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

Press Release
issued by the Registrar of the Court

ECHR 306 (2017)
12.10.2017

Shortcomings in Armenian alternative to military service for conscientious objectors before 2013

The case Adyan and Others v. Armenia (application no. 75604/11) concerned four Jehovah's Witnesses who were convicted in 2011 for refusing to perform either military or alternative civilian service because of their religious beliefs. Before both the local authorities and the courts, they argued that, even though domestic law did provide for an alternative to military service, it was not of a genuinely civilian nature, as it was supervised by the military authorities. They were released from prison in 2013 following a general amnesty. They served more than two years of their prison sentence.

In today's **Chamber** judgment[1] in the case the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 9 (freedom of thought, conscience, and religion) of the European Convention on Human Rights.

The Court found that the Armenian authorities had failed at the relevant time to make appropriate allowances for the applicants' conscience and beliefs and to guarantee a system of alternative service that had struck a fair balance between the interests of society as a whole and those of the applicants.

In particular, it found two main shortcomings in the system of alternative service. First, it was not sufficiently separated from the military system: either as concerned authority, control or applicable rules, the military being involved in the supervision and organisation of the alternative service, including such aspects as spot checks, unauthorised absence, transfers, assignments and the use of the military rules; or as concerned appearances, civilian servicemen being required to wear a uniform. Secondly, the programme was significantly longer (42 months rather than the 24 months for military service), which had to have had a deterrent, even punitive effect.

Moreover, although legislative amendments were introduced in 2013, and the applicants could have applied to have their convictions quashed, by that time they had already served almost two years of their sentences.

Principal facts

The applicants, Artur Adyan, Garegin Avetisyan, Harutyun Khachatryan and Vahagn Margaryan, are Armenian nationals. Mr Adyan was born in 1991; the other three applicants were all born in 1993. They live in Yerevan, Tsaghkavan and Kapan (all in Armenia).

In May and June 2011 the applicants were called up for military service. Addressing letters to the local authorities, they refused to appear either for military or alternative service. They stated that their opposition was based on their religious beliefs. Furthermore, even though domestic law did provide for alternative service, they claimed that it was not of a genuinely civilian nature, as it was supervised by the military authorities. They submitted the same arguments in the ensuing criminal

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.

proceedings brought against them for draft evasion. They were however all convicted in July/November 2011 and sentenced to two years and six months in prison.

They appealed, further arguing that the alternative labour service programme was essentially under military control and supervision in as far as it concerned transfers, sanctions and orders. They also pointed out that they were required to wear a uniform which resembled that of the military and to be at their place of assignment 24 hours a day. Moreover, alternative service was punitive in nature as it lasted 42 months (rather than the 24 months for military service). The Court of Appeal subsequently upheld the applicants' convictions: it found that, although the labour service available contained a few formal elements of military supervision – such as provision of clothing, food and financial means as well as other organisational work – it was still civilian in nature. The applicants' further appeals on points of law were ultimately – between February and May 2012 – declared inadmissible for lack of merit.

The applicants were released from prison in October 2013 following a general amnesty, after having served between 26 and 27 months of their sentences. Three out of the four applicants spent periods in pre-trial detention which formed part of their convictions.

Complaints, procedure and composition of the Court

Relying on Article 9 (freedom of thought, conscience, and religion), the applicants alleged in particular that it had not been necessary to prosecute and imprison them, especially in view of the fact that the law on alternative service had been amended in 2013 to remove all military control/ supervision and to place the programme under purely civilian administration. Further relying on Article 5 § 1 (right to liberty and security), three of the four applicants alleged that the decisions to detain them – pending the criminal proceedings against them – had not been sufficiently justified.

The application was lodged with the European Court of Human Rights on 6 December 2011.

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

Linos-Alexandre **Sicilianos** (Greece), *President*,
Kristina **Pardalos** (San Marino),
Aleš **Pejchal** (the Czech Republic),
Ksenija **Turković** (Croatia),
Pauliine **Koskelo** (Finland),
Tim **Eicke** (the United Kingdom) and,
Siranush **Sahakyan** (), *ad hoc Judge*,

and also Abel **Campos**, *Section Registrar.*

Decision of the Court

The Court pointed out that it was not sufficient for a State to have introduced an alternative to military service – as was the case in Armenia since 2004 – to comply with the right to conscientious objection guaranteed by Article 9 of the Convention. A State was also required to organise and implement such a system – whether in law or in practice – in a way which was genuinely civilian and not deterrent or punitive in character.

However, although alternative labour servicemen were assigned to such civilian institutions as orphanages, retirement homes and hospitals, the Court considered that the system available to the applicants at the time had not been of a genuinely civilian nature. In particular the alternative service was not sufficiently separated from the military system. The military were involved in the supervision of the civilian institutions, carrying out regular spot checks, taking measures in the event of unauthorised absence, ordering transfers and determining assignments. Furthermore, the Internal

Rules of Service in the Armed Forces were used for certain organisational aspects of the alternative service. As regards appearances, civilian servicemen were required to wear a uniform and to stay at their place of service; they also had "the Armed Forces of Armenia" written on the cover of their record booklets.

Furthermore, in the Court's opinion, the fact that alternative service was significantly – more than one and half times – longer than military service had to have had a deterrent effect, containing a punitive element.

Indeed, in 2011 the Armenian parliament was explicit in its criticism of the alternative to military service, and pointed out two main shortcomings: the military supervision and its duration. As a result, legislative amendments were introduced in 2013. Even though those amendments had allowed the applicants to apply for the replacement of the remainder of their sentences with alternative service and to have their convictions quashed, it would not appear from the Armenian Court of Cassation's case-law that a violation of their rights under Article 9 would have been acknowledged or, moreover, that any compensation would have been awarded. In any case, by the time the legislative amendments had been introduced, the applicants had already served almost two years of their sentences.

In conclusion, the Court found that the Armenian authorities had failed at the relevant time to make appropriate allowances for the applicants' conscience and beliefs and to guarantee a system of alternative service that had struck a fair balance between the interests of society as a whole and those of the applicants. Therefore, the applicants' convictions had not been necessary in a democratic society, in violation of Article 9.

Given its findings under Article 9, the Court considered that the main legal question in the case had already been examined, and therefore held that there was no need to rule separately on the complaints brought by three of four the applicants under Article 5.

Just satisfaction (Article 41)

The Court held that Armenia was to pay the applicants 12,000 euros (EUR) each for non-pecuniary damage.

The judgment is available only in English.

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