

# PEACE – YES, WAR – RATHER NOT (IN SWITZERLAND).

HISTORICAL CONDITIONINGS AND THE PRESENT TIME

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## 1. Introduction

Switzerland, despite its small territory (41 285 km<sup>2</sup>) and number of inhabitants (about 7,7 million including about 20% of foreigners), appears to be a place of widespread wealth, beautiful nature and undisturbed peace. The idyllic image of this reality results from overlapping of a whole range of historical, political, economic, or generally cultural premises. The democratic state, enjoying neutrality on the international arena on the territory of which no military conflict has occurred for one century and a half, however, cannot be defenceless. The present wellbeing of Switzerland and its citizens cannot exist, among many other premises, without participation of the army. The role (tasks) played by Swiss army (described more broadly further) does not deviate from the standards adopted in other civilised countries. The specificity of Swiss solutions is that despite no real and very serious external threats the compulsory military service of its citizens is, in fact, of general character. Thus, the necessity of specific regulations in this scope is justified. Therefore, basic regulations of the Swiss military law will be presented onwards.

## 2. Historical conditioning

Due to historical conditioning and federative<sup>1</sup> character of Switzerland, state security, and military issues, as a constitutional subject, has been present in this country since the creation of federative state in 1848. Among the goals of the Confederation, independence has always been emphasised,<sup>2</sup> inviolability of the territories of each canton has always been guaranteed and consequently the external borders of the whole country (see art. 5 of the Constitution of 1848 and 1874 and

- 1 The official, German, appellation of Switzerland is Schweizerische Eidgenossenschaft, which originates from the historical conditionings (compare: "perpetual alliance/ inauguration" of the Federative Agreement (Bundesbrief) in 1291), however, a traditional character is conferred on its second segment and is understood as "confederation" (it is translated in this way in other national languages of this country). Still, in spite of the formula "Confederation" Switzerland in its constitutional essence is a federative country – more about Switzerland from the point of view of history and contemporary solutions see M. Aleksandrowicz, System prawny Szwajcarii. Historia i współczesność, Białystok 2009; Formulas "Eidgenossenschaft" (Confederation) and "Bund" (Federation) occurring in normative acts in simple terms mean respectively: a federal state where Swiss nation and cantons and federal authorities are a sovereign as the ones embracing the entirety of federal organs' competences and activities within the framework of this organisation at the federal level or precisely of this character, see more M. Aleksandrowicz, Przejawy suwerenności kantonów szwajcarskich w sferze stanowienia prawa – kilka uwag, (in:) O. Nawrot, S. Sykuna, J. Zajadło (eds.), Konwergencja czy dywergencja kultur i systemów prawnych, Warszawa 2012, p. 137 ff.
- 2 Compare art. 2 of the Federal Constitution of the Swiss Confederation of 12 September 1848 (Constitution of 1848 according to: A. Kölz (ed.), Quellenbuch zur Neueren schweizerischen Verfassungsgeschichte, vol. 1, Vom Ende der Alten Eidgenossenschaft bis 1848, Berno 1992, p. 447 and following) and art. 2 of the Federal Constitution of the Swiss Confederation of 29 May 1874 (Original text of the Constitution of 1874 according to: A. Kölz, Quellenbuch zur Neueren schweizerischen Verfassungsgeschichte, vol. 2, Von 1848 bis in die Gegenwart, Berno 1996, p. 151 ff. The translation to Polish according to the legislation in force as at 1 January 1968, M. Rybicki, (in:) A. Burda, M. Rybicki (eds.), Konstytucje Wielkiej Brytanii, Stanów Zjednoczonych, Belgii i Szwajcarii, Wrocław-Warszawa-Kraków 1970, p. 225 ff.; The Constitution of 1874 in its form before it was overruled (state of 20.04.1999): [http://www.bj.admin.ch/content/dam/data/staat\\_buerger/gesetzgebung/bundesverfassung/bv-alt-d.pdf](http://www.bj.admin.ch/content/dam/data/staat_buerger/gesetzgebung/bundesverfassung/bv-alt-d.pdf); „Der Bund hat zum Zweck: Behauptung der Unabhängigkeit des Vaterlandes gegen Außen/aussen (...)” and Article 2 section 1 of the Federal Constitution of the Swiss Confederation of 18.04.1999 (SR 101). The translation of the original text of the Constitution into Polish: Z. Czeszejko-Sochacki, Konstytucja Federalna Konfederacji Szwajcarskiej z dnia 18.04.1999 r., Warszawa 2000. The text in German according to the text to the legislation in force as at 3.03.2013: <http://www.admin.ch/ch/d/sr/1/101.de.pdf>; „Die Schweizerische Eidgenossenschaft (...) wahrt die Unabhängigkeit und die Sicherheit des Landes”; The Swiss normative acts and other official documents in force quoted further are available on the official website: [www.admin.ch](http://www.admin.ch). There are German, French, Italian, Roman and partly English versions. The bases of the present study are as a matter of principle the texts of these acts in German; SR number stands for certificate of the act published in Federal Journal (Bundesblatt); BBI number (appearing hereinafter) stands for certificate of the act published in Federal Journal (Bundesblatt); AS number (appearing hereinafter) stands for the certificate published in Official Repertory of Federal Law (Amtliche Sammlung des Bundesrechts).

