

Act on the reform of conscientious objection law
(*Kriegsdienstverweigerungs-Neuregelungsgesetz – KDVNeuRG*)

of 9th August 2003

The Bundestag has adopted the following Act:

Article 1

Act on the refusal to render military service involving the use of arms on grounds of conscience

(*Kriegsdienstverweigerungsgesetz – KDVG*)

Section 1

Principle

(1) Whoever refuses to render military service involving arms on grounds of conscience and by invoking the fundamental right to conscientious objection in accordance with Article 4 para. 3 sentence 1 of the Basic Law shall be recognised as a conscientious objector in accordance with the provisions of this Act.

(2) Persons recognised as conscientious objectors shall render civilian service outside the Federal Armed Forces (*Bundeswehr*) as an alternative service in accordance with Article 12a para. 2 of the Basic Law instead of military service.

Section 2

Application

(1) The legitimacy of the refusal to render military service involving the use of arms shall be decided by the Federal Agency for Civilian Service (Federal Agency) on application.

(2) The applicant shall submit the application in writing to the Regional Recruitment Office or have it recorded there. The application must contain reference to the fundamental right to conscientious objection in accordance with Article 4 para. 3 sentence 1 of the Basic Law. A complete Curriculum Vitae in tabular form and a personal and comprehensive explanation of the reasons for the conscientious decision are to be enclosed with the application or submitted within one month to the Federal Agency.

(3) Written statements and assessments of the applicant's conduct by third parties may be enclosed with the application or submitted to the Federal Agency. Furthermore, persons willing to give information about the applicant may be named.

(4) Conscripts without prior military service may submit an application no earlier than six months prior to their 18th birthday. Consent of their legal representative is not required.

(5) By derogation from subsection 4, conscripts may submit an application no earlier than six months prior to their 17th birthday if they enclose

1. an application to perform civilian service early, to which the legal representative has given his or her consent or
2.
 - a) a draft commitment in accordance with section 14c subsection 1 of the Act on Civilian Service (*Zivildienstgesetz*)
 - b) a declaration by the legal representative giving his or her consent to such a commitment
 - c) a declaration by the relevant institution in accordance with section 14c subsection 3 of the Act on Civilian Service stating the willingness to conclude such a commitment with the applicant after the latter's recognition as a conscientious objector

Persons who have submitted an application in accordance with sentence 1 may be invited to a pre-induction examination to take place no earlier than six months before their 17th birthday.

(6) The Regional Recruitment Office shall confirm receipt of the application to the applicant and forward the application together with his or her personal file (basic file) to the Federal Agency. Forwarding is to take place without delay, in the case of conscripts without prior military service as soon as the pre-induction examination notice has become non-appealable. In the case of career soldiers or temporary career volunteers, a statement by the disciplinary superior and the authority in charge of personnel management shall be included in the personal file.

Section 3

Consequences of an application

(1) Submitting an application in accordance with section 2 does not hinder registration and does not exempt conscripts from having to present themselves at the pre-induction examination.

(2) Once the application is submitted, draft into basic military service is only permissible in cases of non-appealable rejection or withdrawal of the application. The application does not hinder draft into basic military service if conscripts have already been called up or notified in writing that they may be called up at short notice as replacements. Sentence 2 also applies to cases where an earlier application of the applicant has resulted in a non-appealable rejection or has been withdrawn.

Section 4

Priority decision

If a soldier applies for acknowledgement of the right to refuse military service involving the use of arms, the decision on this application is to be given priority. The same shall apply to conscripts without prior military service who have been called up or notified in writing that they may be called up as replacements at short notice and for reservists who have been called up for service or reserve duty exercise.

Section 5

Recognition

The applicant is to be formally recognised as a conscientious objector if

1. the application is complete (section 2 subsection 2),
2. the reasons presented are adequate to justify the right to conscientious objection,
3. the factual overall presentation and other facts known to the Federal Agency do not give any reason to doubt the truthfulness of the statements made by the applicant or if these doubts have ceased to exist after a hearing in accordance with section 6.

