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

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Requirement on a person declared unfit for military service for health reasons to pay an exemption tax was discriminatory

In today's **Chamber** judgment[1] in the case of Ryser v. Switzerland (application no. 23040/13) the European Court of Human Rights held, by a majority, that there had been:

a violation of Article 14 (prohibition of discrimination) read in conjunction with Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned Mr Ryser's liability to the military service exemption tax even though he had been declared unfit for service. The applicant complained of discrimination on the grounds of his state of health.

The Court found that Mr Ryser had indeed suffered discriminatory treatment on the grounds of his state of health. It noted in that regard that the distinction between persons who were unfit for military service and were exempted from the tax in issue and persons who were unfit for service and were nonetheless required to pay the tax was unreasonable. It also noted that Mr Ryser had been placed at a considerable disadvantage as compared with conscientious objectors who were fit for service but could conduct alternative civilian service and thereby avoid paying the tax in question. The Court also pointed out that the relatively low amount of the tax was not decisive *per se*. It further observed that Mr Ryser had been a student at the relevant time.

The Court took note of the legislative amendments which had been made following the judgment in the case of *Glor v. Switzerland*[2]. Those amendments had, however, postdated Mr Ryser's case and were inapplicable to it.

Principal facts

The applicant, Jonas Ryser, is a Swiss national who was born in 1983.

In October 2004 the relevant authorities declared Mr Ryser unfit for military service on health grounds. In consequence, with the exception of the two days spent in recruitment selection, he did not perform any period of military service. However, he was declared fit for the civil protection service.

In February 2010 the Office for Civil Security, Sports and Military Affairs in the Canton of Berne ordered Mr Ryser to pay the military-service exemption tax; the amount payable for 2008 was 254.45 Swiss francs (CHF).

In March 2010 Mr Ryser lodged an objection against that decision and asked to be exonerated from the tax. He argued that since his exemption from military service had been based on medical reasons he could perform neither the military service nor the civilian alternative service. The Office dismissed the applicant's objection.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.
2. *Glor v. Switzerland*, no. 13444/04, ECHR 2009.

In December 2011 Mr Ryser was informed that he was being assigned to the civil protection reserve and was exempted from the induction course. Relying in substance on the same arguments as in his objection, he applied to the Cantonal Tax Appeals Board, but his appeal was dismissed.

Mr Ryser subsequently took the case to the Federal Supreme Court, by way of a public-law appeal. He asked the Federal Supreme Court to set aside the decision taken by the Office and the Board and to hold that collection of the exemption tax would in his case result in discrimination and should not be enforced. In November 2012 the Federal Supreme Court dismissed this appeal.

Following a change of residence, Mr Ryser was assigned to the Civil Protection Reserve of the City of Berne. He was informed by letter of 6 February 2013 that, in principle, he would not be required to perform this service. On 31 December 2013 he was definitively released from military service.

Complaints, procedure and composition of the Court

Relying on Article 14 (prohibition of discrimination) read in conjunction with Article 8 (right to respect for private and family life), Mr Ryser complained that he had been discriminated against on account of his state of health.

The application was lodged with the European Court of Human Rights on 25 March 2013.

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

Paul **Lemmens** (Belgium), *President*,
Georgios A. **Serghides** (Cyprus),
Helen **Keller** (Switzerland),
Dmitry **Dedov** (Russia),
Georges **Ravarani** (Luxembourg),
Darian **Pavli** (Albania),
Peeter **Roosma** (Estonia),

and also Milan **Blaško**, *Section Registrar.*

Decision of the Court

Article 14 (prohibition of discrimination) read in conjunction with Article 8 (right to respect for private and family life)

Mr Ryser complained of a violation of the prohibition of discrimination on the grounds of state of health owing to the fact that, as a person who was unfit for military service suffering from a “minor” disability, he had been treated differently from, on the one hand, persons who were unfit for military service suffering from a “major” disability and on the other, persons who were fit for military service, given that those two categories of persons did not have to pay the military service exemption tax. He added that persons who were fit for military service could engage in alternative civilian service as conscientious objectors in order to avoid paying the tax, unlike himself, a person who had been declared unfit for service.