art. 53, section 1 and art. 57, section 1 of the Constitution of 1999). Switzerland is also engaged in activity for peaceful and just international order (see art. 2, section 4 of the Constitution of 1999).

Let us look at historical normative constitutional solutions. In both constitutions from the nineteenth century (of 1848 and of 1874 which expired on 1 January 2000) the provisions related to military affairs appeared in many relatively complex and substantially detailed regulations. These regulations foresaw, among others, that the right to declare war and to make peace is vested exclusively in the Federation (compare art. 8 of the Constitution of 1848 and art. 8 of the Constitution of 1874) that it is prohibited to conclude the so-called military capitulations<sup>3</sup> i.e. agreements which could be concluded by particular cantons with foreign countries and as a consequence lead to recruitment of mercenary soldiers on the territory of a given canton by these countries.<sup>4</sup> It is important that as regards the bad historical experience including the civil war of 1847 it was decided that the Federation would not have right to maintain regular military units. Cantons and the so-called “semi-cantons”, namely divided cantons, could maintain regular military units of not more than 300 soldiers (compare art. 13 of the Constitution of 1848 and art. 13 of the Constitution of 1874) without the obligatory approval of the Federation. Military security of the country was based on the principle of universal compulsory military service of its citizens. In the Constitution of 1848 we find a provision imposing obligation of military service on “every Swiss” – „Jeder Schweizer ist wehrpflichtig”.<sup>5</sup> This regulation was substantially broadened in the Constitution of 1874. It introduced a right to obtain help from the Federation by military personnel (and their families) who because of their service in the army forces of the federation lost their life or suffered a permanent body injury (art. 18, section 2). A rule of free of charge equipment, uniform and armament (art. 18, section 3) was also introduced and (in the second sentence of the aforementioned article) a provision concerning private possession of weapons was established – „Die Waffe bleibt unter den durch die Bundesgesetzgebung aufzustellenden Bedingungen in

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3 Art. 11 of the Constitution of 1848 and art. 11 of the Constitution of 1874: „Es dürfen keine Militärkapitulationen abgeschlossen werden”.

4 Compare M. Rybicki, (in:) A. Burda, M. Rybicki (eds.), *op. cit.*, p. 228.

5 Art. 18 of the Constitution of 1848.

den Händen des Wehrmannes". Finally, the issue of possible, payable (and based on federal legislation) exemption from military service (art. 18, section 4), was regulated.<sup>6</sup> Moreover, remuneration of people who lost their salary or did not reach (appropriate) profit because of serving military service, was also regulated (art. 34, section 1, letter d).<sup>7</sup>

Both Federal Constitutions from the nineteenth century strictly prohibited (subject to sanction of removal from the current post in the army) receiving any salary, wages, titles, gifts, or decorations by military personnel from foreign authorities. It also applies to prohibition of wearing foreign decorations or using such titles by officers, non-commissioned officers, and private soldiers (compare art. 12 of the Constitution of 1848 and art. 12 of the Constitution of 1874).

The Constitution of 1848 decided that the federal army was composed of contingents. They were composed of:

- units of federal recruitment (to which every canton was obliged to present three men falling on a hundred Swiss citizens (regardless of sex)<sup>8</sup> and
- reserve in number of half of the federal state (art. 19, section 1, letter b).

