CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 23459/03
by Vahan BAYATYAN
against Armenia

The European Court of Human Rights (Third Section), sitting on 12 December 2006 as a Chamber composed of:

Mr B.M. ZUPANČIČ, *President*,
Mr J. HEDIGAN,
Mr C. BÎRSAN,
Mr V. ZAGREBELSKY,
Mrs A. GYULUMYAN,
Mr DAVID THÓR BJÖRGVINSSON,
Mrs I. BERRO-LEFÈVRE, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged on 22 July 2003,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Vahan Bayatyan, is an Armenian national who was born in 1983 and lives in Yerevan. He is represented before the Court by Mr J.M. Burns and Mr A. Carbonneau, lawyers practising in St. Petersburg, and Mr R. Khachatryan, lawyer practicing in Yerevan. The Armenian Government ("the Government") are represented by their Agent, Mr G. Kostanyan, Representative of the Republic of Armenia at the European Court of Human Rights.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

1. Background to the case

The applicant is a Jehovah's Witness. From 1997 he attended various Jehovah's Witnesses religious services and was baptised on 18 September 1999 at the age of 16.

On 16 January 2000 the applicant was registered as a person liable for military service with the Erebuni District Military Commissariat (*Էրեբունի համայնքի զինկոմիսարիատ*).

On 16 January 2001 the applicant, at the age of 17, was called to undergo a medical examination, following which he was declared fit for military service. The applicant became eligible for military service during the 2001 spring draft (April-June).

On 1 April 2001, at the outset of the draft, the applicant sent identical letters to the General Prosecutor of Armenia (*ՀՀ գլխավոր դատախազ*), the Military Commissioner of Armenia (*ՀՀ պաշտպանության նախարարության հանրապետական զինկոմիսար*) and the Human Rights Commission of the National Assembly (*ՀՀ ազգային ժողովին առընթեր մարդու իրավունքների հանձնաժողով*), with the following statement:

> "I, Vahan Bayatyan, born in 1983 inform you that I have studied the Bible since 1996 and have trained my conscience by the Bible in harmony with the words at Isaiah 2:4, and consciously refuse to perform military service. At the same time I inform that I am ready to perform alternative civilian service in place of military service."

In early May a summons to appear for military service on 15 May 2001 was delivered to the applicant's home. On 14 May 2001 an officer with the Erebuni Military Commissariat telephoned the applicant's home and asked his mother whether the applicant was aware that he had been called to appear at the Commissariat to commence military service the following day. That same evening, the applicant temporarily moved away from his home in fear of being forcefully taken to the military.

On 15 and 16 May 2001 officials from the Commissariat telephoned the applicant's mother, demanding to know his whereabouts. They threatened to take him to the military by force if he did not come voluntarily. On 17 May 2001, early in the morning, the officials came to the applicant's home. His parents were asleep and did not open the door. On the same date, the applicant's mother went to the Commissariat where she stated that the applicant had left home and she did not know when he would come back.

The applicant submits that the Commissariat made no further efforts to contact his family.

On 29 May 2001 the Parliamentary Commission for State and Legal Affairs (*ՀՀ ազգային ժողովի պետական-իրավական հարցերի հանձնաժողով*) sent a reply to the applicant's letter of 1 April 2001, stating:

> "In connection with your declaration, ... we inform you that in accordance with the legislation of the Republic of Armenia every citizen ... is obliged to serve in the Armenian army. Since no law has yet been adopted in Armenia on alternative service, you must submit to current law and serve in the Armenian army."

In early to mid-June 2001 the applicant returned home where he lived until his arrest in September 2002.

On 12 June 2001 the Parliament declared a general amnesty which applied only to those who had committed crimes before 11 June 2001 and was subject to implementation until 13 September 2001.

2. Criminal proceedings against the applicant

On 26 June 2001 the Erebuni Military Commissar (*Էրեբունի համայնքի զինկոմիսար*) sent a notice to the Erebuni District Prosecutor (*Էրեբունի համայնքի դատախազ*) that the applicant had failed to appear for military service on 15 May 2001 and was intentionally avoiding service in the army.

During July and on 1 August 2001 the applicant, together with his father and his defence counsel, went on several occasions to the District Prosecutor's Office to inquire with the relevant investigator about his situation and to discuss the forthcoming trial.

