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## **Conscience and Peace Tax International**

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### **Joint UPR Submission: GERMANY Sixteenth Session: May / June 2013**

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## Executive Summary

**In many respects Germany has been an example of best practice with regard to conscientious objection to military service. In particular it was the first country to recognise the right in a constitutional provision, and following the suspension of obligatory military service in 2011, contract personnel in the armed forces continue to benefit from provisions allowing them early release should they develop conscientious objections.**

**Concerns however persist regarding asylum protection for conscientious objectors and the low age of recruitment.**

## Historical Background:

1. Before 1945, there were no provisions for conscientious objection to military service in Germany; a monument to the “unknown deserter” which now stands in a park in Potsdam pays tribute to the uncounted numbers who, in two world wars, refused to take up arms against their fellow men, and were shot as deserters.

2. In reaction to this sad history, Article 4.3 of the 1949 *Grundgesetz* of the German Federal Republic stated “*No one may be forced against his conscience to perform armed military service.*” This was the first explicit protection of conscientious objection to military service in a constitution or equivalent document anywhere in the world.

3. When a law establishing obligatory military service (*Wehrpflichtgesetz*) was passed in 1956, it accordingly contained provisions for the recognition of conscientious objection. Although the first conscripts did not begin their military service until 1<sup>st</sup> April 1959 the first 2,447 applications from conscientious objectors had already been examined in 1958. In 1960 a *Ziviler Ersatzdienst* (civil substitute service) was established and in the following year the first groups of conscientious objectors began performing civilian service.

4. In 2003, the military authorities ceased to be involved in the assessment of applications. The duration of civilian service was gradually shortened; finally, from October 2004 it was set at nine months, equal to that of military service. The duration of both was later further shortened to six months.

5. The annual number of applications for recognition as a conscientious objector exceeded 100,000 for the first time in 1991, thereafter it fluctuated at around 150,000 – equivalent to something over a third of those reaching the age of liability for military service. Latterly approximately 85% were accepted. At the same time, there was a steady decline in the number of conscripts which the military needed or could accommodate. As a result, from 1999 on, the number of young men performing civilian service exceeded the number of conscripts performing military service. In 2004, amendments to the Law on Military Service were promulgated which exempted married men and men living with a partner, and also stipulated that, in normal circumstances, call-up could take place only up to the age of 23. Men who passed that age without having been called up cease to be liable for military service in time of peace.

6. Meanwhile the health and social services had come to rely very heavily on conscientious objectors performing their civilian service. Official figures in October 2007 gave the number as 69,932: 42,152 in hospitals or residential care institutions, 16,677 “technical or practical assistance

in various social institutions”, 2,671 in environmental protection, 1,891 as ambulance crew, 1,738 individual care of severely disabled persons, 1,734 mobile social work (eg “meals on wheels”), and the remainder in various agricultural, transport and administrative functions. The portrayal of conscientious objectors in popular culture had changed in response; where once they had been widely despised as egoists who are too lazy to do military service; most television hospital dramas now featured a conscientious objector performing his civilian service as one of the most sympathetic characters.<sup>1</sup>

7. It was this, rather than any military exigencies, which was for years popularly seen as the biggest obstacle to Germany following its neighbours and abolishing “peacetime” conscription. The decision to do so, when it came, was sudden. The German parliament approved amendments to the conscription law on 15th December 2010, which would take effect from 1st July 2011. The final cohort of conscripts began their compulsory military service on 3rd January 2011. The medical examination of potential recruits was also suspended. Registration for military service was however for the first time extended to women.

8. The suspension of conscription brought also the suspension of civilian service, but a new federal voluntary service, open to women and men, was established under the administration of the former Federal Agency for Civilian Service (*Bundesamt für Zivildienst*), now renamed the "Federal Agency for Family and Civil Society" (*Bundesamt für Familie und zivilgesellschaftliche Aufgaben*). The new voluntary service - which is an addition to the existing voluntary service schemes of the German states (Länder), and under the Voluntary Social Year and the Voluntary Ecological Year programmes - will last 6, 12, or 24 months, and it is planned that there will be about 30,000 places initially.<sup>2</sup>

9. The amendments to the conscription law also included new regulations enabling both men and women to sign up for a Voluntary Military Service (“*freiwilliger Wehrdienst*”) of between 12 and 23 months. The first six months are a probationary period during which the agreement can be terminated by either party. (By comparison, before the suspension of conscription, conscripts had been permitted on the conclusion of the compulsory six months to sign up if they chose for an extra 17 months' service.) Fifteen thousand places per year will be available.

10. Both the Federal Voluntary Service and the Voluntary Military Service are in fact paid, but whereas those performing Federal Voluntary Service receive an allowance of €330 per month, the remuneration for Voluntary Military Service is between €777 and €1146 per month.