It stated that the extent concerning number of soldiers presented in particular cantonal contingents would be revised every twenty years (art. 19, section 3). In case of threat, the Federation could dispose of any other units of all cantons, except federal army (art. 19, section 2). The following article of the Constitution of 1848 gives some detailed regulations related to the types of armed forces (including the division of the army into engineering, artillery, and cavalry (what is interesting, in case of the latter, cantonal obligation to provide horses was regulated) and education in military academies.

The Constitution of 1874 (compare art. 19) decided that federal army was to be composed of military cantonal units and of all Swiss

6 In the wording adopted in the referendum of 11.05.1958, text of amendment according to A. Kölz, *op. cit.*, p. 352 ff.

7 In the wording adopted in the referendum of 6.06.1947, text of amendment according to A. Kölz, *op. cit.*, p. 319 ff.

8 Compare art. 19 section 1 letter a of the Constitution of 1848: „(...) jeder Kanton auf 100 Seelen schweizerischer Bevölkerung 3 Mann zu stellen hat”.

citizens who despite the fact of not being members of these units are obliged to military service. Cantonal units were formed (in principle) of soldiers of the same canton (art. 21, section 1). The right to manage the army and “war” materials (Kriegsmaterial) was under the responsibility of the Federation; cantons could control their military forces unless they were not limited in this respect by the constitution and federal laws. According to art. 20 of the Constitution of 1874, laws related to military affairs in a broad sense, were enacted on the level of the Federation whereas implementing these regulations – within the scope and under surveillance of the Federation fell within the competence of cantonal authorities. Military trainings and the issue of armament were under federal competence. Supplies of uniforms and equipment were left to cantons, which were, however, entitled to expenditure reimbursement in accordance with the norms defined in federal legislation. Composition of cantonal contingents, care of their maintenance, appointing, and promotion of officers were under the competence of cantons if they obeyed federal law (art. 21, section 2). The Federation (art. 22, section 1) was entitled to benefit from and purchase grounds and buildings for military use (offering fair compensation).

The Constitution also regulated two questions of use of the army in a situation of external and internal threats. In case of unexpected external threat of one of the cantons, its government is obliged to ask for help (also armed) from other cantons and to inform federal authorities about the threat. The canton asked for help could not refuse it and the costs of this activity were borne by the Confederation (compare art. 15 of the Constitution of 1848 and the Constitution of 1874). The similar situation was in case of internal disorders or threat from other cantons (in art. 16 of the Constitution we can find a detailed description of required actions upon the request of threatened canton or undertaken by federal authorities *ex officio*). Irrespective of the character of threat each canton is obliged to enable free passage of the Swiss army (including regular cantonal units) which in such case would go under the federal command. The Commander-in-chief of the Swiss army bears the title of the General. The General is chosen by the General Assembly (the Parliament) when it is required to protect state security or there is a need of mobilization. The function of the General was stipulated by all

the Federal Constitutions (also the Constitution in force). This function belongs to the solutions which came before the creation of federal state in 1848.<sup>9</sup>

The most essential historical legislative solutions in the domain of military law included the Act on Organisation of the Army of 1907 (in force until 30 June 1995), Military Penal Code of 1851 (in force until 31 January 1927) and military court regulations of 1889 (in force until 31 December 1979).

### 3. Current solutions

The Federal Constitution of 1999 stipulated (in art. 58, section 1, 1<sup>st</sup> sentence) that Switzerland has an army. Its use falls under the competence of the Federation (section 3 of the aforesaid article). The Federal Assembly has the right to order active military service and mobilisation of army (its entirety or part) for this purpose (art. 175, section 1, letter d) whereas in urgent cases the army may be mobilised by the Federal Council (the government) with the proviso that if mobilisation concerns more than four thousand soldiers or if conscription lasts longer than three weeks, immediate convocation of the parliament is required (art. 185, section 4 of the Constitution). As it was mentioned above, the commander-in-chief of the Swiss army bears the title of the General. The Constitution and the Federal Act on Army and Military Administration (the MG)<sup>10</sup> connects choosing a person to this function by the parliament (art. 168, section 1 of the Constitution of 1999 and art. 85, section 1, 1<sup>st</sup> sentence of the MG) with mobilisation of the army (it is worth noticing that the provision quoted refers to a greater appointment of units – („ein grösseres Truppenaufgebot”). The Parliament also decides on the General’s dismissal (art. 85, section 1, 1<sup>st</sup> sentence of the MG). The election of the General does not mean transferring commanding competence permanently to this person but

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9 The election of the General is mentioned in Tagsatzung (Assembly), (in:) Article 8, section 8 of the Federal Treaty of 1815 (German and French texts of the treaty: Bundesvertrag zwischen den XXII Kantonen der Schweiz vom 7.08.1815 / Pacte fédéral entre les XXII Cantons de la Suisse du 7 août 1815 after: A. Kölz (ed.), *op. cit.*, p. 193 ff.

