

**Article 9**

**Article 9-1**

**Freedom of conscience**

**Manifest religion or belief**

Conviction of conscientious objector for refusing to perform military service: *violation*

*Facts* – The applicant, a Jehovah’s Witness who had been declared fit for military service, informed the authorities that he refused to serve in the military on conscientious grounds but was ready to carry out alternative civil service. When summoned to commence his military service in May 2001 he failed to report for duty and temporarily left his home for fear of being forcibly taken to the military. He was charged with draft evasion and in 2002 was sentenced to two and a half years’ imprisonment. He was released on parole after serving about ten and a half months of his sentence. At the material time in Armenia there was no law offering alternative civil service for conscientious objectors.

*Law – Article 9*

*(a) Applicability* – This was the first case in which the Court had examined the issue of the applicability of Article 9 to conscientious objectors. Previously, the European Commission of Human Rights had in a series of decisions 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 Parties. The question was therefore excluded from the scope of Article 9, which could not be read as guaranteeing freedom from prosecution for refusing to

serve in the army. However, that interpretation of Article 9 was a reflection of ideas that prevailed at that time. Since then, important developments had taken place both on the international level and in the domestic legal systems of Council of Europe member States. By the time of the alleged interference with the applicant's Article 9 rights in 2002-03, there was virtually a consensus among the member States, the overwhelming majority of which had already recognised the right to conscientious objection. After the applicant's release from prison, Armenia had recognised that right also. The United Nations Human Rights Committee considered that the right to conscientious objection could be derived from Article 18 of the International Covenant on Civil and Political Rights and Article 9 of the Charter of Fundamental Rights of the European Union explicitly stated that the right to conscientious objection was recognised in accordance with the national law governing its exercise. Moreover, the Parliamentary Assembly of the Council of Europe and the Committee of Ministers had on several occasions called on the member States which had not yet done so to recognise the right to conscientious objection and this had eventually become a pre-condition for admission of new member States into the Organisation. In the light 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). In any event, it transpired from the *travaux préparatoires* on Article 4 that the sole purpose of subparagraph 3 (b) was to provide further elucidation of the notion "forced or compulsory labour", which neither recognised nor excluded a right to conscientious objection. It should therefore not have a delimiting effect on the rights guaranteed by Article 9.

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.

*(b) Compliance* – The applicant's failure to report for military service had been a manifestation of his religious beliefs and his conviction therefore amounted to an

interference with his freedom to manifest his religion. Leaving open the questions whether the interference had been prescribed by law or whether it pursued a legitimate aim, the Court went on to examine the margin of appreciation afforded to the respondent State in the applicant's case. Given that almost all Council of Europe member States had introduced alternatives to military service, any State which had not done so enjoyed only a limited margin of appreciation and had to demonstrate that any interference corresponded to a "pressing social need". At the material time, however, the existing system in Armenia imposed on citizens an obligation which had potentially serious implications for conscientious objectors while failing to allow any conscience-based exceptions and penalising those who, like the applicant, refused to perform military service. Such a system therefore failed to strike a fair balance between the interests of society as a whole and those of the individual. In the Court's view, the imposition of a criminal sanction on the applicant, where no allowances were made for the exigencies of his religious beliefs, could not be considered a measure necessary in a democratic society. The Court further observed that the applicant's prosecution and conviction had occurred after the Armenian authorities had officially pledged, upon acceding to the Council of Europe, to introduce alternative service within a specific period and they had done so less than a year after the applicant's conviction. In these circumstances, the applicant's conviction, which had been in direct conflict with the official policy of reform and legislative changes in pursuance of Armenia's international commitment, could not be said to have been prompted by a pressing social need.

*Conclusion:* violation (sixteen votes to one).