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Regional Level: The European Human Rights System

Abstract: *This chapter examines the European judicial and non-judicial mechanisms' attitude to the right to conscientious objection. In this regard, the understanding of the Council of Europe, the European Union, and the Organization for Security and Co-operation in Europe will be explored.*

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Article 9 of the European Convention on Human Rights (ECHR) explicitly recognises the right to freedom of thought, conscience, and religion without a specific reference to the right to conscientious objection.[1] However, the European mechanisms have reached a consensus as regards the recognition of the right to freedom of conscientious objection as a legitimate exercise of the right to freedom of thought, conscience, and religion.

In this chapter the European judicial and non-judicial mechanisms' attitude to the right to conscientious objection is examined. There are currently three inter-governmental organisations in Europe: the Council of Europe, the European Union, and the Organization for Security and Co-operation in Europe.

2.1 The Council of Europe

2.1.1 The resolutions and recommendations of the Parliamentary Assembly

In 1967, as part of the first attempts to introduce a universal right to conscientious objection at the regional level in Europe, the Parliamentary Assembly of the Council of Europe (PACE) adopted Resolution 337[2] and Recommendation 478[3] with regard to such a right.[4] In its first resolution, Resolution 337, it declares:

> 1-) Persons liable to conscription for military service who, for reasons of conscience or profound conviction arising from religious, ethical, moral, humanitarian, philosophical or similar motives, refuse to perform armed service shall enjoy a personal right to be released from the obligation to perform such service; 2-) This right shall be regarded as deriving logically from the fundamental rights of the individual in democratic Rule of Law States which are guaranteed in Article 9 of the European Convention on Human Rights.[5]

In this resolution philosophical motivation as a basis for conscientious objection is included, unlike the resolutions of the other institutions in the Council of Europe and the United Nations which do not generally incorporate this motive.[6]

The PACE followed this by setting down Recommendation no. 478 in the same year. In order for the right to conscientious objection to gain recognition by all member states of the Council of Europe, it was

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proposed that the Committee of Ministers instruct the Committee of Experts on Human Rights to draw up proposals for the implementation of the principles embodied in Resolution 337.[7]

However, the Committee of Ministers did not follow the PACE's recommendation, claiming that provisions in domestic law in several states already dealt adequately with the question; other states had made clear that they were opposed to changing their laws. Certain states did not believe that the Council of Europe would be able to gain approval for the adoption of an international agreement on the right to conscientious objection, even though they may agree with the principles behind Recommendation 478.[8]

Despite this failure, in 1977 the PACE reiterated its stance, recommending that the Committee of Ministers:

1. urge the governments of Member States, in so far as they have not already done so, to bring their legislation into line with the principles adopted by the Assembly; [and]
2. introduce the right of conscientious objection to military service into the European Convention on Human Rights.[9]

The Committee of Ministers again ignored this Resolution on the same grounds on which they had based their lack of action on Recommendation 478.[10] Only in 1987 did the Committee of Ministers eventually take action by calling on the governments of member states to recognise the right to conscientious objection.[11]

Moreover, in its Recommendation no. 1518(2001)[12] the PACE added to its prescriptions "the right to be registered as a conscientious objector at any time: before, during and after conscription, or performance of military service";[13] and "the right for permanent members of the armed forces to apply for the granting of conscientious objector status".[14] Furthermore, it continues "the right for all conscripts to receive information on conscientious objector status and the means of obtaining it".[15] The recommendation also calls for "genuine alternative service of a clearly civilian nature, which should be neither deterrent nor punitive in character".[16] Unlike many previous international documents the term 'non-combatant' is not mentioned in this recommendation. Since unarmed military service has not been included within the term 'alternative service', this service is therefore seen as having a wholly civil nature.

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Subsequently, the PACE adopted Recommendation 1742 (2006) regarding the human rights of members of the armed forces,[17] and several other resolutions regarding specific countries.[18] For instance, in 2004 the PACE adopted Resolution 1380(2004) on Turkey in which the PACE declared that "[d]espite Turkey's geostrategic position, the Assembly also demands that Turkey recognise the right to conscientious objection and introduce an alternative civilian service".[19]

To summarise, the PACE was the first organ of the Council of Europe to recognise the right to conscientious objection, and has played a significant role in shaping the content of this right in Europe.

2.1.2 The recommendations of the Committee of Ministers

Although the Committee of Ministers (hereafter 'the Committee') did not follow the recommendation of the PACE in 1967 and 1977, it finally adopted, in 1987, Recommendation no. R (87)8 regarding the right to conscientious objection.[20] The Committee called on governments of member states who had not already done so to bring their domestic law and practice into accordance with the following Basic Principle:

> Anyone liable to conscription for military service who, for *compelling reasons of conscience*, refuses to be involved in the use of arms, shall have the right to be released from the obligation to perform such service, on the conditions set out hereafter. Such persons may be liable to perform alternative service.[21]

It is significant that, in order to avoid conflict with previous Committee decisions, this recommendation did not make specific reference to Article 9 of the ECHR.[22] However, it has been argued by Decker and Fresa that the ECHR's definition of 'conscientious objector' could be inferred from Article 9, on account of the fact that the 'Basic Principle' referred to above included the words compelling reasons of conscience'.[23] This recommendation also establishes the procedure for introducing conscientious objection status and advocates the provision of alternative service.[24] The Committee explains its understanding of alternative service in paragraph 9 as follows:

> Alternative service, if any, shall be in principle civilian and in the public interest. Nevertheless, in addition to civilian service, the State may also provide for unarmed military service, assigning to it only those conscientious objectors whose objections are restricted to the personal use of arms.[25]

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In contrast to the PACE Resolution no. 337 of 1967 and Recommendation no. 816 of 1977,[26] already examined above, this recommendation of the Committee makes no reference to specific motives for claiming the right to conscientious objection.