On 1 August 2001 the investigator instituted criminal proceedings on account of the applicant's draft evasion. According to the applicant, the superior prosecutor refused to bring charges against him until further investigation had been carried out. On 8 August 2001 the applicant, who apparently wanted to benefit from the above amnesty act, complained about this to the General Prosecutor's Office (*ՀՀ գլխավոր դատախազություն*). He received no reply to this complaint.

On 1 October 2001 the investigator issued five orders in respect of the applicant: (1) to bring a charge of draft evasion against the applicant; (2) to apply to court for authorisation of the applicant's detention on remand; (3) to declare the applicant a fugitive and institute a search for him; (4) to apply to court for authorisation of monitoring of the applicant's correspondence; and (5) to suspend the proceedings until the applicant had been found. This last order stated:

> "... since, having undertaken investigative and operative search measures, the attempts to find the wanted [applicant] within two months ... have been unsuccessful

> and his whereabouts are unknown, ... [it is necessary] to suspend the investigation ... and ... to activate operative search measures to find the accused."

Neither the applicant nor his family were notified of these orders, despite the fact that since mid-June 2001 he had been living at the family home and that he had met with the investigator on several occasions in July-August 2001.

On 2 October 2001 the Erebuni and Nubarashen District Court of Yerevan (*Երևան քաղաքի Էրեբունի և Նուբարաշեն համայնքների առաջին ատյանի դատարան*) authorised the monitoring of the applicant's correspondence and his detention on remand. Neither the applicant nor his family were notified about these decisions, and the investigating authority made no attempts to contact them until his arrest in September 2002.

On 26 April 2002 the Convention entered into force in respect of Armenia.

3. The applicant's arrest and trial

On 4 September 2002, while the applicant was at work, two police officers came to his family home, informing his parents that he was on the wanted list and inquiring about his whereabouts.

On 5 September 2002 the police officers returned and accompanied the applicant to a local police station, where they drew up a record of the applicant's voluntary surrender which stated that the applicant, having found out that he was on the wanted list, decided to appear at the police station. On the same date, the applicant was placed in the Nubarashen detention facility.

On 9 September 2002 the investigating authority resumed the criminal proceedings against the applicant.

On 11 September 2002 the applicant was presented with the 1 October 2001 charge for the first time. During his questioning on the same date the applicant submitted that he consciously refused to perform military service because of his religious beliefs but was ready to perform alternative civilian service instead.

On the same date, the applicant and his defence counsel were granted access to the case file. The indictment was finalised on 18 September 2003 and approved by the prosecutor on 23 September 2002.

On 22 October 2002 the applicant's trial commenced in the Erebuni and Nubarashen District Court of Yerevan. The trial was adjourned until 28 October 2002 because the applicant had not been served with a copy of the indictment.

On 28 October 2002, at the court hearing, the applicant made the same submissions as during his questioning. On the same date, the Erebuni and

Nubarashen District Court found the applicant guilty as charged and sentenced him to one year and six months in prison.

On 29 November 2002 the prosecutor lodged an appeal against this judgment, seeking a harsher punishment. The appeal stated:

> "The [applicant] did not accept his guilt, explaining that he refused [military] service having studied the Bible, and as one of Jehovah's Witnesses his faith did not permit him to serve in the armed forces of Armenia.
>
> [The applicant] is physically fit and is not employed.
>
> I believe that the court issued an obviously mild punishment and did not take into consideration the degree of social danger of the crime, the personality of [the applicant], and the clearly unfounded and dangerous reasons for [the applicant's] refusal of [military] service."

On 19 December 2002 the applicant's defence counsel lodged objections in reply to the prosecutor's appeal, in which he argued that the judgment imposed was in violation of the applicant's freedom of conscience and religion guaranteed by Article 23 of the Constitution, Article 9 of the Convention and other international instruments. He further argued that the absence of a law on alternative civilian service could not serve as a justification for imposing criminal liability on a person refusing military service for reasons of conscience.

On 24 December 2002, in the proceedings before the Criminal and Military Court of Appeal (*ՀՀ քրեական և զինվորական գործերով վերաքննիչ դատարան*), the prosecutor argued, *inter alia*, that a harsher sentence should be imposed also because of the fact that the applicant had hidden from the investigation. The applicant submits that during the appeal hearing pressure was put on him to abandon his religious beliefs regarding military service: both the prosecutor and one of the judges offered to terminate his case if he dropped his objection and went to perform his military duty.

