

# Switzerland

## Issues

- Substitute service is 1.5 times longer than military service.
- Those unfit for service have to pay a substitute military tax.



## Military recruitment

Switzerland maintains conscription. According to article 58 of the constitution, “*in principle, the armed forces shall be organised as a militia*”<sup>1</sup>. Although the Armed Forces include some professional soldiers, the great majority are conscripts. From 134'886 in 2008, about 17,506 were officers, 22,650 non-commissioned officers, and 4,230 other professional soldiers or soldiers on time restricted contracts<sup>2</sup>.

The Swiss Army has almost no full-time active combat units but is capable of full mobilisation within 72 hours. There is virtually no standing army apart from training cadres and a few essential headquarters staff.

## Conscription

Conscription is enshrined in article 59 (1) of the Swiss constitution: “*Every Swiss man is required to do military service. Alternative civilian service shall be provided for by law*”. According to paragraph 2 of the same article, “*military service shall be voluntary for Swiss women*”<sup>3</sup>.

It is further regulated by the 1995 Federal Law on the Armed Forces and Military Administration (MG)<sup>4</sup> and the 2002 Ordinance on Recruitment of Conscripts (VREK)<sup>5</sup>.

All men between the ages of 19 and 25 are liable for basic military training. The length of basic military training is 21 weeks, and 18 weeks in some exceptional circumstances.

Women who volunteer for basic military training have the same obligations as male conscripts once they have been accepted<sup>6</sup>.

After basic military training, all men have reservist duties of up to 21 days up to the age of 34, and up to 50 for officers. Reservist duties consist of 6 or 7 refresher training periods of a maximum of 17 days each. The total length of military service thus amounts to 260 days and up to 600 days for officers.<sup>7</sup> 20-30% of the recruits in basic training are obliged to do officer training, according to article 15 of the *Federal Law on the Armed Forces and Military Administration*, and article 85 of the service regulations<sup>8</sup>. Reservist duties also include home maintenance of equipment, a rifle and ammunition.

It is also possible to apply to serve the total of military service as one service (“*Durchdiener*”). In this case, the total length of military service is 300 days for conscripts, and more for non-commissioned officers and officers<sup>9</sup>.

1 Federal Constitution of the Swiss Confederation, 18 April 1999 (with amendments, status 30 November 2008), <http://www.admin.ch/ch/e/rs/101/a58.html>, accessed 19 June 2009

2 Eidgenössisches Departement für Verteidigung, Bevölkerungsschutz und Sport: Die Armee in Zahlen – Truppenbestände, Bestände 2008, <http://www.vbs.admin.ch/internet/vbs/de/home/documentation/armeezahlen/eff.html>, accessed 19 June 2009

3 Federal Constitution of the Swiss Confederation, 18 April 1999 (with amendments, status 30 November 2008), <http://www.admin.ch/ch/e/rs/101/a59.html>, accessed 19 June 2009

4 Bundesgesetz über die Armee und die Militärverwaltung (Militärgesetz, MG), <http://www.admin.ch/ch/d/sr/5/510.10.de.pdf>, accessed 26 June 2009

5 Verordnung über die Rekrutierung (VREK), 10 April 2002 (with amendments until 1 January 2008), <http://www.admin.ch/ch/d/sr/5/511.11.de.pdf>, accessed 26 June 2009

6 Article 3, Bundesgesetz über die Armee und die Militärverwaltung (Militärgesetz, MG), <http://www.admin.ch/ch/d/sr/5/510.10.de.pdf>, accessed 26 June 2009

7 This length of military service applies to conscripts who started their service after 1 April 2004. <http://www.vtg.admin.ch/internet/vtg/de/home/militaerdienst/dienstleistende/dienstleistungspflicht/sdt.html>, accessed 26 June 2009

8 Beratungsstelle Zivildienst, Comments on first draft, 1 July 2007, Dienstreglement der Schweizerischen Armee (DR04), 22 June 1994 (with amendments until 1 January 2008)

9 Verordnung über die Militärdienstpflicht (MDV), 19 November 2003 (status of 1 January 2009), [http://www.admin.ch/ch/d/sr/512\\_21/index.html](http://www.admin.ch/ch/d/sr/512_21/index.html), accessed 26 June 2009

This applies also to women who volunteer for military service.