Despite this, the Committee made it abundantly clear that all conscripts have the right to be released from the obligation to perform military service if they 'refuse to be involved in the use of arms' on the basis of 'compelling reasons of conscience'. A close examination of the language reveals that Recommendation no. R (87)8 concentrates on individuals who reject the 'use' of arms 'for compelling reasons'. The use of the word 'compelling' indicates the intention of the Committee to exclude 'selective' conscientious objectors, who only object to using particular kinds of arms.[27] Furthermore, the Recommendation's Explanatory Report focuses on the significant choice of the term 'use of arms' rather than the HRC's 'lethal force'.[28] The Report surmises that the term 'use of arms' could signify a more limited basis for conscientious objection. The HRC's General Comment no. 22 considers the term 'lethal force' could cover general military actions, such as military manoeuvres that do not necessarily involve the use of arms.[29]

Recommendation no. R (87)8 also evaluates the phrase 'reasons of conscience', considering how it might be interpreted.[30] The Explanatory Report to Recommendation no. R (87)8 states that in the granting of conscientious objector status all reasonable grounds of conscience opposing the use of arms should be taken into account.[31] The report also advocates that states should not utilise too narrow a definition or too limited a stance towards conscientious objectors.[32] It is worthy of note that, at its broadest interpretation, this recommendation could also be applicable to conscientious objectors in professional armies.[33]

More recent recommendation takes note of international and regional developments as regards the right to conscientious objection. In 2010, the Committee adopted Recommendation CM/Rec. (2010)4[34] regarding "the enjoyment of human rights and fundamental freedoms by members of the armed forces in the context of their work and service life".[35] Unlike its Recommendation no. R (87)8, here the Committee entrenches the right to conscientious objection within the framework of the right to freedom of thought, conscience, and religion.[36] It differs from Recommendation No. R (87)8, too, in that it recognises the right to conscientious objection for professional soldiers troubled by their conscience.[37]

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Consequently, it is evident that the political organs of the Council of Europe have played a supportive role as regards clarifying the scope and meaning of the right to conscientious objection in Europe. The Committee has, besides, a function in the supervision of the execution of Court judgments by states in accordance with Article 46(2) of the Convention.[38] In this regard, it is essential to look at the judgments reached by the judicial mechanisms of the Council of Europe (the European Commission of Human Rights—'the Commission'—and the European Court of Human Rights—ECtHR or 'the Court') and, more importantly, to see whether these judgments have found a violation of the Convention.

2.1.3 The European Commission of Human Rights and the European Court of Human Rights

The European Convention on Human Rights created the Commission and the Court in order to ensure the observance of the engagements undertaken by the Contracting Parties in 1954.[39] On 1 November 1998, the structure for taking applications under the Convention was changed in accordance with Protocol 1.1, under which the part-time Commission and the Court were replaced by a single permanent Court. Following the institution of the new system, individuals could bring their complaints directly before the Court.[40]

Early applications: no recognition of conscientious objection

The first case on conscientious objection examined by the Commission was *Grandrath v. the Federal Republic of Germany* in 1966.[41] In this case, a Jehovah's Witness declared he would perform neither military nor alternative civilian service because of his religion and conscience. He was granted exemption from military service, but was told he had to perform alternative civilian service, which he refused to do. As a result, he received an eight-month prison sentence.[42] The applicant claimed that the refusal to exempt him from alternative civilian service was a violation of Article 9 of the Convention.[43] The German government argued that the right to exemption from military service or alternative civilian service was not safeguarded by Article 9(1) of the Convention.[44] In looking into a possible violation of Article 9, two points of controversy were discerned by the Commission:

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1. whether the alternative civilian service which Grandrath was required to perform would have restricted his right to manifest his religion;
2. whether Article 9 had been violated by the mere fact that Grandrath had been required to perform alternative civilian service which was contrary to his conscience or his religion.[45]

As regards the first point, the Commission concluded that the performance of alternative civilian service would be no obstacle to the applicant's right to manifest his religion for the reason that,[46]

> according to the practice of the German authorities in regard to Jehovah's Witnesses, he would presumably have been allowed to perform service in his home town and, while performing such service, he would have had the right, under Article 18 of the Act on Substitute Civilian Service, to do such outside work as did not interfere with the service required of him.[47]

The Commission declared that to assist in understanding the second point it would be helpful to examine Article 4(3)(b) of the Convention.[48] Hence, the Commission found that:

> As in this provision it is expressly recognised that alternative civilian service may be imposed on conscientious objectors as a substitute for military service, [therefore] it must be concluded that objections of conscience do not, under the Convention, entitle a person to exemption from such service.[49]

In summary, the Commission found that it was unnecessary to look at the interpretation of the term 'freedom of conscience and religion' as used in Article 9 of the Convention, since, when considered in isolation, there had not been a violation of this article.[50]

The Commission based subsequent judgments on the *Grandrath* case as a precedent when refusing to recognise the right to conscientious objection within the framework of Article 9 of the Convention. For instance, it ruled in the cases of *X v. Austria*, *X v. the Federal Republic of Germany*, *Autio v. Finland*, and *X v. Belgium* that Article 9 of the Convention did not safeguard the right to conscientious objection.[51]

