

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

FIFTH SECTION

CASE OF BRUN v. SWITZERLAND

(Application no. 50885/16)

JUDGMENT

Art 14 (+ Art 4) • Discrimination • Sex and nationality • Military-service exemption tax imposed on applicant – a Swiss man – in lieu of doing military service, but not on Swiss women and foreign nationals residing in Switzerland • Art 4 applicable – "service of a military character" • Payment of the exemption tax constituting a solidarity obligation in the national defence • Comparator groups not obliged to perform military service and thus not in a comparable situation to that of the applicant who was but benefited from an exemption • Difference in treatment between Swiss men and women, and between Swiss men and foreign nationals residing in Switzerland, with regard to the obligation to perform military service objectively and reasonably justified • Wide margin of appreciation not exceeded

Prepared by the Registry. Does not bind the Court.

STRASBOURG

4 June 2026

FINAL

02/11/2026

This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.



In the case of Brun v. Switzerland,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Kateřina Šimáčková*, President*,
María Elósegui,
Diana Sârcu,
Mykola Gnatovskyy,
Sébastien Biancheri,
Nicholas Emiliou*, judges*,
Nicolas von Werdt*,* ad hoc *judge*,

and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 50885/16) against the Swiss Confederation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Swiss national, Mr Fabian Brun ("the applicant"), on 25 August 2016;

the decision to give notice of the application to the Swiss Government ("the Government");

the decision to grant the applicant leave to represent himself (Rule 36 §§ 2 and 4 of the Rules of Court);

the withdrawal of Judge Andreas Zünd, the judge elected in respect of Switzerland, from the case (Rule 28 of the Rules of Court), and the appointment of Mr Nicolas von Werdt to sit as an *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1 of the Rules of Court);

the parties' observations;

Having deliberated in private on 12 May 2026,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns the alleged discriminatory treatment of the applicant on the grounds of sex and nationality with regard to his obligation to pay a military-service exemption tax under the Swiss Constitution; it was compulsory for men of Swiss nationality, but not women or foreign nationals, to serve in the Swiss army or pay the tax in question in lieu of such service.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

2. The applicant was born in 1980 and lives in Merenschwand (Canton of Aargau).

3. The Government are represented by Mr Xavier-Baptiste Ruedin, Representative of Switzerland to the European Court of Human Rights.

4. The facts of the case may be summarised as follows.

5. In 2000 the applicant was drafted into the Swiss army. He was assigned as a sapper in the engineer corps, where he started to perform his military service, which was compulsory for all men of Swiss nationality (see paragraph 23 below). He completed a total of 104 days of military service between July and October 2000.

6. On 3 October 2001 the applicant was examined by a military doctor, who concluded that he was unfit for military service on the grounds that he could suffer from disorders such as insomnia, depressive reactions and self-destructive patterns if he continued, and could also represent a potential danger to others under the emotional pressure associated with military service.

7. On 4 December 2001 the Aargau District Command (*Kreiskommando Aargau*) declared the applicant unfit for military service on medical grounds and the relevant entry was made in his service record. His status as a conscript remained unaffected.

A. Military-service exemption tax for 2005 and relevant proceedings

8. On 31 January 2008 the Aargau cantonal authorities responsible for the military-service exemption tax ("the Military-Service Tax Administration") set the military-service exemption tax to be paid by the applicant for 2005 at 204 Swiss francs (CHF), on the basis of his taxable income for that year which amounted to CHF 8,500, and taking into account the 104 days of completed military service.

9. On 25 February 2008 the applicant objected, considering that he was being discriminated against.

10. On 28 February 2008 the Military-Service Tax Administration rejected the applicant's objection.

11. On 25 March 2008 the applicant lodged an appeal against the above decision with the Federal Tax Appeals Board for the Canton of Aargau, arguing, *inter alia*, that the obligation to pay the military-service exemption tax was in breach of Article 14 of the Convention taken in conjunction with Article 4 §§ 2 and 3 (d) of the Convention, in so far as conscription applied only to men and women did not have to pay the military-service exemption tax. He further contended that the tax in question was fiscal in nature.

