



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

FIRST SECTION

CASE OF LÖFFELMANN v. AUSTRIA

(Application no. 42967/98)

JUDGMENT

STRASBOURG

12 March 2009

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Löffelmann v. Austria,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyev,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 17 February 2009,

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

PROCEDURE

1. The case originated in an application (no. 42967/98) against the Republic of Austria lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Austrian national, Mr Philemon Löffelmann (“the applicant”), on 9 July 1998.

2. The applicant was represented by Mr R. Kohlhofer, a lawyer practising in Vienna. The Austrian Government (“the Government”) were represented by their Agent, Mr F. Trauttmansdorff, Head of the International Law Department at the Federal Ministry for European and International Affairs.

3. The applicant alleged that he had been discriminated against in the exercise of his rights under Articles 4 and 9 of the Convention on the ground of his religion as he was liable for military or alternative civilian service whereas members of recognised religious societies holding religious functions comparable to his functions were exempted.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. By a decision of 1 February 2005 the Court declared the application partly admissible.

6. Neither the applicant nor the Government filed further written observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1976 and lives in Maissau.

8. Upon his baptism on 9 July 1994 he became a member of the Jehovah's Witnesses in Austria, within which he assumed the function of a preacher or "regular pioneer" (*Prediger, allgemeiner Pionier*) and, since 27 November 1996, a deacon or "ministerial servant" (*Diakon, Dienstamtgehilfe*). In this function he assisted the clerical work of elders of the Jehovah's Witnesses.

9. On 17 November 1994 the Lower Austrian Military Authority (*Militärkommando*) found that the applicant was fit to perform military service. On 3 July 1995 the applicant started his military service; however, on 1 August 1995 he was discharged following a military medical expert opinion that had found him unfit for service.

10. On 28 September 1995 the Lower Austrian Military Authority issued a conscription order (*Stellungsbeseheid*) in respect of the applicant, ordering him to undergo another examination as to his ability to perform military service pursuant to section 24(8) of the Military Service Act (*Wehrgesetz*), as in force at the relevant time. As to the applicant's argument that he should be exempted from military service under section 24(3) of the Military Service Act, it noted that the applicant was not a member of a recognised religious society.

11. The applicant appealed against that order, claiming in particular that he should be dispensed from military service since he performed a function within the Jehovah's Witnesses which was equivalent to that of members of a recognised religious society who were exempted from military service under section 24(3) of the Military Service Act. To restrict such a privilege to members of recognised religious societies was not objectively justified and was therefore in breach of the Federal Constitution.

12. On 16 November 1995 the Federal Minister for Defence (*Bundesminister für Landesverteidigung*) dismissed the applicant's appeal and confirmed the lower authority's decision.

13. On 8 January 1996 the applicant lodged a complaint with the Constitutional Court (*Verfassungsgerichtshof*), requesting it to repeal the wording "recognised religious societies" in section 24(3) of the Military Service Act.

14. On 1 December 1997 the Constitutional Court refused to deal with the applicant's complaint for lack of prospects of success. It referred to an earlier decision by which it had found that the obligation to perform military or civilian service raised no concerns as regards compliance with Article 9 of the Convention.

15. On 26 March 1998 the Administrative Court (*Verwaltungsgerichtshof*) dismissed the applicant's complaint. It noted that the applicant had solely complained about section 24(3) of the Military Service Act in conjunction with the 1998 Act on the Legal Status of Registered Religious Communities (*Bundesgesetz über die Rechtspersönlichkeit von religiösen Bekenntnisgemeinschaften* – hereafter referred to as the “1998 Act”), which had entered into force on 10 January 1998. However, the Administrative Court had to limit its examination of the legality of the drafting order to the legal situation at the time when the order had been issued. Referring to the case-law quoted by the Constitutional Court, it found no concerns as regards the legality of the drafting order and therefore also no indication to institute proceedings to review constitutionality (*Gesetzesprüfungsverfahren*) as proposed by the applicant.

16. On 14 May 1998 the Lower Austrian Military Authority issued another conscription order for an examination of the applicant's fitness to perform military service.

17. On 19 May 1998 the applicant lodged a complaint with the Constitutional Court against the order. He submitted in particular that by virtue of the 1998 Act, the Jehovah's Witnesses had been granted the status of a “registered religious community”. However, the ten-year period for a successful application for recognition under the Recognition Act (*Anerkennungsgesetz*), newly introduced by section 11 of the 1998 Act, lacked objective justification. Furthermore, it precluded any recognition for the following ten years. Since section 24(3) of the Military Service Act referred to “recognised religious societies” and restricted exemption from military service to members of recognised religious societies, the applicant again requested the Constitutional Court to revoke this limitation and also to revoke the ten-year period prescribed in section 11 of the 1998 Act.

