



## Imprisonment of conscientious objector in Armenia for refusing to do military service violated his right to freedom of religion

In today's Grand Chamber judgment in the case **Bayatyan v. Armenia** (application no. 23459/03), which is final<sup>1</sup>, the European Court of Human Rights held, by a majority, that there had been:

**A violation of Article 9 (freedom of thought, conscience and religion)** of the European Convention on Human Rights.

The case concerned the conviction in 2003 of a conscientious objector - a Jehovah's Witness - for his refusal to perform military service. He was imprisoned despite Armenia's undertaking, when joining the Council of Europe on 25 January 2001, to introduce civilian service as an alternative to compulsory military service within three years and to pardon all conscientious objectors sentenced to imprisonment.

### Principal facts

The applicant, Vahan Bayatyan, is an Armenian national, born in 1983. He is a Jehovah's Witness.

Declared fit for military service when he was 17 years' old, Mr Bayatyan became eligible for the spring draft of 2001.

On 1 April 2001 he wrote to the General Prosecutor of Armenia, the Military Commissioner of Armenia and the Human Rights Commission of the National Assembly stating that, as a Christian, he could not do military service, but that he was prepared to do alternative civilian service.

Aged 18, he was summonsed to appear for military service on 15 May 2001, but failed to turn up.

On 29 May 2001 the Commission for State and Legal Affairs of the National Assembly informed him that, since there was no law in Armenia on alternative service, he was obliged to serve in the army, because both the Armenian Constitution and the Military Liability Act required every fit man aged between 18 and 27 to do military service.

On 1 August 2001 criminal proceedings under Article 75 of the Criminal Code were brought against Mr Bayatyan for draft evasion.

In a judgment eventually upheld by the Court of Cassation in January 2003, Mr Bayatyan was convicted of draft evasion and sentenced to two-and-a-half years in prison. During his trial Mr Bayatyan asked again to do alternative civilian service, submitting that it would be more productive to do socially useful work than spend time in prison.

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<sup>1</sup> Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution)

He was imprisoned and, in July 2003, he was released on parole, after having served about ten-and-a-half months of his sentence.

The Armenian Alternative Service Act, which provides for alternative civilian service for conscientious objectors, was passed on 17 December 2003 and entered into force on 1 July 2004.

## Complaints, procedure and composition of the Court

Mr Bayatyan complained about his conviction for draft evasion, despite his objections on religious grounds, relying on Article 9.

His application was lodged with the Court on 22 July 2003 and declared admissible on 12 December 2006.

In a [judgment](#) of 27 October 2009, the Chamber dealing with the case held that there had been no violation of Article 9. On 10 May 2010 the case was referred to the Grand Chamber at Mr Bayatyan's request. A public [hearing](#) was held in the Human Rights building in Strasbourg (webcast available) on 24 November 2010.

Judgment was given by the Grand Chamber of 17, composed as follows:

Jean-Paul **Costa** (France), *President*,  
Christos **Rozakis** (Greece),  
Nicolas **Bratza** (the United Kingdom),  
Peer **Lorenzen** (Denmark),  
Françoise **Tulkens** (Belgium),  
Nina **Vajić** (Croatia),  
Lech **Garlicki** (Poland),  
Alvina **Gyulumyan** (Armenia),  
Dean **Spielmann** (Luxembourg),  
Renate **Jaeger** (Germany),  
Sverre Erik **Jebens** (Norway),  
Päivi **Hirvelä** (Finland),  
Mirjana **Lazarova Trajkovska** ("the Former Yugoslav Republic of Macedonia"),  
Ledi **Bianku** (Albania),  
Mihai **Poalelungi** (Moldova),  
Nebojša **Vučinić** (Montenegro),  
Guido **Raimondi** (Italy), *Judges*,

and also Vincent **Berger**, *Jurisconsult*.

## Decision of the Court

### [Article 9](#)

#### Applicability

The Chamber, following the established case-law of the European Commission of Human Rights, had found that Article 9 had to be read in conjunction with Article 4 (prohibition of slavery and of forced or compulsory labour), which left the choice of recognising conscientious objection to each State which had ratified the European Convention on Human Rights. The Chamber had therefore found that Article 9 did not guarantee a right to refuse military service on conscientious grounds and was inapplicable in Mr Bayatyan's case.