## **Military exemption tax**

According to the Law on Military Exemption Tax<sup>10</sup>, all those not fulfilling their military duties are in principle liable to a military exemption tax. According to article 2 of the law, this applies to all those liable to military service living in Switzerland or abroad who for more than six months of a given tax year have - for whatever reason - not been attached to a military or reserve unit, or who have failed to attend when summoned to perform their military service. However, article 4 defines a range of exemptions, for handicapped people, and especially for Swiss citizens living abroad.

According to article 13, the military exemption tax is rated at 3% of taxable income, and a minimum of 200 Swiss Franks (to be increased to 400 Swiss Franks from 2010). For handicapped people who are not exempt according to article 4 the tax is reduced to 50%.

Non-payment of the military exemption tax can be punished with a fine of 200 Swiss Franks and seizure of wages to recover the tax debt<sup>11</sup>.

The Law on Military Exemption Tax does not provide for a conscientious objection. As only those fit for military service can apply for conscientious objection and perform a substitute service, those with a conscientious objection who are unfit for military service are liable to the payment of military exemption tax. Also conscientious objectors who in a certain tax year fail to serve in substitute service have to pay the military exemption tax<sup>12</sup>.

In April 2009, the European Court of Human Rights decided on the case of a Swiss complaining about discrimination for being obliged to pay the military exemption tax in spite of being willing to do military service, but not being allowed to do so due to health reasons. In this case, the ECtHR declared the Swiss exemption tax a violation of article 14 in conjunction with article 8 of the European Convention of Human Rights, "*finding that the applicant had been the victim of discriminatory treatment as there had been no reasonable justification for the distinction made by the Swiss authorities between, in particular, persons who were unfit for service and not liable to the tax in question and those who were unfit for service but were nevertheless obliged to pay the tax*"<sup>13</sup>. It remains to be seen what the impact of this judgement will be on the military exemption tax in Switzerland.

## **Professional soldiers**

The Swiss Armed Forces are mainly based on conscription. However, there are some posts for soldiers serving on contracts. Applications are only possible for members of the Armed Forces – conscripts or women volunteers after basic military training and before the end of their reserve duties<sup>14</sup>.

Those applying for a post as professional soldiers have more requirements. In addition to the above, they need to have a professional education of at least three years<sup>15</sup>.

Both positions are mainly for people who are interested in a career as officer or non-commissioned officer.

Professional soldiers sign an employment contract according to the Federal Personnel Law (*Bundespersonalgesetz*) from 2001<sup>16</sup>.

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10 Bundesgesetz über die Wehrpflichtersatzabgabe (WPEG), 12 June 1959, with amendments 1 December 2007, <http://www.admin.ch/ch/d/sr/6/661.de.pdf>, accessed 26 June 2009

11 Beratungsstelle Zivildienst: Comments on 1<sup>st</sup> draft, 1 July 2009

12 Beratungsstelle Zivildienst: Comments on 1<sup>st</sup> draft, 1 July 2009

13 Press release issued by the Registrar: CHAMBER JUDGMENT GLOR v. SWITZERLAND, 30 April 2009,

<http://cmiskp.echr.coe.int/tkp197/view.asp?>

[action=html&documentId=850037&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649](http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=850037&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649), accessed 11 August 2009

14 Eidgenössisches Departement für Verteidigung, Bevölkerungsschutz und Sport: Zeitmilitär ZM,

<http://www.vtg.admin.ch/internet/vtg/de/home/themen/berufsmil/anforderungsprofile/zeitmilit.html>, accessed 26 June 2009

15 Eidgenössisches Departement für Verteidigung, Bevölkerungsschutz und Sport: Berufssoldaten BS,

<http://www.vtg.admin.ch/internet/vtg/de/home/themen/berufsmil/anforderungsprofile/berufssoldaten.html>, accessed 26 June 2009

16 Schweizerische Eidgenossenschaft, Eidgenössisches Departement für Verteidigung, Bevölkerungsschutz und Sport: Zeitmilitär ZM,

<http://www.vtg.admin.ch/internet/vtg/de/home/themen/berufsmil/arbeitsbedingungen/zeitmilit0.html>, accessed 19 August 2009

## Conscientious objection

### Conscientious objection for conscripts

In 1999, the right to conscientious objection was included in the new Constitution. According to Article 59: *“Every Swiss man is required to do military service. Alternative civilian service shall be provided for by law”*<sup>17</sup>. The right to conscientious objection is regulated by the 1995 Law on Substitute Civilian Service, last amended on 3 October 2008<sup>18</sup>.