10 Federal Act of 3.02.1995 on Army and Military Administration, Bundesgesetz vom 3. Februar 1995 über die Armee und die Militärverwaltung, (SR 510.10), (the MG) in short.

only for the time of his or her official activity. According to Article 86, section 2 of the MG, the Federal Council places a commission (Auftrag) for him/her to execute.<sup>11</sup> Before the General is elected, the commander-in-chief belongs to the government (art. 85, section 2 of the MG) and also after election the Federal Council keeps its competence of supreme governing and executive authority of the Federation (see art. 174 of the Constitution and art. 86, section 1 of the MG).

The Swiss Army (see art. 58, section 2 of the Constitution) serves:

- to prevent war and contribute to maintaining peace,
- to defend the country and its citizens,
- to support civil authorities in repulsing serious threats to internal and external security and other exceptional situations.

Due to the perpetual neutrality of Switzerland (guaranteed on international arena in 1815),<sup>12</sup> in principle, the local war doctrine is limited exclusively to the concept of defensive war (Verteidigungskrieg). This does not alter the fact that this doctrine does not have to exclude offensives (attacks) of preventive character related to enemy's attacks or retaking Swiss territories occupied by enemy.<sup>13</sup> Therefore, radical rejection of war as a tool serving to solve disputes, does not mean acceptance of an exception of undertaking military activity in order to ensure internal and external security at the Confederation level.

In principle the Swiss army is organised on the formula of reliability.<sup>14</sup> The word "Milizprinzip" stands for, on the one hand, not directly formulated prohibition on permanent units (relatively professional army) and on the other, temporarily defined individual recruitment of citizens to fulfill public tasks for the state, apart from their regular employment. Exceptions from professionalism understood

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11 Compare B. Ehrenzeller, Kommentar zu art. 168 BV, (in:) B. Ehrenzeller, P. Mastronardi, R. J. Schweitzer, K. A. Vallender (eds.), *Die schweizerische Bundesverfassung – Kommentar*, Zurich-Bazylea-Genewa 2002, pp. 1660–1661.

12 *Anerkennungs und Gewährleistungs-Urkunde der immerwährenden Neutralität der Schweiz vom 20. November 1815*: A. Kölz (ed.), *op. cit.*, vol. 1, pp. 203–204.

13 Compare M.H.S. Wiegandt, *Der Einsatz der Armee: unter Berücksichtigung der subsidiären Sicherungs- und Hilfseinsätze, der internationalen Armeeeinsätze sowie des militärischen Polizeirechts*, Berno 1999, p. 140 ff.

14 Compare art. 58, section 1, 2<sup>nd</sup> sentence of the Constitution: „(Die Armee) ist grundsätzlich nach dem Milizprinzip organisiert.“

this way i.e. functioning of professional personnel (military personnel employed for indefinite period of time – “Berufsmilitär”, or a limited period of time “Zeitmilitär”) may involve, for example, functions demanding permanent maintenance of high standards of education (e.g. definite categories of pilots), tasks requiring high availability (e.g. members of emergency units or rapid response units), or particularly dangerous tasks like supporting the police in anti-terrorist actions.<sup>15</sup>