18. On 8 June 1998 the Constitutional Court refused to deal with the complaint for lack of prospects of success. It further held that the provision of the 1998 Act referred to was not directly applicable to the case at issue.

19. Subsequently, the applicant filed a request for recognition as a conscientious objector (*Zivildiensterklärung*), which was granted.

20. Between 1 February 1999 and 31 January 2000 he performed his civilian service in a social institution.

21. On 1 February 2000 the applicant joined the “Religious Order of the Jehovah's Witnesses” (*Orden der Sondervollzeitdiener der Zeugen Jehovas*), where he lived and worked as a preacher (*Bethelmitarbeiter*).

22. In February 2001 he left the order and continued to work as a preacher and deacon.

II. RELEVANT DOMESTIC LAW

A. The obligation to perform military or alternative service

23. Article 9a § 3 of the Federal Constitution reads as follows:

“Every male Austrian citizen is liable for military service. Conscientious objectors who refuse to perform compulsory military service and who are dispensed from this requirement must perform alternative service. The details shall be regulated by ordinary law.”

24. Section 24(3) of the Military Service Act, as in force at the relevant time, read as follows:

“An exemption from the obligation to perform military service shall apply to the following members of recognised religious societies:

1. ordained priests,
2. persons involved in spiritual welfare or in clerical teaching after graduating in theological studies,
3. members of a religious order who have made a solemn vow, and
4. students of theology who are preparing to assume a clerical function.”

25. Section 24(8) of the Military Service Act provided, *inter alia*, that persons whose fitness for military service, having initially been established, became questionable had to undergo another examination. However, the latest decision on fitness for performance of military service remained valid until the final conclusion of the fresh examination.

B. Religious societies and religious communities

1. Recognition of religious societies

- (a) **Act of 20 May 1874 concerning the Legal Recognition of Religious Societies** (*Gesetz betreffend die gesetzliche Anerkennung von Religionsgesellschaften*), **RGBl (Reichsgesetzblatt, Official Gazette of the Austrian Empire) 1874/68**

26. Section 1 of the Act provides that all religious faiths which have not yet been recognised in the legal order may be recognised as a religious society if they fulfil the conditions set out in the Act, namely that their teaching, services and internal organisation, as well as the name they choose, do not contain anything unlawful or morally offensive and that the

setting up and existence of at least one community of worship (*Cultusgemeinde*) satisfying the statutory criteria is ensured.

27. Section 2 provides that if the above conditions are met, recognition is granted by the Minister for Religious Affairs (*Cultusminister*). Recognition has the effect that a religious society obtains legal personality under public law (*juristische Person öffentlichen Rechts*) and enjoys all rights which are granted under the legal order to such societies. Sections 4 et seq. regulate the setting up of communities of worship, membership of them, delimitation of their territory, and their bodies and statutes. Sections 10 to 12 deal with the nomination of religious ministers (*Seelsorger*) of religious societies, the qualifications such persons must have and how their nomination must be communicated to the authorities. Section 15 provides that the public authorities responsible for religious matters have a duty to monitor whether religious societies comply with the provisions of the Act.

(b) Examples of recognised religious societies

(i) Recognition by international treaty

28. The legal personality of the Roman Catholic Church is, on the one hand, regarded as historically recognised, and, on the other hand, explicitly recognised in an international treaty, the Concordat between the Holy See and the Republic of Austria, Federal Law Gazette II, No. 2/1934 (*Konkordat zwischen dem Heiligen Stuhle und der Republik Österreich, BGBl. II Nr. 2/1934*).