12. On 26 February 2009 the Federal Tax Appeals Board dismissed the appeal. It referred to the conclusions of the Federal Court's ruling of 23 May 2002 to the effect that the deliberate unequal treatment of men and women with regard to compulsory military service and the resulting obligation for men who did not perform military service (or the substitute civilian service for conscientious objectors) to pay compensation as set out in Article 59 of the Federal Constitution was neither unconstitutional nor in breach of the Convention or the principles of international law. It further held that the

military-service exemption tax of CHF 204 imposed on the applicant in 2005 did not constitute confiscatory taxation, regard being had to the applicant's income and the limited duration of the obligation in question. The applicant appealed to the Federal Supreme Court, claiming that by having to pay the military-service exemption tax in lieu of doing military service, he was being discriminated against in comparison with women.

13. On 21 January 2010 the Federal Supreme Court dismissed the applicant's appeal. It noted first of all that Article 59 of the Constitution was a *lex specialis* and therefore took precedence over the general principle of equal treatment enshrined in Article 8 of the Constitution. The fact that only men were required to pay the military-service exemption tax was therefore constitutional. The Federal Supreme Court further considered that the applicant's complaint should be examined from the perspective of Article 14 of the Convention in conjunction with Article 4 of the Convention. It held that the military-service exemption tax was a substitute levy – a financial obligation replacing an unfulfilled natural obligation to perform military service – and that its rate, which was proportionate to a person's taxable income, was intended to reflect an appropriate balance between the burden of those who performed military service and that of those who were exempt. The substitute levy remained unsuitable and unproductive for fiscal purposes. For example, in 2008 the revenue from the military-service exemption tax had amounted to approximately 0.239% of the Confederation's total fiscal revenue. With regard to the sex-based discrimination alleged by the applicant as regards the obligation to pay the military-service exemption tax, the Federal Supreme Court held that the obligation would arise in respect of women only if military service were compulsory for them. However, women were not liable for compulsory military service in Switzerland. They could perform military service on a voluntary basis, in which case they had the same rights and obligations as male members of the armed forces. The Swiss army – the army of a small neutral State designed for defensive warfare and security through cooperation – had historically been based on the principle of a militia and *de facto* continued to be based on that principle, and could not be enforced without general conscription. At the relevant time the proportion of militia servicemen amounted to 80%. However, the system did not require general compulsory military service for women. The introduction of general conscription and compulsory military service for women in Switzerland had never been considered. This was mainly because of the fact that, owing to physiological and biological differences, women were considered less suitable for military service than men. The Federal Supreme Court considered that Switzerland was free to take appropriate measures to ensure its internal and external security, and that the restriction of compulsory military service to men was compatible with the principle of equal treatment of men and women. The Federal Supreme Court further distinguished the applicant's case from the case of *Karlheinz Schmidt v. Germany* (Series A no. 291-B, 18 July

1994), which had concerned the fire service levy in the *Land* of Baden-Württemberg in Germany that only men had to pay, and in which the Court had found a violation of Article 14 of the Convention in conjunction with Article 4 § 3 (d) on account of the fact that in practice, no male persons were obliged to serve in the fire service, and therefore the fire service levy had lost its compensatory character and had become an actual obligation. In Switzerland, on the contrary, military service for men was not only theoretical, but practical, and in 2005 a total of 220,000 army personnel had been secured in this way; the military-service exemption tax was therefore still compensatory in nature, as it functioned as a substitute for the performance of military service.

B. Military-service exemption tax for 2010 and relevant proceedings

14. On 1 May 2011 the Military-Service Tax Administration provisionally set the military-service exemption tax to be paid by the applicant for 2010 at CHF 320, on the basis of his taxable income for that year.

15. On 30 May 2014 the Military-Service Tax Administration confirmed that the above amount had to be paid in respect of the applicant's military-service exemption tax for 2010.

16. On 26 September 2014 the applicant challenged the tax demand, arguing that he was being discriminated against.

17. On 2 October 2014 the Military-Service Tax Administration confirmed its decision.

18. On 7 November 2014 the applicant lodged an appeal with the Federal Tax Appeals Board for the Canton of Aargau, arguing that the obligation to pay the military-service exemption tax was in violation of Article 14 of the Convention in conjunction with Article 4 §§ 2 and 3 of the Convention, in so far as women did not have to pay that tax, in the absence any known biological or functional reason.

19. On 21 May 2015 the Federal Tax Appeals Board upheld the above decision, fully endorsing the reasoning contained in the judgment of the Federal Supreme Court of 21 January 2010 with regard to the similar complaint raised by the applicant in relation to his obligation to pay the military-service exemption tax for 2005 (see paragraph 13 above). The Federal Tax Appeals Board held that the 2010 military-service exemption tax of CHF 320 imposed on the applicant did not constitute confiscatory taxation.