According to art. 59, section 1 of the Constitution of 1999 every Swiss (citizen, man) is obliged to serve military service. We should note that the act provides for alternative civilian military service.<sup>16</sup> According to the ZDG, a citizen cannot individually choose the type of service (military or civilian). This is decided, at the request of the concerned person, by proper authorities of the Federal Department of Defence, Civil Protection, and Sport (Eidgenössisches Departement für Verteidigung, Bevölkerungsschutz und Sport, VBS).<sup>17</sup> Basic premise for soliciting the alternative civilian service is the impossibility to serve military service because of conflict of conscience.<sup>18</sup> We should add that in the address of the Federal Council of 22 June 1994 concerning the ZDG<sup>19</sup> act it is clearly stated that as the legislator did not want to decide unequivocally of which conflict of values related to serving military service it is the question, a general entry related to conscience (Gewissen) was made. Nevertheless, in the official document quoted, potential religious, ethic/humanitarian motivation and political and social convictions are indicated.<sup>20</sup> We should also remember that an appropriately longer period of serving alternative civil military service is stipulated (to compare the aforementioned art. 1 of the ZDG), even 1,5 of the period of military service; art. 8 of the ZDG to compare. It is emphasised that extending the time limit of service is not assumed to have penal character in relation with the citizen. It concerns equalising (both services are to be comparable (vergleichbar) as far as their value is concerned or even

15 Compare H. Meyer, Kommentar zu art. 58 BV, (in:) B. Ehrenzeller, P. Mastronardi, R.J. Schweitzer, K.A. Vallender (eds.), *op. cit.*, p. 728 and mentioned literature.

16 The Federal Act on Alternative Civil Service of 6.12.1995, Bundesgesetz vom 6.12.1995 über den zivilen Ersatzdienst, (SR 824.0), in short: the ZDG.

17 Compare art. 16 ff. of the ZDG.

18 Compare art. 1 of the ZDG.

19 Botschaft zum Bundesgesetz über den zivilen Ersatzdienst, BBl 94.063.

20 *Ibidem*, pp. 1638 and 1639.



equivalent (gleichwertig).<sup>21</sup> In the event of non fulfillment of individual duties of civil service compensation is awarded which has to be covered by such a person (compare art. 15 of the ZDG).<sup>22</sup>

As far as women (citizens of Switzerland) are concerned the Constitution (art. 59, section 2) introduces the possibility of volunteer military service (freiwillig) and implements legislative delegation in art. 59, section 3 (at the Federation level) in order to determine a compensatory fee for not serving military service (also alternative),<sup>23</sup> an equivalent for lost earnings (art. 59, section 4)<sup>24</sup> and protection of persons and their relatives in the event of loss of life or health impairment during military service (also alternative) (art. 59, section 5).<sup>25</sup>

The Federal Constitution, which is currently in force (art. 60), states that military legislation, organisation, training, and equipment matters fall into the competences of the Federation. Cantons are (within the federal law) intended to create cantonal military formations, appoint and promote officers and to supply soldiers with uniforms and equipment. The Federation may take over (offering proper compensation) military appliances of the cantons as in previous constitutional provisions.

The basic act regulating military matters in Switzerland is the aforesaid act concerning military administration (the MG), which may be treated as a specific “military constitution” because of its substantially broad and, at the same time, complex character and numerous delegations to constitute the detailed law.

In the first title of the MG, “Auftrag der Armee” tasks of the army outlined on the level of the Federal Constitution were complemented with contribution to support peace on the international level and

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21 Compare H. Meyer, Kommentar zu art. 59 BV, (in:) B. Ehrenzeller, P. Mastronardi, R.J. Schweitzer, K.A. Vallender (eds.), *op. cit.*, p. 738

22 Details of calculation of such compensation are defined by art. 13 and the following of Federal Act of 12.06.1959 on compensation for compulsory military service, Bundesgesetz vom 12.07.1959 über die Wehrpflichtersatzabgabe, (SR 661), in short WPEG.

23 Compare art. 15 of the ZDG and art. 13 ff. of WPEG.

24 These questions are regulated by the Federal Act of 25.09.1959 (the version in force determined by the Federal Act of 3.08.2003, binding since 1.07.2005, AS 2005 1429) on compensation of salary of persons serving military service and maternity, Bundesgesetz vom 25.09.1952 über den Erwerbersatz für Dienstleistende und bei Mutterschaft, (SR 834.1).

25 These questions are regulated by the Federal Act of 19.06.1992 on Military Insurance, Bundesgesetz vom 19. 06.1992 über die Militärversicherung, (SR 833.1).

“supporting civil authorities in overcoming other exceptional situations” was supplemented with precise description of this goal in the sphere of disasters within the country and abroad.

The second title is devoted to the duty of military service (*Militärdienstpflicht*). It defines, among others, the rules of military service of Swiss women and men living abroad or holding dual citizenship. It is worth noticing that Swiss women volunteers after proper declaration procedure acquire equal entitlements and duties as Swiss men obliged to military service.<sup>26</sup> The act also stipulates the obligation to document the process of serving military duty in form of a “military service book” – “*Ausweis über die Erfüllung der Militärdienstpflicht*”.