Section 6

Hearing

(1) If the Federal Agency doubts the truthfulness of statements made by the applicant, the latter shall be given the opportunity to submit a written complementary response addressing these doubts and furnish proof of the statements made within one month (written hearing). The Federal Agency may also question the applicant orally (oral hearing), should the doubts persist.

(2) The oral hearing is not open to the public. The Federal Agency shall compile a record of the oral hearing.

(3) The Federal Agency may request a certificate of good conduct in accordance with section 31 of the Act on the Federal Central Criminal Register if doubts exist as to the truthfulness of statements made by the applicant and if it is to be assumed that these doubts may be clarified by obtaining a certificate of good conduct. The applicant is to be informed that a certificate of good conduct has been obtained.

(4) The Federal Agency shall not pursue clarification of facts beyond the foregoing.

(5) In the case of participation in an oral hearing, the applicant is to be reimbursed for necessary expenditure. If an employee attends an oral hearing, the employer has to continue payment of remuneration for working time lost as a result. If the applicant is not an employee, the necessary expenditure incurred for appointing a replacement shall be reimbursed if the continuation of business operations or self-employed activity cannot otherwise be ensured.

(6) The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth shall be authorised to organise the details of the hearing process and of reimbursement of necessary expenditure and loss of earnings and necessary expenses.

Section 7

Rejection of the application

(1) The Federal Agency shall reject the application if

1. it is incomplete (section 2 subsection 2) and the applicant has failed to complete it within the time of one month after having been requested to do so by the Federal Agency,
2. the reasons presented in the application fail to justify the right to conscientious objection, even after a written and, if necessary, oral hearing of the applicant has taken place or
3. doubts as to the truthfulness of statements made by the applicant have not been clarified despite a written or oral hearing.

(2) If the applicant fails to present him or herself for an oral hearing when having been requested to do so, the Federal Agency will decide on the basis of the record as it stands.

Section 8
Representation at the hearing

Persons commissioned by churches and religious communities that are institutions under public law are also permitted to represent the applicant at a hearing, free of charge.

Section 9
Opposition Proceedings

(1) Section 68 et seqq. of the Code of Administrative Court Procedure shall be applied in the opposition proceedings unless otherwise specified in this Act.

(2) Apart from the applicants themselves, their legal representatives may also file applications or seek legal remedy independently.

(3) Section 8 shall apply *mutatis mutandis* to the opposition proceedings.

Section 10
Administrative Court Procedure

(1) In a procedure before the Administrative Court and the Federal Administrative Court, section 8 and section 9 subsection shall 2 apply *mutatis mutandis*. Section 67 of the Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung*) remains unaffected.

(2) Appealing from judgements and other decisions by the Administrative Court shall not be possible. This does not apply to appeals against denial of leave to appeal in accordance with section 135 in conjunction with section 133 of the Code of Administrative Court Procedure and to appeals from decisions on recourse to the courts in accordance with section 17a subsections 2 and 3 of the Courts Constitution Act (*Gerichtsverfassungsgesetz*). Section 17a subsection 4 sentence 4 of the Courts Constitution Act shall apply *mutatis mutandis* to appeals from decisions on recourse to the courts.

Section 11
State of Tension, State of Defence, Standby Duty

(1) In a state of tension (article 80a of the Basic Law) and in a state of defence (article 115a of the Basic Law)

1. section 3 subsection 2 sentence 1 shall not apply,

2. the period of time granted in section 6 subsection 1 sentence 1 may be reduced to two weeks and
3. objections against a decision by the Federal Agency shall be lodged within one month after their announcement.

(2) Section 1 shall apply *mutatis mutandis* to reserve duty exercise ordered by the Federal Government as standby duty (section 6 subsection 6 of the Compulsory Military Service Act - *Wehrpflichtgesetz*).

Section 12

Keeping of Files

(1) Section 36 of the Act on Civilian Service Rendered by Conscientious Objectors shall apply *mutatis mutandis* to keeping of the applicant's personal file at the Federal Agency.