20. On 6 July 2015 the applicant filed an administrative appeal with the Federal Supreme Court. He claimed, in particular, that he was a victim of discriminatory treatment on the grounds of sex and nationality in so far as he was obliged to pay the military-service exemption tax in lieu of performing military service; such military service was compulsory for Swiss men, but not

Swiss women or foreign nationals, who had no obligation to pay the tax in question.

21. In a judgment of 12 February 2016 the Federal Supreme Court reiterated the provisions of Article 59 of the Federal Constitution, which provided that only men were generally obliged to perform military service, that women could perform military service on a voluntary basis, and that men who did not perform military service (or substitute civilian service for conscientious objectors) had to pay the military-service exemption tax (see paragraph 23 below). The court further restated its previous findings that the Article in question applied as a *lex specialis* to the general principle of equal treatment of men and women enshrined in Article 8 of the Federal Constitution, that the military-service exemption tax represented a substitute for individuals who did not perform their required military or civilian service, and that the fact that only men were required to pay the tax in question was constitutional. The Federal Supreme Court further held that no issue of unequal treatment arose as regards foreign nationals, because the Constitution obliged only Swiss nationals to perform military or civilian service. The Federal Supreme Court therefore found no breach of the principle of equality and no discrimination, and rejected the applicant's appeal with reference to the considerations of the lower authorities.

22. The judgment of 12 February 2016 was sent by post on 2 March 2016 and was received by the applicant on 5 March 2016.

II. RELEVANT LEGAL FRAMEWORK

A. The Federal Constitution of the Swiss Confederation

23. The relevant parts of the Federal Constitution read as follows:

Article 8: Equality before the law

"1. Every person is equal before the law.

2. No one may be discriminated against on grounds of origin, race, sex, age, language, social position, way of life, religious, ideological or political convictions, or because of a physical, mental or psychological disability.

3. Men and women have equal rights. The law shall ensure their equality, both in law and in practice, most particularly in the family, in education and in the workplace. ..."

Article 58: Armed forces

"1. Switzerland has an army. It is organised essentially according to the principle of a militia.

2. The armed forces contribute to the prevention of war and the maintenance of peace; they ensure the defence of the country and its population. They support the civilian authorities when they are faced with a serious threat to internal security or other exceptional situations. Further duties may be provided for by law.

3. The Confederation is responsible for setting up the army."

Article 59: Military service and substitute service

"1. All men of Swiss nationality are required to perform military service. The law provides for substitute civilian service.

2. Swiss women may serve in the army on a voluntary basis.

3. All men of Swiss nationality who do not perform military service or substitute civilian service shall pay a tax. The tax shall be paid to the Confederation and fixed and levied by the cantons.

..."

24. The relevant parts of the Federal Military-Service Exemption Tax Act of 12 June 1959, in force until 31 December 2018, read as follows:

Section 1: Principle

"Swiss citizens who do not fulfil their service obligations in the form of personal service (military or substitute service), or [who fulfil those obligations] only partially, must provide financial compensation."

Section 2: Persons subject to [the military-service exemption] tax

"1. The persons subject to [the relevant] tax are men, resident in Switzerland or abroad, who are eligible for service and who, in the course of a calendar year (the year in which the tax is applicable)

(a) are not enrolled in an army unit for more than six months or called upon to perform civilian service;

...

(c) do not perform the military or civilian service required of them as men eligible for service.

..."

Section 3: Duration of tax liability

"1. Tax liability begins at the start of the year in which the person eligible for service reaches the age of 20.

2. It ends

(a) for those not enrolled in an army unit and not subject to civilian service, at the end of the year in which they reach the age of 30;

(b) for those enrolled in an army unit or subject to civilian service, by the end of the year in which they reach the age of 34."

Section 4: Tax exemption

"1. [The following persons] shall be exonerated from the tax: persons who, in the course of the year in which the tax is applicable,

(a) because of a major physical or mental disability, have a taxable income which, after deduction of the insurance benefits ... and the cost of support made necessary by

the disability, does not exceed the minimum subsistence income by more than 100% for the purposes of debt recovery law;

(a) *bis* are considered unfit for military service because of a major disability and receive a disability benefit or allowance from the federal disability insurance or accident insurance scheme;

(a) *ter* are considered unfit for military service because of a major disability and do not receive a disability benefit or allowance, but meet one of the two minimum requirements to qualify for such an allowance;

...

