

Guido Grünewald

5.1. THE GERMAN CASE

When on the 23rd May, 1949, the Parliamentary Council (Parlamentarischer Rat) enforced the Basic Law (Grundgesetz) of the Federal Republic of Germany, the right of conscientious objection was legally established for the first time in a German state. Article 4, paragraph 3 of the Basic Law says: "No one may be compelled, against his conscience, to perform military service as a combatant. Details shall be regulated by a Federal law." Considering the experience of World War II, the idea of war resistance has thus for the first time met with a broader response.

War Resistance before World War II

Up to the end of World War II, conscientious objection in Germany had been the matter of religious minorities. The ruling monarchs and dukes had granted various privileges to Mennonites and Quakers concerning the exemption from military service in return for a compensatory payment. But with the national unification by way of war and the establishment of the German Empire in 1871, these exceptional regulations were abolished. This was a logical consequence for a state striving in imperialistic expansions for a "place in the sun", with its military in an outstanding position in society. The bourgeois peace movement, especially the Deutsche Friedensgesellschaft (DFG = German Peace Society) which numbered about 10.000 members in 1914 in fact adopted a national view and assented to a war of defence. War Resistance was definitely rejected for "committing the terrible crime of betraying one's fatherland", as Alfred Herrmann Fried said, the theorist of the Peace Society up to World War I. As the Social Democrats too spoke in favour of defending the fatherland, there were only a few war resisters in Germany during World War I, most of which were members of religious sects, especially of the Seventh Day Adventists. The objectors were partly declared feeble-minded and deported to asylums, but some were even executed.

In Germany, war resistance attained significance only after World War I, then the movement of "Radical" or "Young Pacifism" developed, according to which the refusal of any kind of military service was regarded as a means to prevent war. The reasons for the rise of this new wing in the German peace movement were on the one hand the strong impression the movement of the British war resisters during World War I had left with some German pacifists who were in Britain at that time, but on the other hand the realisation that first of all conscription had given the world war its total character. The War Resisters gathered in the Bund der Kriegsdienstgegner (BdK = Union of War Resisters), founded in 1919. In 1921 the BdK took part in the foundation of War Resisters' International (WRI), the still existing international umbrella-organization of war resisters. But even at its zenith the BdK was not able to gain more than 3.000 members.

In the Peace Society, too, where the radical pacifists had taken over leadership in 1929, the number of members decreased at the end of the twenties. The war resisters failed particularly to establish permanent contacts with the working-class movement. Both organizations were dispersed by the National Socialists in 1933. During World War II,

there were about several thousand conscientious objectors in Germany, mostly Jehovah's Witnesses, the majority of which were killed in concentration camps. The reasons for the small number of German war resisters – apart from state terror – are foremost to be seen in the political atmosphere of the Weimar Republic which was pervaded by the idea of revising the treaty of Versailles and by striving for establishing Germany again as a great power which seemed to require a German rearmament. Another reason was the long authoritarian tradition to which the mere idea of war resistance seemed to be a sacrilege. Thus the churches supported Hitler's war till the end, and even the Bekennende Kirche (Confessional Church) which stood in opposition to nazism could not decide to condemn the German war of aggression.

Conscientious Objection as a Basic Right

After 1945 an anti-militarist and pacifist mood prevailed among the German population which had its root in the experiences of World War II and resulted in a rejection of any kind of military. Due to this mood statements about the right of conscientious objection and the proscription of war were for the most part embodied in the constitutions for the federal states which were passed in 1947 and 1948. Opinion polls made by newspapers showed that 85 per cent of those questioned asked for a constitutional right of conscientious objection. The Parliamentary Council, too, received numerous petitions from the population which demanded the right of conscientious objections. The constitution makers did not intend to concede conscientious objection only to religious minorities, as the following facts point out: when the later Bundespräsident (president) Heuss declared himself against the rights of conscientious objection saying that in a case of emergency "a mass abrasion of conscience" had to be apprehended, the social democratic deputy answered: "... We've gone through a mass sleep of conscience. During that mass sleep of conscience millions of Germans have said 'an order is an order', and according to that they killed. This paragraph may have a great educational effect and we hope it will have, because it gives everyone the decision of conscience whether he wants to accept such an order or, as colleague Dr. Schmid says, wants to serve his country in another way. Just in this situation after the war and after the totalitarian system, where we must put an end to this attitude 'an order is an order', I believe that if we really want to establish democracy this paragraph is appropriate."

The right of conscientious objection as it is fixed in the Basic Law is therefore a genuine, autonomous basic right which is not restricted to religious minorities and had constitutional primacy in comparison to conscription which was introduced later. The constitution makers expected by its introduction an educational influence, a democratic-emancipatory and peace securing effect. In connection with the peace commitment of the Basic Law as expressed in the articles 24 and 26 (inhibition of a war of aggression, assertion of a system of collective security) the right of conscientious objection actually gains political significance.