(ii) Recognition by a special law

29. The following are examples of special laws recognising religious societies:

(a) Act on the External Legal Status of the Israelite Religious Society, Official Gazette of the Austrian Empire, No. 57/1890 (*Gesetz über die äußeren Rechtsverhältnisse der Israelitischen Religionsgesellschaft, RGBl. Nr. 57/1890*);

(b) Act of 15 July 1912 on the recognition of followers of Islam [according to the Hanafi rite] as a religious society, Official Gazette of the Austrian Empire No. 159/1912 (*Gesetz vom 15. Juli 1912, betreffend die Anerkennung der Anhänger des Islam [nach hanefitischen Ritus] als Religionsgesellschaft, RGBl. Nr. 159/1912*);

(c) Federal Act on the External Legal Status of the Evangelical Church, Federal Law Gazette No. 182/1961 (*Bundesgesetz vom 6. Juli 1961 über die äußeren Rechtsverhältnisse der Evangelischen Kirche, BGBl. Nr. 182/1961*);

(d) Federal Act on the External Legal Status of the Greek Orthodox Church in Austria, Federal Law Gazette No. 229/1967 (*Bundesgesetz über*

die äußeren Rechtsverhältnisse der Griechisch-Orientalischen Kirche in Österreich, BGBl. Nr. 182/1961);

(e) Federal Act on the External Legal Status of the Oriental Orthodox Churches in Austria, Federal Law Gazette No. 20/2003 (*Bundesgesetz über äußere Rechtsverhältnisse der Orientalisch-Orthodoxen Kirchen in Österreich, BGBl. Nr. 20/2003*).

(iii) *Recognition by a decree (Verordnung) under the Recognition Act 1874*

30. Between 1877 and 1982 the competent ministers recognised a further six religious societies.

2. *Registration of religious communities*

Act on the Legal Status of Registered Religious Communities (*Bundesgesetz über die Rechtspersönlichkeit von religiösen Bekenntnis- gemeinschaften*), Federal Law Gazette - BGBl I 1998/19

31. The Religious Communities Act entered into force on 10 January 1998. Pursuant to section 2(3) of the Act, the Federal Minister for Education and Culture has to rule in a formal written decision (*Bescheid*) on the acquisition of legal personality by the religious community. In the same decision the Minister has to dissolve any association whose purpose was to disseminate the religious teachings of the religious community concerned (section 2(4)). The religious community has the right to call itself a “publicly registered religious community”.

32. Section 4 specifies the necessary contents of the statutes of the religious community. Among other things, they must specify the community's name, which must be clearly distinguishable from the name of any existing religious community or society. They must further set out the main principles of the religious community's faith, the aims and duties deriving from it, the rights and duties of the community's adherents, including the conditions for terminating membership (it is further specified that no fee for leaving the religious community may be charged), how its bodies are appointed, who represents the religious community externally and how the community's financial resources are raised. Lastly, the statutes must contain provisions on the liquidation of the religious community, ensuring that the assets acquired are not used for ends contrary to religious purposes.

33. Under section 5, the Federal Minister must refuse to grant legal personality to a religious community if, in view of its teachings or practice, this is 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 freedom of others; this is in particular the case if its activities involve incitement to commit criminal offences, obstruction of the

psychological development of adolescents or undermining of people's mental integrity, or if the statutes do not comply with section 4.

34. Under section 7, the religious community must inform the Federal Minister for Education and Cultural Affairs of the name and address of the persons belonging to its official bodies and of any change of its statutes without delay. The Minister must refuse to accept the notification if the appointment of the official bodies contravened the statutes or if the change of the statutes would constitute a reason for refusal of registration under section 5.

35. Section 9 specifies the reasons for termination of a community's legal personality. Legal personality ceases to exist if the religious community dissolves itself or if the acknowledgment of its legal personality is revoked. Reasons for revoking legal personality are set out in subsection (2): for example, if the reasons for granting legal personality no longer subsist or if for more than one year no bodies representing the religious community externally have been appointed.

36. The Act only regulates the granting of legal personality. Once legal personality has been granted to a religious community, it may pursue the activities referred to in its statutes. There are no specific laws in Austria regulating the acquisition of assets by religious societies or communities, the establishment of places of worship or assembly, or the publication of religious material. However, provisions which contain explicit references to religious societies are spread over various statutory instruments (see below).

37. Since the entry into force of the Religious Communities Act on 10 January 1998, non-recognised religious associations may be granted legal personality upon application. A previous application for recognition under the Recognition Act is to be dealt with as an application under the Religious Communities Act pursuant to section 11(2).

38. Section 11(1) of the Religious Communities Act establishes additional criteria for a successful application under the Recognition Act, such as the existence of the religious association for at least twenty years in Austria and for at least ten years as a registered religious community; a minimum number of two adherents per thousand members of the Austrian population (at the moment, this means about 16,000 persons); the use of income and other assets for religious purposes, including charity activities; a positive attitude towards society and the State; and no illegal interference as regards the community's relationship with recognised or other religious societies.

