

AS TO THE ADMISSIBILITY OF

Application No. 22793/93
by Edwin Rogier PETERS
against the Netherlands

The European Commission of Human Rights sitting in private on
30 November 1994, the following members being present:

Present:

MM. S. TRECHSEL, President
H. DANELIUS
G. JÖRUNDSSON
J.-C. SOYER
H.G. SCHERMERS
Mrs. G.H. THUNE
MM. F. MARTINEZ
L. LOUCAIDES
J.-C. GEUS
M.A. NOWICKI
I. CABRAL BARRETO
J. MUCHA
D. SVÁBY

Mr. K. ROGGE, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection
of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 4 October 1993 by
Edwin Rogier PETERS against the Netherlands and registered on
19 October 1993 under file No. 22793/93;

Having regard to the report provided for in Rule 47 of the Rules
of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Dutch national, born in 1962, and resides at
Utrecht, the Netherlands. Before the Commission he is represented by
Mr. B.J. Duinhof, a lawyer practising in Utrecht.

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

In 1989, the applicant obtained a degree in mathematics. In the
same year, he resumed his study of philosophy, which he had already
begun in 1984 or 1985.

On 15 May 1990, the Minister of Defence recognised the applicant
as a conscientious objector and exempted him from ordinary military
service. He was consequently required to perform substitute civilian
service.

On 27 June 1990, the applicant requested to be exempted from
substitute civilian service on the basis of "study for a religious-
humanitarian office (philosophy)" ("opleiding tot geestelijk-
menslievend ambt (filosofie)"). He stated that he studied philosophy
with the intention of using the acquired knowledge in a function
comparable to an ecclesiastical or religious-humanitarian office. He

therefore claimed he should receive the same treatment as theology students as regards the exemption from substitute civilian service.

Pursuant to Section 15 para. 2 of the Conscientious Objectors Act (Wet gewetensbezwaren militaire dienst), conscientious objectors may be exempted from substitute civilian service if they hold or are studying for an ecclesiastical office (geestelijk ambt) or a religious-humanitarian office (godsdienstig menslievend ambt). Exemption on account of this reason is granted to, inter alia, theology students (studenten in de godgeleerdheid) intending to become religious ministers.

On 10 April 1991, the Minister of Social Affairs and Employment (Minister van Sociale Zaken en Werkgelegenheid) rejected the applicant's request, holding that an exemption under Section 15 para. 2 of the Conscientious Objectors Act could only be granted to persons holding or studying for religious offices, which was not the applicant's case.

On the applicant's appeal, the Administrative Litigation Division of the Council of State (Afdeling voor de geschillen van bestuur van de Raad van State) quashed the Minister's decision on 3 April 1992. It found that the Minister's interpretation of the term "religious office" within the meaning of Section 15 para. 2 of the Conscientious Objectors Act was too narrow in that the Minister had not taken into account the developments in society in respect of various religions and other forms of spiritual life. It held that an exemption could also be granted in cases involving offices and studies for offices not having a strictly religious character, such as humanistic counsellors (humanistisch geestelijke raadslieden), as their work is comparable to that of someone holding a ecclesiastical or religious-humanitarian office. In reaching this opinion the Administrative Litigation Division noted that within the Dutch armed forces the work of humanistic counsellors coincides to a high degree with that of Roman-catholic, Protestant-christian and Jewish office holders.

On 17 June 1992, the Minister of Social Affairs and Employment again refused the applicant's request, holding that the applicant followed a general philosophy study at a state university and was not studying for a specific ecclesiastical or religious-humanitarian office, or a comparable office of a non-religious character and that this finding was not altered by the applicant's statement that he had humanistic beliefs and wished to be of service to others. The Minister added that only after the applicant would have accepted such an office, he could be exempted from substitute civilian service.

Following the applicant's appeal, the Administrative Litigation Division, in its decision of 6 April 1993, upheld the Minister's decision of 17 June 1992. It did not consider Articles 9 and 14 of the Convention, which the applicant had invoked in his appeal.

COMPLAINT

The applicant alleges a violation of Article 14 in conjunction with Article 9 of the Convention, in that he, being a student of philosophy whose intention is to use the acquired knowledge in a function comparable to an ecclesiastical or religious-humanitarian office, is not exempted from substitute civilian service, whereas a theology student, as a rule, is.

THE LAW

The applicant complains under Article 14 in conjunction with Article 9 (Art. 14+9) of the Convention that he, unlike theology students, was not granted an exemption from substitute civilian service.

Article 9 (Art. 9) of the Convention reads as follows:

"1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or in private, 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."

Article 14 (Art. 14) of the Convention 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 Commission recalls that the right to conscientious objection is not, as such, guaranteed by Article 9 (Art. 9) of the Convention or any other provision of the Convention or one of its Protocols (cf. No. 17086/90, Dec. 6.12.91, D.R. 72 p. 245).

However, Article 9 (Art. 9) and the other substantive provisions of the Convention and its Protocols are supplemented by Article 14 (Art. 14). A measure which, as such, could be in conformity with one of the substantive provisions may nevertheless violate that provision when taken in conjunction with Article 14 (Art. 14), if it is applied in a discriminatory manner. However, there is no room for application of Article 14 (Art. 14) unless the facts of the case fall within the ambit of one of the substantive provisions of the Convention (Eur. Court H.R., Inze judgment of 28 October 1987, Series A no. 126, p. 17, para. 36).

The Commission finds that the facts of the case fall within the ambit of Article 9 (Art. 9) of the Convention, and Article 14 of the Convention, taken together with Article 9 (Art. 14+9), is, therefore, applicable (cf. No. 10410/83, Dec. 11.10.84, D.R. 40 p. 207).

Article 14 (Art. 14) of the Convention safeguards individuals, placed in similar situations, from discrimination in the enjoyment of the rights set forth in the other provisions of the Convention and its Protocols.

The Commission notes the statement of the applicant, who follows a general study of philosophy, that he has humanistic beliefs and wishes to use his acquired knowledge for being of service to others. He compares his own situation with that of persons holding or studying for a specific ecclesiastical or religious-humanitarian office, or a recognised comparable office of a non-religious character. However, the Commission considers that these two situations cannot be regarded as comparable for the purposes of Article 14 (Art. 14) of the Convention.

It follows that there is no discrimination in the sense of this provision. The application is therefore manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Second Chamber

(K. ROGGE)

President of the Second Chamber

(S. TRECHSEL)