Early Limitations of the Basic Right of Conscientious Objection in the Process of Rearma

When in the end of 1950 it became apparent that Bundeskanzler (chancellor) Adenauer and the governing political and economic forces in accord with the United States were

working for a German rearmament, the right of conscientious objection soon got under severe pressure. As the majority of the population strictly rejected a German military contribution up to the middle of the fifties, the basic right of conscientious objection seemed to be a hindrance in the government's view, particularly because many young people regarded war resistance as an appropriate means to express their protest against rearmament. The government itself excepted about 25 to 30 per cent of conscripts to refuse military service after the introduction of conscription. Therefore it became important to make the content of the executive law to article 4 paragraph 3 of the Basic Law which was going to be passed as restrictive as possible. Even though there was not yet any conscription leading politicians of the governing parties defamed war resisters as shirkers thus trying to put conscientious objection as a whole into twilight and to make the "true" objectors look like idealistic dreamers. The proposals made by the governmental camp during the debate about the executive law to article 4 paragraph 3 of the Basic Law clearly aimed at reducing the right of conscientious objection to an exception from conscription. The constitutional lawyer Ulrich Scheuner from Bonn who had a decisive share in the government's draft of the conscription bill wrote that the government did not consent to the attitude of war resistance. The conscientious objector had to realize "that he was expected to pass an alternative service in order to confirm his civic attitude and loyalty". The alternative service should last longer than the military service, be paid worse and be performed in camps as a sort of "practical labour service". The Abteilung Blank (department Blank), predecessor of the ministry of defence, called the right of conscientious objection as exceptional right, too. The objector "may for his part reject military service and pass an alternative service - this right is explicitly granted. It is not to be restricted by the executive law. But he must not question the liability of a previously passed law of conscription or the right and the moral duty of the state to defend itself. That would be resistance. No state can allow that, unless he gives itself up."

In firm defence of the basic right of conscientious objection stood youth organizations, parts of the Protestant Church and pacifist organizations, which in 1949 had formed the Arbeitsgemeinschaft Deutscher Friedensverbände (ADF = Federation of German Peace Associations). Besides various small groups (German branches of Service Civil International and IFOR) three larger pacifist organizations arose after 1945. The Deutsche Friedensgesellschaft was founded anew 1945 by some people who had been active members already in Weimar Germany. Admittedly the Peace Society stood up for the right of war resistance for everyone but held a sceptical position against the idea of mass war resistance of the twenties and thirties when its appeal for mass war resistance had failed to meet with good response. The DFG concentrated on working out proposals to solve the German question and the Berlin problem during the following years. Within the peace movement it gradually lost its importance because it was not able to gain new members. On the other hand, the Internationale der Kriegsdienstgegner (IdK = International of War Resisters) founded in 1947 as successor of the BdK resumed the tradition of radical pacifism as laid down in the principles of WRI. In several initiatives the IdK interceded for a comprehensive legal regulation of conscientious objection. As a foreign policy it stood up for the neutralization of Germany. The IdK which numbered about 4.000 members in 1956 refused any one-sided comment on the cold war and accepted communists as members as long as they supported

the principles of pacifism. In 1953 the Gruppe der Wehrdienstverweigerer (GdW = Group of Objectors to Military Service) was founded in Cologne. the GdW did not represent the fundamental pacifism of WRI. It rather followed a pragmatic course and had set itself the task of defeating the compulsory military service and of propagating conscientious objection. It mainly relied on young workers and employees closely connected with the young trade-unionists and young socialists. Due to unconventional methods of propaganda (organization of car processions, spreading of small stickers) the GdW was able to win about 5.000 members until 1957.

Within the ADF a Ausschuss für Fragen der Kriegsdienstverweigerung (Committee for Questions of Conscientious Objection) was formed which tried to influence the legal regulation of conscientious objection by negotiating with the department Blank. In March 1954 the Committee presented the draft of an executive law to article 4 paragraph 3 of the Basic Law which conceded conscientious objection "based on moral reasons" and provided a tribunal which should consist of a judge and jurors to be nominated by the army, the chamber of physicians, the churches and the pacifist organizations. According to the draft the objector was obliged to perform either an alternative service without weapons in the army or a peace service between both of which he could choose. But despite its rather compliant position the Committee did not succeed to gain any concessions in the negotiations with the department Blank. In December 1954 the committee therefore felt compelled to warn against the plans of the department.

With the conscription law a far reaching limitation of the basic right of conscientious objection had become a law. It was passed on 6th July 1956 and defined the details of the principle laid down in article 4 paragraph 3 of the Basic Law. In this conscription law only those persons are acknowledged as conscientious objectors who "reject to participate in any use of arms in conflicts between the states". This means that against the votes of the catholic and protestant churches situational objections i.e. the refusal to serve in a specific war is not covered by the law. Besides it was resolved to introduce an examination of conscience and an alternative service which has to be passed outside of the army. The establishment of an examination of conscience created an unsolvable conflict: Since conscience cannot be examined by legal means and the courts in their jurisdiction defined conscience in an idealistic way, a psycho-pathological phenomenon is asked for as an evidence for the decision of conscience to be true; not the one who does not want to kill is acknowledged, but the one who cannot kill.

According to the law, the person who intended to reject military service had to put forward a written petition which should be well-founded. The tribunal consisting of a chairman and three assessors determined if the petition was justified. The chairman was appointed by the ministry of defence, while the assessors were elected like jurors. According to the law, the chairman who led the proceedings had no right to vote, he only advised the assessors. But in fact many cases were such that he impinged on the decision by his way of questioning and leading the hearing. If the objector was not acknowledged he had the right to claim a new proceeding at a second tribunal which likewise did not meet in public. In case of a repeated refusal he could appeal to an administrative court which decided definitively, except in cases of fundamental significance where a revision at the supreme administrative court was conceded.

