European Court of Human Rights

Press Release

issued by the Registrar of the Court

ECHR 250 (2012)

12.06.2012

Refusal to grant conscientious objector status is not necessary

in a democratic society

In today’s Chamber judgment in the case **Savda v. Turkey** (application no. 42730/05),

which is not final1, the European Court of Human Rights held, unanimously, that there

had been:

**violations of Article 3 (prohibition of degrading treatment) and 9 (right to**

**freedom of thought, conscience and religion)** of the European Convention on

Human Rights; and

**a violation of Article 6 § 1** of the Convention on account of the lack of independence

and impartiality of the military court.

The case concerned the failure to recognise the right to conscientious objection, which

would enable refusals to carry out military service to be legitimised in Turkey. The Court

reiterated that the system of compulsory military service in force in Turkey allowed for

no exceptions on grounds of conscience and resulted in heavy criminal sanctions being

imposed on those who refused to comply. Such a system failed to strike a proper

balance between the general interest of society and that of conscientious objectors. The

penalties, sanctions, convictions and prosecutions imposed on conscientious objectors,

when no measures were provided to take account of the requirements of their

consciences and convictions, could not be regarded as necessary in a democratic society.

Principal facts

The applicant, Halil Savda, is a Turkish national who was born in 1974 and lives in

Istanbul (Turkey). Following his conscription into the army in 2004, he declared himself

to be a conscientious objector and refused to serve in the armed forces. He became a

leading member of the anti-militarist movement in Turkey, running a website set up by

“*War Resisters International”* (an association founded in 1921 to promote non-violent

action against the causes of war).

On 26 January 1994 he was sentenced to a prison term for aiding and abetting the PKK

(Workers’ Party of Kurdistan). He was called up for military service on 21 May 1996.

Having served his sentence, he was conscripted into his regiment on 27 May 1996 and

deserted on 14 August 1996. Arrested some months later in possession of a weapon, he

was accused of carrying out acts in favour of the PKK; he was detained on remand. The

Adana State Security Court sentenced him to 14 years and 7 months’ imprisonment for

membership of the PKK. On 18 November 2004, after serving his sentence, he was

taken to the gendarmerie station for the purpose of his military service, then, on

25 November 2004, to his regiment, where he refused to don military uniform.

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

A range of criminal proceedings were brought against him; in the meantime he

continued to refuse to integrate into his regiment for the purpose of military service. He

was tried on four occasions for desertion. On 21 April 2008 Mr Savda was transferred to

a military hospital, where psychological tests were conducted. A panel of military doctors

diagnosed an “anti-social personality” disorder and concluded that he was unfit for

military service. On 25 April 2008, having been exempted from military service, he was

discharged from his regiment. He was released on 25 November 2008 once his last

prison sentence had been served.

Complaints, procedure and composition of the Court

Mr Savda complained that his various prosecutions and convictions for claiming

conscientious objector status had entailed violations of Articles 9 (right to freedom of

thought, conscience and religion) and 10 (right to freedom of expression) of the

Convention. Emphasising the seriousness of the measures taken against him on account

of his refusal, he argued that the successive convictions placed him in a situation of

humiliation and debasement. Relying on Article 6, he challenged the fairness of the

proceedings before the military court, which, in his view, could not be regarded as an

independent and impartial tribunal. The Court decided to examine Mr Savda’s complaints

under Articles 3, 6 and 9 of the Convention.

The application was lodged with the European Court of Human Rights on 11 November

2005.

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

Françoise **Tulkens** (Belgium), *President*,

Danutė **Jočienė** (Lithuania),

Dragoljub **Popović** (Serbia),

Isabelle **Berro-Lefèvre** (Monaco),

András **Sajó** (Hungary),

Işıl **Karakaş** (Turkey),

Guido **Raimondi** (Italy)*, Judges*,

and also Stanley **Naismith**, *Section Registrar.*

Decision of the Court

Article 3

The Court noted that in Turkey all male citizens who are found fit for national service are

obliged to perform military service. Given that no substitute civilian service exists,

conscientious objectors have no other choice, if they are to remain true to their

convictions, but to refuse to be drafted into the army. In so doing, they open themselves

to a form of “civil death”, on account of the numerous criminal proceedings that the

authorities invariably bring against them, the cumulative effects of the resulting criminal

convictions and the possibility of being prosecuted throughout their lives.

Mr Savda was sentenced to prison terms on three occasions for refusing to wear a

military uniform. On several occasions he was placed in solitary confinement, for periods

ranging from 2 to 8 days, always on the same ground. Finally, Mr Savda was subjected

to various criminal prosecutions and convictions, which were likely to continue

indefinitely had the decision to demobilise him not been taken on 25 April 2008.