(d) have reached the age-limit at which ordinary servicemen and non-commissioned officers, except higher-ranking non-commissioned officers, are released from their military obligations;

..."

Section 13: Rates

"1. The tax is 3 francs per 100 francs of income, but must be at least 400 francs.

2. For disabled persons subject to the tax who are not exempt from the tax in accordance with section 4(1)(a), the tax is reduced by half."

25. The relevant part of the Federal Army and Military Administration Act of 3 February 1995 read as follows:

Section 3: Military service for Swiss women

"1. Any Swiss woman may volunteer for military service.

2. If her application is accepted, she is enrolled. If at the time of recruitment she is declared fit for service and undertakes to perform the military duties assigned to her, she will be liable for military service.

3. She has the same rights and duties as male soldiers. The Federal Council may provide for exceptions, particularly with regard to release from military service, length of service, posting and promotion."

26. For further relevant domestic law and practice and the relevant international law, see *Glor v. Switzerland* (no. 13444/04, §§ 27-39, ECHR 2009), and *Ryser v. Switzerland* (no. 23040/13, §§ 18-20, 12 January 2021).

THE LAW

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 4

27. The applicant complained that, as a man of Swiss nationality who was required to perform compulsory military service, he had been exposed to discriminatory treatment on account of his sex and nationality by being made to pay the military-service exemption tax following the declaration that he

was unfit for military service, whereas women of Swiss nationality and foreign nationals residing in Switzerland were not obliged to pay the tax in question. He relied on Article 14 of the Convention taken in conjunction with Article 4 §§ 2 and 3 of the Convention. Having initially given the Government notice of the case under the above-mentioned Articles and, on its own initiative, under Article 14 of the Convention taken in conjunction with Article 8 of the Convention, the Court, being the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), finds it appropriate to examine the complaint under Article 14 of the Convention taken in conjunction with Article 4 only. The relevant parts of these provisions read as follows:

Article 14

"The enjoyment of the rights and freedoms set forth in [the] 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."

Article 4

"2. No one shall be required to perform forced or compulsory labour.

3. For the purpose of this Article the term 'forced or compulsory labour' shall not include:

...

(b) any service of a military character ...

...

(d) any work or service which forms part of normal civic obligations."

A. Admissibility

1. Applicability of Article 14 of the Convention taken in conjunction with Article 4 of the Convention

28. The Government argued that the applicant's complaint was incompatible *rationae materiae* with the Convention for the following reasons. The military-service exemption tax was an integral part of compulsory military service, which had a long tradition in Switzerland and was firmly anchored in the Federal Constitution. Without compulsory military service, the tax in question would not exist. While Article 4 § 2 of the Convention contained a general rule prohibiting forced or compulsory labour, Article 4 § 3 provided for exceptions to this general rule. In particular, Article 4 § 3 (b) stated that any service of a military character did not fall under the term "forced or compulsory labour" for the purposes of this Convention provision. It followed that the existing compulsory military

service in Switzerland and the military-service exemption tax which was closely linked to the obligation to serve did not fall within the scope of Article 4. The applicant had therefore not been required to perform forced or compulsory labour within the meaning of Article 4 § 2 and could not rely on a substantive right protected by the Convention for Article 14 to come into play.

29. The applicant argued that his complaint did not concern military service as such, but the duty imposed on him to pay the military-service exemption tax, to which women of Swiss nationality and foreign nationals residing in Switzerland were not subject.

30. As the Court has consistently held, Article 14 of the Convention complements the other substantive provisions of the Convention and its Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application unless the facts at issue fall within the ambit of one or more of them (see, most recently, *Savickis and Others v. Latvia* [GC], no. 49270/11, § 120, 9 June 2022, and *Beeler v. Switzerland* [GC], no. 78630/12, §§ 47-48, 20 October 2020), that is, whenever "the subject matter of the disadvantage ... constitutes one of the modalities of the exercise of a right guaranteed ...", or the measures complained of are "linked to the exercise of a right guaranteed ..." (see *Konstantin Markin v. Russia* [GC], no. 30078/06, § 129, ECHR 2012 (extracts), with further references).