On the same date, the Court of Appeal decided to grant the prosecutor's appeal and increased the applicant's sentence to two and a half years, stating that:

> "The court of first instance, when sentencing [the applicant], took into account that [the applicant] had committed not a grave crime, that he was young, he had not been guilt-stained in the past, that he had confessed his guilt, had actively assisted in the disclosure of the crime and had sincerely repented.
>
> However, in the course of the appeal proceedings it was established that not only did [the applicant] not accept his guilt, but he also did not repent of having committed the crime, not only did he not assist in the disclosure of the crime, but he hid from preliminary investigation and his whereabouts were unknown, for which his search was initiated.
>
> Based on these circumstances, as well as taking into account the nature, motives and degree of social danger of the crime, the Court of Appeal considers that the

> prosecutor's appeal must be granted, and a harsher and adequate punishment must be imposed on [the applicant]."

On an unspecified date, the applicant's defence counsel brought a cassation appeal against this judgment, in which he raised arguments similar to the ones made in his objections of 19 December 2002. He reiterated the applicant's willingness to perform alternative civilian service and submitted that, instead of spending two and a half years in prison, the applicant could have done socially useful work. According to him, such possibility was envisaged under Article 12 of the Law on Military Liability (*ՀՀ օրենքը «Զինապարտության մասին»*). Furthermore, he argued that the principle of alternative service was enshrined in Article 19 of the Law on Freedom of Conscience and Religious Organisations (*ՀՀ օրենքը «Խղճի ազատության և կրոնական կազմակերպությունների մասին»*), and the absence of appropriate implementation mechanisms could not be blamed on the applicant.

On 24 January 2003 the Court of Cassation (*ՀՀ վճռաբեկ դատարան*) upheld the judgment of the Court of Appeal, finding, *inter alia*, that the rights guaranteed under Article 23 of the Constitution were subject to limitations under its Article 44 such as in the interests of State security, public safety and the protection of public order. Similar limitations were envisaged also by Article 9 § 2 of the Convention.

On 22 July 2003 the applicant was released on parole after having served about ten and a half months of his sentence.

B. Relevant domestic law

1. The Constitution of 1995 (in force at the material time)

Article 23 provided that everyone had the right to freedom of thought, conscience and religion.

According to Article 44, the fundamental rights and freedoms of man and citizen enshrined, *inter alia*, in Article 23 could be restricted by law if necessary for the protection of State security and public safety, the public order, the health and morals of the society, and the rights, freedoms, honour and good name of others.

Article 47 provided that every citizen was obliged to participate in the defence of the Republic of Armenia in accordance with a procedure prescribed by law.

2. The Law on Military Liability of 1998

Article 11 provides that in peacetime male conscripts from the age of 18-27 who have been found physically fit for military service shall be drafted to compulsory military service.

According to Article 12 § 1, a citizen can be exempt from compulsory military service (a) on account of poor health; (b) if he is the only male child in a family and his father (mother) or brother (sister) perished in the Armenian armed forces or for the defence of Armenia; (c) by a decree of the Government; (d) if he has performed compulsory military service in foreign armed forces before acquiring Armenian citizenship; or (e) he has a scientific degree and is engaged in specialised, scientific or educational activities.

According to Article 16 § 2, in individual cases the Government defines categories of citizens and particular individuals to be granted deferral from conscription to regular military service.

3. The Criminal Code of 1961 (ՀՀ քրեական օրենսգիրք՝ ուժը կորցրել է 01.08.03 թվականից)

Article 75 of the Criminal Code, in force at the material time, provided that evasion from a regular call to active military service was punishable by imprisonment for a period of one to three years.

4. The Law on Freedom of Conscience and Religious Organisations of 1991

Article 19 provides that all civic obligations envisaged by law apply equally to believing members of religious organisation as they do to other citizens. In specific cases of contradiction between civic obligations and religious convictions, the matter of discharging one's civic obligations can be resolved by means of an alternative principle, in the procedure prescribed by law, by mutual agreement between the relevant State authority and the given religious organisation.

5. The Law on Alternative Service of 17 December 2003 (ՀՀ օրենքը «Այլընտրանքային ծառայության մասին»)

On 17 December 2003 the Armenian Parliament adopted the Law on Alternative Service.

According to Article 2, an alternative service is a service replacing the military service which does not involve the carrying, keeping, maintenance and use of arms, and which is performed either in military or civilian institutions.

According to Article 3, an Armenian citizen, whose creed or religious beliefs do not allow him to carry out military service in a military unit, including the carrying, keeping, maintenance and use of arms, can perform alternative service.