In those circumstances, the Court considered that the treatment to which Mr Savda had

been subjected had caused serious pain and suffering that went beyond the usual

3

element of humiliation inherent in a criminal conviction or detention. The Court therefore

concluded that there had been a violation of Article 3.

Article 9

The Court recently re-examined its case-law concerning the application of Article 9 to

conscientious objectors, in its judgment in the case of Bayatyan v. Armenia

(no. 23459/03) of 7 July 2011. It held that opposition to military service, where it was

motivated by a serious and insurmountable conflict between the obligation to serve in

the army and a person’s conscience or his deeply and genuinely held religious or other

beliefs, constituted a conviction or belief of sufficient cogency, seriousness, cohesion and

importance to attract the guarantees of Article 9.

In the present case, the Court noted that Mr Savda complained not only about specific

actions on the part of the State, but also about the latter’s failure to have enacted a law

implementing the right to conscientious objection. It noted that the Government had put

forward no convincing or compelling reason that would justify this failure. The

Government was unable to explain in what way recognition of the right to conscientious

objection was incompatible, in the contemporary world, with the State’s duties in relation

to territorial integrity, public safety, the prevention of disorder and protection of the

rights of others.

The Court noted that Mr Savda’s case was characterised by the absence of a procedure

to examine his request for recognition of conscientious objector status. His request was

never examined by the authorities, who merely made use of criminal-law provisions

penalising the refusal to carry out military service. The Court emphasised the State’s

obligation to provide a regulatory framework introducing a mechanism to protect the

rights of individuals. In the absence of a procedure to examine requests for the purpose

of establishing conscientious objector status, the obligation to carry out military service

was such as to entail a serious and insurmountable conflict with an individual’s

conscience. There was therefore an obligation on the authorities to provide Mr Savda

with an effective and accessible procedure that would have enabled him to have

established whether he was entitled to conscientious objector status, as he requested.

A system which provided for no alternative service or any effective and accessible

procedure by which the person concerned was able to have examined the question of

whether he could benefit from the right to conscientious objection failed to strike the

proper balance between the general interest of society and that of conscientious

objectors. It followed that the relevant authorities had failed to comply with their

obligation under Article 9 of the Convention.

Article 6

The Court noted that under Turkish criminal law an individual was considered to be a

serviceman from the moment of incorporation into his regiment. Following his

conscription, Mr Savda refused to wear military uniform and stated that he did not wish

to carry out military service for reasons of conscience. In the Court’s opinion, such a

situation could hardly be regarded as similar to that of a regular solder who willingly

agreed to submit to a system of military discipline.

In the Court’s opinion, it was entirely understandable that a person who claimed to be a

conscientious objector should be apprehensive about being tried by a bench of three

judges which included a regular army officer. Such mistrust, however, did not suffice for

it to be held that there had been a violation of Article 6 § 1. The Court endorsed the

findings of the Turkish Constitutional Court, which, in its judgment of 7 May 2009, held

that the participation of officers in the deliberations of military courts and the provisions

subjecting military judges to military discipline and assessment reports were

4

incompatible with the constitutional principle of judicial independence. Under a recently

introduced constitutional amendment, the legislature is no longer obliged to take into

account the “requirements of military service” in enacting legislation on military courts.

The Court considered it understandable that Mr Savda, having had to face purely military

charges before a court made up entirely of servicemen, had been apprehensive about

being tried by judges who could be equated with a party to the proceedings. As the

applicant could legitimately have feared that the court could be influenced by biased

considerations and given that his doubts as to that court’s independence and impartiality

were objectively justified, the Court held that there had been a violation of Article 6 § 1.

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Turkey was to

pay the applicant 12,000 euros (EUR) in respect of non-pecuniary damage and

EUR 1,975 in respect of costs and expenses.

*The judgment is available only in French.*

This press release is a document produced by the Registry. It does not bind the Court.

Decisions, judgments and further information about the Court can be found on

www.echr.coe.int. To receive the Court’s press releases, please subscribe to the Court’s

RSS feeds.

**Press contacts**

echrpress@echr.coe.int | tel: +33 3 90 21 42 08

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Kristina Pencheva-Malinowski (tel: + 33 3 88 41 35 70)

Céline Menu-Lange (tel: + 33 3 90 21 58 77)

Nina Salomon (tel: + 33 3 90 21 49 79)

Denis Lambert (tel: + 33 3 90 21 41 09)

**The European Court of Human Rights** was set up in Strasbourg by the Council of

Europe Member States in 1959 to deal with alleged violations of the 1950 European

Convention on Human Rights.