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Conscientious objection

"Article 9[1] [of the European Convention on Human Rights] does not explicitly refer to a right to conscientious objection. However, [the European Court of Human Rights] considers that opposition to military service, where it is motivated by a serious and insurmountable conflict between the obligation to serve in the army and a person's conscience or his deeply and genuinely held religious or other beliefs, constitutes a conviction or belief of sufficient cogency, seriousness, cohesion and importance to attract the guarantees of Article 9 … Whether and to what extent objection to military service falls within the ambit of that provision must be assessed in the light of the particular circumstances of the case" (*Bayatyan v. Armenia*, Grand Chamber judgment of 7 July 2011, § 110).

The *Bayatyan* case (see below, page 3) is the first case in which the Court has examined the issue of the applicability of Article 9 of the Convention to conscientious objectors. Previously, the European Commission of Human Rights[2] had, in a series of decisions (see below), refused to apply that provision to such persons, on the grounds that, since Article 4 § 3 (b) of the Convention excluded from the notion of forced labour "any service of a military character or, in cases of conscientious objectors, in countries where they are recognised, service exacted instead of compulsory military service", the choice whether or not to recognise conscientious objectors had been left to the Contracting States. The question was therefore excluded from the scope of Article 9 of the Convention, which could not be read as guaranteeing freedom from prosecution for refusing to serve in the army.

Case-law of the European Commission of Human Rights

Grandrath v. Germany

12 December 1966 (report of the European Commission of Human Rights)

The applicant, a minister of Jehovah's Witnesses, was a "total objector", seeking to be exempted both from military and from civilian service. He complained about his criminal conviction for refusing to perform substitute civilian service and alleged that he was discriminated against in comparison with Roman Catholic and Protestant ministers who were exempt from this service.

The European Commission of Human Rights examined the case under Article 9 and under Article 14 (prohibition of discrimination) in conjunction with Article 4 (prohibition of forced or compulsory labour) of the Convention. It concluded that there had been **no**

[1]. Article 9 (freedom of thought, conscience and religion) of the European Convention on Human Rights provides that:

"1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

[2]. Together with the European Court of Human Rights and the Committee of Ministers of the Council of Europe, the European Commission of Human Rights, which sat in Strasbourg from July 1954 to October 1999, supervised Contracting States' compliance with their obligations under the European Convention on Human Rights. The Commission ceased to exist when the Court became permanent on 1st November 1998.

violation of the Convention in the present case, as conscientious objectors did not have the right to exemption from military service, and that each Contracting State could decide whether or not to grant such a right. If such a right was granted, objectors could be required to perform substitute civilian service, and did not have a right to be exempted from it.

G.Z. v. Austria (application no. 5591/72)

2 April 1973 (decision of the Commission)

The applicant complained about his conviction by the Austrian courts for having refused to serve his compulsory military service on grounds of his religious beliefs as a Roman Catholic.

The Commission declared the case **inadmissible**, finding in particular that Article 4 § 3(b) of the Convention, which exempts from the prohibition of forced or compulsory labour "any service of a military character or, in cases of conscientious objectors, in countries where they are recognised, service exacted instead of compulsory military service", clearly showed that States had the choice whether or not to recognise conscientious objectors and, if so recognised, to provide some substitute service. Article 9 of the Convention as qualified by Article 4 § 3(b) did not impose on a State the obligation to recognise conscientious objectors and, consequently, to make special arrangements for the exercise of their right to freedom of conscience and religion as far as it affected their compulsory military service. It followed that these Articles did not prevent a State which had not recognised conscientious objectors from punishing those who refused to do military service.

X. v. Germany (no. 7705/76)

5 July 1977 (decision of the Commission)

A Jehovah's Witness and recognised as a conscientious objector by the competent authorities, the applicant refused to comply with a call-up for substitute civilian service. He was convicted of avoiding service and sentenced to four months in prison, but was granted a stay of execution to negotiate for a service agreement to do social work in a hospital or other institution, which would exempt him from civilian service. As he was unable to arrange for such an agreement, his sentence was enforced in December 1976. The applicant complained of the revocation of the stay of execution.

The Commission declared the case **inadmissible**. It found in particular that since Article 4 § 3(b) of the Convention, which exempts from the prohibition of forced or compulsory labour "any service of a military character or, in cases of conscientious objectors, in countries where they are recognised, service exacted instead of compulsory military service", expressly recognised that conscientious objectors might be required to perform civilian service in substitution for compulsory military service, it had to be inferred that Article 9 of the Convention did not imply a right to be exempted from substitute civilian service. With regard to the applicant's complaint under Article 7 (no punishment without law) of the Convention, the Commission underlined that it was for the national legislator to define the offences that may be penalised and found that the Convention did not prevent a state from imposing sanctions on those who refused to perform civilian service. Further, taking into consideration the length of the applicant's sentence, its deferment and his conditional release, the Commission found no convincing argument in support of his allegations of a violation of Article 3 (prohibition of inhuman or degrading treatment) of the Convention.