C. Relevant international documents

1. Opinion No. 221 (2000) of the Parliamentary Assembly of the Council of Europe (PACE): Armenia's application for membership of the Council of Europe

In paragraph 13 (iv) the PACE noted that Armenia undertook to honour the following commitment: to adopt, within three years of accession, a law on alternative service in compliance with European standards and, in the meantime, to pardon all conscientious objectors sentenced to prison terms or service in disciplinary battalions, allowing them instead to choose, when the law on alternative service has come into force, to perform non-armed military service or alternative civilian service.

2. Recommendation 1518 (2001) of the PACE: exercise of the right of conscientious objection to military service in Council of Europe member states

In paragraph 2 the Assembly stated that the right of conscientious objection was a fundamental aspect of the right to freedom of thought, conscience and religion enshrined in the Universal Declaration of Human Rights and the European Convention on Human Rights.

3. Charter of Fundamental Rights of the European Union (2000)

Article 10 § 2 of the Charter states that the right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

COMPLAINTS

1. The applicant complains under Article 9 of the Convention that

(a) his conviction for refusal to serve in the army unlawfully interfered with his right to freedom of thought, conscience and religion; and

(b) the primary goal of his prosecution was to coerce him into abandoning his religious and conscientious objection to military service, and the proceedings themselves were conducted in a manner designed to coerce him to join the Armenian Apostolic Church.

2. The applicant complains under Article 14 in conjunction with Article 9 of the Convention that the increased sentence upon appeal was the result of his beliefs, referring to the prosecutor's statement about unfounded and dangerous reasons for his refusal of military service. He further complains under the same Article that the State continued to treat young male Jehovah's Witnesses, including himself, who refused military service for

reasons of conscience, as serious criminals despite the fact that their situation was significantly different from others guilty of crimes punishable by imprisonment or even typical draft evaders. The State has failed to take appropriate measures to preclude the prosecution of conscientious objectors, such as himself, despite the commitments undertaken by Armenia upon accession to the Council of Europe, the President's authority to grant pardon and the Prime Minister's authority to exempt from or defer the performance of the military service under Article 12 § (c) and 16 § 2 of the Law on Military Liability.

3. The applicant complains under Article 5 §§ 1 (c) and 3 of the Convention that he did not appear before a judge when the decision of 2 October 2001 ordering his detention was taken, since this decision was made in his absence, and he was not brought before a judge when detained on 5 September 2002. Under Article 5 § 4 of the Convention the applicant complains that he was not able to appeal against the decision of 2 October 2001 because of not being notified of it. Under Article 5 § 5 of the Convention he complains that he did not have an enforceable right to compensation.

4. The applicant complains under Article 6 § 1 of the Convention about a deliberate delay in bringing the charge against him, so that he could not benefit from the amnesty act of 12 June 2001. He further complains that he was not promptly informed of the nature and cause of the accusation against him, and that the unfounded decision declaring him a fugitive and his failure to repent of having committed the crime served as grounds for the increased sentence of the Court of Appeal.

THE LAW

1. The applicant complains that his conviction was in violation of his right to freedom of conscience and religion. He further complains about a coercion to abandon his beliefs. He invokes Article 9 of the Convention which, insofar as relevant, provides:

> "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom 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."

a) As regards the applicant's conviction

i. Domestic remedies

The Government submit that the applicant has failed to exhaust the domestic remedies as required by Article 35 § 1 of the Convention. According to Article 12 § 1 (c) of the Law on Military Liability, a citizen could be exempted from compulsory military service by a decree of the Government. In other words, a citizen could apply to the Government for exemption from military service, which the applicant has failed to do. Instead, he applied to authorities, such as the General Prosecutor, the Military Commissioner and the Human Rights Commission of the National Assembly, which were not authorised to exempt a citizen from military service.

The applicant submits that he had exhausted all the effective domestic remedies, having appealed against his conviction to the Court of Appeal and the Court of Cassation. Article 12 § 1 (c) of the Law on Military Liability could not be considered as an effective remedy. By referring to the case of *Horvat v. Croatia*, the applicant claims that an application under this Article would have been "a hierarchical appeal that was, in fact, no more than information submitted to the supervisory organ with the suggestion to make use of its powers if it saw fit to do so" (no. 51585/99, § 47, ECHR 2001-VIII). The Government have failed to produce any decision or example to support their argument concerning the sufficiency and effectiveness of this Article as a remedy. Neither this Article nor any other legal act contained, at the material time, any provisions whatsoever for individual citizens to apply to the Government for exemption from military duty. The granting of such an exemption was subject to the absolute discretion of the Government; it was without time limitation and was not part of ordinary hierarchy of judicial decisions open to the applicant. Furthermore, the Government was under no obligation whatsoever to consider any such request by citizens, nor was it even obliged to respond.