The alternative service became effective only in 1960. Analogous to the military service its duration was fixed on 12 months. In 1962, both were extended to 18 months. The alternative service was to be performed mainly in hospitals, sanatoriums, asylums and nursing homes. Although this regulation was essentially moderated compared to the government's original draft, the alternative service turned out to be unattractive in the following years. Thus an inquiry made in 1965 showed that 28 per cent of the *Zivildienstleistenden* (ZDL = conscientious objectors performing alternative service) performed the jobs of unskilled workers. Furthermore many objectors had to put up with an interruption of their vocational education, for they were often summoned only several years after they had been acknowledged. Contrary to the decision of the war resisters to perform a peace service the alternative service did not offer any possibility to contribute to the social and political conditions of peace but showed clearly the characteristics of a mere substitute to military service.

War Resistance as a Marginal Phenomenon

After the introduction of conscription in 1956 the number of conscientious objectors remained surprisingly low. In 1957 and 1958 together only 2.500 young men refused military service, and also in the following years till 1966 the number stayed below 6.000 yearly (see table 1). The social stratification of the objectors corresponded chiefly to that of the population. Conscientious objection was generally founded on religious or humanitarian-ethical motives while political arguments were less important. During these years war resistance was characterized by individual renunciation of violence and of the armed forces without combining the refusal with its political and social background.

The small number of conscientious objectors was a surprise because even in the end of 1956 about 45 per cent of the population had declared themselves against conscription. The reasons for this development are manifold. All conceptions of security policy were dominated by the East-West conflict at that time. A deeply rooted anti-communism and the widely accepted enemy-image of aggressive world communism, which seemed to be confirmed by the Soviet intervention in Hungary in 1956, the ultimatum concerning Berlin and the construction of the Wall in 1961, made the *Bundeswehr* (Federal Armed Forces) look like an unavoidable burden. The refusal to perform military service, which was conceived as a necessary duty now, under these circumstances became suspicious to serve the interests of the enemy, even if involuntarily. Moreover conscientious objection looked like opposition to the state against the background of an authoritarian tradition. Thus for large parts of the youth a decision to refuse military service was equivalent to a break away from a commonly accepted field of conceptions which in addition had to be defended in front of a state tribunal. After all for many young men conscientious objection was no topical question since the army called up only about half of the conscripts so that there were many possibilities to get an exemption. It should also not be overlooked that larger parts of the conscripts at that time simply did not know that there was a basic right of conscientious objection which actually could be claimed.

Without doubt the unattractive alternative service and the examination of conscience formed a deterring barrier for conscientious objectors, too. Especially for potential objectors with a low educational level the examination of conscience worked as a preventive

deterrence, so that the basic right of conscientious objection gradually developed into a privilege of high school students who became over-represented among the objectors. Since complaint about inquisitorial proceedings at the tribunals which were not public became more frequent in the sixties and some objectors even were arrested by the army after they had not been acknowledged at both stages of the tribunal and had consequently been called up, apparently even high school students were increasingly deterred by the examination of conscience. Otherwise it is merely possible to explain why the number of objectors stagnated or even decreased while at the same time especially young people participated in the yearly Easter-Marches with increasing numbers showing that the security policy by the government was no longer unanimously accepted by the youth.

During those years the pacifist organizations played a rather limited role. They counselled conscientious objectors and tried to assist them during the alternative service. The objectors were also supported by advisers nominated by the protestant church; the catholic church followed only after the Vaticanum II. To negotiate with the government on behalf of the conscientious objectors was now the business of the *Zentralstelle für Recht und Schutz der Kriegsdienstverweigerer aus Gewissensgründen* (Central Board for the Right and the Protection of the Conscientious Objectors) which in 1957 had succeeded the Committee for Questions of Conscientious Objection. Its membership included besides the pacifist organizations church groups and political youth organizations. The attempt of the Central Board to establish a peace service abroad failed since the government was not ready to make any concession.

The GdW was transformed into the *Verband der Kriegsdienstverweigerer* (VK = Union of Conscientious Objectors) in 1958 after some groups of the IdK had joined. The failure of a complete fusion of both organizations was mainly due to the fact that GdW claimed to include a rigorous anti-communist clause into the statute. This was rejected by most members of the IdK. Accordingly the VK followed a strictly anti-communist course during the following years. Consequently IdK and VK co-existed, largely without contact, although the membership demanded a fusion from time to time and there was a close co-operation in some districts. Both organizations were actively involved in the yearly Easter-Marches which started in 1960 and gradually gained momentum during the sixties. But even though both IdK and VK in fact became political peace organizations which criticised very early the plans for an Emergency Power Act and also organized early protests against the American war of aggression in Vietnam, their public image remained that of being associations of interests concerning conscientious objection. Both organizations did not succeed in enlarging their membership (together about 12.000) for most members left these organizations after they had performed alternative service. In the mid-sixties IdK and VK demanded the unconditional abolition of the examination of conscience for the first time.