However, the Grand Chamber reiterated that the Convention was a living instrument which had to be interpreted in the light of prevailing conditions and ideas in democratic States. At the time when the alleged interference with the applicant's rights under Article 9 occurred, in 2002-2003, only four Council of Europe Member States, apart from Armenia, did not provide for the possibility of claiming conscientious objector status, although three of those had already incorporated the right to conscientious objection into their Constitutions but had yet to introduce implementing laws.

Almost all the member States which ever or still had compulsory military service introduced laws at various points recognising and implementing the right to conscientious objection. The earliest was the United Kingdom in 1916, followed by Denmark (1917), Sweden (1920), the Netherlands (1920-1923), Norway (1922), Finland (1931), Germany (1949), France and Luxembourg (1963), Belgium (1964), Italy (1972), Austria (1974), Portugal (1976) and Spain (1978).

A big wave of recognitions ensued in the late 1980s and the 1990s, when almost all the existing or future Member States which had not yet done so introduced such a right into their legal systems. Those included: Poland (1988), the Czech Republic and Hungary (1989), Croatia (1990), Estonia, Moldova and Slovenia (1991), Cyprus, the former Federal Republic of Yugoslavia (which in 2006 divided into two member States: Serbia and Montenegro, both of which retained that right) and Ukraine (1992), Latvia (1993), the Slovak Republic and Switzerland (1995), Bosnia and Herzegovina, Lithuania and Romania (1996), Georgia and Greece (1997), and Bulgaria (1998).

From the remaining Member States, "the Former Yugoslav Republic of Macedonia", which as early as 1992 had allowed for non-armed military service, introduced alternative civilian service in 2001. Russia and Albania, which in 1993 and 1998 respectively had constitutionally recognised the right to conscientious objection, introduced legislation in 2004 and 2003 respectively. Azerbaijan constitutionally recognised the right to conscientious objection in 1995. Conscientious objectors are not recognised in Turkey.

In most Member States where conscientious objection was recognised and fully implemented, conscientious objector status could be claimed on the basis not only of religious beliefs but also of a relatively broad range of personal beliefs of a non-religious nature, except in Romania and Ukraine. In some member States the right to claim conscientious objector status only applied during peacetime, as in Poland, Belgium and Finland, while in others, like Montenegro and the Slovak Republic, the right to claim such status by definition applied only in time of mobilisation or war. Finally, some Member States, like Finland, also allowed certain categories of conscientious objectors to be exempted from alternative service.

At the time of Mr Bayatyan's case, the overwhelming majority of Council of Europe member States had already recognised in law and practice the right to conscientious objection. Subsequently, Armenia also recognised that right. The laws of the Member States - along with the relevant international agreements<sup>2</sup> - had therefore evolved so that, at the relevant time, there was already a virtual consensus on the question in Europe and beyond. It could not therefore be said that a shift in the interpretation of Article 9 in relation to events which occurred in 2002-2003 was not foreseeable.

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<sup>2</sup> Since 1993 the United Nations Human Rights Committee also recognised that a right to conscientious objection could be derived from the International Covenant on Civil and Political Rights. The Charter of Fundamental Rights of the European Union, which entered into force in 2009, explicitly recognised the right to conscientious objection. Within the Council of Europe, both the Parliamentary Assembly and the Committee of Ministers had also on several occasions called on Member States which had not yet done so to recognise the right to conscientious objection. Furthermore, recognition of the right to conscientious objection had become a pre-condition for admission of new Member States into the Council of Europe.

The Grand Chamber concluded that Article 9 should no longer be read in conjunction with Article 4 § 3 (b). Consequently, the applicant's complaint was to be assessed solely under Article 9.

Article 9 did not explicitly refer to a right to conscientious objection. However, the Grand Chamber considered that opposition to military service - where it was motivated by a serious and insurmountable conflict between the obligation to serve in the army and a person'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.