Slow development: applications arguing violation of the prohibition of discrimination

As indicated above, most of these cases related to the right to conscientious objection by total objectors who refused to perform both military service and alternative service (including unarmed military service and alternative civilian service). The Commission admitted that, by asserting

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that the right to conscientious objection is not recognised in Article 9 of the Convention, member states had the freedom to choose whether or not to recognise this right in accordance with Article 4(3)(b) of the Convention. However, in subsequent cases, applicants based their claims on discriminatory treatment as regards different wages for soldiers and conscientious objectors,[52] longer periods of alternative civilian service[53] and the coercion of groups such as Jehovah's Witnesses into performing military and alternative civilian services.[54]

In the 1990s the Commission and the Court also dealt with several Greek cases in which the Court made a point of avoiding any discussion of the right to conscientious objection in the context of Article 9, dealing, instead, with the question in different ways.[55] For example, in *Tsirlis and Koulompas v. Greece*, unfair discrimination was argued in that Jehovah's Witnesses' ministers had no exemption from military service while clergy members of other religions had such exemption.[56] Although the Commission found a violation of Article 14 within the framework of 9,[57] it also concluded that it was unnecessary to examine Article 9 alone.[58] A partially dissenting opinion on this question was announced by Commissioner Liddy, who considered conscientious objection should be addressed within the framework of Article 9:

> First, the savers in Article 4 are for the purposes of the right specifically guaranteed by Article 4. Second, the Convention does not purport to recognize that States may arbitrarily impose compulsory military service or alternative [civilian] service. The Court has found a violation of Article 14 in conjunction with Article 4 para. 3(d) where a financial burden ensuing from provision for compulsory service in the fire-brigade involved a difference of treatment on the ground of sex (*Schmidt v. Germany*, Judgment of 18 July 1994, Series A, Vol. 291). Third, the Commission in the above-mentioned case had been of the opinion that there had also been a violation of Article 14 in conjunction with Article 1 of Protocol No. 1. In the event, the Court did not find it necessary to examine the complaint. This represents a significant evolution of the law since the Grandrath Case: neither the Commission nor the Court adopted the view that the saver in Article 4 para. 3(b) had the effect of rendering Article 1 of Protocol No. 1 inapplicable. Fourth, the formulation of Article 4 para. 3(b) ('any' service of a military character, 'in case of conscientious objectors in countries where they are recognised') makes it clear that the framers of the Convention did not assume that every country had a need for compulsory military service, but allowed (without prejudging any issue under other provisions of the Convention) for the fact that not every country gave recognition to conscientious objectors.[59]

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Commissioner Liddy concluded by declaring:

> Article 9 contains no express saver for compulsory military or alternative [civilian] service in its first paragraph, notwithstanding the recognition in Article 4 para. 3(b) that questions of conscience could arise concerning military service, and notwithstanding the deliberate insertion of a third 'saving' sentence in the first paragraph of Article 10.[60]

Mrs Liddy's views are consistent with Article 31(1) of the Vienna Convention on the Law of Treaties, under which "a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its objects and purpose".[61]

Mrs Liddy therefore stated that the right to conscientious objection should be accepted as a fundamental aspect of the right to freedom of thought, conscience, and religion, as envisaged in the objectives and purpose of the Convention.

In addition, Mrs Liddy emphasised the fact that the content of Article 4 of the Convention serves to ensure personal freedom, stating that "the savers in Article 4 are for the purposes of the right specifically guaranteed by Article 4".[62] She therefore underlined that this article should not be associated with Article 9.

However, despite Liddy's views, until the judgment of the Grand Chamber in the case of *Bayatyan v. Armenia* on 7 July 2011, the Court maintained its stance of examining Article 4(3)(b) together with Article 9. Obviously, this examination was not accepted by conscientious objectors and their supporters. However, it is also true that after the case of *Tsirlis and Koulompas*, the Court slowly started reconsidering its approach regarding this issue. In that respect, it is important to touch upon the case of *Ülke v. Turkey*.[63]

Close to recognising the right to conscientious objection: violation of the prohibition of degrading treatment

The case of *Ülke* provided a turning point. The significance of this case is explained by Boyle[64] as follows: "[a]lthough the European Court of Human Rights had in later cases moved close to recognizing that actions motivated by objection to war or pacifist beliefs are within the scope of the protections of Article 9, it had never previously been faced with the question directly as in the *Ülke* case".[65] Moreover, for the first time the Court found a violation of Article 3 as regards the issue of conscientious objection.

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In this case, the applicant, Osman Murat Ülke, had received a total of 701 days imprisonment, intermittently, as a result of eight different convictions. Due to the lack of any specific provision in Turkish law as regards penalties for conscientious objectors,[66] he also had had to appear in court 11 times between 1996 and 1999.[67]

Ülke's lawyers argued that there had been violations of Articles 3, 5, 8, and 9.[68] The Court ruled on 5 January 2006 that:

> In the present case, the numerous criminal proceedings brought against the applicant, the cumulative effects of the ensuing criminal convictions and the constant alternation between prosecution and imprisonment, together with the possibility that he would face prosecution for the rest of his life, are disproportionate to the aim of ensuring that he performs his military service. They are aimed more at repressing the applicant's intellectual personality, inspiring in him feelings of fear, anguish and vulnerability capable of humiliating and debasing him and breaking his resistance and will. The clandestine life, amounting almost to 'civil death', which the applicant has been compelled to adopt is incompatible with the punishment regime of a democratic society.[69]

The Court found in this judgment that repeated imprisonment was not justified for offences deriving from the beliefs of conscientious objectors. Consequently, although the Court did not explore the right to conscientious objection under Article 9, it made clear that there was a connection between a person's intellectual personality and his belief. The Court emphasised that the endless vicious circle of military prison–military court–military unit had violated this connection, finding that there had been a violation of Article 3.[70]

Hence, the Court opted to analyse these cases in the light of other Articles of the Convention, such as Article 14 and Article 3, rather than dealing directly with the question of conscientious objection under Article 9. In fact, the Court's stance as regards conscientious objection in terms of Article 9 was not clear until the Grand Chamber's 2011 judgment in the case of *Bayatyan v. Armenia*[71] when it overruled the Commission and the Court's previous case law on the right to conscientious objection.