31. The Court reiterates that Article 4 § 2 of the Convention does not contain a definition of "forced or compulsory labour". However, Article 4 § 3 lists the activities which are not to be considered "forced or compulsory labour", including, under paragraph 3 (b) of this provision, "any service of a military character".

32. In *Karlheinz Schmidt v. Germany* (18 July 1994, Series A no. 291-B), in which only men were obliged to serve in the fire service or pay a financial contribution in lieu of such service, the Court found that Article 14 was applicable and stated:

> "22. ... paragraph 3 of Article 4 is not intended to 'limit' the exercise of the right guaranteed by paragraph 2, but to 'delimit' the very content of that right, for it forms a whole with paragraph 2 and indicates what 'the term "forced or compulsory labour" shall not include' (*ce qui* '*n'est pas considéré comme* "*travail forcé ou obligatoire*"'). This being so, paragraph 3 serves as an aid to the interpretation of paragraph 2. The four sub-paragraphs of paragraph 3, notwithstanding their diversity, are grounded on the governing ideas of the general interest, social solidarity and what is normal in the ordinary course of affairs ..."

33. The Court has also emphasised that "[t]he criteria which serve to delimit the concept of compulsory labour include the notion of what is in the normal course of affairs ... Work or labour that is in itself normal may in fact

be rendered abnormal if the choice of the groups or individuals bound to perform it is governed by discriminatory factors ...” (see *Van der Mussele v. Belgium*, 23 November 1983, § 43, Series A no. 70, and *Zarb Adami v. Malta*, no. 17209/02, § 45, ECHR 2006-VIII).

34. In the present case, the Court observes that the existing compulsory military service in Switzerland corresponds to the notion of “service of a military character” within the meaning of Article 4 § 3 (b) of the Convention. It further observes that the military-service exemption tax – which is payable in lieu of the performance of one’s service obligations – is, in accordance with the Federal Constitution and the Federal Military-Service Exemption Tax Act (see paragraphs 23-24 above), “financial compensation”. The Court therefore concludes that on account of its close links with the obligation to serve and its purpose to achieve an appropriate balance between the burden of those who performed military service and that of those who were exempt (see paragraph 13 above), the obligation to pay the tax in question has the nature of a solidarity obligation in the national defence rather than a fiscal obligation and therefore also falls within the scope of Article 4 § 3 (b) of the Convention.

35. It follows that the facts in issue fall within the ambit of Article 4. Article 14 of the Convention is accordingly applicable.

36. The Court does not consider that the application is manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or that it is inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

(a) The applicant

37. The applicant maintained his complaint, referring to the principle of equality enshrined in Article 8 of the Swiss Constitution. He submitted that he had been declared unfit for military service on mental health grounds as a result of the bullying and humiliation that he had endured while performing his military service. He emphasised that the subject matter of his complaint was not military service as such (recruitment, army duties, abolishing the army, and so on), but the obligation for Swiss men to pay the military-service exemption tax, which Swiss women and foreign nationals residing in Switzerland did not have to pay. The applicant argued that the long-standing tradition did not justify discriminatory treatment. Nor did the fact that the compensation for loss of income paid to those who performed military service did not fully compensate them for all the financial losses caused by their military service. The applicant further argued that there were no biological or functional differences preventing women from paying the military-service

exemption tax, and that the State did not enjoy a margin of appreciation in matters of gender equality. As regards foreign nationals, the applicant submitted that since they enjoyed the security provided by the State, they should also be contributing by paying the relevant tax.

(b) The Government

38. The Government submitted at the outset that the applicant had not argued before the Federal Supreme Court that he had been treated in a degrading manner during his military service. Nor had he indicated the reasons for his being declared unfit for military service before the national courts.

39. The Government further submitted that the military-service exemption tax was intrinsically linked to the obligation to serve, and that the States enjoyed a wide margin of appreciation in the organisation of their national defence. The principle of a militia was enshrined in the Swiss Constitution, and the general obligation for Swiss men to serve – or to pay the military-service exemption tax if they did not fulfil that obligation – was an integral part of the Constitution. The principle of a militia was rooted in Swiss federalism and national politics, as well as justified by economic grounds. The Swiss army was the army of a small neutral State which was not intended to wage offensive wars, but to defend the country and its population. It was and had always been needs-driven, and the current situation did not require that the obligation to serve be extended to women and/or foreign nationals. The wording of Article 4 § 3 (b) of the Convention was clearly intended to leave the way in which compulsory military service was conceived and organised to the discretion of the Contracting States. The Government noted in this regard that out of all the Contracting States, only Norway had extended the obligation to perform military service to women; women were commonly exempted from compulsory military service for biological reasons or for other reasons linked to the functioning of the States' defence systems. In addition, European Union law did not prohibit States from limiting the obligation to serve to men. No country required foreign nationals to perform compulsory military service. There was therefore no reason to grant the Swiss authorities only a limited margin of discretion in this area.