(2) Files on the acknowledgement procedure of an acknowledged conscientious objector who is subject to compulsory civilian alternative service will be destroyed no later than six months after completion of civilian alternative service, with the exception of the acknowledgement note; if the conscientious objector is not called on to perform civilian alternative service, the files will be destroyed after the year of his 32nd birthday has ended. Files on the acknowledgement procedure of an acknowledged conscientious objector who is not subject to compulsory civilian alternative service in accordance with article 12a subsection 2 of the Basic Law shall be destroyed one year after completion of the acknowledgement procedure. Personal files forwarded in accordance with section 2 subsection 6 are to be forwarded to the office responsible for personnel management in the case of conscripts for basic military service and to the competent Regional Recruiting Office in the case of reservists.

(3) After the decision on rejection of an application, revocation or withdrawal of acknowledgement has become non-appealable, the Federal Agency shall forward the personal file of the person concerned to the office responsible for personnel management in the relevant case and, in the case of persons conscripts for basic military service and reservists, to the competent Regional Recruiting Office. The same is true in cases where an applicant withdraws the application or waives acknowledgement as a conscientious objector. A copy of the decision by the Federal Agency shall be attached.

(4) Files on the acknowledgement procedure of conscripts who have not been acknowledged as conscientious objectors will be kept by the Federal Agency for as long as necessary to complete military service (sections 3 to 5 of the Compulsory Military Service Act). Files on

acknowledgement procedures concerning female career soldiers, short-service volunteers and reservists are shall be kept for the same period of time as those of conscripts. Once the period has ended, the files shall be destroyed without delay. Sentences 2 to 3 shall also apply to personal data stored in electronic files.

Section 13

Transitional Arrangements

Procedures pending at the committees and chambers for conscientious objection on 1 November 2003 will be continued by the Federal Agency in the state of processing which they are in at that point of time. If a decision in a procedure before committees or chambers has been announced but not yet delivered in writing, the recruiting agencies will effect delivery.

Article 2

Amendment of the Compulsory Military Service Act

The Act on Compulsory Military Service in the version announced on 20 February 2002, amended most recently through Article 64 of the Act dated 21 August 2002 (BGBl. I S.3322) is amended as follows:

1. In the table of contents, the description of section 26 will be worded as follows:

"section 26 (no longer valid)"
2. In section 3, sentence 1, the information "dated 28 February 1983 (BGBl. I S. 203)" following the words " Compulsory Military Service Act" shall be deleted.
3. Section 26 shall be repealed.

Article 3

Amendment of the Act on Civilian Service of Conscientious Objectors

The Act on Civilian Service of Conscientious Objectors in the version published on 28 September 1994 (BGBl. I S. 2811), most recently amended by the Act dated 10 May 2003 (BGBl. S.657) is amended as follows:

1. Section 2 subsection 3 shall be repealed.
2. Section 36 subsection 5 sentence 4 shall be worded as follows:

"Section 12 subsection 4 sentence 1 and 2 of the Act on Conscientious Objection remain unaffected."

Article 4
Entry into Force, termination

This Act shall enter into force on the first day of the third month after its publication. At the same time, the Act on Conscientious Objection dated 28 February 1983 (BGBl. I S. 203), most recently amended by Article 4 of the Act dated 27 May 2002 (BGBl. S. 1677) and the Ordinance on Conscientious Objection dated 2 January 1984 (BGBl. I S. 42) amended by article 2 of the Ordinance dated 23 November 2001 (BGBl. I s. 3221) shall be terminated.

The constitutional rights of the *Bundesrat* remain unaffected.

The above Act has hereby been enacted. It shall be published in the Federal Law Gazette.

Berlin, 9 August 2003

The Federal President
Johannes Rau

The Federal Chancellor
Gerhard Schröder

The Federal Minister for Family Affairs, Senior Citizens, Women and Youth
Renate Schmidt

The Federal Minister of Defence
Peter Struck