It is significant that the applicant, Bayatyan, went to the Grand Chamber because the ECtHR (as a Chamber) had failed to find a violation of Article 9 in the 2009 Bayatyan judgment.[72] The applicant was a Jehovah's Witness who refused to do military service at a time when there was no alternative service in Armenia.[73] After serving more than

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ten months of an 18-month sentence,[74] Bayatyan complained that his conviction violated his right to freedom of thought, conscience, and religion (Article 9).[75] He argued that the Court should interpret Article 9 in the light of present-day conditions, given that the majority of Council of Europe member states had granted recognition to the right to conscientious objection.[76]

Initially, the Court agreed that it was worth taking into consideration the fact that the majority of the Council of Europe member states had introduced legislation making provision for alternative civilian service for conscientious objectors.[77] However, the Court added:

> since this Article [4(3)(b)] clearly left the choice of recognising conscientious objectors to each Contracting Party, the fact that the majority of the Contracting Parties have recognised this right cannot be relied upon to hold a Contracting Party which has not done so to be in violation of its Convention obligations. Consequently, as far as this particular issue is concerned, this factor cannot serve a useful purpose for the evaluative interpretation of the Convention. In such circumstances, the Court concludes that Article 9, read in the light of Article 4(3)(b), does not guarantee a right to refuse military service on conscientious grounds.[78]

Judge Power, in a dissenting opinion, evaluated recent changes in attitudes to conscientious objection at both an international and regional level in the light of the 'living instrument' doctrine.[79] She emphasised that the majority finding was incompatible with current European standards and that it was also out of kilter with the Court's case-law.[80]

Recent judgments: a major breakthrough

After the Chamber judgment of 2009 the applicant, Bayatyan, joined by non-governmental organisations with an interest in the right to conscientious objection, appealed to the Grand Chamber.[81] For the Grand Chamber to deal with the right to conscientious objection for the first time, on 7 July 2011, solely in the light of Article 9, was a historic step as there had been no examination of this right since 1966.

The Grand Chamber commenced by looking at the Commission's viewpoint in past conscientious objection cases such as *Grandrath*, the first case examined by the Commission on this question. The Grand Chamber declared that in these cases judgments had been reached by the Commission arguing that the Convention did not safeguard conscientious objection. The Grand Chamber hence sought an answer to the

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question as to whether a change in the case-law in question was necessary, noting recent important developments both internationally and in the domestic law of Council of Europe member states.[82]

The Grand Chamber asserted that the Convention is 'a living instrument' that 'must be interpreted in the light of present day conditions'.[83] Thus, present norms adhered to by the Council of Europe member states had had a major influence on the Grand Chamber.[84] Moreover, the Grand Chamber noted the development of the right to conscientious objection in international human rights law.[85]

The Grand Chamber emphasised that henceforth Article 9 should not be used together with Article 4(3)(b), given the significant developments in international law in addition to those in Council of Europe member states and in accordance with the 'living instrument' approach. It consequently found that the case-law of the Commission should be changed, adding that, when addressing an applicant's complaint, Article 9 was to be examined in isolation.[86] The Grand Chamber, while drawing attention to the fact that Article 9 of the Convention does not clearly articulate the right to conscientious objection, stressed that:

> It considers that opposition to military service, where it is 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, constitutes a conviction or belief of sufficient cogency, seriousness, cohesion and importance to attract the guarantees of Article 9.[87] Whether and to what extent objection to military service falls within the ambit of that provision must be assessed in the light of the particular circumstances of the case.[88]

There was absolutely no reason to doubt that the applicant, Bayatyan, Jehovah's Witness, had genuinely held religious beliefs, and that these conflicted with his obligation to perform military service.[89] The Grand Chamber noted that although the applicant had wished to perform alternative civilian service, at the time when the case was lodged alternative civilian service did not exist in Armenia.[90] The Grand Chamber's emphasis of this aspect of the case points to the fact that there was no attempt by the applicant to avoid military service and that his genuinely held religious beliefs were being tested by risking prosecution.[91]

It will be useful at this stage to consider how the Court tests the sincerity of belief. In previous judgments, when testing genuinely held religious beliefs, the Court held that the belief in question must have

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sufficient cogency, seriousness, cohesion, and importance. Moreover, as the Court held in its Arrowsmith judgment, the belief cannot benefit from the protection of Article 9 if it is not expressed. In other words, there must be a real connection between an action and belief.[92] The Grand Chamber decided that Bayatyan had a sincerely held belief. Since one of the duties of the Court is to prevent abuse of the rights and freedoms enshrined in the Convention, it is wholly understandable that the Court put the sincerity of a belief to the test in order to prevent individuals justifying their actions by taking refuge in this article.

