



Convention breached by absence of legislation allowing conscientious objectors to opt for civilian service as alternative to military service

In today's **Chamber** judgment¹ in the case of [Kanatlı v. Türkiye](#) (application no. 18382/15) 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 case concerned an applicant (Mr Kanatlı) who complained that he had been convicted for refusing to perform his one day of military service as a reservist – for which he had been called up in 2009 in accordance with the Military Service Act – on grounds of conscientious objection.

The Court noted that the relevant national legislation – which provided for compulsory military service in the armed forces, including as a reservist – made no provision for conscientious objectors to perform an alternative form of service.

It pointed out that it had previously held that a system which provided for no alternative service or any effective and accessible procedure for the examination of a claim of conscientious objection could not be seen as having struck a fair balance between the general interest of society and that of conscientious objectors. No convincing arguments having been put forward by the Government, the Court saw no reason to depart from its case-law in the present case.

Principal facts

The applicant, Murat Kanatlı, was born in 1973 and lives in the “Turkish Republic of Northern Cyprus” (“the TRNC”).

In the “TRNC”, the Military Service Act (Law no. 59/2000) provided that military service – the enlistment age for which was set at 19 – was made up of three stages (the recruitment stage, the active service stage, and the reserve stage) and lasted for a maximum period of 30 years. The Act further provided that the period running from the end of the active service stage to the end of the military service period as a whole was the “reserve stage”, during which up to 30 days of service per year were to be performed when required. In addition, the Mobilisation Act (Law no. 17/1980) provided that anyone who failed to report for military service on being called up as a reservist during peace time was liable to the payment of a fine corresponding to a quarter of the minimum wage.

In 2005 Mr Kanatlı performed his one year of active military service at the Turkish-Cypriot security forces command. Each of the following years, he was called up to perform one day of service in military barracks as a reservist; he discharged this duty in 2006, 2007 and 2008.

In 2008 Mr Kanatlı became the Cypriot representative of the European Bureau for Conscientious Objection (“the EBCO”), a federation of national associations of conscientious objectors founded in 1979.

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.

In 2009 he was elected to the board of the EBCO and refused to perform his military service as a reservist that year, explaining that he had become a conscientious objector as of 15 May 2008.

In 2011 the military prosecutor's office brought criminal proceedings against him in the Security Forces Court. In that court, Mr Kanatlı stated that he had knowingly refused to perform his military service as a reservist owing to his pacifist and anti-militarist convictions. He took issue with the compulsory nature of military service and alleged that the lack of a substitute civilian service was contrary to the Convention. He went on to request a review of the constitutionality of the relevant sections of the Mobilisation Act. The court adjourned the proceedings and requested a ruling from the High Court.

In 2013 the Supreme Military Administrative Court held that the relevant provisions were constitutional and clarified that the Military Service Act made no provision for potential conscientious objectors to perform an alternative form of service. The criminal proceedings before the Security Forces Court resumed.

In 2014 the Security Forces Court sentenced Mr Kanatlı to the payment of a fine (of roughly 167 euros), which could be converted to ten days' imprisonment in the event of non-payment. In its judgment, the court pointed out that the law made no provision for conscientious objectors to perform community service and went on to find that the applicant could not be characterised as a conscientious objector.

In the same year the Court of Appeal upheld Mr Kanatlı's conviction, finding however that the lower court had been mistaken to rule on the question whether the applicant was or was not a conscientious objector despite noting that there was no legislation in that regard.

Having refused to pay the fine, Mr Kanatlı subsequently served a ten-day prison sentence.

In 2010 and 2011 Mr Kanatlı again refused to perform the periods of military service for which he was called up as a reservist. As a result, two additional sets of proceedings were brought against him in the Security Forces Court, in the course of which, however, the Attorney-General of the "TRNC" decided to drop the charges and requested a discontinuance order. The Court had not been informed of the outcome of those cases.

Complaints

Relying in particular on Article 9 (freedom of thought, conscience and religion) of the Convention, Mr Kanatlı complained of his conviction for having refused, on grounds of conscientious objection, to perform the military service for which he had been called up as a reservist.

Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 6 April 2015.

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

Arnfinn Bårdsen (Norway), *President*,
 Jovan Ilievski (North Macedonia),
 Egidijus Kūris (Lithuania),
 Pauliine Koskelo (Finland),
 Saadet Yüksel (Türkiye),
 Frédéric Krenc (Belgium),
 Diana Sârcu (the Republic of Moldova),

and also Hasan Bakırcı, *Section Registrar*.

Decision of the Court

Article 9

The Court noted that, under the applicable legislation, the applicant was unable to lodge – let alone substantiate – an application for exemption and was liable to prosecution if he refused to perform his military service.

In view of the applicant's submissions to the national courts and the Court, his activities as an activist and his persistent refusal to serve in the army despite the measures taken against him, the Court was prepared to consider that the applicant's objection to performing his military service as a reservist – irrespective of the nature of that service – had been motivated by convictions or beliefs of sufficient cogency, seriousness, cohesion and importance to attract the guarantees of Article 9 of the Convention.

Moreover, the Court observed that, under the Military Service Act, the "reserve stage" was an integral part of military service. Furthermore, in its judgment, the Supreme Military Administrative Court had taken the view that such mobilisation was an extension of the initial military duty. In addition, in several decisions delivered in respect of the applicant's case, the national courts had failed to give any weight to the specific features of military service performed as a reservist. The Court therefore declared the application admissible.

The Court pointed out that freedom of conscience, just like the freedom to have or adopt a religion or belief of one's choice, was protected unreservedly and was one of the core rights guaranteed by Article 9 of the Convention.

In the present case, the applicant had complained not only about specific actions on the part of the State, but also and above all about its failure to secure the right to conscientious objection.

The relevant national legislation – which provided for compulsory military service in the armed forces, including as a reservist – made no provision for potential conscientious objectors to perform an alternative form of service.

Thus, there being no provision for alternative service, the applicant had faced criminal proceedings, which had resulted in his conviction and imprisonment.

Admittedly, the present case did not concern compulsory military service but rather service as a reservist, which only lasted a single day, although it was liable to reach up to 30 days a year.

As the national courts had noted, service as a reservist was an extension of military service, performed in military barracks under the authority and supervision of army officers. Moreover, the Government had not submitted that such service was hierarchically and institutionally distinct from the army.

The Court had previously found that a system which provided for no alternative service or any effective and accessible procedure for the examination of a claim of conscientious objection could not be seen as having struck a fair balance between the general interest of society and that of conscientious objectors. No convincing arguments having been put forward by the Government, the Court saw no reason to depart from its case-law in the present case.

It followed that there had been a violation of Article 9 of the Convention.

Just satisfaction (Article 41)

The Court held that Türkiye was to pay the applicant 9,000 euros (EUR) in respect of non-pecuniary damage and EUR 2,363 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 here: www.echr.coe.int/RSS/en or follow us on Twitter [@ECHR CEDH](https://twitter.com/ECHR_CEDH).

Press contacts

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

We would encourage journalists to send their enquiries via email.

Inci Ertekin (tel.: + 33 3 90 21 55 30)

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

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

Neil Connolly (tel.: + 33 3 90 21 48 05)

Jane Swift (tel.: + 33 3 88 41 29 04)

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.