

AUSTRIA

Conscientious objection to military service: a summary of current concerns

Conscientious objection under the law

Under Austrian law all men between the ages of 18 and 35 are liable for call-up into the Austrian army. According to Section 7 (1) of the Military Penal Code (*Militärstrafgesetz*), anyone who fails to comply with a call-up order within 30 days can be sentenced to three months' imprisonment or a fine.

After 30 days the penalty increases to a maximum of one year's imprisonment (Section 7 (2)). Section 12 (1) 2 of the same law further states that a conscript can be sentenced to up to two years' imprisonment for persistently disobeying a military order.

Provisions for refusing military service on grounds of conscience have existed since 1975. On 1 January of that year, the Alternative Service Law (*Zivildienstgesetz 1974*) came into effect. The law stipulated that applications for alternative service could be submitted any time after a person had received notification of fitness to perform military service (young men are usually given a medical examination to ascertain this at the age of 18), but no later than 14 days after receipt of call-up papers. Applicants had to submit a written application to the appropriate military command. This was then sent to the Alternative Service Commission (*Zivildienstkommission*) which summoned the applicant for an oral hearing.

An amendment to the Alternative Service Law (*Zivildienstgesetz-Novelle 1991*), which came into effect on 1 January 1992, abolished the Alternative Service Commission. Henceforth conscientious objectors merely had to submit to the authorities, within two weeks of receipt of call-up papers, a written application containing a pre-printed statement that they would experience a crisis of conscience if required to perform military service. The 1991 amendment also increased the length of alternative service from eight to 10 months. The length of military service remained unchanged at eight months.

At the end of 1993 the legislation, which had been introduced for a two-year period only, ceased to be valid. There followed a vacuum of several weeks during which discussions took place on the new legislation which would replace the old provisions. A new amendment (*Zivildienstgesetz-Novelle 1994*) was finally passed by the Austrian Parliament at the beginning of February 1994, applicable retroactively from 1 January 1994 and valid for two years. Under the new amendment the length of alternative service was further increased to 11 months. New restrictions were also introduced to the time limits within which conscientious objectors were able to submit applications for alternative service. Henceforth, conscientious objectors had to submit their applications for alternative service within one month of receiving notification of their fitness to perform military service.

In December 1996 a new amendment to the Law on Alternative Service was passed by parliament. The new law (*Zivildienstgesetz-Novelle 1996*), increases the length of alternative service from 11 to 12 months and leaves the length of military service unchanged. Alternative service is therefore now 50% longer than military service (12 months, as compared to eight). Applications for alternative service have to be submitted within a strictly defined period, beginning upon receipt of notification of fitness to perform military service, and ending two days before receipt of call-up papers. The period between notification of fitness to serve and call-up must be at least six months.

Amnesty International's concerns

Amnesty International has repeatedly brought to the attention of the Austrian authorities its concern regarding the time limits for the submission of applications for alternative service. The organization has also questioned the reasoning behind the steady increase in the length of alternative service.

Both the United Nations Commission on Human Rights and the Committee of Ministers of the Council of Europe have recognized the principle that it should be possible for conscientious objectors to compulsory military service to apply for alternative service at any time. According to resolution 84/93 on Conscientious Objection to Military Service, adopted by the United Nations Commission on Human Rights on 10 March 1993, states should introduce "minimum guarantees to ensure that...conscientious objector status can be applied for at any time...". Similarly, Paragraph 26 of the Explanatory Report to Recommendation No. R(87)8 regarding Conscientious Objection to Compulsory Military Service, adopted by the Committee of Ministers of the Council of Europe on 9 April 1987, states that:

"To prescribe an absolute time-limit in the rules to which applications are subject could be considered as contrary to the very purpose of the Recommendation. If refusal to perform military service is acknowledged as being based on a conflict of conscience, it follows that this conflict might occur at any moment in a person's life".

Recommendation No. R(87)8 also states that:

"Alternative service shall not be of a punitive nature. Its duration shall, in comparison to that of military service, remain within reasonable limits".

Amnesty International would normally regard a discrepancy of more than 50% between the length of military and alternative service as punitive.

In January and in March 1994 Amnesty International wrote to the Chairman of the Internal Affairs Committee of the Austrian Parliament (*Nationalrat*), the President of the *Nationalrat* and to the Federal Ministry for Foreign Affairs, criticizing the 1994 amendment to the Alternative Service Law. In its letters the organization said that restricting the time period within which an application could be made took no account of the fact that a person's conscientiously-held beliefs may change over time. Amnesty International also asked the Austrian authorities to be informed of the reasons for the continued divergence in the length of military and alternative service. Except for an acknowledgement of its letter to the Austrian Parliament, Amnesty International received no replies to its letters.

