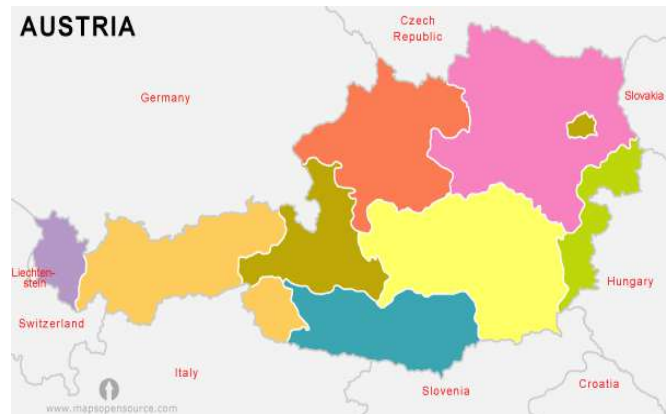


Austria

Issues

- The right to conscientious objection is **only recognised for conscripts, prior to call-up**, or more than three years after the end of military service.
- Those who joined the military as volunteers (professional soldiers) do not have a right to conscientious objection.



Military recruitment

Austria maintains conscription, although professional soldiers make up almost 50% of the Austrian armed forces. According to estimates of the Austrian *Bundesheer*, the armed forces comprise of 16,000 professional soldiers and about 17,000 conscripts – in total 35,000 soldiers¹.

In a referendum held on 20th January 2013, Austrian citizens voted to maintain conscription, with a majority of almost 60%².

Conscription and exemptions

Conscription is enshrined in art. 9(a) para 3 of the constitution (amended in 2002), according to which all male citizens are liable for military service³. The present legal basis of conscription is the 2001 Defence Law (*Wehrgesetz*)⁴.

Under the current arrangements all resident male Austrian citizens are obliged to register for military service during the calendar year of their 18th birthday. 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”⁵ In the cases of *Gütl v. Austria* and *Löffelmann v. Austria*⁶ the European Court of Human Rights found violations because the Jehovah’s Witnesses, having the status only of a “registered religious community” do not benefit from the complete exemptions granted to members of recognised churches.

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 party consider the possibility to increase the minimum age for voluntary recruitment to 18 years”⁷. In its

1 Österreichisches Bundesheer, http://www.bmlv.gv.at/truppendienst/milint/td_milint-laenderinfo.php?id_c=96&table_id=2 accessed 12 February 2008

2 Deutsche Welle, *Austria bucks trend with conscription vote*, 21 January 2013, accessed 24 February 2016

3 English version: <http://www.legislationline.org/upload/legislations/7d/0e/9533b7bfafda8e640a82346ab246.pdf>, accessed 12 February 2008

4 http://www.heer.at/pdf_pool/gesetze/wg2001.pdf, accessed 12 February 2008

5 See paras 290 - 320 of the State Report (CCPR/C/AUT/4) and the list at <http://www.help.gv.at/Content.Node/82/Seite.820100.html>, accessed 05 March 2008. Adherents must provide certification from the appropriate religious authorities

6 Applications nos. 49686/99 and 42967/98; judgements of 12 March, 2009

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

written responses⁸ Austria stated that it did not accept the recommendation.

The length of military service is presently six months.

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.

Professional soldiers

The service of professional soldiers (from non-commissioned officers up) is based on the public servants service law (*Beamten-Dienstrechtsgesetz*) of 1979, and the contract service law (*Vertragsbedienstetengesetz*) of 1948. Both laws do not specifically regulate military service, but apply to professional soldiers, either as public servants (*Beamte*) or contracted soldiers⁹.

The military also offers conscripts who finished their original military service the option to extend their service for six months according to Article 23 of the *Wehrgesetz* of 2001.

Women and conscripts who report voluntarily can also do a so-called "training service" of 12 months, extendible by a maximum of six months, according to Article 37 of the *Wehrgesetz*. It is possible to give notice to leave this service at any time; this notice comes into force at the end of the month in which it is given (Article 37 paragraph 3). However, those eligible for conscription will need to serve at least six months, or will be transferred to basic military service to serve the full time of conscript service if they give notice to leave "training service" before the end of six months (Article 38b).