### Contract soldiers and conscientious objection

11. From the beginning, the possibility of applying for conscientious objector status was open to everyone without time limits. Thus not only could conscripts lodge an application after their military service had begun, but – an even rarer example of good practice – it was unambiguously established that the right extended to those who had voluntarily embarked on a professional military career.

12. Many contract soldiers “*Zeitsoldaten*” apply for release under the conscientious objection

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<sup>1</sup> Schneider, F. “Objection de conscience et service civil en Allemagne”, European Bureau for Conscientious Objection, March 2008.

<sup>2</sup>

provisions. A parliamentary reply on 30<sup>th</sup> March 2011<sup>3</sup> revealed that 204 such applications had been lodged in 2008 and 370 in 2010, with a further 96 in the first two months of 2011. (Applications are generally successful; there has not been a contested refusal within the last few years.) These figures contradict the popular view that very few volunteers are ever likely to become conscientious objectors, and implies that the very low number of cases recorded elsewhere reflects the complicated and little-known application procedures rather than the underlying reality.

### Selective objection

13. It was also in Germany that the Federal Administrative Court in 2005 made a groundbreaking decision for the recognition of selective objection, in the case of Major Florian Pfaff. Pfaff had been demoted following refusal to work on computer software which would be used in the invasion of Iraq, which he believed to be contrary to international law. The court found that his belief that the assignment was illegal constituted a genuine conscientious objection, and on that ground it ordered the reinstatement of his former rank, without finding it necessary to rule definitively on the legality of the order he had refused. It observed simply that "*there were and still are serious legal objections to the war against Iraq launched on 20 March 2003 by the USA and the UK, relating to the UN Charter's prohibition of the use of violence and other provisions of international law. The US and UK governments could not use as their basis for the war either decisions of the UN Security Council authorising them to go to war, or the right to self-defence set out in Article 51 of the UN Charter*"<sup>4</sup>.

### Asylum for conscientious objectors

14. In the light of its own good practices it is surprising that Germany's asylum tribunals have not consistently recognised the right to asylum of those fleeing recruitment in countries where there are no, or no adequate, provisions for conscientious objection to military service.

15. This question is touched on in the question about asylum procedures in "List of Issues" prepared by the Human Rights Committee in preparation for its examination of Germany's Sixth Periodic Report under the ICCPR in October 2012:

"Please provide information on the application of Section 34a (2) of the Asylum Procedures Act prohibiting suspension orders in cases of transfers to another State participating in the Dublin-II system. Please explain the mechanisms that have been put in place to ensure that the "fast track" asylum determination procedure that is undertaken at the State party's airports, particularly at Frankfurt airport, complies with due process and does not breach the principle of non-refoulement? Please provide data on the number of cases that have been disposed of under this procedure during the reporting period. Please provide information on the State party's practice regarding asylum applications of conscientious objectors."<sup>5</sup>

16. Following the Pfaff verdict, moreover, it might be expected that the German asylum tribunals would be sympathetic to the claims of members of the U.S.A.'s armed forces who develop concerns of a conscientious and legal nature with some of that country's military operations, but who if they refuse deployment there on grounds of conscience face long terms of imprisonment on

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<sup>3</sup> Bundestag: Antwort des Parlamentarischen Staatssekretärs Thomas Kossendey vom 30.03.2011 auf Schriftliche Fragen des Bundestagsabgeordneten Paul Schäfer, Drucksache 17/5422 (Auszug)

<sup>4</sup> BVerwG 2 WD 12.04

<sup>5</sup> CCPR/C/DEU/Q/6 , 21<sup>st</sup> August 2012, para 11.

their return to the U.S.A. This issue is particularly relevant in Germany because of the large number of United States' service personnel based there. Nevertheless, the one high-profile case, that of U.S. Army Specialist André Shepherd was rejected by the Federal Bureau of Migration and Refugees.

17. After completing training as an Apache helicopter airframe mechanic, Shepherd had been posted to a unit based at Katterbach in Germany, but currently deployed at a forward operating base near Tikrit in Iraq. His experiences during the six months he spent in Iraq led Shepherd to question the legitimacy of the U.S.A.'s military operation there, and on return to Germany he investigated the possibility of applying for release as a conscientious objector, but was told that as his was a "selective" objection to the war in Iraq, it would almost certainly be denied. On April 11<sup>th</sup> 2007, he went "absent without leave" and had since been living "underground" in Germany.

