leave the armed forces for reasons of conscience should be examined within a reasonable time. Pending the examination of their requests they should be transferred to non-combat duties, where possible.

Any request to leave the armed forces for reasons of conscience should ultimately, where denied, be examined by an independent and impartial body.

Members of the armed forces having legally left the armed forces for reasons of conscience should not be subject to discrimination or to any criminal prosecution. No discrimination or prosecution should result from asking to leave the armed forces for reasons of conscience.

Members of the armed forces should be informed of [these] rights (...) and the procedures available to exercise them.”¹²

26. The Council of Europe's follow-up questionnaire.¹³ asked “Can professional members of the armed forces leave the armed forces for reasons of conscience? If so, please explain the conditions and the procedure, and in particular whether the requests can be reviewed by an independent and impartial authority. If not, please explain why and whether any measure is in preparation.”

27. Austria replied “Not foreseen within the Austrian system. Professional members of the armed forces can leave the armed forces by notice of the termination of their contract. There are no measures in preparation to change this system.”

Juvenile recruitment

28. Although no recruit is subject to mandatory call-up until after his eighteenth birthday (Article 9.1), from his seventeenth birthday, a citizen may with parental consent anticipate the summons to enlist for obligatory military service. The Committee on the Rights of the Child, in 2005, 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 party consider the possibility to increase the minimum age for voluntary recruitment to 18 years”¹⁴; the Committee did not address the questionable assumption that an option regarding the timing of enlistment for *obligatory* military service rendered such recruitment “voluntary”, and thus not prohibited by the OPAC. Also, males who enlist voluntarily at the age of 17 are obliged to complete the contractual period of service. Only female volunteers are permitted (Section 37) to leave early.

29. Austria is also one of the States in which the armed forces maintain close links with the edu-

¹¹ CCPR/C/AUT/CO/5, 3rd December 2015, paras 33 and 34.

¹² CM/Rec(2010)4, 24th February 2010, paras 42 – 46.

¹³ See, Council of Europe, Steering Committee for Human Rights (CDDH) Questionnaire on the implementation of Committee of Ministers Recommendation CM/Rec(2010)4 on human rights of members of the armed forces: COMPILATION OF MEMBER STATES' ANSWERS, CDDH(2012)016,Final, Strasbourg, 27th December 2012.

¹⁴ UN Document reference CRC/C/OPAC/CO/2, January 2005, paras 5 and 6.

cation system for recruitment purposes: “According to information received from the Austrian *Arbeitsgemeinschaft Wehrdienstverweigerung*, the Austrian military has liaison officers with each secondary school and university, and maintains a presence at the last school year through so-called ‘information events’.”¹⁵

30. In the first UPR cycle, Ghana and Slovakia recommended that Austria “Raise the age for all enrolments into the armed forces to the age of at least 18 in accordance with the CRC recommendation.”¹⁶

31. Austria did not accept this recommendation:

“The option of performing the military service starting at the age of 17 is based solely on the voluntary enlistment of the person concerned and requires the consent of his legal guardian. Neither the direct participation in combat nor the voluntary enlistment for military service in international operations is admissible. Under these provisions, full respect of the entire Convention on the Rights of the Child including its Optional Protocol is guaranteed.”¹⁷

32. Unfortunately, these recommendations were neither followed up nor repeated during the Second UPR cycle.

33. The Human Rights Committee in 2015 asked “Please also indicate whether the State party is considering raising the minimum age for voluntary recruitment into the armed forces to 18 years.” The rather unconvincing reply was “Austria is State Party to the Convention on the Rights of the Child as well as to its Optional Protocol on the involvement of children in armed conflict. Article 9, Article 41 para. 2 and Article 57 of the Defence Act 2001 (*Wehrgesetz 2001*) comply fully with the requirements set out by this Convention. It is possible in Austria, however, to join the army voluntarily at the age of 17, provided certain conditions are met. According to Article 9 in conjunction with Article 57 of the Defence Act 2001, a 17-year-old has to act of his own accord and requires the written consent of a parent or legal guardian to be able to join the army. The idea behind this rule is to provide young men, who have successfully completed their apprenticeship or education at the age of 17, with the opportunity to join the army. Most employers consider the completion of the mandatory military service or the substitute civilian service as a necessary prerequisite for offering a job. The Austrian Federal Army, however, does not actively advertise this opportunity and does not promote the recruitment of under 18-year-olds in any way.”¹⁸ IFOR would draw attention to the 2018 report “Why 18 Matters”¹⁹, which documents the disproportionately adverse effect of recruitment at a young age, and calls on all States to adopt a “straight-18” policy.

¹⁵ War Resisters’ International, *World Survey of Conscription and Conscientious Objection to Military Service: Austria Country Report and Updates*, 2016 edition, at https://wri-irg.org/en/programmes/world_survey/country_report/en/Austria.

¹⁶ A/HRC/17/8, 18th March 2011 (Working Group on 26th January 2011), para 93.47.

¹⁷ A/HRC/17/8/Add.1

¹⁸ CCPR/C/AUT/Q/5/Add.1, 4th August 2015, paras 138-140

¹⁹ Child Soldiers International, *Why 18 Matters*, London, 2018.