"Silent Change" of a Basic Right as a Consequence of Rising Numbers of Conscientious Ob

Together with the protest movement of the youth in the end of the sixties war resistance evidently gained importance. In comparison with the preceding year the number of objectors doubled up to 12.000 in 1968 and mounted up to 40.618 in 1976. Conscientious objection lost its extreme minority character and was gradually accepted by the majority

of the public although it still was regarded as an exception. Opinion polls clearly showed that especially among young people conscientious objection was seen now as a legitimate alternative to military service. To the general public, however, war resistance remained ambiguous: The decision to refuse military service was still regarded as something disgraceful while at the same time the objectors as people performing alternative service i.e. transporting sick people, working in nursing assistance or ambulance service and assisting disabled persons, became increasingly popular.

The social stratification of conscientious objection changes. Since 1968 pupils and students became greatly over-represented; the increase in conscientious objection came mainly out of the middle class. The type of objector change as well. More in the foreground stepped the politically conscientious resister who did not see his decision as a pure personal confession but regarded it in its social context. Especially the American war of aggression in Vietnam played an outstanding role as an initiator for the decision to refuse military service, while resisting soldiers, whose number also enlarged considerably, mainly put forward the possibility of an internal intervention of the armed forces after the Emergency Power Act has been passed.

The politicians and the military reacted to the increasing number of war resisters with defamations and by taking administrative steps toward a further restriction of the right of conscientious objection. The Christian Democratic deputy Schröder spoke of an "organized misuse by extreme groups" while Helmut Schmidt, minister of defence at that time, held school responsible for the growing number of objectors. The number of so-called youth officers visiting schools who make their propaganda for the army increased while the organizations of the war resisters did not get access to schools. The stereotype statement that only every third objector was drafted to alternative service made them appear as shirkers, although according to official records the objectors were summoned to the same extent as the other conscripts (see graphic 1). In 1968, the Supreme Court passed a judgment saying that now the objector had to prove that his decision of conscience was a serious one. Moreover, the court considerably limited the possibility of conscientious objection on account of political reasons in 1971. The tribunals, too, became more and more repressive. The number of those objectors who were acknowledged decreased drastically, and in 1973 only 40,1 per cent of the proposers were acknowledged by the tribunals in the first stage, the corresponding numbers for the second stage of appeal and for the administrative court being 32,6 per cent and 69,5 per cent respectively (see table 2). The proceeding became more and more a lottery with ever decreasing winning numbers.

The alternative service, too, remained not untouched by this development. An attempt to put ZDL into central camps failed in 1970 due to a strike of those concerned who were supported by other ZDL and by parts of the public. In 1971 the ZDL founded the Selbstorganisation der Zivildienstleistenden (SODZDL = Self-Organization of the ZDL). Various protest and a token strike on 1st April 1971 in which about 2.800 ZDL participated prevented the plans put forward by the newly appointed state agent for the ZDL (staatlicher Zivildienstbeauftragter) and some politicians to use ZDL for technical work (unskilled work at fire-brigades, the Federal Railway or the Federal Mail) to be realized. The amendment to the law on the alternative service in 1973 stated that the alternative service was to be performed mainly in the social field and established a special Bundesamt

für den Zivildienst (Federal Office for the Alternative Service). Compared to military service, the alternative service was prolonged to 16 months, and the disciplinary regulations were tightened up. The role of the ZDL remained confined to that of a low paid unskilled worker; it was not allowed that ZDL performed responsible jobs or came into contact with children and young people.

In 1973, military authorities aggravated the measures against the war resisters again. With reference to a law passed in the time of Hitler, the military authorities attempted to penalize the advisers of the pacifist organizations for ostensibly improper legal aid. Thus they tried to deter the advisors and to incriminate the pacifist organizations. In fact, all proceedings had to be stopped later, however, since the public did not support these measures.

At the same time, more and more objectors were drafted into the army because their petitions were definitively considered. Because a great part of the called-up refused to wear a uniform and to use weapons according to their decision of conscience, many objectors were sentenced to several months imprisonment, other fell mentally ill or evaded the call-up by fleeing abroad. A few even committed suicide. Altogether several thousand objectors were subject to this practice. The Supreme Court in several judgments sanctioned the criminal prosecution of conscientious objectors by stating that in times of peace the "ability of activity" of the armed forces is superior to the basic right of conscientious objection. The Supreme Court thus paved the way to reduce the content of article 4 paragraph 3 of the Basic Law by legal means even though the constitution says that basic rights are not to be restricted.

The Failed Attempt to Reform the Law Concerning Conscientious Objection

Under the impression of the aggravated examination of conscience a minority opinion developed in the juridical literature which considers it impossible to examine conscience by legal terms and therefore concluded that the tribunals were against constitution. Above all the state examination of conscience was increasingly criticised by the public. Political youth organizations, the trade unions (DGB = Deutscher Gewerkschaftsbund), the federation of youth organizations (Bundesjugendring) and the synod of the protestant church all spoke up for the abolition of the examination of conscience. The Katholische Arbeitsgemeinschaft für Kriegsdienstverweigerung und Zivildienst (KAK = Catholic Committee for Conscientious Objection and Alternative Service) and the Evangelische Arbeitsgemeinschaft zur Betreuung der Kriegsdienstverweigerer (EAK = Protestant Committee to Assist Conscientious Objectors) held a conference in April 1974 where several hundred of church advisers for conscientious objectors and assessors at the tribunals demanded the abolition of the examination of conscience. The Deutsche Friedensgesellschaft-Vereinigte Kriegsdienstgegner (DFG-VK = German Peace Society-United War Resisters) presented a draft of a law according to which every war resister had to be acknowledged within one month after having filed a written petition; he should be obliged to perform a peace service of 15 months. (With about 13.000 members, the DFG-VK was by now the largest pacifist organization after in 1968 first DFG and IdK had merged and the VK had joined in 1974.) Even the governing parties SPD (Social Democratic Party) and FDP (Free Democratic Party) supported the abolition of the examination of conscience. They were motivated by

the public opinion which in face of reports about objectors being arrested by the army and a reduced feeling of threat due to the policy of detente supported by majority a free choice between military and alternative service. Especially young people about whose votes there was a strong competition at that time opposed the state examination of conscience increasingly. For the government to give in to this mood, however, has to be attributed to the fact that up to the mid-eighties a surplus of conscripts was to be expected.