40. The Government went on to argue that the applicant had misunderstood the nature of the military-service exemption tax, which was a means to establish equality between those who performed their service obligations and bore the relevant burdens and disadvantages, and those who were exempted from it. Abolishing the military-service exemption tax would lead to unjustified discrimination between those two categories of Swiss men.

41. Only the extension of the obligation to serve to women and/or foreign nationals would make them subject to the military-service exemption tax, thereby eliminating the discrimination on the grounds of gender and/or

nationality alleged by the applicant. However, for the reasons cited above, such an extension was not required for military purposes and was not envisaged in Switzerland. Such an extension, which would require a revision of the Constitution, would have a negative impact on the country's economic situation owing to the absence of women and foreign nationals during their period of service. The Government considered that those reasons clearly fell within its margin of appreciation and constituted objective and reasonable justification under Article 14 in conjunction with Article 4 of the Convention.

42. The military-service exemption tax was payable only during the period when a man would normally be liable for military service and was a percentage of his taxable income; his economic capacity was therefore taken into account. As regards the alleged benefits for those who were performing their military service, the Government submitted that some of those benefits were not linked to military service as such, but to an employee's inability to work through no fault of his or her own. The compensation for loss of income which was paid to conscripts did not compensate them for all the financial losses caused by military service. That benefit did not compensate them for the many restrictions on their private life. The low number of women (volunteers) doing military service also indicated that military service entailed considerable disadvantages compared with civilian life.

43. The Government further submitted that foreign nationals living in Switzerland did not enjoy the same citizenship rights as Swiss nationals, and were therefore not required to perform the same duties. It would be problematic if foreign nationals were called up for compulsory military service to defend a country of which they were not nationals. This would inevitably give rise to bilateral difficulties with many States, if only to resolve conflict situations arising from a dual obligation to serve.

44. Lastly, the Government argued that the military-service exemption tax in Switzerland was still compensatory in nature and constituted an appropriate and necessary system of re-establishing equality in the face of the obligation to serve (unlike the fire service levy in *Karlheinz Schmidt*, cited above). Around 75-80% of men who were subject to compulsory military service were considered fit for such service, and around two-thirds of them actually performed military service, civil service or civil protection. The low number of women performing voluntary military service (1,508 women on 1 March 2020) showed that voluntary military service alone would not suffice to meet the personnel requirements of the Swiss army under statutory law. The distinction made between Swiss men and women and foreign nationals with regard to the obligation to pay the military-service exemption tax therefore fell within the Contracting State's margin of appreciation in organising its national defence and was based on objective and reasonable justification, and the applicant's argument to the effect that biological and functional differences did not render women unfit for military service could not alter that conclusion.

2. The Court's assessment

(a) Scope of the case

45. The Court notes that in so far as the applicant alleged that he had been declared unfit for military service as a result of the bullying and humiliation that he had endured while performing his military service (see paragraph 37 above), this grievance was mentioned incidentally and does not contain a sufficient factual and legal basis to qualify as a "complaint" within the meaning of the Court's case-law (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018). The Court will therefore not examine it.

(b) General principles

46. The relevant principles established under Article 14 of the Convention have been reiterated in *Molla Sali v. Greece* ([GC], no. 20452/14, §§ 133-37, 19 December 2018) (references omitted):

> "133. In order for an issue to arise under Article 14 there must be a difference in the treatment of persons in analogous or relevantly similar situations ... In other words, the requirement to demonstrate an analogous position does not require that the comparator groups be identical.
>
> 134. However, not every difference in treatment will amount to a violation of Article 14. Only differences in treatment based on an identifiable characteristic, or 'status', are capable of amounting to discrimination within the meaning of Article 14 ...
>
> 135. The Court also reiterates that in the enjoyment of the rights and freedoms guaranteed by the Convention, Article 14 affords protection against different treatment, without an objective and reasonable justification, of persons in similar situations. For the purposes of Article 14, a difference of treatment is discriminatory if it 'has no objective and reasonable justification', that is, if it does not pursue a 'legitimate aim' or if there is not a 'reasonable relationship of proportionality' between the means employed and the aim sought to be realised ...
>
> 136. The Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment. The scope of this margin will vary according to the circumstances, the subject matter and its background ...
>
> 137. As to the burden of proof in relation to Article 14 of the Convention, the Court has held that once the applicant has demonstrated a difference in treatment, it is for the Government to show that the latter was justified ..."