N. v. Sweden (no. 10410/83)

11 October 1984 (decision of the Commission)

A pacifist, the applicant was convicted for refusing to perform compulsory military service. He did not ask for a possibility to perform substitute civilian service. Before the Commission, he alleged to be a victim of discrimination, since members of various religious groups were exempted from service while philosophical reasons such as being a pacifist did not constitute valid grounds for discharging him from his obligation to serve in the army.

The Commission declared the case **inadmissible**. It did not find an appearance of a violation of Article 14 (prohibition of discrimination) in conjunction with Article 9 of the Convention, stating that it was not discriminatory to limit full exemption from military service and substitute civil service to conscientious objectors belonging to a religious community which required of its members general and strict discipline, both spiritual and moral.

Peters v. the Netherlands

30 November 1994 (decision of the Commission)

The applicant, a philosophy student, was recognised as a conscientious objector, but was compelled to perform a substitute civilian service. Since theology students were in principle entitled to be exempted from both kinds of state service, he considered himself to be a victim of discrimination.

The Commission declared the case **inadmissible**. While it recognised that the issue raised by the applicant fell within the ambit of Article 9 of the Convention, it did not find an appearance of a violation of Article 14 (prohibition of discrimination) of the Convention in conjunction with Article 9.

Case-law of the European Court of Human Rights

Thlimmenos v. Greece

6 April 2000 (Grand Chamber judgment)

A Jehovah's Witness, the applicant was convicted of a felony offence for having refused to enlist in the army at a time when Greece did not offer alternative service to conscientious objectors to military service. A few years later he was refused appointment as a chartered accountant on the grounds of his conviction despite his having scored very well in a public competition for the position in question.

The Court found a **violation of Article 14** (prohibition of discrimination) **in conjunction with Article 9** of the Convention, holding that the applicant's exclusion from the profession of chartered accountant was disproportionate to the aim of ensuring appropriate punishment of persons who refuse to serve their country, as he had already served a prison sentence for this offence.

Ülke v. Turkey

24 January 2006 (Chamber judgment)

The applicant refused to do his military service, on the ground that he had firm pacifist beliefs, and publicly burned his call-up papers at a press conference. He was initially convicted of inciting conscripts to evade military service and, having been transferred to a military regiment, repeatedly convicted for his refusals to wear a military uniform. He served almost two years in prison and later hid from the authorities.

The European Court of Human Rights found a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, holding in particular that the applicable legal framework did not provide an appropriate means of dealing with situations arising from the refusal to perform military service on account of one's beliefs. Because of the nature of the legislation, the applicant ran the risk of an interminable series of prosecutions and criminal convictions. The constant alternation between prosecutions and terms of imprisonment, together with the possibility that the applicant would be liable to prosecution for the rest of his life, had been disproportionate to the aim of ensuring that he did his military service.

Bayatyan v. Armenia

7 July 2011 (Grand Chamber judgment)

A Jehovah's Witness, the applicant refused to perform military service for conscientious reasons when he became eligible for the draft in 2001, but was prepared to do alternative civil service. The authorities informed him that since there was no law in Armenia on alternative service, he was obliged to serve in the army. He was convicted of

draft evasion and sentenced to prison. The applicant complained that his conviction violated his rights under Article 9 of the Convention and submitted that the provision should be interpreted in the light of present-day conditions, namely the fact that the majority of Council of Europe Member States had recognised the right of conscientious objection.

The Court noted that prior to this case it had never ruled on the question of the applicability of Article 9 of the Convention to conscientious objectors, unlike the European Commission of Human Rights, which refused to apply that Article to such persons (see above, page 1). However, that restrictive interpretation of Article 9 was a reflection of ideas that prevailed at that time. Since then, important developments have taken place both on the international level and in the domestic legal systems of Council of Europe Member States. In the light in particular of the foregoing and of its "living instrument" doctrine, the Court concluded that a shift in the interpretation of Article 9 was necessary and foreseeable and that that provision could no longer be interpreted in conjunction with Article 4 § 3 (b) of the Convention. Accordingly, although Article 9 did not explicitly refer to a right to conscientious objection, the Court considered that opposition to military service motivated by a serious and insurmountable conflict between the obligation to serve in the army and an individual's conscience or deeply and genuinely held religious or other beliefs constituted a conviction or belief of sufficient cogency, seriousness, cohesion and importance to attract the guarantees of Article 9. This being the situation of the applicant, **Article 9** was **applicable** to his case.