The parliamentary parties of the coalition in June 1975 presented a draft of a bill which already had been modified due to an intervention by the minister of defence. The draft provided that for conscripts who had not been called up the examination of conscience should be suspended. In case that not enough conscripts were available for the armed forces the tribunals were to be established again. For conscripts who had not yet been called up or who as reservists had filed a petition the tribunals should remain in force. According to the governing parties the alternative service was to be prolonged to 18 months. Moreover, in the future ZDL should be employed in places far from their homes, they should be employed even in civil defence and partly be put into central camps.

The parties of the opposition CDU (Christian Democratic Union) and CSU (Christian Social Union) presented an alternative draft which in principle held on to the tribunals and pleaded only for them to be improved and accelerated. Actually the Parliament (Bundestag) passed the draft of the governing parties in April 1976, but the parties of the opposition managed this draft to fail due to their majority in the Bundesrat (chamber consisting of representatives of the federal states). Then the coalition presented a slightly modified draft in February 1977 which was passed by the Parliament in May.

The reform act came into power on the 1st August 1977. It had many shortcomings. Since the tribunals were to be established again if there were too many conscientious objectors finally conscientious objection was linked to the personnel-planning of the armed forces. Thus the primacy of armed defence of the country over the basic right of conscientious objection was fixed. The prolongation of the alternative service offended against article 12a paragraph 2 sentence 2 of the Basic Law, according to which the alternative service shall not last longer than the military service, and had a clear function of deterrence. It was also criticized that for conscripts already called up and for reservists the tribunals remained in force and thus two classes of conscientious objectors were created. Moreover, there was no provision for any amnesty for those objectors who obeying their conscience had come into conflict with the law. The federal states were requested only to relieve those objectors who just were in prison.

Even that compromising law had no chance. The opposition appealed to the Supreme Court (Bundesverfassungsgericht) which previously stopped the new regulation on the 1st December 1977 and finally abrogated in on the 13th April 1978 saying that it offended against the constitution. A token strike of one day at 27th December 1977 in which 5.000 out of the 24.000 ZDL took part and a rally in Dortmund at the following day in which 12.000 people participated did not have any influence on the decision of the court.

In its judgment the Supreme Court rejected the free choice between military and alternative service as offending the constitution. Only those conscripts were to be recognized as conscientious objectors whose decision of conscience the authorities were sufficient certain to be true. The Supreme Court, however, left it up to the legislator how to determine

whether a decision of conscience was true. The court judged the former tribunals to be compatible with the constitution. Instead of the tribunals, however, the alternative service could be organized in such a way that normally no fake objectors were to be expected. In this context the court did not have any objections to prolong the alternative service up to 24 months.

The judgment of the Supreme Court was the last one step on a way by which a basic right which originally has been granted unconditionally was transformed to a basic right with *numerus clausus* (closed numbers). The Supreme Court that only in 1970 characterized the right of conscientious objection as an "irrevocable, not limitable basic right" actually established the primacy of the military, since it implicitly constructed a constitutional order for the armed defence of the country, and thus degraded the basic right of conscientious objection to an exceptional right. Thereby the court adopted the doctrine of a constitutional order for the armed forces which had been developed above all by jurists being employed by the minister of defence in the public discussion about reforming the examination of conscience. In fact the corresponding provisions of the Basic Law (article 87a paragraph 1, article 73 sentence 1 and article 12a paragraph 1) only make possible the armed defence of the country. They empower the legislator to establish general conscription, but they do not oblige them to draw up an army or to establish conscription and to keep it. Accordingly, one of the judges in the Supreme Court reproached his colleagues in a minority vote for having passed a legally untenable judgment.

Statistical manipulation by the defence authorities played a role in finding this judgment, too. An artificially increased demand for the armed forces was constructed while the numbers of the petitions filed by conscientious objectors were inflated by double-counting those petitions which had been filed according to the provisions of the former law and precautionary had also been filed according to the provisions of the new law. By this way the court was influenced by suggesting that already within the next years too few conscripts were available for the armed forces and that there were too few jobs for conscientious objectors so that many objectors had not to perform any service at all. The government did not counter these manipulations. By their behaviour during the trial observers had the impression that they were not unhappy about the failure of that law which had mainly been passed due to the pressure of the leftist deputies.