The third part of the act is entitled *Rights and Obligations of Members of the Army* (*Rechte und Pflichten der Angehörigen der Armee*). There are three chapters devoted to common rights (*Allgemeine Rechte*), common obligations (*Allgemeine Pflichten*), the issue of diseases and accidents (*Krankheit und Unfall*), legal protection measures related to military service but not of legal or real estate character (*Rechtsschutz in nicht vermögensrechtlichen Angelegenheiten des Militärdienstes*), the issue of titles and decorations awarded by foreign authorities (*Titel und Orden ausländischer Behörden*) and the question of copyright in the army (*Urheberrechte*).

Common rights of members of the army according to the MG, except the rights guaranteed by the Constitution, or according to other acts, include, among others, the right to soldier’s remuneration, food and shelter and business trips as well as the right to assistance and medical, psychological, spiritual and social care.

Among the common duties, the issues of entitlements of superiors to give orders (*Befehl*) and corresponding subordinate’s obligation of obedience (*Gehorsam*) were mentioned in the first place. The act (art. 32, section 3) reserves the right to refuse to execute an order in a situation when its execution would be punishable under international law norms. Problems of obligation of professional secrecy also after leaving the army are also listed among the duties. Subjection to common

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26 The exceptions concerning exemptions, among others, from military obligation of women or the period of their service may be determined by the Federal Council, compare art. 3, section 2 of the MG.

obligation implies other detailed duties which will be described more broadly further in the article.

The MG concluded a delegation of legislative powers concerning diseases and accidents, which is fulfilled by the Act on Military Insurance.<sup>27</sup> Furthermore, it stipulates a possibility of administering by the Federal Council necessary measures related to members of the army to overcome particularly dangerous and contagious diseases.

A basic measure of legal protection in affairs of military service of other than legal/real estate character<sup>28</sup> is service complaint (Dienstbeschwerde – compare art. 36). A member of the army is entitled to a service complaint when a superior, another member of army or organ of military authority violates the law. An organ of higher rank adjudicates service complaints, however, there is a possibility to appeal to the Federal Department of Defence, Civil Protection, and Sport. The decisions of VBS are final.

As far as titles and distinctions from foreign authorities are concerned, the MG includes the same provisions, in this respect, as the Federal Constitutions of 1848 and 1874 (as mentioned above).

With respect to the copyright, a principle is introduced that the right to the work created by a member of army as part of his or her official activity is vested in the Federation; however, in case of significant profits from the work for the Federation the author is entitled to appropriate compensation.

As far as the scope of the military service obligation (Inhalt der Militärdienstpflicht – art. 7–27 THE MG) is concerned, we should first indicate the compulsory conscription (Stellungspflicht und Rekrutierung). The obligation to present at the enlistment starts with the beginning of calendar year during which the conscript reaches the age of eighteen. Conscription, which consists in a comprehensive evaluation of conscript from the point of view of suitability to service (Tauglichkeit), should end before the conscript reaches the age of

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27 The aforementioned Military Insurance Act (SR 833.1).

28 The question of responsibility of members of the army or units for material damage including third parties and the question of responsibility for personal weapons are regulated by art. 135–143 of the MG.

nineteen. The compulsory conscription ends with the end of calendar year during which the obliged person reaches the age of twenty-five.

The deadlines of military obligation depend on military rank (membership to a defined group). For the group of private soldiers (up to the rank of Obergefreiter, members of the so-called "Mannschaft") and petty officers (up to Oberwachtmeister) the deadline is the end of the year during which the obliged reaches the age of 30 (in determined cases even 34 years) while for higher staff officers and specialists the deadline is the end of the year during which the obliged person reaches the age of 50, with possibility to elongate this period.

The described title deals with questions of non-subjection to conscription, dismissal from the army, and demotion (Nichtrekrutierung, Ausschluss aus der Armee, Degradation). It emphasises, above all, the reasons of subjection to this type of consequences. The basic consequence is a sentence by a judgment of penal court. Even though it is mentioned in case of every sanction it should be noted that punitive sentencing does not prevent from returning to the army whenever a given person is considered indispensable for the army "(...) wenn die Armee sie benötigt".