Further, taking into account in particular that there existed effective alternatives capable of accommodating the competing interests involved in the overwhelming majority of European States and that the applicant's conviction had happened at a time when Armenia had already pledged to introduce alternative service, the Court held that there had been a **violation of Article 9** of the Convention in the present case.

Erçep v. Turkey

22 November 2011 (Chamber judgment)

In this case, the applicant, a Jehovah's Witness, refused to perform his military service. Under the relevant legislation, persons who failed to report for duty when called for military service were regarded as deserters. Each time a new call-up period began, criminal proceedings for failure to report for duty were brought against the applicant (over twenty-five sets of proceedings from 1998 onwards). He was sentenced to several terms of imprisonment. In 2004 the military court decided to impose an aggregate sentence of seven months and fifteen days' imprisonment. After serving five months in prison, the applicant was released on licence. The applicant complained in particular about his successive convictions for refusing to serve in the armed forces.

The Court held that there had been a **violation of Article 9** of the Convention in the present case. It noted in particular that the applicant was a member of the Jehovah's Witnesses, a religious group whose beliefs included opposition to military service, irrespective of any requirement to carry weapons. The applicant's objections had therefore been motivated by genuinely held religious beliefs which were in serious and insurmountable conflict with his obligations in that regard. Conscientious objectors having no option but to refuse to enrol in the army if they wished to remain true to their beliefs, in doing so they further laid themselves open to a kind of "civil death" because of the numerous prosecutions which the authorities invariably brought against them and the cumulative effects of the resulting criminal convictions, the continuing cycle of prosecutions and prison sentences and the possibility of facing prosecution for the rest of their lives. Such a system failed to strike a fair balance between the interests of society as a whole and those of conscientious objectors. Accordingly, the penalties imposed on the applicant, without any allowances being made for the dictates of his conscience and beliefs, could not be regarded as a measure necessary in a democratic society.

Under **Article 46** (binding force and execution of judgments) of the Convention, having observed that the violation of the applicant's rights had its origins in a structural problem linked to the inadequacy of the existing legal framework governing the status of

conscientious objectors and to the absence of an alternative form of service, the Court further held that a reform of the law, which was necessary in order to prevent further similar violations of the Convention, combined with the introduction of an alternative form of service, might constitute an appropriate means of redress by which to put an end to the violation found.

See also: **Feti Demirtaş v. Turkey**, judgment (Chamber) of 17 January 2012; **Buldu and Others v. Turkey**, judgment (Chamber) of 3 June 2014.

Savda v. Turkey

12 June 2012 (Chamber judgment)

This case concerned the failure to recognise the right to conscientious objection in Turkey. The applicant complained in particular about his various prosecutions and convictions for claiming conscientious objector status. Emphasising the seriousness of the measures taken against him on account of his refusal, he further argued that the successive convictions placed him in a situation of humiliation and debasement. Lastly, he challenged the fairness of the proceedings before the military court, which, in his view, could not be regarded as an independent and impartial tribunal.

The Court held that there had been a **violation of Article 9** of the Convention. In the present case, the applicant complained not only about specific actions on the part of the State, but also about the latter's failure to have enacted a law implementing the right to conscientious objection. His request was never examined by the authorities, who merely made use of criminal-law provisions penalising the refusal to carry out military service. In the absence of a procedure which would have enabled the applicant to establish whether he met the conditions for recognition of a right to conscientious objector status, the obligation to carry out military service was such as to entail a serious and insurmountable conflict between that obligation and an individual's deeply and genuinely held beliefs. There was therefore an obligation on the authorities to provide the applicant with an effective and accessible procedure that would have enabled him to have established whether he was entitled to conscientious objector status, as he requested. A system which provided for no alternative service or any effective and accessible procedure by which the person concerned was able to have examined the question of whether he could benefit from the right to conscientious objection failed to strike the proper balance between the general interest of society and that of conscientious objectors.

The Court also concluded that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, as the applicant had been subjected to degrading treatment, and a **violation of Article 6 § 1** (right to a fair trial) of the Convention, given that the applicant, as a conscientious objector, had been required to appear before a military court that was incompatible with the principle of the independence and impartiality of the courts.

See also: ***Tarhan v. Turkey***, judgment (Chamber) of 17 July 2012; **Savda v. Turkey (no. 2)**, judgment (Chamber) of 15 November 2016 (where the Court found a violation of Article 10 (freedom of expression) of the Convention concerning the criminal conviction of a conscientious objector on the ground that he had incited the population to evade military service by means of a public statement).

Enver Aydemir v. Turkey

7 June 2016 (Chamber judgment)

The applicant in this case complained, *inter alia*, that he had been repeatedly detained, prosecuted and convicted because he had claimed the status of conscientious objector.