It is still not clear, however, whether the sincerity of the belief of a person who objects to alternative civilian service for personal or non-religious convictions could be tested in this way. Forging a connection between belief and actions could be problematic as every belief has its own characteristics manifested in different ways. Making this link was straightforward in the Bayatyan case as the applicant was a Jehovah's Witness. The Grand Chamber held in the Bayatyan judgment that the applicant's genuinely held religious belief was indisputable. The Grand Chamber, in order to ascertain whether there had been a violation of Article 9, emphasised that it was necessary to establish whether the state had interfered with the right guaranteed in the Article. It was then essential, if this was the case, to determine whether the interference had been 'necessary in a democratic society'. The Armenian government claimed it was protecting the rights of others and attempted to justify its actions as being necessary to maintain public order, adding that it did not discriminate against anyone in any way.[93]

The Grand Chamber, however, did not "find the Government's reference to these aims to be convincing in the circumstances of the case, especially taking into account that at the time of the applicant's conviction the Armenian authorities had already pledged to introduce alternative civilian service and, implicitly, to refrain from convicting new conscientious objectors".[94] The Grand Chamber added:

> It, nevertheless, considers it unnecessary to determine conclusively whether the aims referred to by the Government were legitimate within the meaning of Article 9(2), since, even assuming that they were, the interference was in any event incompatible with that provision for the reasons set out below.[95]

On subsequently considering how far such interference may extend in a democratic society, the Grand Chamber emphasised that freedom of

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thought, conscience, and religion was one of the foundations of such a society. Therefore, this freedom is absolutely essential for everyone, be they religious believers, atheists, agnostics, sceptics, or unconcerned and that their freedom is guaranteed by Article 9.[96]

As far as the necessity of state interference is concerned, the Grand Chamber declared that state parties to the Convention possessed a certain discretion when it came to deciding whether and to what degree any interference was necessary.[97] When determining the extent of the margin of appreciation it was important, it pointed out, to take into account the fact that genuine religious pluralism is an essential component of a democratic society and must be maintained.[98]

The Grand Chamber also pointed to the importance of considering any consensus or common values that had come into being as a result of the practice of member states.[99] It noted that nearly all the states of the Council of Europe had brought in alternatives to military service for the prevention of possible conflict between individual conscience and military obligations. It added that any state that did not offer such alternatives would have to show a 'pressing social need' in order to justify interference with the right, and would only be granted a limited margin of appreciation.[100]

The Grand Chamber emphasised that on account of alternative civilian service not existing at the time in Armenia, the applicant had no option but to refuse to perform military service and risk prosecution.[101] Moreover, the applicant had informed the authorities of his desire to perform alternative civilian service.[102] The Grand Chamber concluded that the Armenian system had failed to find a fair equilibrium between the interests of the applicant and those of society in general. It hence found that the punishment of the applicant could not be considered necessary in a democratic society as his conscience and beliefs had been taken into account.[103]

The Grand Chamber underlined the importance for a state to provide opportunities for minority groups, like the applicant's, to serve society in a way that accorded with their conscience, thereby ensuring a stable pluralism and religious harmony that would maintain tolerance in society.[104]

As a result, the Grand Chamber found, by 16 votes to 1, that the applicant's punishment for exercising his right to conscientious objection was, according to Article 9, unnecessary interference in a democratic society.[105] It consequently found that there had been a violation of the Convention.[106]

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The national Armenian judge, Judge Gyulumyan, opposed the majority view that Article 9 should no longer be examined together with Article 4(3)(b).[107] She emphasised that the Court should not create new rights, but instead safeguard existing ones.[108]

After this judgment, the Court examined the question again in *Erçep v. Turkey*,[109] reaching a judgment on 22 November 2011. Yunus Erçep was also a Jehovah's Witness. He did not report for duty when initially called up in March 1998, and was therefore considered a deserter. Each time he failed to report for duty at the beginning of a new call-up period, a prosecution was lodged by the Military Court. Over 25 cases have been lodged against the applicant and he has received several prison sentences.[110]

The applicant's case rested on his assertion that due to his being prosecuted for refusing to perform military service on each and every occasion he was called up, Article 9 of the Convention had been violated.[111] The government argued against the implementation of Article 9 in this case.[112]

In answer, the Court declared that as regards the right to conscientious objection there had been a recent review of its case law. Making reference to the Bayatyan judgment, the Court made clear that the applicant had the right to freedom of thought, conscience, and religion as enshrined in Article 9 when there was serious and insurmountable conflict between the obligation to perform military service and an individual's deeply held beliefs.[113]

The Court also took into consideration the situation in member states of the Council of Europe, something it had also done in the *Bayatyan* judgment.[114] It stressed there was no doubt that Erçep's refusal to perform military service was due to his genuinely held religious beliefs. It emphasised the fact that military service is compulsory in Turkey, and highlighted the fact there is no alternative for those who do not want to perform military service due to their religious beliefs, and emphasised the fact that objectors in Turkey faced a lifetime of criminal prosecutions, described in the *Ülke* judgment as a kind of 'civil death'.[115]

The Court stressed that with regard to Article 9, there is only a limited margin of appreciation for countries like Turkey that do not recognise the right to conscientious objection and do not provide alternative civilian service.[116] In this case it was expected that Turkey would justify its interference as being a response to a 'pressing social need'. It found that Turkey had made no such justification.[117]

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It was further declared by the Court that a system of compulsory military service constitutes a heavy onus for citizens.[118] The Court held, in conclusion, that it considered such a state of affairs to be incompatible with law enforcement in a democratic society.[119] It found a violation of Article 9 due to the repeated prosecution of Erçep for his beliefs when no alternative civilian service was available.[120]