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". However, the military faces problems in recruiting sufficient numbers of well educated professional soldiers¹⁰.

Conscientious objection

Conscientious objection for conscripts

The right to conscientious objection (CO) has been legally recognised since 1974. It is included in Article 9(a) of the Constitution, which states that citizens who refuse to perform military service for reasons of conscience must perform a substitute service. Its further legal basis is laid down in the 1986 *Law on Civilian Service* (*Zivildienstgesetz*).¹¹

It is believed that the summons to register for military service is accompanied by written information about the possibility of civilian service for conscientious objectors. However, there is no mention of conscientious objection nor of civilian service on the Ministry of Defence website for recruits¹²; for such information a conscientious objector would have to find the website of the Civilian Service Agency (*Zivildienstverwaltung*).

Both religious and non-religious grounds for conscientious objection are legally recognized. According to Article 2 of the Law on Civilian Service, the right to conscientious objection applies to "*those who cannot perform military service because they - except in cases of personal emergency - denounce for reasons of conscience to use armed violence against people and performing military service may get them into conflict with their conscience*".

8 A/HRC/17/8/Add.1

9 Response of the *Bundesministerium für Landesverteidigung* to a WRI questionnaire, GZ S91099/3-GrpRechtLeg/2008, 19 February 2008, see also Article 1 paragraph 2 of the *Wehrgesetz* 2001

10 *Arbeitsgemeinschaft Wehrdienstverweigerung*, Response to email from War Resisters' International, 18 February 2008.

11 The legislation currently in force is the revised Act, No. 679/1986, with subsequent amendments, most recently in Act No. 106/2005. Info: http://www.zivildienstverwaltung.at/material/ZDG_40_2006.pdf

12 www.bmlv.gv.at/rekrut

However, persons serving in the Austrian *Bundesheer* (armed forces) – either as conscripts or as volunteers – do not have the right to apply for conscientious objection and transfer to civilian service.

There are several time limits for submitting CO applications (Law on Civilian Service, Article 2.2).

Applications must be made within six months of receiving the notification of fitness for military service, but at least two days before receiving call-up papers for military service.

Applications cannot be made by serving conscripts. Applications can be made after completion of military service, but in this case an application can only be made more than three years after the first day of military service.

Applications must be made to the Ministry of Interior. The Ministry has produced a standard form, which basically states that the applicant agrees with the wording of Article 2 of the Law on Civilian Service. This form can be downloaded from the website of the civilian service administration¹³.

Since 1991, no personal interviews take place. Consequently, applications are almost automatically granted, provided they are submitted within the time limits. An application may be rejected if the applicant has been convicted for a criminal offence, if the applicant is employed by the state police, if the applicant has a gun licence, or if the applicant's objections to the use of violence are considered to be conditional and politically motivated (Law on Civilian Service, Article 5(a)).

If the application is rejected, there is a right of appeal to a civil court.

Substitute service

The length of substitute service is 9 months (from 1 January 2006 on). This is one and a half times the length of military service.

Substitute service is administered by the Ministry of Interior. Substitute service may be performed in several institutions in the public sector, such as hospitals, social work and emergency relief. It may also be performed with non-governmental organisations, such as the Austrian Red Cross.

COs may also perform a 12 month voluntary service abroad. COs who have completed such service, which usually consists of peace work or social work, are exempt from substitute service.

After completion of substitute service, COs have reservist duties up to the age of 50. During time of war or emergency, COs may be called up for "*extraordinary civilian service*", which consists of several unarmed duties such as emergency aid (Law on Civilian Service, Article 21). So far, COs have never been called up for reservist duties in practice.

In 2000, the government greatly reduced the payment of COs. Before 2000, COs were paid by the government and received approximately the same payment as conscripts in the armed forces. Now, the salaries of COs have to be partially paid for by the employing organisations themselves. The government has set guidelines on appropriate payment, but as these are very low this effectively means that CO salaries have been cut by half. Austrian CO groups have lodged several complaints with the Constitutional Court, which has in fact ruled that the new payment regulations are a violation of the constitutional right of free choice between military and civilian service. As the Constitutional Court did not rule which body is to be responsible for increasing CO salaries, the issue has still not been settled. Consequently, in practice the payment of COs remains far below the payment of conscripts in the armed forces¹⁴.