3. Specific references to religious societies in the Austrian legal order

39. In various Austrian laws specific reference is made to recognised religious societies. The following list, which is not exhaustive, sets out the main instances.

Under section 8 of the Federal School Supervision Act (*Bundes-Schulaufsichtsgesetz*), representatives of recognised religious societies may sit (without the right to vote) on regional education boards.

Under the Private Schools Act (*Privatschulgesetz*), recognised religious societies, like public territorial entities, are presumed to possess the necessary qualifications to operate private schools, whereas other persons have to prove that they are qualified.

Under section 24(3) of the Military Service Act, ordained priests, persons involved in spiritual welfare or in religious teaching after graduating in theological studies, members of a religious order who have made a solemn vow and students of theology who are preparing to assume a pastoral function and who belong to a recognised religious society are exempt from military service and, under section 13 of the Civilian Service Act, are also exempt from alternative civilian service.

Under sections 192 and 195 of the Civil Code (*ABGB*), ministers of recognised religious societies are exempt from the obligation to submit an application to be appointed as guardians, and under section 3(4) of the 1990 Act on Juries of Assizes and Lay Judges (*Geschworenen- und Schöffengesetz*) they are exempt from acting as members of a jury of an assize court or as lay judges of a criminal court.

Section 18(1)(5) of the Income Tax Act provides that contributions to recognised religious societies are deductible from income tax up to an amount of 100 Euros (EUR) per year.

Section 2 of the Land Tax Act (*Grundsteuergesetz*) provides that real property owned by recognised religious societies and used for religious purposes is exempt from real-estate tax.

Under section 8(3)(a) of the 1955 Inheritance and Gift Act (*Erbschafts- und Schenkungsteuergesetz*), which was still in force at the relevant time, donations to domestic institutions of recognised churches or religious societies were subject to a reduced tax rate of 2.5%.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN TOGETHER WITH ARTICLE 9

40. The applicant complained that the fact that he was not exempt from military service while assuming a function with the Jehovah's Witnesses which was comparable to those of members of recognised religious societies who were exempt from military service constituted discrimination on the

ground of his religion, prohibited by Article 14 of the Convention taken together with Article 9.

Article 14 of the Convention provides:

“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 9 provides 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 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.”

A. Submissions by the parties

41. The Government pointed out that Article 9 a § 3 of the Federal Constitution provided that every male Austrian citizen was liable to perform military service. Exemptions from this obligation were set out in section 24(3) and were linked to membership of a recognised religious society. However, there were also further criteria which the applicant did not satisfy either. The applicant had stated that his function was comparable to those of persons who were involved in spiritual welfare or in clerical teaching after graduating in theological studies or who were preparing to assume such functions. In this connection, the Government stressed that the applicant had not stated at any time during the domestic proceedings that he had studied theology at a university or any equivalent institution. Therefore, notwithstanding his religious denomination, the applicant had failed to prove that he complied with any of the four criteria set out in the above-mentioned provision. Thus, there was no need to consider whether or not the applicant had been discriminated against on the ground of his faith. Also members of recognised religious societies who did not comply with the criteria laid down in section 24(3) of the Military Service Act were not exempt from military service.

42. The Government submitted further that, as the Contracting States were under no obligation to accept a refusal to perform military service for religious reasons, non-exemption of a person from military or alternative civilian service did not raise any concerns under Article 9 of the Convention. In any event, the applicant's submissions did not indicate that

the obligation to perform military or alternative civilian service entailed any concrete interference with his rights under Article 9.

43. The applicant contested this view and maintained that if the relevant domestic legislation provided for exemptions from military or alternative civilian service, it should do so without any discrimination. During the time of his civilian service he had had to work forty hours a week, and thus had been unable to perform his functions as a deacon and preacher and had had to limit the practice of his religion to his spare time.

44. While it was true that the Jehovah's Witnesses had neither universities nor faculties within State or church universities, they nonetheless offered intensive clerical training which consisted of theoretical studies and practical experience. Elders and deacons were in charge of spiritual welfare, guided the community's worship, provided social assistance, celebrated mass, baptisms, marriages and funerals, and supervised missionary work. The Religious Order of the Jehovah's Witnesses had already existed for many decades and had about 160 members in Austria. Most of its members lived and worked in a community of preachers who took part together in morning worship, prayer and studies; other members were "special pioneers" (*Sonderpioniere*) and "travelling overseers" ("*episcopoi*" or bishops) who visited communities to perform missionary work and ensure spiritual welfare. The applicant claimed that he himself worked full time as a deacon, whereas the provision in issue did not explicitly require full-time clerical work. The Austrian authorities and courts only linked the granting of an exemption from civilian service to membership of a recognised religious society and did not examine whether or not the person concerned performed comparable functions for the purposes of section 24(3) of the Military Service Act.