The applicant also claimed that there had been a violation of Article 6 of the Convention, in addition to Article 9. He claimed that being put on trial as a civilian in a military court was a violation of Article 6(1) of the Convention. He also complained that in accordance with Article 6(1) of the Convention, the criminal proceedings against him were unfair.[121]

The Court emphasised the fact that, according to criminal law, the applicant was a civilian although he had been charged under the Military Criminal Code. It also noted that according to a Military Court judgment of 13 October 2008 a person is only deemed to be a soldier from the time he reports to his regiment. The Court concurred that the applicant had good reason to fear appearing in front of a Military Court, which might be unduly prejudiced. The Court concluded there had been a violation of Article 6(1) and accepted the doubts of the applicant concerning the independence and impartiality of these courts.[122]

As regards the second complaint under Article 6(1) the Court reached the conclusion that it was unnecessary to examine separately the complaint regarding the alleged unfairness of the criminal proceedings, as the facts pertaining to the applicant's arguments had already been examined under the first complaint.[123]

In the same judgment, the Court referred to the Committee of Ministers' Resolution of 19 March 2009 which stressed Turkey's obligation to make legal changes in order to recognise conclusively the right to conscientious objection in the light of Article 46 of the Convention, and to introduce provision for alternative civilian service for conscientious objectors. At the time of writing (March 2014), Turkey has yet to execute the judgment of ECtHR; the Committee of Ministers continues to monitor the situation.[124]

Following its conclusions in the *Bayatyan* and *Erçep* judgments, the Court found a violation of Article 9 in two more Armenian and three more Turkish cases. In the case of *Bukharatyan and Tsaturyan v. Armenia*[125] the claims of the applicants were almost identical to those in the Bayatyan case.

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The Court handed down yet another judgment on this question on 17 January 2012, in *Fethi Demirtaş v. Turkey*.[126] Just as in the case of *Erçep*, the applicant, Fethi Demirtaş, was a Jehovah's Witness, claiming he wished to perform his national service in alternative civilian service.[127] The Court found a violation of Article 6(1) and 9 on the same grounds as in the *Erçep* judgment.[128]

Referring to the *Ülke* judgment, the Court further emphasised that the intellectual personality of the individual was harmed by the fear of constant criminal convictions and found that this was grave enough to be considered inhuman and degrading treatment.[129] It added that while in prison the applicant had been forced to wear military uniform, had been tied to a bed or chair for long periods and suffered threats and beatings.[130] It held that in such circumstances it was understandable that the applicant should feel fear, anxiety, and humiliation, the purpose of this treatment being to break the individual physically and morally.[131] As a result, the Court found there had been a violation of Article 3 of the Convention on account of the pain and suffering that the applicant had been subjected to because of his refusal to perform military service.[132]

In its judgment in *Savda v. Turkey* the Court re-examined this subject.[133] This case was different to the previous cases (for example, Bayatyan, Erçep, Bukharatyan, Tsaturyan, Fethi Demirtaş) as regards the applicant's belief. The applicant, Halil Savda, was not a Jehovah's witnesses. He had refused to perform military service on account of being a pacifist and anti-militarist.[134] The Court reached the conclusion that the repeated criminal prosecutions and prison sentences constituted 'civil death'. It held that there had been a violation of Article 3 on account of the serious pain and suffering caused to him.[135] It also found there had been a violation of Article 6(1).[136]

The Court pursued the route it had taken in the *Erçep* and *Fethi Demirtaş* judgments as to whether there had been a violation of Article 9, also referring to the Bayatyan judgment.[137]

Moreover, the Court emphasised that in *Savda*'s case the applicant had made a declaration of conscientious objection based on pacifist grounds. On this question it was debatable as to how much protection would be provided by Article 9.[138] Unfortunately, we cannot say the Court answered this pertinent question satisfactorily. Instead, it pointed out that the authorities have a positive obligation to provide accessible and effective procedures that applicants may follow. It added that, as in Turkey neither

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this form of legal procedure nor alternative civilian service exists, there is no balance between the interests of society as a whole and that of conscientious objectors. Therefore, the Court concluded that there had been a violation of Article 9.[139]

The Court's latest judgment regarding conscientious objection is the *Tarhan v. Turkey* judgment of 17 July 2012.[140] The applicant, Mehmet Tarhan, declared that he did not want to perform military service due to his pacifist and anti-militarist convictions.[141] The Court again decided that on the same grounds as in the *Erçep*, *Demirtaş* and *Savda* judgments there had been a violation of Article 3 and Article 9.[142]

The above judgments are the first occasions on which the Court has clearly recognised the right to conscientious objection under Article 9 of the Convention. Therefore, it is clear from the case law that the Court's jurisprudence on the right to conscientious objection has undergone a change, starting with the Grand Chamber's *Bayatyan* judgment.

Moreover, it is evident that secular pacifist objectors can also benefit from the protection of Article 9 and that it is not only members of religious groups who are safeguarded by the right to conscientious objection.[143]

However, questions still remain as to whether these judgments are in compliance with the HRC ruling that freedom of conscience "is part of the right [to freedom of thought, conscience and religion] and not just a manifestation of religion or belief".[144] Since the ECtHR has only mentioned the *forum externum* of the right to conscientious objection in its more recent judgments, it is not clear whether the Court will deal with the *forum internum* of this right in future cases.[145] However, if the Court follows the lines of the HRC view, it would undoubtedly develop its attitude and consign to history the view that it is permissible to restrict the right to conscientious objection in accordance with the legitimate aims [public safety, for the protection of public order, health, or morals, or for the protection of the rights and freedoms of others] expressed in Article 9(2).[146]

In spite of these uncertainties, the new approach in ECtHR case-law is of particular importance for Council of Europe countries, such as Turkey, which do not recognise the right to conscientious objection and do not make provision for alternative civilian service. The Court has emphasised that in Europe there exists a consensus as regards the recognition of the right to conscientious objection and these judgments play a highly significant role in reinforcing this consensus.

