

European Court of Human Rights fails to uphold international human rights standards

Joint statement of European Bureau for Conscientious Objection, Quaker United Nations Office, Geneva, and War Resisters' International on the ECtHR Third section judgement *Bayatyan v. Armenia* (Application no. 23459/03, 27/10/09)

In the case of a Jehovah's Witness who was sentenced to two and a half years in prison following his refusal of military service on the grounds of conscientious objection, a Chamber of the European Court of Human Rights has stated categorically that conscientious objection to military service is not protected under the European Convention on Human Rights.

In the judgement, the Chamber appeared, in its interpretation of Article 9 of the European Convention, to overlook the international human rights standards and jurisprudence. The United Nations Human Rights Committee addressed precisely the same issues in relation to the equivalent provision of the International Covenant on Civil and Political Rights in the case of *Yeo-Bum Yoon and Myung-Jin Choi vs Republic of Korea*¹. In that case (January 2007) the Human Rights Committee specifically interpreted Article 18 of the International Covenant (the right to freedom of thought, conscience, and religion²) as protecting conscientious objection to military service.

The Human Rights Committee stated that the reference in Article 8 para 3 of the International Covenant to *"any service of a military character and, in countries where conscientious objection is recognised, any national service required by law of conscientious objectors"* as exceptions to the prohibition of forced labour *"itself neither recognises nor excludes a right of conscientious objection"*. By contrast the Chamber judgement claims that the equivalent provision on forced labour in the European Convention³ trumps the right to freedom of thought, conscience and religion in this respect, even stating that States are not prevented from punishing conscientious objectors.

It is important that the Grand Chamber agrees to hear an appeal in order to bring the European Court's position in line with international jurisprudence.

1 *Yeo-Bum Yoon y Myung-Jin Choi vs Republic of Korea* (CCPR/C/88/D/1321-1322/2004, 23 January 2007)

2 Article 18 of the ICCPR is the equivalent of Article 9 of the European Convention on Human Rights.

Article 18 of the International Covenant on Civil and Political Rights:

"1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions."

Article 9 of the European Convention on Human Rights:

"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 the protection of the rights and freedoms of others."

3 Article 8 para 3 of the ICCPR:

"(a) No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

(...)

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;"

Article 4 para 2 and 3 (b) of the European Convention of Human Rights:

"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 or, in case of conscientious objectors in countries where they are recognized, service exacted instead of compulsory military service;"

Background

The case

The case concerned Armenian conscientious objector Vahan Bahatyan, born in 1983, who lives in Yerevan, Armenia. He is a Jehovah's Witness who for reasons of conscience refused to perform military service. In 2001 he was sentenced to a prison term of one and a half years. His sentence was increased by one year after the Prosecutor appealed for a harsher sentence, claiming that his conscientious objection was "unfounded and dangerous". When this decision was confirmed by the Armenian Supreme Court, Bahatyan took his case to the European Court. The European Court has now ruled against him even though it did "not doubt that the applicant's objection to compulsory military service was based on his genuine religious convictions".

Situation in Armenia

On accession to the Council of Europe in 2000, Armenia committed itself "to adopt, with three years of accession, a law on alternative service in compliance with European standards and, in the meantime, to pardon all conscientious objectors sentenced to prison terms or service in disciplinary battalions, allowing them instead to choose, when the law on alternative service has come into force, to perform non-armed military service or alternative civilian service"⁴.

The Alternative Service Act of 17 December 2003 introduced a right to conscientious objection, and a substitute civilian service. However, this law, and the substitute civilian service, are not in conformity with European and international standards, in particular because the substitute civilian service is under the control of the military.

According to Jehovah's Witness sources, there are currently 71 conscientious objectors who are Jehovah's Witnesses in Armenia in prison for their conscientious objection to military service⁵.

International Human Rights Standards

The Human Rights Committee has interpreted the International Covenant on Civil and Political Rights as encompassing the right to conscientious objection in individual communications, General Comments, and Concluding Observations⁶. In addition, the former United Nations Commission on Human Rights⁷ and its Special Procedures, in particular the Special Rapporteur on Freedom of Religion and Belief⁸, and the Working Group on Arbitrary Detention⁹ have all addressed the right to conscientious objection to military service.

4 Opinion No. 221 (2000) of the Parliamentary Assembly of the Council of Europe (PACE): Armenia's application for membership of the Council of Europe, 28 June 2000, <http://assembly.coe.int/Main.asp?link=http://assembly.coe.int/Documents/AdoptedText/TA00/eopi221.htm>, accessed 31 October 2009

5 Jehovah's Witnesses, Office for Public Information: European Court ruling fails to protect the right of conscientious objectors in Armenia, 27 October 2009, <http://www.jw-media.org/frames/091027.htm>, accessed 31 October 2009

6 See for example: The right to freedom of thought, conscience and religion (Art. 18) : General Comment No 22, 30/07/93. CCPR/C/21/Rev.1/Add.4, <http://www.unhchr.ch/tbs/doc.nsf/0/9a30112c27d1167cc12563ed004d8f15>, accessed 31 October 2009; Concluding Observations COLOMBIA, CCPR/CO/80/COL, 26 May 2004; Georgia, CCPR/CO/74/GEO, 19 April 2002; Viet Nam, CCPR/CO/75/VNM, 26 July 2002; Estonia, CCPR/CO/77/EST, 15 April 2003; Morocco, CCPR/CO/82/MAR, 1 December 2004; Tajikistan, CCPR/CO/84/TJK, 18 July 2005; Yemen, CCPR/CO/84/YEM, 9 August 2005; Republic of Korea, CCPR/C/KOR/CO/3, 28 November 2006; Chile, CCPR/C/CHL/CO/5, 17 April 2007; Russian Federation, CCPR/C/RUS/CO/6, 29 October 2009; Frédéric Foin v. France, CCPR/C/67/D/666/1995, 9 November 1999; Yeon-Bum Yoon y Myung-Jin Choi vs Republic of Korea (CCPR/C/88/D/1321-1322/2004, 23 January 2007)

7 UN Commission on Human Rights Resolution 1998/77, 'Conscientious Objection to Military Service'. This resolution brought together in a single text the various elements of resolutions 1989/59, 1993, and 1995/83 and was subsequently reaffirmed in Resolutions 2000/34, 2002/45 and 2004/35.

8 See for example: Report submitted by Mr. Abdelfattah Amor, Special Rapporteur, in accordance with Commission on Human Rights resolution 1999/39, 15 February 2000, E/CN.4/2000/65, para . 87, [http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/80f0e46fc1648260802568ba004b44bf/\\$FILE/G0011063.pdf](http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/80f0e46fc1648260802568ba004b44bf/$FILE/G0011063.pdf); Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir - Summary of cases transmitted to Governments and replies received, 27 March 2006, E/CN.4/2006/5/Add.1, paras . 10-11, 25-26, 138 and 305, <http://daccess-ods.un.org/access.nsf/Get?Open&DS=E/CN.4/2006/5/Add.1&Lang=E>; Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir - Addendum - Mission to Turkmenistan, 12 January 2009, A/HRC/10/8/Add.4, paras 50-51, <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/10/8/Add.4&Lang=E>

9 Working Group on Arbitrary Detention: Opinion No 36/1999 (Turkey); Opinion No 24/2003 (Israel); Recommendation No 2, Detention of conscientious objectors, E/CN.4/2001/14; Opinion No 8/2008 (Colombia); Opinion No 16/2008 (Turkey)