Referring to the case of *Glor v. Switzerland*[3], the Court considered that the present case had indeed concerned differential treatment of persons in relevantly similar situations. It also pointed out that Article 14 also prohibited discrimination on grounds of state of health, which was the criterion used for declaring unfitness for military service.

[3] *Glor v. Switzerland*, no. 13444/04, § 80, ECHR 2009.

The Court observed that in *Glor* it had taken note of the Swiss legislature's intention to restore some degree of equality between persons conducting military or civilian service and those exempted from such service. The tax complained of had been meant to make up for the efforts and obligations bound up with the performance of military service. The Court also accepted that justification in the present case.

The Court considered that in view of the similarity between Mr Ryser's and Mr Glor's cases, it should confine its assessment to whether the factual differences between them as claimed by the Government justified reaching a different conclusion from that in the case of *Glor*, in which it had found a violation of Article 14 read in conjunction with Article 8.

As regards the Government's plea that Mr Ryser had expressed no wish to perform military service, the Court held that since Mr Ryser had been declared unfit on medical grounds, the presence or absence of such a wish had not been decisive, since the army medical experts had stated that he was unfit for medical service.

The Government also considered that Mr Ryser had not demonstrated that he had a "disability" or that his case differed substantially from that of Mr Glor, who had suffered from diabetes. Given that the parties had provided no information on the type of health problem or physical impairment which Mr Ryser suffered from, the Court could not speculate on that matter. Accordingly, it could not accept the Government's submission that Mr Ryser's situation was different from Mr Glor's on that point.

As regards the existence of other modes of service as an alternative to the exemption tax, and in particular the possibility of reducing the amount of the military tax by working for civil protection agencies, the Court observes that Mr Ryser was informed by letters of 6 December 2011 and 6 February 2013 that he had been assigned to the civil protection reserve and the he would therefore, in principle, not have to perform military service. Moreover, the parties agreed that there was no right to perform civilian service. Consequently, the Court held that the possibility of reducing the amount of the tax in question had been purely theoretical.

As to the amount of the tax, the Court considered that it was not decisive *per se*. Indeed, even though the amount in question was low (CHF 254.45 in 2008), it pointed out that Mr Ryser had been a student at the relevant time. It also observed that the tax had been payable for the duration of the compulsory service requirement, generally from the person's twentieth birthday to his or her thirtieth birthday.

Finally, having regard to the explanations provided by the Government and the lack of information on the reasons why Mr Ryser had been declared unfit for military service, the Court could not see why the authorities' assessment of the extent of the applicant's disability should have been different in the two cases.

In conclusion, the Court took the view that Mr Ryser's situation was not sufficiently different from that of the applicant in *Glor* to warrant a different conclusion. Thus the objective justification for the distinction drawn by the authorities between persons declared unfit for service and exempted from the tax in question and persons declared unfit for service but still required to pay the tax was unreasonable. The Court also noted that Mr Ryser had been placed at a clear disadvantage as compared with conscientious objectors, who were fit for service but could be assigned to an alternative civilian service and thus avoid paying the tax.

The Court took note of the legislative amendments which had been made following the judgment in *Glor*. Those amendments had, however, postdated the instant case and were inapplicable to Mr Ryser's situation.

Mr Ryser had therefore sustained discriminatory treatment, and there had been a violation of Article 14 of the Convention read in conjunction with Article 8.

Just satisfaction (Article 41)

Mr Ryser had not lodged any valid claims in respect of just satisfaction within the prescribed time-limit.

Separate opinion

Judge Keller expressed a dissenting opinion, which is annexed to the judgment.

The judgment is available only in French.

Press contacts
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