Both religious and non-religious grounds for conscientious objection are legally recognised. According to article 1 of the Law on Civilian Service: *“Those liable to military service who cannot serve the military service for reasons of conscience have on application to serve a longer substitute civilian service according to this law”*<sup>19</sup>. The newly amended law does not require any explanation of the reasons for conscientious objections, besides stating a conflict of conscience with military service<sup>20</sup>.

There are no time limits for submitting CO applications. Applications can thus be made before, during and after military service (by reservists).

If an application is made by a serving conscript serving a term of more than 4 months, the application has to be decided within two weeks. During this period, the applicant is not released from the army.

Applications cannot be made by people who are too old for reservist training or by those who are legally exempt from service for medical or other reasons.

Applications must be made to the Central Civilian Service Authorities (Ministry of Economic Affairs). Since 1 April 2009, applications are in writing only<sup>21</sup>. Before 1 April 2009, a personal interview took place with a commission. Its members were civilians who had been selected and appointed by the Ministry. If the application is rejected, there is a right of appeal to the Federal Court. Those who applied before 1 April 2009, but have not been recognised by 31 March 2009, will be recognised without personal interview<sup>22</sup>.

### Substitute service

According to article 8 of the Law on Civilian Service, substitute service is 1.5 times longer than military service. For conscientious objectors who were non-commissioned officers or officers during their time as conscripts, substitute service lasts 1.1 times longer than the remaining military service<sup>23</sup>.

Substitute service is administered by the Ministry of Economic Affairs. It can be performed in any public or private body that serves the public interest, such as social welfare, the health sector and environmental protection.

After completion of substitute service, COs are liable for ‘extraordinary civilian service’. COs may only be called up for extraordinary civilian service during time of war or emergency<sup>24</sup>.

Since the Law on Civilian Service came into force in 1996, the number of CO applications has been relatively stable with approx. 2,000 per year. Since 2001, the following number of CO applications has been made:

2001	1,870
2002	2,102
2003	1,955
2004	1,805
2005	1,656

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17 Federal Constitution of the Swiss Confederation, 18 April 1999 (with amendments, status 30 November 2008), <http://www.admin.ch/ch/e/rs/101/a58.html>, accessed 19 June 2009

18 Bundesgesetz über den zivilen Ersatzdienst (Zivildienstgesetz, ZDG), Änderung vom 3. Oktober 2008, <http://www.admin.ch/ch/d/as/2009/1093.pdf>, accessed 26 June 2009

19 Bundesgesetz über den zivilen Ersatzdienst, [http://www.admin.ch/ch/d/sr/824\\_0/a1.html](http://www.admin.ch/ch/d/sr/824_0/a1.html), accessed 26 June 2009

20 Beratungsstelle Zivildienst: Comments on 1<sup>st</sup> draft, 1 July 2009

21 Beratungsstelle für Militärdienstverweigerung und Zivildienst: Zulassung, <http://www.zivildienst.ch/cms/index.php?option=content&task=view&id=50&Itemid=90>, accessed 26 June 2009

22 Beratungsstelle für Militärdienstverweigerung und Zivildienst: Zulassung, <http://www.zivildienst.ch/cms/index.php?option=content&task=view&id=50&Itemid=90>, accessed 26 June 2009

23 Bundesgesetz über den zivilen Ersatzdienst, [http://www.admin.ch/ch/d/sr/824\\_0/a8.html](http://www.admin.ch/ch/d/sr/824_0/a8.html), accessed 26 June 2009

24 Bundesgesetz über den zivilen Ersatzdienst, [http://www.admin.ch/ch/d/sr/824\\_0/a14.html](http://www.admin.ch/ch/d/sr/824_0/a14.html), accessed 26 June 2009

2006	1,752
2007	1,727
2008	1,948 <sup>25</sup>

Decision-making by the commission could be rather strict, which was exemplified by the case of Marino Keckeis in 2001. His application was rejected because he failed to convince the commission of his conscientious beliefs. He continued to refuse military service and was sentenced by military court to five months' imprisonment, although he repeatedly stressed that he was willing to perform substitute service. During his imprisonment he went on hunger strike and after three months in prison, he was released early. His case attracted considerable international attention. In fact, Amnesty International considered the rejection of his application to be "*due to a very limited interpretation of conscientious objection*".<sup>26</sup>

## Conscientious objection for professional soldiers

According to information provided by the *Beratungsstelle Zivildienst* in Zürich, the law on substitute civilian service also applies to those on the path to becoming a professional soldiers, as long as they are still serving time which is regarded as compulsory military service (depending on the rank between 260 and 500 days or more).