The Court recalls that, according to Article 35 § 1 of the Convention, it may only deal with a matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law. The Court reiterates that this rule only requires normal recourse by an applicant to such remedies which are likely to be effective, sufficient and available. For a remedy to be effective, it must be, *inter alia*, capable of remedying directly the situation complained of (see, *e.g.*, *Vorobyeva v. Ukraine* (dec.), no. 27517/02, 17 December 2002).

The Court notes that the applicant does not complain about a refusal or a lack of possibility to be exempted from military service, but about a conviction for draft evasion. It is not clear how an application to the Government for an exemption from military service under Article 12 § 1 of the Law on Military Liability, which, moreover, according to the Government themselves, does not envisage such grounds for exemption as being a Jehovah's Witness (see below), could have provided a remedy to the

applicant against his conviction. As far as this conviction is concerned, the Court considers that the applicant has exhausted all the effective remedies in respect of his complaint under Article 9 by appealing against it to higher judicial instances which had the competence to examine his relevant appeals.

It follows that the Government's arguments as to non-exhaustion must be rejected.

ii. Applicability of Article 9

The Government, by referring to the Commission's decisions in the cases of *Peters v. the Netherlands* and *Heudens v. Belgium* (application no. 22793/93, Commission decision of 30 November 1994, not published, and application no. 24630/94, Commission decision of 22 May 1995, respectively), claim that the right to conscientious objection is not guaranteed by Article 9 or any other provision of the Convention, and that the Contracting Parties are not prevented from imposing sanctions on those who refuse to perform military service. Furthermore, in the case of *Valsamis v. Greece* the Commission considered that Article 9 did not confer a right to exemption from disciplinary rules which applied generally and in a neutral manner (judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, § 36). In any event, the fulfilment of an obligation under the Constitution could not be considered as an interference with the applicant's rights, since all citizens were subject to such duties regardless of their religious convictions. Thus, there has not been an interference with the applicant's right to freedom of thought and conscience within the meaning of Article 9.

The applicant submits, relying on Recommendation 1518 of the Parliamentary Assembly of the Council of Europe, that his refusal to serve in the army was a manifestation of his freedom of thought and conscience, and his conviction amounted to an interference with this freedom. The Government, claiming in their observations that there has not been such an interference, relied on a 10 year-old decision of the Commission, not taking into consideration the gradual recognition of the right of conscientious objection under Article 9 as stated in the above Recommendation and its development into a customary practice within member states of the Council of Europe. Furthermore, this right was also confirmed by the 2004 Treaty Establishing a Constitution for Europe. Considering the “living instrument” doctrine, the applicant asks the Court to review the Commission's and Court's case-law which allowed Article 4 § 3 (b) to override the guarantees of Article 9, in light of the evolution of the law and the current practice among member states the greater majority of which have recognised the right to conscientious objection. This recognition is reflected in the policy of the Council of Europe which requires that new member states undertake

to recognise the right to conscientious objection as a condition of their admission into the organisation, as it most recently happened with Armenia.

The Court considers it necessary to join the issue of applicability of Article 9 to the merits of this complaint.

iii. As to the merits

The Government submit that there has not been a breach of Article 9. The applicant was obliged under the Constitution to perform military service. The exceptions to this rule listed in Article 12 § 1 of the Law on Military Liability did not include such grounds as him being a Jehovah's Witness. Thus, an exemption from compulsory military service on a ground not prescribed by law would be in breach of the principle of equality and non-discrimination.