The Court found that the applicant's objection to performing compulsory military service for the benefit of the secular Republic of Turkey did not fall within the scope of Article 9 of the Convention, given that the arguments he had put forward for claiming the status of conscientious objector were not motivated by religious beliefs which were in serious and insurmountable conflict with his obligation to perform military service. It therefore

declared this complaint **inadmissible** as being incompatible with the Convention in accordance with Article 35 § 3 (admissibility criteria).

See also: ***Baydar v. Turkey***, decision (Committee) of 19 June 2018.

Papavasilakis v. Greece

15 September 2016 (Chamber judgment)

This case concerned the authorities' refusal to grant the applicant the status of conscientious objector and to allow him to do alternative civilian work instead of military service.

The Court held that there had been a **violation of Article 9** of the Convention, finding that the applicant did not enjoy the necessary procedural safeguards in having his request for alternative civilian service examined. The Court considered in particular that the Greek authorities had failed in their duty to ensure that the interviewing of conscientious objectors by the army's Special Board took place in conditions that guaranteed procedural efficiency and the equal representation required by domestic law. In this respect, it noted that: the applicant had been interviewed by a Board made up primarily of servicemen, two of the civilian members of the Board being absent but not replaced; the Minister of Defence's final decision, on the basis of a draft ministerial decision following the Board's proposal, did not afford the requisite safeguards of impartiality and independence; the scrutiny of the Supreme Administrative Court concerned only the lawfulness of the decision, not the merits, and was based on the assessments of the Special Board.

Adyan and Others v. Armenia

12 October 2017 (Chamber judgment)

This case concerned four Jehovah's Witnesses who were convicted in 2011 for refusing to perform either military or alternative civilian service because of their religious beliefs. Before both the local authorities and the courts, they argued that, even though domestic law did provide for an alternative to military service, it was not of a genuinely civilian nature, as it was supervised by the military authorities. They were released from prison in 2013 following a general amnesty. They served more than two years of their prison sentence.

The Court held that there had been a **violation of Article 9** of the Convention. It found that the Armenian authorities had failed at the relevant time to make appropriate allowances for the applicants' conscience and beliefs and to guarantee a system of alternative service that had struck a fair balance between the interests of society as a whole and those of the applicants. In particular, it found two main shortcomings in the system of alternative service. First, it was not sufficiently separated from the military system: either as concerned authority, control or applicable rules, the military being involved in the supervision and organisation of the alternative service, including such aspects as spot checks, unauthorised absence, transfers, assignments and the use of the military rules; or as concerned appearances, civilian servicemen being required to wear a uniform. Secondly, the programme was significantly longer (42 months rather than the 24 months for military service), which had to have had a deterrent, even punitive effect. Moreover, although legislative amendments were introduced in 2013, and the applicants could have applied to have their convictions quashed, by that time they had already served almost two years of their sentences.

See also: **Aghanyan and Others v. Armenia**, judgment (Committee) of 5 December 2019.

Mushfiq Mammadov and Others v. Azerbaijan

17 October 2019 (Chamber judgment)

This case concerned the applicants' refusal on religious grounds to serve in the army.

The Court held that there had been a **violation of Article 9** of the Convention, finding that the criminal prosecutions and convictions of the applicants on account of their refusal to perform military service had stemmed from the fact that there was no

alternative service system under which individuals could benefit from conscientious objector status. That amounted to an interference which had not been necessary in a democratic society. Under **Article 46** (binding force and execution of judgments) of the Convention, the Court further noted that the case highlighted an issue relating to the lack of legislation on civilian service as an alternative to military service in Azerbaijan. The enactment of such a law corresponded to a commitment entered into by Azerbaijan on its accession to the Council of Europe and was also a requirement under the country's own Constitution.

Dyagilev v. Russia

10 March 2020 (Chamber judgment[3])

This case concerned the procedure in Russia for examining requests to replace compulsory military service with its civilian alternative. The applicant in the case, a recent graduate, complained that the authorities had refused his request because they found that he was not a genuine pacifist.

The Court held that there had been **no violation of Article 9** of the Convention in the applicant's case. In particular, it could see no reason to doubt the authorities' assessment of the seriousness of the applicant's convictions. Indeed, he had not provided sufficient evidence, only submitting a curriculum vitae and a letter of recommendation from his employer, to prove that his opposition to serving in the army was motivated by a serious and insurmountable conflict with his convictions. Overall, the Court found that the framework in Russia for deciding on cases concerning opposition to military service, involving a military commission and the possibility for judicial review, was appropriate. The military commissions satisfied the *prima facie* requirement of independence, while the courts had wide powers to then review a case if there were any procedural defects at the commission level.

Further readings

See in particular:

- **Guide on Article 9 – Freedom of thought, conscience and religion**, document prepared by the Directorate of the Jurisconsult.

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[3]. This judgment will become final in the circumstances set out in Article 44 § 2 (final judgments) of the European Convention on Human Rights.