

EXTERNAL

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AUSTRIA

Update to *Conscientious objection to military service: a summary of recent concerns* (AI Index: EUR 13/01/97)

On 13 February 1997 Amnesty International published the document *Austria: Conscientious objection to military service - a summary of recent concerns* (AI Index: EUR 13/01/97) in which it examined the latest legislative amendment to the Alternative Service Law, which took effect on 1 January 1997, and the cases of conscientious objectors Herwig Matzka, Peter Zwiauer and Andreas Gruber.

A summary of Amnesty International's principal concerns

In its report the organization criticized the new law for continuing to impose restrictions on the time limits within which applications for alternative service have to be made.

According to the new legislation, applications for alternative service can only be submitted within a limited period of time which begins with receipt of notification of fitness to perform military service and ends two days before receipt of call-up papers. This period must be of at least six months' duration. In practice, therefore, a potential applicant can never know that the period for submitting an application is actually over, until it is already too late. The situation is even worse for a person declared fit before 1 January 1994 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 and who later develops a conscientious objection. A person in this position is only allowed to submit an application for alternative service if five years have elapsed since he was first declared fit to serve. Even then he only has a six-week 'window of opportunity' within which to submit his application.

The effect of this 'six-week rule' was to deny many people the right to submit an application at all. For example, if someone had been declared fit to serve on 19 November 1991, he would, according to the new law, be able to submit an application in a six-week period five years after he was declared fit, that is in the period between 19 November - 31 December 1996. Yet the new legislation did not take effect until 1 January 1997! Thus anyone declared fit to serve before the 19 November 1991 was effectively disqualified from registering a conscientious objection. The Austrian authorities were fully aware of these consequences of the new legislation but refused to bow to pressure, mainly from non-governmental organizations, such as the *Netzwerk Gewissensfreiheit* (Freedom of Conscience Network) and the Green Party (*Die Grünen*), to amend it.

Update

After publication of its report, Amnesty International learned that the new Minister of the Interior, Karl Schlögl, who took up office at the end of January 1997, had re-examined the law. On 12 February 1997 the Ministry of the Interior confirmed to *Netzwerk Gewissensfreiheit*¹ that those people who were declared fit before 1 January 1992 would also be granted a six-week period within which they could submit an application. This period would run retroactively from 1 January 1997, when the new law came into effect, until 12 February 1997. The authorities were aware that this concession had come too late for potential applicants, since most of this six-week period had already elapsed. However, since the authorities had not fulfilled their obligation under section 76a (2) of the new law to inform men liable to be called up about these new deadlines for submitting applications, they could not disqualify any application submitted after 12 February. (The general time limit for applications, which ends two days before receipt of call-up papers, still applies, however.)

Although this concession would appear to eradicate the worst flaw in the new legislation, Amnesty International remains concerned about the restrictions imposed by the Austrian Law on Alternative Service on the time period within which applications for alternative service can be made. Such time limits take no account of the fact that a person's conscientiously-held beliefs may change over time and are therefore inconsistent with international standards, such as resolution 84/93 on Conscientious Objection to Military Service, adopted by the United Nations Commission on Human Rights on 10 March 1993, which stipulates that states should introduce "minimum guarantees to ensure that...conscientious objector status can be applied for at any time...".

¹ Amnesty International obtained confirmation of the information given to *Netzwerk Gewissensfreiheit* in a telephone call to the Ministry of the Interior on 13 February 1997.