After this initial period, a professional soldier has a contract with the Armed Forces and the notice periods in this contract (or the Federal Personnel Law) apply<sup>27</sup>. This does not constitute a right to conscientious objection, but does allow for leaving the Armed Forces prematurely, albeit with giving several months notice.

## Background

Switzerland was one of the last Western European countries to recognize the right to conscientious objection and provide for a substitute service outside the armed forces. Before 1996, the treatment of COs was harsh. During the 80s and 90s, approx. 360 COs were imprisoned each year.

The Law on Substitute Service that was adopted in 1996 is the result of years of campaigning by Swiss peace groups. The decision to pass a CO law was in fact made by a referendum (In Switzerland, anyone may call for a referendum to be held, providing that a sufficient number of signatures is collected). In a referendum that was held in 1991, an 82.5 per cent majority voted in favour of amending the constitution, which allowed for a substitute service outside the armed forces. This amendment allowed for the drafting of the law on substitute service, which was eventually passed by the Swiss Parliament in 1995.

## Draft evasion and desertion

### Penalties

According to article 81 of the military penal code, refusing military service can be punished with up to 18 months imprisonment or a fine<sup>28</sup>.

According to article 81 (3), members of a religious community who refuse military service for reasons of conscience and do not apply for substitute service will be sentenced to community service, the length of which is based on the Law on Civilian Service. Also, the conditions of the community service will be according to the Law on Civilian Service. This article has been introduced especially for members of the Jehovah's Witnesses.

Being absent without leave can be punished with a fine equivalent of 180 days imprisonment. However, during active duty the punishment is up to three years imprisonment.

25 2001-2007: Vollzugsstelle für den Zivildienst ZIVI: Leistungszahlen Zivildienst 1. Oktober 1996 – 31. Dezember 2007, <http://www.zivi.admin.ch/dokumentation/00439/00467/index.html?lang=de&download=M3wBPgDB/8ull6Du36WenojQ1NTTjaXZnqWfVpzLhmfhnappmmc7Zi6rZnqCkklN0fn1+bKbXrZ6lhuDZz8mMps2gpKfo>, accessed 26 June 2009; 2008: Vollzugsstelle für den Zivildienst ZIVI: Mehr Zivildienstgesuche im Jahr 2008, <http://www.zivi.admin.ch/dokumentation/00438/00464/00786/index.html?lang=de>, accessed 26 June 2009

26 Amnesty International: Amnesty International urges the immediate release of conscientious objector Marino Keckeis (EUR 43/002/2002), <http://www.amnesty.org/en/library/info/EUR43/002/2002/en>, accessed 26 June 2009; War Resisters' International: Marino Keckeis, <http://wri-irg.org/node/3924>, accessed 26 June 2009

27 Beratungsstelle Zivildienst: Comments on first draft. Email to War Resisters' International, 12 August 2009

28 Militärstrafgesetz, <http://www.admin.ch/ch/d/sr/3/321.0.de.pdf>, accessed 26 June 2009

## Practice

Since 1996, between 41 and 110 conscripts per year refuse to perform both military and substitute service. According to article 81 of the Military Penal Code , total objection is punishable by up to 18 months' imprisonment<sup>29</sup>. In practice, total objectors are sentenced on average to eight to twelve months<sup>30</sup>.

Total objectors also remain liable to the military exemption tax, even after a criminal conviction for their refusal to perform military and substitute service. Non-payment of the exemption tax can again lead to fines and seizure of income.

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<sup>29</sup> Militärstrafgesetz, <http://www.admin.ch/ch/d/sr/3/321.0.de.pdf>, accessed 26 June 2009

<sup>30</sup> Beratungsstelle Zivildienst: Comments on 1st draft, 1 July 2009