



June 2012

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Conscientious objection

Case-law of the European Commission of Human Rights

Grandrath v. Germany (2299/64)

Commission report of 12.12.1966

Mr Grandrath, 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 (freedom of religion) and under Article 14 (prohibition of discrimination) in conjunction with Article 4 (prohibition of forced or compulsory labour). The Commission concluded that there had been no violation of the Convention, 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.

X. v. Austria (5591/72)

Commission decision of 02.04.1973

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 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 (7705/76)

Commission decision of 05.07.1977

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, relying on Article 3 (prohibition of inhuman and degrading treatment), Article 7 (no punishment without law) and Article 9.

The Commission declared the case inadmissible. It found in particular that since Article 4 § 3(b) 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 did not imply a right to be exempted from substitute civilian service. With regard to the complaint under Article 7, 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.

N. v. Sweden (10410/83)

Commission decision of 11.10.1984

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 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 (22793/93)

Commission decision of 30.11.1994

Mr Peters, 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 Mr Peters fell within the ambit of Article 9, it did not find an appearance of a violation of Article 14 in conjunction with Article 9 of the Convention.

Case-law of the European Court of Human Rights

Ülke v. Turkey (39437/98)

Chamber judgment of 24.01.2006

Mr Ülke 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 Court found a violation of Article 3 (prohibition of inhuman and degrading treatment), 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 Mr Ülke 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 he 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.

Thlimmenos v. Greece (34369/97)

Grand Chamber judgment of 06.04.2000

A Jehovah's Witness, Mr Thlimmenos 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 in conjunction with Article 9, holding that Mr Thlimmenos' 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.

Bayatyan v. Armenia (23459/03)

Grand Chamber judgment of 07.07.2011

A Jehovah's Witness, Mr Bayatyan 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. Mr Bayatyan complained that his conviction violated his rights under Article 9 and submitted that the Article 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 found a violation of Article 9, taking into account that there existed effective alternatives capable of accommodating the competing interests involved in the overwhelming majority of European States and that Mr Bayatyan's conviction had happened at a time when Armenia had already pledged to introduce alternative service.

Savda v. Turkey (42730/05)

Chamber judgment of 12.06.2012

The case concerned the failure to recognise the right to conscientious objection in Turkey. The Court reiterated that the system of compulsory military service allowed for no exceptions on grounds of conscience and resulted in heavy criminal sanctions being imposed on those who refused to comply. It failed to strike a proper balance between the general interest of society and that of conscientious objectors. The penalties, sanctions, convictions and prosecutions imposed on conscientious objectors, when no measures were provided to take account of the requirements of their consciences and convictions, could not be regarded as necessary in a democratic society.

Violations of Articles 3 and 9 and a violation of Article 6 § 1 of the Convention on account of the lack of independence and impartiality of the military court.

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