The Last Step: The Supreme Court Sanctions the "Silent Change of Constitution"

After the reform act had failed the old examination procedure was in power again. According to observers the proceedings were partly even more restrictive than formerly so that conscientious objectors were imprisoned by the army again. The Zentralstelle organized a conference "Freedom of Conscience as a Human Right" in March 1981 where it was again proved that the proceedings at the tribunals were arbitrary and where the abolition of the tribunals was demanded unconditionally. ZDL increasingly were employed in places far away from their homes. The attempt to put ZDL into a central camp in Dortmund failed again because of the opposition the concerned ZDL who got support by the welfare organizations they were employed with.

In spite of these deterring conditions the number of conscientious objectors still increased (see table 1). Since only few proceedings had been held in 1977 because everybody

had been waiting for the reform act tens thousands of petitions piled up at the tribunals. The politicians therefore had to look for a new solution.

A group consisting of members of all parliamentary parties presented the draft of a bill in May 1979 which provided an examination of the written petition which had to be filed together with an explanation; a hearing was to be held only in case of doubt. The draft failed, however, since the CSU led by Franz-Josef Strauss insisted on the hearing as a rule and on prolonging the alternative service to 18 months. The governing parties SPD and FDP and the parties of opposition CDU and CSU then presented separate drafts in May 1979. According to the draft of the governing parties it was possible to acknowledge the objector without a hearing; the alternative service should last 16 months as formerly. The opposition insisted on a hearing in principle and intended to extend the alternative service to 18 months. The prolongation was justified by arguing that soldiers are obliged to participate in military exercises after having performed military service. In fact only one sixth of the conscripts is called up to military exercises, and related to all reservists the military exercises lasted 3,5 days on the average during the preceding decade.

In the end the draft of the governing parties came to continue the examination of conscience, too, since it should not be allowed to acknowledge the conscientious objectors without a hearing if they used identical phrases in their written explanations. With more than 40.000 petitions per year this was inevitable, however. Therefore both drafts were criticised by the organizations of war resisters and by the two major churches at a hearing held by the Parliament Committee for Labour and Social Welfare (Bundestagsausschuss für Arbeit und Sozialordnung) on 16th January 1980. When they voted in Parliament on 3rd July 1980 eleven Social Democratic deputies voted together with the opposition and therefore the draft of the governing parties was rejected as a consequence. The draft of the opposition was rejected, too.

After the Parliamentary elections in October 1980 SPD and FDP supported a serious prolongation of the alternative service, too. A draft put forward by the Social Democratic Minister Of Labour and social Welfare already provided that the alternative service should last 20 months. But in spite of increasing numbers of conscientious objectors and a growing peace movement nothing happened until the autumn of 1982. After the FDP had left the government and had formed a new coalition with CDU and CSU (Helmut Kohl became the new Chancellor on 1st October 1982), both the governmental parties and the SPD now in opposition presented new drafts in November and October respectively. Both draft had in common that conscripts who had not yet been called up could be acknowledged by a written procedure without a hearing, that for soldiers, reservists and notified conscripts the former examination of conscience should remain in force essentially and that the alternative service was to be prolonged. They differed as to how detailed the written petition was to be explained and documented, whether the chairman of the tribunal should be employed by the minister of defence and how long the alternative service should last (19 versus 20 months). At a hearing on 8th December 1982 both drafts were criticised sharply by a large majority of the invited experts, the organizations of war resisters and the trade unions. Nevertheless, the draft of the governing parties was passed in Parliament already on 16th December 1982. A motion put forward by the SPD that the government should prepare an amnesty for objectors who had not been acknowledged and therefore had evaded military

service was rejected. On 27th January 1983 several thousand ZDL protest by a token strike and demonstrations against the new regulation.

The new law came into power on 1st January 1984. Provisionally it is limited to 30th June 1986. According to the law there is a first examination by the Bundesamt für den Zivildienst for conscripts who have not yet been called up. This examination is based on the written explanation, detailed curriculum vitae, certificate of conduct by the police. The Bundesamt can reject the petition if it considers the explanations of the objector to be inconclusive; then the objector can appeal to an administrative court. If the Bundesamt doubts that the statements made by the objector are true the petition is passed on to the tribunal which in principle holds a hearing. The chairman of the tribunal is appointed by the minister of defence and has full voting power. If the objector is rejected he can appeal to a second tribunal and finally to an administrative court if he is rejected again. For soldiers, reservists and notified conscripts the oral examination of conscience continues.

According to the new law the alternative service lasts one third longer than the military service (today 20 months). It has been transformed to a longer and more troublesome alternative. ZDL today often are employed in places far away from their homes. Actually also the new law fixes the priority of social welfare as field of employment, but ZDL can also be employed now in environmental conservation and in conservation of nature as well as in landscape management which allows for jobs which differ not too much from a labour service. The number of "easy" administrative jobs has been reduced sharply (for the division related to the fields of work see table 3). Moreover, the ZDL are increasingly housed collectively but presently there are no plans to put them into central camps apparently.

The new law of conscientious objection combines in a cumulative way the two options allowed by the Supreme Court, namely to continue a formal examination of conscience and to aggravate the alternative service. The tribunals have not been abolished at all. The proportion of those acknowledged at the new tribunals is even lower than previously. In 1984, only 47 percent of the objectors were acknowledged at the tribunals in the first stage; in the second stage of appeal 50 per cent were acknowledged and 56 per cent at the administrative courts. In the written procedure the Bundesamt in many cases asks questions concerning the content of the petition and explanation. Since the law came into power the Bundesamt actually has acknowledged more than 85 per cent of the objectors. But it should not be overlooked that momentarily about one third of the jobs in the alternative service are not filled. The vague wording of the law makes two extremes possible: that 99 percent of the objectors are acknowledged or that 99 per cent are rejected. Against the background of too few conscripts in the years coming due to the slump in the birth rates there is a reason to be afraid that the present liberal practice of acknowledgement by the Bundesamt will be aggravated sharply in future.