The applicant claims that the interference with his right to freedom of religion and belief was not prescribed by law, since his conviction was not lawful in light of the Armenia's Constitution, international obligations and other provisions of international and domestic law. It did not pursue a legitimate aim since Article 9 § 2 does not permit limitations in the interests of national security. As far as public safety and the protection of public order are concerned, no court made any attempt to explain how his conviction was connected with the pursuit of such aims. Finally, given the customary practice now adopted by most of the member states, the imposition of criminal sanctions on conscientious objectors, even in those few member states that have not yet implemented alternative civilian service, could not be regarded as necessary in a democratic society. Armenia acknowledged this when it undertook a commitment to refrain from imprisonment of conscientious objectors even before such a law was passed as a condition of membership in the Council of Europe. Thus, deprivation of liberty in a penal colony with convicted criminals was wholly disproportionate in a modern democratic State.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

b) As to the alleged coercion to abandon his beliefs

The Court notes that nothing in the materials before it indicates that the proceedings against the applicant pursued any other aim than to enforce the relevant provisions of the Criminal Code, namely Article 75, which envisaged a penalty for draft evasion. The fact that one of the judges offered to terminate the criminal case against the applicant, if he agreed to perform his military duty, cannot be regarded as pressure on the applicant to

abandon his religious beliefs. Nor can any indication of such pressure be found in the judgment of the Court of Appeal.

It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

2. The applicant complains that he has been subjected to discrimination because of his religious beliefs. He invokes Article 14 of the Convention in conjunction with Article 9 which provides:

> "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

The Court recalls that it may only examine complaints in respect of which domestic remedies have been exhausted (see, e.g., *Valašinas v. Lithuania* (dec.), no. 44558/98, 14 March 2000). The Court further recalls that, for the domestic remedies to be exhausted, it is not sufficient that the available procedures be pursued. It is also required that the complaints intended to be made subsequently before the Court be made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law (see, among other authorities, *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, § 66; *Kok v. the Netherlands* (dec.), no. 43149/98, 4 July 2000). In the present case, the applicant lodged appeals with the Criminal and Military Court of Appeal and the Court of Cassation but failed to raise in his appeals the issue of the alleged discrimination.

It follows that the applicant has failed to exhaust domestic remedies, and that this part of the application must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

3. The applicant complains that he was not brought before a judge and was not able to contest the lawfulness of his detention as required by Article 5 §§ 1 (c), 3 and 4 of the Convention. He further complains that he did not have the right to compensation guaranteed by Article 5 § 5 of the Convention. The relevant provisions provide:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> ...

> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power...
>
> 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
>
> 5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation."

a) As to the complaints under Article 5 §§ 1 (c), 3 and 4

The Court recalls that it may only deal with a case within a period of six months from the date of the final decision or, where an applicant complains of a continuing situation, from the date when that situation ends (see, e.g., *Papon v. France (no. 1)* (dec.), no. 64666/01, ECHR 2001-VI). The Court notes that the applicant's complaints under Article 5 §§ 1 (c), 3 and 4 concern his detention on remand. The Court recalls, however, that the end of the period of detention is the day on which the charge is determined, even if only by a court of first instance (see, as a classic authority, *Wemhoff v. Germany*, judgment of 27 June 1968, Series A no. 7, § 9). In the present case, the applicant's charge was determined at first instance on 28 October 2002 which is more than six months before the introduction of this application to the Court on 22 July 2003.

It follows that this part of the application was lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

b) As to the complaint under Article 5 § 5

The Court notes that the applicant's detention was never found to be unlawful by the domestic authorities. Nor is this Court able to rule on the lawfulness of his detention because of the reasons mentioned above. In such circumstances, the applicant cannot claim to be a victim of an alleged violation of the right to compensation for unlawful detention.

It follows that this part of the application is incompatible *ratione personae* and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

4. The applicant raises several complaints in respect of the criminal proceedings against him. He invokes Article 6 § 1 of the Convention which provides:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal..."

a) As to the allegedly deliberate delay in bringing the charge against him

The Court recalls that in accordance with the generally recognised rules of international law, the Convention only governs, for each Contracting Party, facts subsequent to its entry into force with regard to that Party (see, e.g., *Jovanović v. Croatia* (dec.), no. 59109/00, ECHR 2002-III). The Court observes that the Convention entered into force in respect of Armenia on

26 April 2002. Accordingly, the Court is not competent to examine the present application in so far as it refers to the circumstances in which the charge was brought against the applicant because they concern events which took place between June and October 2001.

It follows that this part of the application is incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

b) As to the remainder of the complaints under Article 6

The Court reiterates the requirement to exhaust the domestic remedies mentioned above and notes that the applicant failed to raise any of these complaints in his appeal to the Court of Cassation.

It follows that the applicant has failed to exhaust domestic remedies, and that this part of the application must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court by a majority

Joins to the merits the question of applicability of Article 9 of the Convention to the present case;

Declares admissible, without prejudging the merits, the applicant's complaint concerning an alleged violation of his right to freedom of thought, conscience and religion;

Declares inadmissible the remainder of the application.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President