B. The Court's assessment

45. As the Court has consistently held, Article 14 of the Convention complements the other substantive provisions of the Convention and the 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 the latter (see, among many other authorities, *Van Raalte v. the Netherlands*, 21 February 1997, *Reports of Judgments and Decisions* 1997-I, § 33, and *Camp and Bourimi v. the Netherlands*, no. 28369/95, § 34, ECHR 2000-X).

46. Further, the freedom of religion as guaranteed by Article 9 entails, *inter alia*, freedom to hold religious beliefs and to practise a religion. While religious freedom is primarily a matter of individual conscience, it also

implies, *inter alia*, freedom to manifest one's religion, alone and in private, or in community with others, in public and within the circle of those whose faith one shares. Article 9 lists the various forms which manifestation of one's religion or belief may take, namely worship, teaching, practice and observance (see, as a recent authority, *Leyla Şahin v. Turkey* [GC], no. 44774/98, §§ 104-105, ECHR 2005-XI, with further references).

47. In the Court's view the privilege at issue – namely the exemption from the obligation to perform military service and also, consequently, civilian service, afforded to religious societies in respect of those who are part of their clergy – shows the significance which the legislature attaches to the specific function these representatives of religious groups fulfil within such groups in their collective dimension. Observing that religious communities traditionally exist in the form of organised structures, the Court has repeatedly found that the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is, thus, an issue at the very heart of the protection which Article 9 affords (see *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 62, ECHR 2000-XI).

48. As the privilege at issue is intended to ensure the proper functioning of religious groups in their collective dimension, and thus promotes a goal protected by Article 9 of the Convention, the exemption from military service granted to specific representatives of religious societies comes within the scope of that provision. It follows that Article 14 read in conjunction with Article 9 is applicable in the instant case.

49. According to the Court's case-law, a difference of treatment is discriminatory for the purposes of Article 14 of the Convention 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”. 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 (see, among other authorities, *Willis v. United Kingdom*, no. 36042/97, § 39, ECHR 2002-IV).

50. In the instant case, the Court first observes that the exemption from military service under section 24(3) of the Military Service Act is exclusively linked to members of recognised religious societies performing specific services of worship or religious instruction. The applicant, a member of the Jehovah's Witnesses, claimed that he performed similar services. However, the Jehovah's Witnesses was at the time a registered religious community and not a religious society, and there was thus no room for an exemption under the above-mentioned legislation.

51. The Government argued that the applicant had not been discriminated against, because the criterion that a person applying for exemption from military service must be a member of a religious society was only one condition among others and the applicant would not, in any

event, have fulfilled the further conditions as he had not completed a course of theological studies at university or at a comparable level of education. The Court is not persuaded by this argument. Since the competent authority explicitly based its refusal of the applicant's request on the ground that he did not belong to a religious society, there is no need to speculate on what the outcome would have been if the decision had been based on other grounds.

52. The Court has to examine whether the difference in treatment between the applicant, who does not belong to a religious group which is a religious society within the meaning of the 1874 Recognition Act, and a person who belongs to such a group, has an objective and reasonable justification.

53. In doing so the Court refers to the case of *Relionsgemeinschaft der Zeugen Jehovas and Others v. Austria* (no. 40825/98, 31 July 2008), in which the first applicant, the Jehovah's Witnesses in Austria, had been granted legal personality as a registered religious community, a private-law entity, but wished to become a religious society under the 1874 Recognition Act – that is, a public-law entity. The Court observed that under Austrian law, religious societies enjoyed privileged treatment in many areas, including, *inter alia*, exemption from military service and civilian service. Given the number of these privileges and their nature, the advantage obtained by religious societies was substantial. In view of these privileges accorded to religious societies, the obligation under Article 9 of the Convention incumbent on the State's authorities to remain neutral in the exercise of their powers in this domain required therefore that if a State set up a framework for conferring legal personality on religious groups to which a specific status was linked, all religious groups which so wished must have a fair opportunity to apply for this status and the criteria established must be applied in a non-discriminatory manner (*ibid.*, § 92). The Court found, however, that in the case of the Jehovah's Witnesses one of the criteria for acceding to the privileged status of a religious society had been applied in an arbitrary manner and concluded that the difference in treatment was not based on any “objective and reasonable justification”. Accordingly, it found a violation of Article 14 of the Convention taken in conjunction with Article 9 (*ibid.*, § 99).