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Thomas Hammarberg, the Council of Europe's Commissioner on Human Rights, has declared that there is an obligation on states to implement the Convention in the best possible way, underlining the fact that the mere payment of compensation is insufficient and that domestic legislation should be changed in accordance with the situation of applicants.[147]

Hammarberg's comments were based on Article 46(1) of the Convention. The crucial issue is that it is up to the state to take the necessary measures to ensure that the consequences of the violation are rectified and its repetition prevented.[148]

2.1.4 The European Committee of Social Rights: accusations of forced labour

The European Social Charter (hereafter 'the Charter')[149] safeguards social and economic human rights.[150] In accordance with Article 25 of the Charter the European Committee of Social Rights (hereafter 'the European Committee') was brought into being as its monitoring body.[151]

In the year 2000, conscientious objectors took a claim to the European Committee in the form of a collective complaint, despite the fact there is no mention in the Charter of the right to conscientious objection or to alternative civilian service. In the case of *Quaker Council for European Affairs v. Greece*,[152] the complaint pertained to Article 1(2) of the Charter (Prohibition of forced labour). According to this paragraph, Contracting Parties undertake " ... to protect effectively the right of the worker to earn his living in an occupation freely entered upon".[153]

In this case, the conditions under which alternative civil service take place in Greece was explained by the applicant: the alternative civilian service was 18 months longer than normal military service or reduced military service, and those performing this service had to work long hours without weekly rest periods or holidays.[154] The applicant claimed that, under these conditions, alternative civil service was equivalent to forced labour and was, consequently, in violation of Article 1(2) of the Charter.[155]

The European Committee concluded on 25 April 2001 that there had been a violation of Article 1(2) on account of the enforcement of a long period of alternative civilian service which it considered to be incompatible with the prohibition on forced labour.[156]

The European Committee, on 27 April 2001, transmitted its decision on the merits of the complaint to the Committee of Ministers which

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adopted Resolution ResChS(2002)3 on 6 March 2002. The Committee of Ministers urged the Greek authorities to take all necessary measures including a revision of the Greek Constitution and the shortening of the length of military service.[157] Due to international pressure, the duration of alternative civilian service is 15 months in Greece at the time of writing (March 2014).[158]

To sum up, the subject of conscientious objection was examined by the European Committee by making comparisons with the length and conditions of work of alternative civilian service in other member countries.[159]

2.2 The European Union

2.2.1 The Charter of Fundamental Rights of the European Union: the right to conscientious objection recognised

On 7 December 2000 the Charter of Fundamental Rights of the European Union (hereafter 'the Charter' or CFREU) came into effect.[160] The chapter headed 'Freedoms' includes freedom of thought, conscience, and religion, mentioned in Article 10.[161] What is new is Article 10(2) concerning the right to conscientious objection: "The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right."

The Charter is thereby the first human rights treaty that explicitly recognises the right to conscientious objection, thus providing evidence of the development of this right in international law. According to the EU Network of Independent Experts on Fundamental Rights, established by the European Commission:

> The right to conscientious objection to military service, which is recognised in Article 10(2) of the EU Charter, has no equivalent in the European Convention for the Protection of Human Rights and Fundamental Freedoms (the ECHR) but it is increasingly accepted in international human rights law. According to the official explanations of the Charter, Article 10(2) reflects national constitutional traditions and developments in domestic law.[162]

Furthermore, it should be noted that the recognition of the right to conscientious objection is a condition of EU membership which means

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that there is no longer any flexibility for candidate countries if they fail to recognise the right.[163]

Moreover, after coming into force on 1 December 2009,[164] the CFREU was introduced into European primary law[165] by the Treaty of Lisbon, thus becoming legally binding for the institutions and bodies of the EU.[166]

2.2.2 European Parliament Resolutions: extending the right to conscientious objection

Several resolutions regarding conscientious objection have been adopted by the European Parliament. The first (the Macciocchi Resolution) was adopted on 7 February 1983.[167] It declared that "protection of freedom of conscience implies the right to refuse to carry out armed military service and to withdraw from such service on grounds of conscience".[168]

On 13 October 1989 the European Parliament also adopted the Schmidbauer Resolution. Since this resolution protects conscientious objectors to a greater degree than previous documents it deserves closer examination.[169] Paragraph A of the resolution states that "no court and no committee can examine a person's conscience". Paragraph G/4 states that for a person to be able to make a claim for conscientious objection a mere declaration of motives should be sufficient.[170] Moreover, it is here laid down that conscripts should have the right to make an application for conscientious objection at any time during their military career, and calls for an end to discrimination against such individuals in armed or in unarmed services.[171]

The Resolution also calls for provision to be made for conscientious objectors to be able to perform alternative service (including unarmed military service and alternative civilian service) in another EU member state, and for these services to be made available in non-member, developing countries.[172] It also calls on the European Commission and member states to guarantee the right to alternative civilian service as enshrined in the ECHR and to prohibit discrimination.[173]