Amnesty International again raised its concern about the legislation on conscientious objection in May 1995 following publication of a new draft law which retained the time limits on applications for alternative service imposed by the 1994 amendment. The organization also asked the authorities for information on the number of people detained since January 1994 for refusing, on grounds of conscience, to report for military duty following call-up or to obey military orders. In June 1995 Amnesty International was informed by the Minister for Internal Affairs that during the parliamentary debate on the new law his ministry would be seeking to obtain a relaxation of the proposed time limits. No further information was supplied. (In fact the planned 1995 amendment never came into force; instead the current legislation was extended by another year.)

The current legislation

Compared to the legislation it replaced, the new amendment to the Alternative Service law which came into effect on 1 January 1997 relaxes the time limits for the vast majority of potential applicants. Whereas the 1994 amendment to the Alternative Service Law required objectors to military service to submit their applications for alternative service within one month of receipt of notification of fitness to perform military service, the new law extends this period to a minimum of six months. In Amnesty International's view, however, this is still too restrictive. Also, the stipulation that the period for submitting an application for alternative service will end two days before receipt of call-up papers effectively means that potential applicants can never know that the period for submitting an application is actually over, until it is already too late. The new law has even more restrictive provisions for people declared fit to serve before 1 January 1992 and those declared fit between 1 January 1992 and 31 December 1993. Anyone declared fit in 1992 and 1993, who has either not yet been called up or who has been called up but has obtained a temporary exemption from or postponement of, military service, will not be able to submit another application until five years have elapsed since he was first declared fit to serve. Even then he will only have six weeks in which to submit an application and there is no guarantee that he will not be called up before this six-week 'window of opportunity'. The Vienna-based non-governmental organization *Netzwerk Gewissensfreiheit* (Freedom of Conscience Network) estimates that there could be up to 15,000 men who fall into this category.

For anyone declared fit to serve before 1 January 1992 the situation is even more restrictive - and even more confusing. For example, according to the new law, a person declared fit to perform military service on 1 December 1991 would have theoretically had an opportunity to make an application for alternative service within a six-week period five years later, that is between the beginning of December 1996 and mid-January 1997; yet the legislation only became law on 1 January 1997, giving the person less than two weeks to submit an application. The situation for anyone who was declared fit to perform military service before mid-November 1991 is, by extension, even worse, as he is effectively denied any further opportunity to make an application. It is estimated that there could be more than 15,000 men who are affected by this restriction.

The anomalies and confusion created by the proposed legislation were repeatedly raised with the government authorities responsible for drafting it, by local non-governmental organizations, such as the *Netzwerk Gewissensfreiheit*, by the Green Party (*Die Grünen*) and by Amnesty International.

In October 1996 Amnesty International wrote to the Federal Minister of the Interior criticizing the proposed amendment on the grounds that it was not compatible with Resolution 84/93 on Conscientious Objection to Military Service, adopted by the United Nations Commission on Human Rights on 10 March 1993. In its letter the organization again asked to be informed of the reasons for the continued divergence in the length of military and alternative service. Amnesty International had received no reply to its letter by the end of January 1997.

Before the legislation was passed, Amnesty International also raised with the Austrian authorities three individual cases of people who, because of the restrictive time limits under the legislation then in force, were denied an opportunity to register a conscientious objection. Two of the three had gone into hiding, fearful of arrest and detention because of their refusal, on grounds of conscience, to report for military service. Trial proceedings against a third conscientious objector began in November 1996 and were adjourned.

The case of Herwig Matzka

Herwig Matzka began his military service on 2 May 1978, at the age of 17. On 27 June of the same year he was discharged from his unit after joining the Vienna police force. He had completed one month and 27 days of his military service. On 30 September 1994 Herwig Matzka resigned from the Vienna police force and on 5 December 1994 he submitted an application for alternative service. In his application he explained that he had resigned from the police because he had developed over the preceding years a "deep aversion to violence and to all instruments representing violence" (*"Da ich Gewalt und gewaltrepräsentierende Gegenstände zutiefst ablehne, trat ich ... freiwillig aus dem Polizeidienst aus"*). He declared that it was impossible for him, on grounds of conscience, to perform military service. Eleven days after he submitted his application he received orders to report for military duty on 2 February 1995. On 27 December 1994 he was informed by the Federal Ministry for Interior Affairs that his application for alternative service had been rejected because it had not been submitted within the required time period. (By law, Herwig Matzka should have submitted an application within one month of the promulgation of the 1994 amendment to the Alternative Service Law in March 1994. At that time, however, he was still in the police force and still exempted from completing the remainder of his military service.) Herwig Matzka appealed to the Constitutional Court (*Verfassungsgerichtshof*) against rejection of his application. The court suspended his call-up and referred his appeal to the Administrative Court (*Verwaltungsgerichtshof*) which rejected it on 14 November 1995. A further appeal to the Federal Ministry of Defence on 10 June 1996 was also unsuccessful.