54. In the present case, the refusal of exemption from military and alternative civilian service was likewise based on the ground that the applicant was not a member of a religious society within the meaning of the 1874 Recognition Act. Given its above-mentioned findings in the case of *Relionsgemeinschaft der Zeugen Jehovas and Others*, the Court considers that in the present case the very same criterion – whether or not a person applying for exemption from military service is a member of a religious group which is constituted as a religious society – cannot be understood

differently and its application must inevitably result in discrimination prohibited by the Convention.

55. In conclusion, section 24(3) of the Military Service Act, which provides for exemptions from the obligation to perform military service exclusively in the case of members of a recognised religious society, is discriminatory and the applicant has been discriminated against on the ground of his religion as a result of the application of this provision. There has therefore been a violation of Article 14 taken in conjunction with Article 9 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

56. The applicant also relied on Article 9 of the Convention in complaining that he was not exempt from military service, unlike persons assuming a comparable function in religious communities recognised as religious societies.

57. In the circumstances of the present case the Court considers that in view of the considerations under Article 14 read in conjunction with Article 9 of the Convention there is no separate issue under Article 9 of the Convention alone.

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

58. The applicant complained that the fact that he was not exempt from military service while assuming a function with the Jehovah's Witnesses which was comparable to those of members of recognised religious societies who were exempt from military service constituted discrimination on the ground of his religion prohibited by Article 14 of the Convention, taken together with Article 4.

Article 4 §§ 2 and 3 of the Convention reads as follows:

“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:

(a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of [the] Convention or during conditional release from such detention;

(b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;

(c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;

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

59. The Court considers that, in view of its finding under Article 14 read in conjunction with Article 9 of the Convention, there is no need to examine this question also from the point of view of Article 14 read in conjunction with Article 4, all the more so as the core issue, whether the difference in treatment may be based on the criterion of “being a member of a religious society”, has already been sufficiently dealt with above.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

61. The applicant claimed 4,000 Euros (EUR) for non-pecuniary damage for the suffering caused by the obligation to leave his vocation as a full-time “pioneer” preacher and the restriction of his duties as a “ministerial servant” for one year. Furthermore, criminal proceedings had been initiated against him while his request for suspension of the order to perform civilian service was still pending before the Constitutional Court.

62. The Government maintained that the finding of a violation would constitute sufficient just satisfaction. In any event, the amount claimed was excessive.

63. The Court considers that the applicant has sustained non-pecuniary damage which cannot be compensated by the finding of a violation. It considers that the sum claimed by the applicant appears reasonable and awards the full amount, namely EUR 4,000, plus any tax that may be chargeable on this amount.

B. Costs and expenses

64. The applicant claimed EUR 8,198.53, plus value-added tax (VAT), for the costs of the domestic proceedings and EUR 4,475.99, plus VAT, for the costs of the proceedings before the Court.

65. The Government pointed out that the application had been declared only partly admissible.

66. The Court reiterates that, according to its case-law, it has to consider whether the costs and expenses were actually and necessarily incurred in order to prevent or obtain redress for the matter found to constitute a

violation of the Convention and were reasonable as to quantum. The Court considers that these conditions are met as regards the costs of the domestic proceedings. It therefore awards the full amount claimed under this head, namely EUR 8,198.53, plus any tax that may be chargeable to the applicant on this amount.

67. As regards the proceedings before the Court, the applicant, who was represented by counsel, did not have the benefit of legal aid. However, the Court finds the claim is excessive as the application was only partly successful. Making an assessment on an overall basis, the Court awards EUR 2,500 under this head, plus any tax that may be chargeable to the applicant on this amount.

68. The Court, thus, awards a total amount of EUR 10,698.53 in respect of costs and expenses.

C. Default interest

69. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 14 of the Convention taken in conjunction with Article 9 of the Convention;
2. *Holds* that there is no separate issue under Article 9 of the Convention alone;
3. *Holds* that it is not necessary to examine the complaint under Article 14 taken in conjunction with Article 4 §§ 2 and 3 (b) of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 4,000 (four thousand Euros) in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant;
 - (ii) EUR 10,698.53 (ten thousand six hundred and ninety-eight Euros and fifty-three cents) in respect of costs and expenses, plus any tax that may be chargeable to the applicant on this amount;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a

rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 12 March 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President