18. There is a strong argument that Shepherd would face persecution were he returned to the U.S.A. because of his refusal to participate in the war in Iraq. Article 9 para 2(e) of European Union Council Directive 2004/83/EC, states: "*Acts of persecution as qualified in paragraph 1, can, inter alia, take the form of: ... (e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include... a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes.*"

19. However the Federal Bureau announced in April 2011 that it was denying Shepherd's asylum application. In its negative decision, the Federal Bureau writes, "*whether the helicopters he maintained and their crews actually participated in specific illegal actions (contrary to international law) has neither been stated sufficiently, nor can it be determined specifically otherwise. According to the applicant's statements, he himself was also not able, during his first Iraq deployment, to find out details on the missions of the helicopters serviced by him or his unit. Accordingly, the applicant's deliberations on the potential participation of 'his' helicopters in possible illegal acts and war crimes constitute at most conjectures or a hypothetical possibility.*"

20. Shepherd's attorney, Reinhard Max, observed, "*With this rejection and its interpretation of the EU Qualification Directive, which is contrary to European law, the Federal Bureau is attempting to destroy the protection for deserters and conscientious objectors envisaged by the Directive. The background for this is obviously the intention of the German government to give priority to German legal principles over European law.*"<sup>6</sup>

21. An appeal against the Federal Bureau's decision is currently pending.

### Juvenile recruitment

22. Germany is one of the states in which voluntary enlistment in the armed forces is possible, with parental consent, at the age of 17. According to the Child Soldiers Global Report 2008,<sup>7</sup> there were in 2005 1,229 males and females serving in the German armed forces; in 2006 the figure was 903. Service could begin from the seventeenth birthday; applications could in fact be made much earlier. The normal procedure was that those applying for such early entry went through a medical examination six months before their seventeenth birthday. Although safeguards were in place to ensure that they would not be involved in any function requiring the use of firearms, including

<sup>6</sup> Press release by Connection Ev, 7<sup>th</sup> April 2011.

<sup>7</sup> Coalition to Stop the Use of Child Soldiers, Child Soldiers Global Report 2008, London, 2008, p151.

armed guard duty, seventeen-year-old volunteers could receive firearms training. Even more disturbing is the fact that 16-year-olds may join the border guard and police services and that, even if not in an armed role, persons aged under 18 may perform active duty in these armed services.

23. When Germany made its initial report under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, the Committee on the Rights of the Child expressed its unease about recruitment ages.

“The Committee notes that the age for the recruitment of volunteers at 17 is valid only with the consent of their legal representatives and that those volunteers are not allowed to be deployed to armed duty.

“ The Committee notes that the great majority of States parties to the Protocol do not permit voluntary recruitment of children. The Committee therefore encourages the State party to raise the minimum age for recruitment into the armed forces to 18 years in order to promote the protection of children through an overall higher legal standard.”<sup>8</sup>

24. Far from implementing this recommendation, there is evidence that since the end of conscription Germany has increased its military recruitment activities aimed at persons aged under 18 and its presence in schools.

25. Under a new article 58 of the conscription law, local authorities must at the beginning of each year provide to the local military authorities (*Kreiswehrrersatzamt*) the names and addresses all boys and girls who will turn 18 in the following year, for the purpose of "sending information about a service in the Armed Forces". This means that in fact 16-17 year old youth can be contacted by the military, and can (and will) be sent military propaganda. It is possible to opt out of this, but only in the year before the data will be passed on to the military authorities – in effect in the calendar year of the sixteenth birthday.

26. Education Ministries from 8 of the 16 “Bundesländer” have signed a cooperation contract with the army enabling the presence of specially qualified representatives of the army (“Jugendoffiziere”) in schools (and sometimes their participation in teacher training). Figures show that in the course of 2009 they reached more than 160,000 pupils. Meanwhile “military service advisers” were present at 12,600 youth events, reaching a further 280,000 pupils.<sup>9</sup>

27. Other initiatives target an even younger age group. Bravo, Germany's most popular youth magazine, aimed at 12 – 19 year olds, carries a video on its You Tube channel headlined: “Action, Adrenaline, Adventure! The challenge of your life is waiting! Army Adventure Camps 2012”. The video offers 'free' trips to the beaches of Sardinia or the mountains of Berchtesgaden, where the adventure camps are held. Meanwhile on Bravo's main website, a slim young girl wearing a rucksack proclaims "outdoor fashion is in," above an article detailing what readers might want to wear at the free Army Adventure Camp being held 'at the beach or in the mountains.'<sup>10</sup>

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<sup>8</sup> CRC/C/OPAC/DEU/CO/1, 13 February 2008, paras 10, 11.

<sup>9</sup> Speck, A. “Comments on the presentation of the EBCO annual report to the Committee of Civil Liberties of the European Parliament, 26<sup>th</sup> September 2012, (<http://wri-irg.org/node/20446>)

<sup>10</sup> The Local, “Army lures Bravo readers with 'free' trips” Published: 18 Sep 2012