



Kurzinformation

On a National Mandatory Military Service

1. National Mandatory Military Service in the Federal Republic of Germany

A national mandatory military service (conscription) was introduced in the Federal Republic of Germany on July 21, 1956.

However, some groups of people were exempt from conscription (e.g. police officers and priests). Others were not conscripted for military service because of their health. There were also opportunities to do military service through a multi-year commitment, e.g. as a volunteer in a fire brigade or in the Technical Relief Agency.

On December 15, 2010, the federal cabinet decided to skip the mandatory military service. The newly introduced paragraph 2 of the “Conscription Act” (WPfLG)¹ then suspended the legal obligation to perform mandatory military service on July 1, 2011.

However, conscription continues, but conscripts are no longer drafted in peacetime. On January 1, 2011, all conscripts were called up for the last time, and since March 1, 2011, conscripts are no longer forced to serve against their will.

2. The Enshrinement of a National Mandatory Military Service in the Basic Law and in the Legislation of the Federal Republic of Germany

After a long rearmament discussion, the German Armed Forces (Bundeswehr) were set up on November 12, 1955 (“rearmament”). Shortly after the foundation of the Bundeswehr, general conscription was introduced in Germany on July 21, 1956 when the “Conscription Act” (WPfLG) came into force.

On April 1, 1957, a conscription call took place for the first time on the basis of this law.

1 Conscription Act (Wehrpflichtgesetz – WPfLG) in the version published in the Federal Law Gazette I p. 1730 on August 15, 2011, as last amended by Article 12 of the German Constitution (Grundgesetz) on June 28, 2021 (Federal Law Gazette I p. 2250), available in German language at: <https://www.buzer.de/gesetz/5521/index.htm>

In 1968, conscription was anchored in the newly introduced Article 12a of the German constitution, the so-called “Basic Law” (Grundgesetz – GG)². Article 12a GG “Compulsory military and alternative civilian service” reads as follows:

“(1) Men who have attained the age of eighteen may be required to serve in the Armed Forces, in the Federal Border Police, or in a civil defence organisation.

(2) Any person who, on grounds of conscience, refuses to render military service involving the use of arms may be required to perform alternative service. The duration of alternative service shall not exceed that of military service. Details shall be regulated by a law, which shall not interfere with the freedom to make a decision in accordance with the dictates of conscience and which shall also provide for the possibility of alternative service not connected with units of the Armed Forces or of the Federal Border Police.

(3) Persons liable to compulsory military service who are not called upon to render service pursuant to paragraph (1) or (2) of this Article may, when a state of defence is in effect, be assigned by or pursuant to a law to employment involving civilian services for defence purposes, including the protection of the civilian population; they may be assigned to public employment only for the purpose of discharging police functions or such other sovereign functions of public administration as can be discharged only by persons employed in the public service. The employment contemplated by the first sentence of this paragraph may include services within the Armed Forces, in the provision of military supplies or with public administrative authorities; assignments to employment connected with supplying and servicing the civilian population shall be permissible only to meet their basic requirements or to guarantee their safety.

(4) If, during a state of defence, the need for civilian services in the civilian health system or in stationary military hospitals cannot be met on a voluntary basis, women between the age of eighteen and fifty-five may be called upon to render such services by or pursuant to a law. Under no circumstances may they be required to render service involving the use of arms.

(5) Prior to the existence of a state of defence, assignments under paragraph (3) of this Article may be made only if the requirements of paragraph (1) of Article 80a are met. In preparation for the provision of services under paragraph (3) of this Article that demand special knowledge or skills, participation in training courses may be required by or pursuant to a law. In this case the first sentence of this paragraph shall not apply.

(6) If, during a state of defence, the need for workers in the areas specified in the second sentence of paragraph (3) of this Article cannot be met on a voluntary basis, the right of German citizens to abandon their occupation or place of employment may be restricted by or pursuant to a law in order to meet this need. Prior to the existence of a state of defence, the first sentence of paragraph (5) of this Article shall apply, mutatis mutandis.”