On the 2nd October 1985 the government has stated in a report that the new law concerning conscientious objection and the new regulation of the alternative service have proved worthwhile. The government therefore has decided to extend the law up to 31st December 1990. Since the military service is to be prolonged to 18 months from 1st July 1989 the duration of the alternative service will be 24 months then. The Supreme Court explicitly has sanctioned such a duration when on 24th April 1985 it rejected an appeal concerning the new law made by the federal states of Bremen, Hamburg, Hessen and

Nordrhein-Westfalen all of which are governed by the SPD and by the parliamentary party of the SPD. In its judgment the Supreme Court against the facts explicitly stated that there is a "constitutional basic decision for an effective defence of the country by arms" and justified the longer duration of the alternative service by arguing that the legislator is allowed to compensate for the (allegedly) uneven burden in the military and alternative service. Two judges have contradicted the decision in a minority vote.

As a consequence to the degradation of the basic right of conscientious objection sanctioned by the Supreme Court there is an intensified discussion about absolute resistance (Totalverweigerung). The radical resisters radically reject any participation in the preparation for war. Consequently they refuse to perform the alternative service, too, arguing that it is a fulfillment of conscription and an integral part of modern war-fighting concepts. The first absolute resisters appeared in the mid-seventies. Meanwhile they number between 10 and 30 per year. The defence authorities today press for a severe punishment and summon the absolute resisters anew if they have got less than one year of imprisonment.

Conclusion

With the judgment of the Supreme Court in April 1985 the basic right of conscientious objection has been actually deprived of its privileged status. A basic right which was guaranteed unconditionally by way of a silent change of the constitution has turned into a basic right with *numerus clausus* which gets restricted if there are too many conscientious objectors. The freedom of conscience which as a lesson derived from the terror of totalitarian nazism and German militarism was meant to protect the individual from compulsive claims by the state has actually been degraded to a function of conscription. The chairman of the Zentralstelle Reverend Ulrich Finckh therefore has called the judgment of the Supreme Court as "ideological coup d'état" by which the free democratic constitutional state has been transformed into an authoritarian constitutional state.

The government and the military were able to push through this development in spite of a growing peace movement which in the years from 1981 to 1983 succeeded in bringing hundreds of thousands of people into the streets. An action conference of the peace movement held in November 1983 actually called for massive war resistance as an answer to the deployment of Pershing II and cruise missiles, and in December 1983 some well known writers made a similar appeal to the public. But while in certain occupational groups like for instance among physicians and nurses it is discussed to refuse to participate in exercises for disaster control which are linked to civil defence, the appeals for massive war resistance have met with little response. Apparently most supporters of the peace movement are atomic pacifists which still believe in the necessity of conventionally equipped forces.

Vice versa for the conscientious objectors it is true that the objection which is motivated politically for some time already has decreased. The vast majority of the objectors today is unpolitical. Only a few of them take part in peace activities, and most of them are distinct individualists. Thus only a few become members of the organizations of war resisters, so that the DFG-VK for example have the impression that for many objectors the decision to refuse military service is less a decision against actual preparation for war than a decision for the alternative service being one of two compulsory state services.

Objectively the basic right of conscientious objection and the decision to refuse military service nevertheless has a political dimension as the reaction by the government and the military shows. By means of military service and maneuvers the state demonstrates that the option of the use of military force is still a possible and legitimate one. That is questioned by the refusal to perform military service notwithstanding if that is a politically conscious decision or is due to a basic civil orientation. Analysing essays written by pupils and group discussions held by young people about military service, the peace researcher Hanne-Margret Birckenbach has shown that young people in general, including those who actually perform military service, have an unambiguous civil orientation due to the process of civilization (Norbert Elias) and that they reject the use of military force. The military service, however, fulfills a conserving and integrating function in that it seemingly promises the young men relief from the working system they experience as boring and repressive. Thus they hope on the one hand to escape the system of control of the civil work and to get again a chance to play while on the other hand they hope to learn there the discipline necessary to endure in an alienated system work. If this is true it is possible in principle to convince the conscripts of the potentially peace endangering effect of the military service. But as long as the pacifists do not succeed in replacing military service by pacifist vivacity as a means by which the civil working conditions can be born and changed conscientious objection in the Federal Republic of Germany will remain the matter of a minority and the basic right of conscientious objection actually will continue to be an exceptional right.

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Appendix

Table 1

Development of the number of petitions filed by conscientious objectors 1956-1984

Year the petition was filed	total number of petitions	petitions filed by soldiers
1956-58	2447	32
1959	3257	51
1960	5439	68
1961	3804	90
1962	4489	162
1963	3311	217
1964	2777	205
1965	3437	272
1966	4431	418
1967	5963	871
1968	11952	3495
1969	14420	2600
1970	19363	3198
1971	27657	3805
1972	33792	3305
1973	35192	3100
1974	34150	2684

petitions filed by
notified soldiers
conscripts

1975	32565	1103	1386
1976	40618	474	1439
1977	*69969	1962	2114

petitions filed by

notified soldiers
conscripts

1978	39698	1463	1196	1703
1979	45454	1387	2155	2436
1980	54193	1500	2642	4737
1981	58051	1307	2712	5767
1982	59776	1016	2723	5952
1983	68334	616	1955	6157
1984	43875	731	1583	4822

* 34692 petitions filed according to the provisions of the new law.