On 11 July 1996 Herwig Matzka received notification that he was to report for military duty on 22 July 1996, less than two months before his 36th birthday. He did not report for military service, but instead fled abroad, where, according to Amnesty International's information, he remains. If he returns to Austria he could be arrested and detained pending trial on charges of "non-compliance with a call-up order" (*Nichtbefolgung des Einberufungsbefehles*) under section 7(2) of the Military Penal Code. If he is convicted, he could face up to one year's imprisonment.

The case of Peter Zwiauer

Peter Zwiauer began his military service on 1 July 1980, at the age of 20. On 27 August of the same year, after completing almost two months of his service, he was discharged from his unit "for reasons of public interest": his employer, the Federal Post Office, required his services urgently. On 7 September 1994 Peter Zwiauer was informed by the Federal Ministry of Defence that the circumstances which led to his exemption from completing his military service no longer prevailed. Nine days later he submitted an application to perform alternative service, declaring that it was impossible for him, on grounds of conscience, to perform military service. (More than 14 years had now elapsed since he had served for almost two months.) His application was rejected by the Ministry of Internal Affairs on 31 October 1994 on the grounds that it had not been submitted within one month of the promulgation of the 1994 amendment to the Alternative Service Law in March 1994, and in November 1994 he was ordered to report for military duty on 31 January 1995.

Peter Zwiauer appealed to the Constitutional Court and to the Administrative Court against the decision to reject his application for alternative service. Although the Constitutional Court suspended his call-up, both it and the Administrative Court subsequently denied his appeal. On 2 May 1996, the military authorities ordered Peter Zwiauer to report for military service on 20 May 1996, only a week away from his 36th birthday. However, he failed to report for duty, and on 22 October 1996 was charged under section 7 (2) of the Military Penal Code. His trial before

Schwechat District Court (*Bezirksgericht Schwechat*) was opened on 20 November 1996 and adjourned.

The case of Andreas Gruber

Andreas Gruber was declared fit to perform his military service on 5 March 1985. Although he made it known at this time that he wished to perform alternative service instead, he did not put this request in writing. In October 1985, he applied for, and was granted, postponement of his military service until May 1990 for study reasons. The period of postponement was twice extended up until October 1995. On 21 June 1995 he was called up to commence his military service on 2 October 1995. On 30 June 1995 Andreas Gruber's employer submitted a request for him to be exempted from military service. The call-up order was suspended until 31 December 1997. On 24 June 1996, Andreas Gruber's employer informed the Defence Ministry that Andreas Gruber had resigned from his job and therefore the grounds for his exemption from military service were no longer valid. On 17 September 1996 he was called up to commence his military service on 2 December 1996. Andreas Gruber wrote to the Austrian President and to other authorities on 13 October 1996 asking to be exempted from carrying out his military service as his moral convictions did not allow him to serve in the army. His request was turned down by the Defence Ministry on 6 November 1996. The authorities argued that someone can only be released from a call-up order when this would be in the public interest and that this was not the case with Andreas Gruber's request.

Andreas Gruber declared that he refused to obey the call-up order and did not report to the Schwarzenberg barracks in Salzburg as he was ordered to do, but went into hiding. He stated that his conscience did not allow him to do his military service, but that he was willing to perform alternative service.

Amnesty International has written to the Austrian authorities in all three of the above cases. In its letters the organization has stated that should Herwig Matzka, Peter Zwiauer or Andreas Gruber be imprisoned as a result of their refusal, on grounds of conscience, to perform military service, Amnesty International would adopt them as prisoners of conscience and would call for their immediate and unconditional release. In December 1996 the organization was informed by the Ministry of Defence that Peter Zwiauer and Andreas Gruber were obliged under Austrian law to complete their military service. Amnesty International has received no response from the authorities to its letters concerning the case of Herwig Matzka.