In their 2015 report to the Human Rights Council under the Universal Periodic Review (their fifth report)¹⁵, Austria was asked to justify 'the differentiation between the length of substitute civilian service for conscientious objectors and that of military service'. They argued that the 'advantages' of civilian service – including not wearing a uniform, not being subject to military law and not living in barracks, and the reduced 'level of exertion' – need to be redressed by extended the duration of the substitute service.

Restrictions

¹³ <http://www.zivildienstverwaltung.at/material/Zivildiensterklaerung.pdf>.

¹⁴ www.zivildienst.at (Austrian Union of Conscientious Objectors).

¹⁵ You can access it at <http://www.wri-irg.org/Austria-UPR-2015>

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.

Members of the constabulary (Wachkörper) are also debarred from Civilian Service (Article 5a(2)), as are those who hold a firearms licence Article 6(3)(3); presumably on the grounds that there cannot be an aversion to carrying weapons. Thus the grounds of conscientious objection are limited.

Conscientious objection for professional soldiers

There are no legal provisions for the right to conscientious objection for professional soldiers¹⁶. The Law on Civilian Service only applies to conscripts and does not contain provisions for professional soldiers.

The Public Servants Service Law and the Contract Service Law define the conditions under which a public employee – and therefore also professional soldiers – can terminate a contract prematurely. According to Article 21 of the Public Servants Service Law (which applies to permanent members of the armed forces, which are so-called “Beamte”), it is possible to leave the service within a month. However, if a soldier is part of an operation for which she/he receives additional payments according to the Operations Supplement Law (*Einsatzzulagengesetz*) of 1992, then his/her notice only takes effect on the end of the month following the end of this operation. This does not guarantee a right to leave prematurely for reasons of conscience, and makes leaving the armed forces more difficult in situation where reasons of conscience are more likely to arise.

Contracted soldiers according to the Contract Service Law (*Vertragsbedienstetengesetz*) can give notice when they want to prematurely end their contract. How much notice has to be given depends on the time of service that has already passed (Article 33). However, this might involve that training expenses have to be repaid (Article 30 paragraph 5).

Background

During the 1990s there were several cases of COs whose applications had been rejected because they were not submitted within the time limit. They continued to refuse military service and were consequently sentenced to up to one year's imprisonment under the Military Penal Code for “*failure to comply with call-up orders*”. Around 1997 this attracted considerable international attention and some of the COs concerned were in fact adopted as prisoners of conscience by Amnesty International. In 1997, Schwechat District Court acquitted a CO of these charges and ruled that he could not be reproached for not knowing about the time limits, especially because the authorities had made no particular efforts to inform the public about the introduction of the time limits.

Since 1998, there have been no known cases of COs being imprisoned after not submitting their CO applications within the time limit¹⁷.

Draft evasion and desertion

Penalties

Draft evasion and desertion are punishable under the Military Penal Code¹⁸.

Not responding to a call-up within 30 days is punishable by three months' imprisonment or a fine (section 7 (1)). After 30 days the sentence can be as heavy as a year's imprisonment (section 7 (2)).

16 Exercise of the right of conscientious objection to military service in Council of Europe member states, Report Committee on Legal Affairs and Human Rights, Doc. 8809 (Revised), 4 May 2001.

17 Amnesty International: Conscientious objection to military service: A summary of current concerns (EUR 13/001/1997).

18 Amnesty International 1997.

Persistent disobeying of military orders is punishable by up to 2 years' imprisonment (section 12 (1) 2).

Practice

Total objectors get sentenced to 2 to 6 months' imprisonment. There are no known cases of total objectors in recent years¹⁹.

Acknowledgements

This 2016 update was done in conjunction with the [International Fellowship of Reconciliation](#), thanks to the research undertaken for their 2015 [submission to the Universal Periodic Review](#) on Austria.

¹⁹ Silvestri, A. 1993. Conscientious objection to military service: a regional human right? Institut Universitaire de Hautes Etudes Internationales, Geneva; War Resisters' International 1990. Country report Austria. WRI, London.