47. Article 14 does not prohibit a member State from treating groups differently in order to correct "factual inequalities" between them; indeed, in certain circumstances a failure to attempt to correct inequality through different treatment may, in the absence of an objective and reasonable justification, give rise to a breach of Article 14 (see *Stummer v. Austria* [GC], no. 37452/02, § 88, ECHR 2011, with further references).

48. A wide margin of appreciation is afforded to the States in matters relating to national security in general and the armed forces in particular (see

Konstantin Markin, cited above, § 134; *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, § 89, ECHR 1999-VI; *Engel and Others v. the Netherlands*, 8 June 1976, § 59, Series A no. 22; *Olcina Portilla v. Spain* (dec.), no. 31474/96, 14 October 1996; and *Spottl v. Austria* (dec.), no. 22956/93, 15 May 1996).

49. Differences based on sex require particularly serious reasons by way of justification, and references to traditions, general assumptions or prevailing social attitudes in a particular country cannot, by themselves, be considered to amount to sufficient justification for a difference in treatment, any more than similar stereotypes based on race, origin, colour or sexual orientation (see *Khamtokhu and Aksenchik v. Russia* [GC], nos. 60367/08 and 961/11, § 78, 24 January 2017, with further references).

50. An additional factor relevant to determining the extent to which the respondent State should be afforded a margin of appreciation is the existence or non-existence of a European consensus, that is, common ground between the laws of the Contracting States (see *Stummer*, cited above, § 104). Since the Convention is first and foremost a system for the protection of human rights, the Court must have regard to the changing conditions within the respondent State and within Contracting States generally and respond, for example, to any emerging consensus as to the standards to be achieved (see *Khamtokhu and Aksenchik*, cited above, § 79, and *Glor v. Switzerland*, no. 13444/04, § 75, ECHR 2009, with further references).

(c) Application of these principles to the present case

51. The Court observes that under Swiss law, the Swiss army is organised essentially on the principle of a militia; that all men of Swiss nationality are required to perform military service; and that all men of Swiss nationality who do not perform military service (or substitute civilian service reserved for conscientious objectors), except for those with a severe disability, must pay the military-service exemption tax (see paragraphs 23 and 24 above).

52. The military-service exemption tax which exists in Switzerland has already been the subject of the Court's examination, albeit in a context different from the one in the present case (see *Glor*, cited above, and *Ryser v. Switzerland*, no. 23040/13, 12 January 2021). The applicants in those cases – both men of Swiss nationality – were declared unfit for military service on the grounds of a minor disability and were obliged to pay the military-service exemption tax instead. They complained, in particular, of being subjected to discriminatory treatment because Swiss men who were declared unfit for military service on the grounds of a major disability were exempt from paying the tax in question, as were those who did substitute civilian service instead of military service (conscientious objectors). The Court held that there had been differential treatment of people in comparable situations with regard to the obligation to pay the military-service exemption tax, which amounted to

discrimination on the basis of disability in breach of Article 14 of the Convention in conjunction with Article 8.

53. In the present case, the applicant, a Swiss man exempt from military service on health grounds and liable to pay the military-service exemption tax, complained of discrimination on the grounds of sex and nationality because Swiss women and foreign nationals residing in Switzerland were not obliged to pay the tax in question. The Court observes, however, that unlike in the previously cited cases, the comparator groups in this case – women and foreign nationals – had no obligation to perform mandatory military service. Consequently, as regards the military-service exemption tax replacing that service, they were not in a situation comparable to that of the applicant, who was a man of Swiss nationality who was obliged to perform military service, but benefited from an exemption (compare *Spottl v. Austria* (dec.) and *Olcina Portilla v. Spain* (dec.), both cited above, and, *a contrario*, *Glor*, cited above, §§ 77-80).