According to art. 12 of the MG, persons subject to compulsory military service may be directed to training service (Ausbildungsdienste), peacekeeping services (Friedensförderungsdienst), support services (Assistenzdienst) and active service (Aktivdienst). This regulation also stipulates common obligations out of service (allgemeine Pflichten ausser Dienst). Training service, peacekeeping service, and active service constitute three ways of the Swiss army exploitation (art. 65 of the MG).

As far as training of the army is concerned (Ausbildung der Armee – title 4 – art. 41–64 of the MG) the act defines types of trainings, length of trainings and issues of acceptability of foreign trainings. Basic training (Grundausbildung) should start the year during which the trainee reaches the age of 20, and obligation of attending recruit academy (Rekrutenschule) expires (compulsory military service also expires in such a case) by the end of the year during which the person reaches the age of 26. In the domain of training services for units (Ausbildungsdienste der Formationen) the most important are

re-training courses (Wiederholungskurse) in a given formation/unit to which every person subject to military obligation may be directed.

Applying for peacekeeping services is voluntary (art. 66–66b of the MG). Basic statutory premise for participation in this service is grounded in the mandate of the United Nations Organisation or the Organisation for Security and Co-operation, however, it must be in compliance with foreign and security policies of the Confederation.

The purpose of auxiliary service (art. 67–75 of the MG) is to support civil authorities, among others, in air defence of the country, defence of citizens or of particularly valuable objects or to deal with consequences of disasters. Performing this service within the framework of foreign humanitarian missions is also acceptable.

Active service (art. 76–91 of the MG) is introduced, as mentioned above, through the decision of the Federal Council or the government. The units appointed to active service are not sworn in (art. 78 of the MG). The aim of active service is defence of the country and its citizens (as Landesverteidigungsdienst), support of civil authorities in case of serious threats to internal security (as Ordnungsdienst) and finally raising the level of skills of the army. During the active service, units may execute tasks of auxiliary service and peacekeeping service. As a side note, we should observe that in case of mobilisation, requisitions are acceptable (with relation to property and immovables being property of third party). The act stipulates appropriate compensation for usage, reduction of value or loss of requisite objects (art. 80, section 4 of the MG).

The Act also defines common obligations out of service among which there are: obligation to check in at the district commandant of domicile canton, obligation of careful storage and maintenance of personal weapons and presence at annual shooting training (art. 25 of the MG).

Training service units and units mobilised for effective performance of their tasks are equipped with certain competences of the police (art. 92 of the MG). These units can stop suspects, identify their identity, interrogate, search, and temporarily arrest (before surrenderring to appropriate police forces). They are entitled to control and sequester objects when it is necessary. They are allowed to use coercive means,

if other measures appear ineffective in a given situation. Among the aforementioned police competences, the Act also stipulates the possibility to use weapons. It concerns cases of necessary self-defence (Notwehr) and state of necessity (Notstand) as well as use of weapons for protection of property if the property (its value) justifies it.<sup>29</sup>

## 4. Conclusions

The above considerations, cursory because of the nature of this presentation, suggest, in the author's opinion, the relevance of thesis that maintaining peace demands an enormous military effort comprising both elaborated administrative procedures and what seems more significant, real involvement of citizens in fulfillment of duties presented by the state. As indicated by the Swiss practice, coherence of actions in both fields brings security, peace, and prosperity.

Keywords: army, compulsory military service, Switzerland

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29 Compare art. 92, section 3, letter b of the MG „(...) als letztes Mittel zur Erfüllung eines Schutz- oder Bewachungsauftrags, soweit es die zu schützenden Rechtsgüter rechtfertigen“.

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## POKÓJ – TAK, WOJNA – RACZEJ NIE (W SZWAJCARII). UWARUNKOWANIA HISTORYCZNE I WSPÓŁCZESNOŚĆ

Celem niniejszego artykułu jest przedstawienie uwarunkowań historycznych oraz rozwiązań współczesnych w zakresie obrony kraju i obowiązków w tym zakresie dotyczących obywateli Szwajcarii. Przedstawiono zależności wynikające z tradycji i historii Konfederacji Szwajcarskiej, wskazano najważniejsze regulacje obecnie obowiązujące. Wystąpienie służy obronie tezy, że skuteczne zachowanie pokoju w danym państwie wymaga, niestety, zaangażowania w działania wojskowe.