

1 This submission was prepared in March 2015 on the basis of the latest information available to the signatory organisations.

**Executive summary:**

2 This submission focusses on the situation regarding military service and conscientious objection to military service in Austria.

3 The principal human rights concerns it identifies are:

**Legislative provision which allows young men to opt to perform obligatory military service at the age of 17, contrary to the spirit of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, and to the recommendations of the Committee on the Rights of the Child when it examined Austria's initial report under the Optional Protocol. In the first cycle of the UPR Austria rejected recommendations by two States on this subject.**

**Various shortcomings in the arrangements for conscientious objectors to military service; restrictive time limits for making applications; no provision for those who develop conscientious objections after beginning their military service, or when subsequently liable to reserve service; unreasonable limitations on who is eligible to apply; a punitive duration of alternative civilian service, exacerbated by a rate of remuneration approximately half of that received by military conscripts, which the Constitutional Court found to be discriminatory. Although these issues date back beyond the review of Austria in January 2011 during the first cycle of the UPR, the issue was not raised during the Working Group, and no recommendations were made.**

**Background**

4 Under the 1919 Treaty of Versailles, Austria was prohibited from maintaining conscription. From 1938 to 1945 conscription into the German Army was imposed. Opposition generally went underground, but, as in Germany itself, an unknown number of persons openly declared themselves as conscientious objectors. Most were shot.

5 Obligatory military service in Austrian armed forces was introduced only by the Defence Act (*Wehrgesetz*) of 1955, which expressly recognised conscientious objection and permitted recognised conscientious objectors to perform non-combatant service in the medical or clerical corps; this service was of 12 months, as against 9 months in the military.<sup>1</sup> This Act has been revised several times - most recently in 1990 and 2001.

6 In a referendum held on 20<sup>th</sup> January 2013, Austrian citizens voted to maintain conscription. Figures released by the interior ministry when all votes except postal votes had been counted showed that the proposal had been rejected by a margin of 59.8% to 40.2%.

7 A civilian “substitute” service<sup>2</sup> for conscientious objectors was introduced in the Civilian Service Act (*Zivildienstgesetz*) of 1974. The legislation currently in force is the revised Act, No.

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

<sup>2</sup> Although the usual term in English is “alternative service”, Austrian sources stress that their civilian service is an “*Ersatzdienst*” - a substitute or replacement service. “*Alternative*” in German is seen as implying an option open to all, not just conscientious objectors.

679/1986, with subsequent amendments, most recently in Act No. 106/2005.

8 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 at the same time increased the length of the Civilian Service from 8 to 10 months. There were further increases to 11 months in 1994 and to 12 months in 1996. Amending Acts of 2005 reduced the duration of military and civilian service to six months and nine months respectively, thus maintaining the latest 150% ratio. This means that for a person who performs alternative civilian service, half as long again is taken from their normal education and career progression as is in the case of a person performing military service.

9 Under the current arrangements all resident male Austrian citizens are obliged to register for military service during the calendar year of their 18<sup>th</sup> birthday; thus those born in 1996 are being registered in 2014. 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”<sup>3</sup>. In the cases of *Gütl v. Austria* and *Löffelmann v. Austria* the European Court of Human Rights<sup>4</sup> 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.

10 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.

11 Those in the appropriate age cohort are summoned to register on a specific date according to commune of residence and alphabetical order of name. The summons also applies in principle to anyone liable to military service who has for any reason not previously registered. Identity documents and a considerable amount of medical information must be supplied; the principal function of this process is to identify any medical hindrances to recruitment. Devout Islamic and Jewish recruits must provide certification from the appropriate religious authorities (which are both on the list of “recognised religions”); special arrangements will be made for their call up so that their military duties will not conflict with their religious observances; if this information is not provided until after call-up and it is impossible to make suitable arrangements the recruit concerned will be stood down and called up the following year.

12 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 the involvement of 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”<sup>5</sup>; the Committee did not address the questionable assumption

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<sup>3</sup> 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](http://www.help.gv.at/Content.Node/82/Seite.820100.html)

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

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

that an option regarding the timing of enlistment for obligatory military service made such recruitment voluntary, and thus, subject to certain conditions, permissible under the OP/CAC.

13 In the first cycle of the Universal Periodic Review, 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.”<sup>6</sup>

14 In its written responses<sup>7</sup> Austria stated that it did not accept the 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.”

15 It is believed that the summons to register is accompanied by written information about the possibility of civilian service for conscientious objectors.<sup>8</sup> No mention of conscientious objection nor of civilian service can however be traced in the section of the Ministry of Defence website<sup>9</sup> containing information for conscripts; for such information a conscientious objector would have to find the website of the Civilian Service Agency (*Zivildienstverwaltung*).

16 The requirement to perform military service applies until the acceptance of an application to perform Civilian Service, which must incorporate a declaration of conscientious objection which fits the description in the Act. Helpfully, the application form which may be downloaded from the website of the Civilian Service Agency gives the recommended wording in a preprinted declaration; all that the applicant needs to do is add his signature. The declaration reads:

“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.”<sup>10</sup>

17 The Austrian authorities have made it clear, however, that a conscientious objector is free to make a declaration in his own words, and that the application need not be made on the prescribed form; it may even in the first instance be registered orally.<sup>11</sup> This could be important in view of the very strict time limits which apply. Under Article 1(2) of the Civilian Service Act application to perform Civilian Service must be made within six months of receiving notification of fitness for military service following first registration; the right to apply for Civilian Service is however suspended from two days before the receipt of call-up notice until military service is performed or the call-up notice is rescinded; there is no possibility of a transfer to Civilian Service after call-up. Moreover reservists may not declare themselves conscientious objectors until three years have elapsed from the day of their first call-up. There are no legislative provisions to allow the release of regular members of the armed forces who declare a conscientious objection.

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<sup>6</sup> A/HRC/17/8, 18<sup>th</sup> March 2011 (Working Group on 26<sup>th</sup> January 2011), para 93.47.

<sup>7</sup> A/HRC/17/8/Add.1

<sup>8</sup> Ibid.

<sup>9</sup> <http://grundwehrdienst.bundesheer.at>

<sup>10</sup> “Ich erkläre hiemit ausdrücklich, a) die Wehrpflicht nicht erfüllen zu können, weil ich es - von den Fällen der persönlichen Notwehr oder Nothilfe abgesehen - aus Gewissensgründen ablehne, Waffengewalt gegen andere Menschen anzuwenden und daher bei Leistung des Wehrdienstes in Gewissensnot geraten würde, b) deshalb Zivildienst leisten zu wollen.”

<sup>11</sup> 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.

18 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. 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. It is indeed implied in Article 6(3)(3) that having held a firearms licence for any purpose debars a person from Civilian Service.

19 It is reported that in 2000 under new payment arrangements the remuneration of those performing Civilian Service was reduced to approximately half that received by military conscripts; that this discrimination had been found by the Constitutional Court to be unconstitutional, but that even in 2008 the situation had not been resolved.<sup>12</sup>

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<sup>12</sup> 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](http://www.wri-irg.org/programmes/world_survey/country_report/en/Austria))