2 Basic Law for the Federal Republic of Germany (Grundgesetz – GG) in the revised version published in the Federal Law Gazette Part III, classification number 100-1, as last amended by Article 1 of the Act of 29 September 2020 (Federal Law Gazette I p. 2048), available at: https://www.gesetze-im-internet.de/englisch_gg/

3. Alternative Service in the Federal Republic of Germany

Alternative military service (called “alternative service” according to Article 12a, Paragraph 2 of the “Basic Law”) refers to services that can be performed in place of military service in order to perform compulsory military service. In principle, military service is the normal form in Germany. There is no right to choose between it and civilian resp. community service as alternative military service.

On the basis of Art. 4, para. 3 of the “Basic Law”, however, there is a right to recognition as a conscientious objector. This right was already provided by the Basic Law in its original version from 1949. Other forms of alternative military service are generally recognized by the legislature due to their non-profit status and can be recognized with the consent of the competent authority.

With the suspension of compulsory military service in Germany on July 1, 2011, community service was also suspended. For volunteers, the Federal Volunteer Service was launched on July 1, 2011 as a “successor” to the civil service.

3.1. Community Service until 2011 as a result of conscientious objection

Conscripts who submitted an application for conscientious objection (“conscientious objection application”) were exempt from military service after their recognition, but could be used for civilian activities in the event of a defence. As a rule, recognized conscientious objectors performed community service as alternative military service.

Recognized objectors also had the option of doing another service abroad. Within the framework of international understanding, recognized conscientious objectors performed in various forms. The service lasted two months longer than regular community service.

Recognized conscientious objectors who, for reasons of conscience, were also unable to do community service (e.g. Jehovah's Witnesses) were given the opportunity to take up employment in a hospital or another facility for treatment, nursing and care instead. The employment lasted a year longer than the community service.

3.2. Obligation in civil protection or disaster control

Until 2011, the mandatory military service could be replaced by a multi-year obligation to participate in civil defence or disaster control according to paragraph 13a of the “Conscription Act” or according to paragraph 14 of the “Act on the Civilian Service of Conscientious objectors” (short: Civilian Service Act)³.

The commitment period changed with the respective length of military service.

3 Civil Service Act (Zivildienstgesetz - ZDG) in the version published on May 17, 2005 (Federal Law Gazette I p. 1346), as last changed by Article 7 of the law of December 12, 2019 (Federal Law Gazette I p. 2652), available in German language at: <https://www.gesetze-im-internet.de/ersdig/>

In contrast to civil or military service, you could continue your usual life, since the duties could be accomplished in addition to study or work. However, recognition as a helper presupposed that the responsible civil protection authority had given its approval.

The service in civil protection or civil protection could be done with the following organizations:

- Federal Technical Agency for Relief (THW),
- German Life Saving Society (DLRG),
- German Red Cross,
- Johanniter Accident Aid,
- Arbeiter-Samariter-Bund Germany,
- Maltese Relief Service,
- management units of the civil protection authorities, and
- volunteer fire brigades (service lasted four years).

3.3. Development Service

Development workers from recognized development aid organizations were no longer called up for military or community service after two years of service.

3.4. Voluntary Social or Ecological Year

From June 2002 to 2011 it was possible for recognized objectors to complete their service in the form of a voluntary social year (FSJ) or a voluntary ecological year (FÖJ).

4. Pro and Contra Arguments for Enshrining a National Mandatory Military Service in the National Constitution or Other Equivalent Legislation from a German Point of View

Compulsory military services or alternative services constitute a significant encroachment on fundamental rights. By anchoring compulsory military service and alternative services in the constitution, a constitutional justification for the encroachment is created.

When introducing mandatory military service in the Federal Republic of Germany, there had been a discussion about the need to enshrine conscription in the German constitution, due to the special situation in Germany after World War II. The discussion focussed on the compatibility of German rearmament with the constitution. Some scholars argued that no constitutional amendment, also with respect to the implementation of compulsory military service, was necessary because they saw it already (unwrittenly) anchored in other constitutional norms. Moreover, they argued that fundamental rights could be suspended in the special relationship between the state and its soldiers, or at least the restriction of fundamental rights would already be defined by other norms of constitutional rank. However, other scholars argued that there was a need for a constitutional norm to ensure constitutionality of rearming.

Finally, rearmament as well as the introduction of mandatory military and alternative service were enshrined by constitutional law to ensure constitutionality.