Table 2

Proportions of acknowledged at the tribunals and the administrative courts in the years 1967

Year	Prüfungsausschuss tribunal, 1.stage	Prüfungskammer tribunal, 2.stage	Verwaltungsgericht administr. court
1967	65,2	54,1	
1968	66,3	55,6	
1969	64,4	49,2	
1970	57,0	49,5	
1971	51,3	42,0	90,0
1972	44,2	33,9	68,1
1973	40,1	32,6	69,5
1974	45,5	35,9	65,6
1975	50,8	38,1	

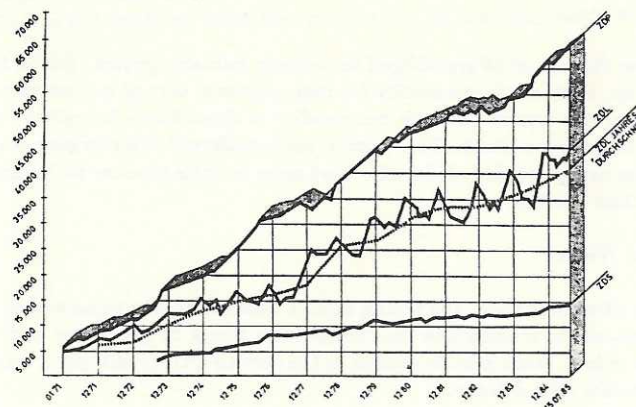
Table 3

Division of the jobs for ZDL related to fields of work and personnel (date: 15th July 1985)

field of work	number in percent		number in percent	
	of jobs	occupied	of jobs	occupied
01 nursing assistance	37.296	57,9	24.770	66,4
02 craft activities	7.897	12,3	5.480	69,4
03 Gardening and agricultural activities	1.282	2,0	797	62,2
04 commercial and administrative activities	2.668	4,1	1.010	37,9
05 supply activities	3.024	4,7	2.065	68,3
06 activities in environmental conservation	727	1,1	493	67,8
07 driver's service	2.141	3,3	1.578	73,3
08 activities in transportation of sick people in ambulance service	7.110	11,0	5.208	73,2
09 individual assistance to severely disabled persons	2.301	3,6	1.337	59,8
Total	64.446	100,0	42.778	66,4

Graphic 1

Institutions employing ZDL and jobs for ZDL in the years 1971 to 1985 (date: 15th July 1985)



ZDS = institutions employing ZDL (Zivildienststellen)

ZDL-Jahresdurchschnitt = ZDL on yearly average

ZDL = conscientious objectors performin alternative service (Zivildienstleistende)

ZDP = jobs for ZDL (Zivildienstplätze)

Preface

The International Peace Bureau (IPB) is a non-governmental organization which has been active since 1864. It is the oldest and largest of the international peace organizations. The IPB has a long and distinguished history of promoting peace and disarmament. It has been instrumental in the development of the Geneva Conventions, the Geneva Protocol, and the Geneva Declaration. The IPB has also been active in the promotion of the Geneva Convention on the Prohibition of Chemical Weapons and the Geneva Convention on the Prohibition of Biological Weapons. The IPB has a wide membership and is active in many countries. It has a strong reputation for its work in promoting peace and disarmament.

Youth and Conscription

eds: Kimmo Kiljunen and Jouko Väänänen

International Peace Bureau
War Resisters International
Peace Union of Finland
Union of Conscientious Objectors in Finland

Preface

The International Peace Bureau (IPB) and the War Resisters International (WRI) organised in collaboration with the Finnish Peace Union and the Finnish Union of Conscientious Objectors an international symposium on "Youth and Conscription". The symposium was held on the occasion of the International Year of Youth in Kauniainen, Finland, 29.11.—1.12.1985. This book contains the papers presented at the symposium. In the appendix, the classical booklet by Seán MacBride, "The Right to Refuse to Kill", is reprinted.

A civil perception of war has become one of the priority areas for inquiry within the peace movement. Already in 1983, the IPB organised together with the Finnish Peace Union an international symposium on "Children and War". The "Youth and Conscription" symposium offered the next step in this elaboration. In 1987 a similar type of research-oriented symposium will be organised on the theme "Women and Military System".

Conscription forms a mechanism via which youth meets the military system in society, in conditions of both war and peace. Despite its significance, conscription has not been a popular subject of social or historical investigation. Hence the "Youth and Conscription" symposium aimed to focus on the historical origin and expansion of conscription as well as on the opposition to it. Furthermore, the goal was to examine the social and cultural effects of conscription, in particular from the point of view of youth — both male and female. Special attention was given to campaigns against conscription to the right of conscientious objection and to the actual situation of CO's in different countries.

The symposium brought together some one hundred participants from different countries, mainly from Europe but also from the US and South Africa. They consisted largely of researchers and peace activists. The symposium was partly funded by the Ministry of Education in Finland.

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Kimmo Kiljunen

Jouko Väänänen

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