



Refusal to grant conscientious objector status is not necessary in a democratic society

In today's Chamber judgment in the case [Savda v. Turkey](#) (application no. 42730/05), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

violations of Article 3 (prohibition of degrading treatment) and 9 (right to freedom of thought, conscience and religion) of the European Convention on Human Rights; and
a violation of Article 6 § 1 of the Convention on account of the lack of independence and impartiality of the military court.

The case concerned the failure to recognise the right to conscientious objection, which would enable refusals to carry out military service to be legitimised in Turkey. The Court reiterated that the system of compulsory military service in force in Turkey allowed for no exceptions on grounds of conscience and resulted in heavy criminal sanctions being imposed on those who refused to comply. Such a system 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.

Principal facts

The applicant, Halil Savda, is a Turkish national who was born in 1974 and lives in Istanbul (Turkey). Following his conscription into the army in 2004, he declared himself to be a conscientious objector and refused to serve in the armed forces. He became a leading member of the anti-militarist movement in Turkey, running a website set up by "*War Resisters International*" (an association founded in 1921 to promote non-violent action against the causes of war).

On 26 January 1994 he was sentenced to a prison term for aiding and abetting the PKK (Workers' Party of Kurdistan). He was called up for military service on 21 May 1996. Having served his sentence, he was conscripted into his regiment on 27 May 1996 and deserted on 14 August 1996. Arrested some months later in possession of a weapon, he was accused of carrying out acts in favour of the PKK; he was detained on remand. The Adana State Security Court sentenced him to 14 years and 7 months' imprisonment for membership of the PKK. On 18 November 2004, after serving his sentence, he was taken to the gendarmerie station for the purpose of his military service, then, on 25 November 2004, to his regiment, where he refused to don military uniform.

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

A range of criminal proceedings were brought against him; in the meantime he continued to refuse to integrate into his regiment for the purpose of military service. He was tried on four occasions for desertion. On 21 April 2008 Mr Savda was transferred to a military hospital, where psychological tests were conducted. A panel of military doctors diagnosed an "anti-social personality" disorder and concluded that he was unfit for military service. On 25 April 2008, having been exempted from military service, he was discharged from his regiment. He was released on 25 November 2008 once his last prison sentence had been served.

Complaints, procedure and composition of the Court

Mr Savda complained that his various prosecutions and convictions for claiming conscientious objector status had entailed violations of Articles 9 (right to freedom of thought, conscience and religion) and 10 (right to freedom of expression) of the Convention. Emphasising the seriousness of the measures taken against him on account of his refusal, he argued that the successive convictions placed him in a situation of humiliation and debasement. Relying on Article 6, 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 decided to examine Mr Savda's complaints under Articles 3, 6 and 9 of the Convention.

The application was lodged with the European Court of Human Rights on 11 November 2005.

Judgment was given by a Chamber of seven, composed as follows:

Françoise **Tulkens** (Belgium), *President*,
 Danutė **Jočienė** (Lithuania),
 Dragoljub **Popović** (Serbia),
 Isabelle **Berro-Lefèvre** (Monaco),
 András **Sajó** (Hungary),
 Işıl **Karakaş** (Turkey),
 Guido **Raimondi** (Italy), *Judges*,

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

Article 3

The Court noted that in Turkey all male citizens who are found fit for national service are obliged to perform military service. Given that no substitute civilian service exists, conscientious objectors have no other choice, if they are to remain true to their convictions, but to refuse to be drafted into the army. In so doing, they open themselves to a form of "civil death", on account of the numerous criminal proceedings that the authorities invariably bring against them, the cumulative effects of the resulting criminal convictions and the possibility of being prosecuted throughout their lives.

Mr Savda was sentenced to prison terms on three occasions for refusing to wear a military uniform. On several occasions he was placed in solitary confinement, for periods ranging from 2 to 8 days, always on the same ground. Finally, Mr Savda was subjected to various criminal prosecutions and convictions, which were likely to continue indefinitely had the decision to demobilise him not been taken on 25 April 2008.

In those circumstances, the Court considered that the treatment to which Mr Savda had been subjected had caused serious pain and suffering that went beyond the usual

element of humiliation inherent in a criminal conviction or detention. The Court therefore concluded that there had been a violation of Article 3.

Article 9

The Court recently re-examined its case-law concerning the application of Article 9 to conscientious objectors, in its judgment in the case of [Bayatyan v. Armenia](#) (no. 23459/03) of 7 July 2011. It held 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 his 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.

In the present case, the Court noted that Mr Savda 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. It noted that the Government had put forward no convincing or compelling reason that would justify this failure. The Government was unable to explain in what way recognition of the right to conscientious objection was incompatible, in the contemporary world, with the State's duties in relation to territorial integrity, public safety, the prevention of disorder and protection of the rights of others.

The Court noted that Mr Savda's case was characterised by the absence of a procedure to examine his request for recognition of conscientious objector status. His request was never examined by the authorities, who merely made use of criminal-law provisions penalising the refusal to carry out military service. The Court emphasised the State's obligation to provide a regulatory framework introducing a mechanism to protect the rights of individuals. In the absence of a procedure to examine requests for the purpose of establishing conscientious objector status, the obligation to carry out military service was such as to entail a serious and insurmountable conflict with an individual's conscience. There was therefore an obligation on the authorities to provide Mr Savda 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. It followed that the relevant authorities had failed to comply with their obligation under Article 9 of the Convention.

Article 6

The Court noted that under Turkish criminal law an individual was considered to be a serviceman from the moment of incorporation into his regiment. Following his conscription, Mr Savda refused to wear military uniform and stated that he did not wish to carry out military service for reasons of conscience. In the Court's opinion, such a situation could hardly be regarded as similar to that of a regular soldier who willingly agreed to submit to a system of military discipline.

In the Court's opinion, it was entirely understandable that a person who claimed to be a conscientious objector should be apprehensive about being tried by a bench of three judges which included a regular army officer. Such mistrust, however, did not suffice for it to be held that there had been a violation of Article 6 § 1. The Court endorsed the findings of the Turkish Constitutional Court, which, in its judgment of 7 May 2009, held that the participation of officers in the deliberations of military courts and the provisions subjecting military judges to military discipline and assessment reports were

incompatible with the constitutional principle of judicial independence. Under a recently introduced constitutional amendment, the legislature is no longer obliged to take into account the "requirements of military service" in enacting legislation on military courts.

The Court considered it understandable that Mr Savda, having had to face purely military charges before a court made up entirely of servicemen, had been apprehensive about being tried by judges who could be equated with a party to the proceedings. As the applicant could legitimately have feared that the court could be influenced by biased considerations and given that his doubts as to that court's independence and impartiality were objectively justified, the Court held that there had been a violation of Article 6 § 1.

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Turkey was to pay the applicant 12,000 euros (EUR) in respect of non-pecuniary damage and EUR 1,975 in respect of costs and expenses.

The judgment is available only in 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.