54. In this regard, the present case must be distinguished from the situation in *Karlheinz Schmidt* (cited above, § 22). In that case, the applicant complained of discrimination on the grounds of sex under Article 14 of the Convention in conjunction with Article 4 § 3 (d) of the Convention, on account of the requirement to pay a fire service levy in accordance with an Act of the *Land* of Baden-Württemberg which made it compulsory for men, but not women, to serve in the fire service or pay a financial contribution in lieu of such service. In that case, the Court found that irrespective of the existence of any justification for treating men and women differently as regards compulsory service in the fire service, the decisive factor was that the obligation to perform such service was exclusively one of law and theory, because in view of the existence of a sufficient number of volunteers, in practice, no male person was obliged to serve in the fire service. The financial contribution was therefore found to have lost – not in law but in fact – its compensatory character and to have become the only effective duty. The Court considered that in such circumstances, where a financial burden like that was being imposed, a difference of treatment on the grounds of sex could not be justified.

55. In the case at hand, however, the obligation for Swiss men to perform military service remains an obligation not only of law and theory, but also of fact, and the military-service exemption tax is still compensatory in nature. The Court notes in this connection that at the material time up to 80% of the Swiss army was made up of militia servicemen, and a total of 220,000 army personnel were secured through military service (see paragraphs 13 and 44 above). The imposition of a financial burden on Swiss men who are exempt from doing military service is therefore the consequence of their obligation to perform compulsory military service. It is meant to establish equality between Swiss men who carry out their military service (or substitute civilian

service in case of conscientious objectors) and those who are exempted from it.

56. In so far as the applicant's complaint may be understood to extend to the difference in treatment between Swiss men and women, and between Swiss men and foreign nationals residing in Switzerland, with regard to the obligation to perform military service (in person), the Court assumes that he can be considered to be in a comparable situation with these groups. The Court, in any event, considers that the reasons for a difference in treatment were objective and reasonable for the following reasons.

57. The Court notes, first of all, that the distinction pursued a legitimate aim, which was to maintain an effective national defence system. It reiterates in this regard that in the organisation of their national defence, the Contracting States are entitled to a wide margin of appreciation (see paragraph 48 above). It notes the Government's arguments that the Swiss army was the army of a small neutral State which was intended to defend the country and its population, that it was needs-driven, and that the current situation did not require that the obligation to serve be extended to women and/or foreign nationals. It further observes that the distinction was also justified by the following reasons.

58. As regards foreign nationals, the Court notes the Government's arguments to the effect that foreign nationals living in Switzerland did not enjoy the same citizenship rights as Swiss nationals and were therefore not required to perform the same duties; that it would be problematic if foreign nationals were called up for compulsory military service to defend a country of which they were not nationals; and that this would inevitably give rise to bilateral difficulties with many States, involving conflict situations arising from a dual obligation to serve. It further observes that no Contracting State requires foreign nationals to perform compulsory military service (see paragraphs 39 and 43 above). The Court finds that the circumstances relied on by the Government constitute reasonable justification for the difference in treatment between Swiss men and foreign nationals with regard to the obligation to perform compulsory military service.

59. In so far as Swiss women are concerned, the Court observes that at the time of the events in question a common standard existed among the Contracting States whereby women were not liable for mandatory military service. The only exception was Norway, where compulsory military service for women was introduced in 2013. That standard took into account continuing traditions in the field of national military defence, people's opinions, and the public interest of Contracting States which, like Switzerland, have based their system of national defence on compulsory military service, in maintaining an effective national defence system. In the present case, the protection of national security and the organisation of the armed forces amounted to a particularly serious reason justifying the

difference based on sex with regard to the obligation to perform compulsory military service (compare *Spottl* and *Olcina Portilla*, both cited above).

60. The Court takes the foregoing into account and has regard to the wide margin of appreciation afforded to the Contracting States in relation to the organisation of their national defence. It finds that by treating Swiss men differently from Swiss women and foreign nationals residing in Switzerland *vis-à-vis* the obligation to perform compulsory military service, with the consequence that Swiss women and foreign nationals residing in Switzerland did not have to pay the military-service exemption tax, the Swiss authorities did not exceed the margin of appreciation allowed to them.

61. Consequently, the Court finds that there has been no violation of Article 14 of the Convention taken in conjunction with Article 4 in respect of either the difference in treatment on account of nationality or the difference in treatment on account of sex.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 14 of the Convention taken in conjunction with Article 4 of the Convention.

Done in English, and notified in writing on 4 June 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik Registrar	Kateřina Šimáčková President