Mr Bayatyan was a member of the Jehovah's Witnesses, a religious group opposed to service, even unarmed, in the military. The Grand Chamber therefore had no reason to doubt that his objection to military service was motivated by his religious beliefs, which were genuinely held and in serious and insurmountable conflict with his obligation to perform military service. Accordingly, Article 9 was applicable to his case.

#### Compliance

The Grand Chamber considered that Mr Bayatyan's failure to report for military service was a manifestation of his religious beliefs. His conviction for draft evasion therefore amounted to an interference with his freedom to manifest his religion.

The Grand Chamber left open the question of whether his conviction was lawful. It was based on laws which were accessible and clear. However, the Armenian authorities had also undertaken to adopt a law on alternative service and, in the meantime, to pardon conscientious objectors sentenced to prison terms.

The Grand Chamber did not find it necessary to rule on the Armenian Government's argument that there was a "legitimate aim" behind Mr Bayatyan's conviction; the protection of public order and, implicitly, the rights of others. However, the Government's arguments were unconvincing, especially given their pledge to introduce alternative civilian service and, implicitly, to refrain from convicting new conscientious objectors.

Concerning whether his conviction was "necessary in a democratic society" the Grand Chamber noted that almost all the 47 Member States of the Council of Europe which ever or still had compulsory military service had introduced alternatives to military service. Accordingly, a State which had not done so had to give convincing and compelling reasons to justify any interference with a person's right to freedom of religion.

The Grand Chamber noted that Mr Bayatyan, as a Jehovah's Witness, wanted to be exempted from military service, not for personal benefit or convenience, but, because of his genuinely-held religious convictions. Since no alternative civilian service was available in Armenia at the time, he had had no choice but to refuse to be drafted into the army to stay faithful to his convictions and, by doing so, risk criminal sanctions. Such a system failed to strike a fair balance between the interests of society as a whole and those of Mr Bayatyan. The Grand Chamber therefore considered that the imposition of a penalty on Mr Bayatyan, in circumstances where no allowances were made for his conscience and beliefs, could not be considered a measure necessary in a democratic society. Still less could it be seen as necessary, taking into account that there existed viable and effective alternatives capable of accommodating the competing interests, as demonstrated by the experience of the overwhelming majority of European States.

The Grand Chamber admitted that any system of compulsory military service imposed a heavy burden on citizens. However, it was acceptable if shared in an equitable manner

and if exemptions from that duty were based on solid and convincing grounds, as in Mr Bayatyan's case.

The Grand Chamber reiterated that pluralism, tolerance and broadmindedness were hallmarks of a democratic society. Democracy did not simply mean that the views of the majority had always to prevail; a balance had to be achieved which ensured the fair and proper treatment of minorities and avoided any abuse of a dominant position. Respect on the part of the State towards the beliefs of a minority religious group (like the Jehovah's Witnesses) by providing them with the opportunity to serve society as dictated by their conscience might, far from creating unjust inequalities or discrimination as the Government claimed, ensure cohesive and stable pluralism and promote religious harmony and tolerance in society.

Mr Bayatyan's prosecution and conviction also happened at a time when the Armenian authorities had already officially pledged to introduce alternative service. Their commitment not to convict conscientious objectors during that period was also implicit in their undertaking to pardon all conscientious objectors sentenced to imprisonment. Hence, Mr Bayatyan's conviction for conscientious objection was in direct conflict with the official policy of reform and the legislative changes then being implemented in Armenia in line with its international commitment and could not be said to have been prompted by a pressing social need. In addition, the law on alternative service was adopted less than a year after Mr Bayatyan's final conviction. The fact that he was later released on parole did not affect the situation. Nor did the adoption of the new law have any impact on his case.

The Court therefore considered that Mr Bayatyan's conviction constituted an interference with his right to freedom of religion which was not necessary in a democratic society, in violation of Article 9.

#### Article 41

Under Article 41 (just satisfaction), the Court held that Armenia was to pay Mr Bayatyan 10,000 Euros (EUR) in respect of non-pecuniary damage and EUR 10,000 in respect of costs and expenses.

#### Separate opinion

Judge Gyulumyan expressed a dissenting opinion which is annexed to the judgment.

*The judgment is available in English and French.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.