The European Parliament, in its Bandrés Molet and Bindi Resolution in 1994,[174] concerning alternative civilian service, "calls on the Member States to ensure that compulsory military service and civilian service performed at institutions which do not come under the supervision of the Defence Ministry are of the same length".[175] This resolution emphasises the civil and non-punitive nature of alternative service.[176] If military

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and alternative civilian services are of the same duration, then compliance with the principle of non-discrimination is safeguarded.[177]

The European Parliament publishes its resolution reports not only for member states but also for candidate countries as part of the EU membership accession process, hence extending the right to conscientious objection to a wider spectrum. As a candidate member of the EU, Turkey is worthy of particular attention here. In its resolution report of September 2006, the European Parliament:

> reminds Turkey that the right to conscientious objection is recognised in the European Charter of Fundamental Rights; therefore welcomes the initiative by the Ministry of Justice to legalise the right to conscientious objection and to propose the introduction of an alternative [civilian] service in Turkey; is concerned that in a recent judgment of the Turkish military court a conscientious objector to military service was sentenced to imprisonment and that the military court openly declined to follow a relevant ruling of the European Court of Human Rights; condemns the on-going persecutions of journalists and writers who have expressed their support for the right of conscientious objection to military service.[178]

From the above, as regards recognition of the right to conscientious objection, it is obvious that the EU has adopted a clear and positive stance. The Macciocchi, Schmidbauer, and Bandrés Molet/Bindi resolutions demonstrate the scope of this right. It is apparent that EU members must comply with resolutions as well as with the binding texts of the EU such as the Charter of Fundamental Rights of the EU. This also applies to candidate members. It is a condition for countries such as Turkey that wish to join the EU that they comply with the above EU resolutions and with the Charter by recognising the right to conscientious objection.

2.3 The Organization for Security and Co-operation in Europe and the Copenhagen Meeting on the Human Dimension: a political obligation to recognise the right to conscientious objection

In addition to the Council of Europe and the European Union, the Organization for Security and Co-operation in Europe (OSCE) also

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deserves attention. The OSCE has played a crucial role in the progress of human rights in greater Europe.[179]

Between 5 and 29 June 1990 the OSCE members met in Copenhagen and signed the Document of the Copenhagen Meeting. According to this Document, participating states acknowledged that the UN Commission on Human Rights recognised the right of any individual to exercise conscientious objection.[180]

Moreover, as regards alternative service, it was also agreed by participating states to give consideration, if not having done so already, to introducing forms of alternative civilian or non-combatant service that would accord with the motivations of conscientious objectors, as well as being non-punitive in nature and in the public interest.[181] What is significant here is the distinction made between alternative civilian service and unarmed military service. From the wording, it might seem that a state may satisfy the demands of the Documents of Copenhagen by establishing only unarmed military service as an alternative service. Under the Document, participating states pledged to provide information to the public on the various forms of alternative service available.[182]

It is necessary to understand that the documents of the OSCE, unlike many other human rights documents, are politically binding rather than legally binding. The difference lies between these commitments being legal or political rather than between binding or non-binding. Consequently, the commitments of the OSCE should be observed as a political pledge to comply with set standards.[183]

The significance of this political pledge is that countries such as Turkey that do not recognise the right to conscientious objection, have, by signing the Document, a political obligation to recognise this right and to introduce alternative service (unarmed military service and alternative civilian service).[184]

2.4 Concluding remarks

Although at the outset the ECtHR adopted a negative stance, lasting from 1966 to 2011, the European mechanisms have played a role in the construction of a firm basis for the right to conscientious objection as a legitimate exercise of freedom of thought, conscience, and religion. Moreover, the ECtHR has broadened the scope of this right in the light of present day conditions culminating in the *Bayatyan* judgment. This

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judgment demonstrates the importance of the Court's newly adopted stance of harmonising with the other significant institutions in Europe, including the EU and the OSCE. Therefore, the right to conscientious objection is now recognised throughout the whole European region, ensuring more uniformity as regards opinions concerning the right to conscientious objection within the UN and European mechanisms.

Notes

1 For further information on the *travaux préparatoires* of Article 9 of the European Convention on Human Rights, see Robertson, A. H. (1975), *Collected Edition of the 'Travaux Préparatoires' of the European Convention on Human Rights (CETP),* vol. I–VIII, Preparatory Commission of the Council of Europe, Committee of Ministers, Consultative Assembly, 11 May–8 September 1949, Martinus Nijhoff Publishers: The Hague.
2 PACE, Resolution no. 337 (1967).
3 PACE, Recommendation no. 478 (1967), 26 January 1967.
4 Lippman, p. 46. The Parliamentary Assembly of the Council of Europe was called the Consultative Assembly at the time.
5 PACE, Resolution no. 337 (1967), para. (A) Basic Principle.
6 The report of Asbjorn Eide and Mubango-Chpoya (1983), 'Conscientious Objection to Military Service', UN Doc. E/CN.4/Sub.2/1983/30, UN Publication: New York and Geneva, para. 153/1-a; see also the PACE, Resolution no. 337 (1967) and CHR, Resolutions of 1989/59 and 1993/84. In these documents only 'religious, ethical, moral, humanitarian or similar motives' are given as grounds for conscientious objection.
7 PACE, Recommendation no. 478 (1967), para. 2(a).
8 Nineteenth Report of the Committee of Ministers to the Consult. Ass., Eur. Consult. Ass., Doc 2359 (1967) 159–160. For further information see also Lippman, p. 47.
9 PACE, Recommendation no. 816 (1977), para. 4.
10 Communication on the Activities of the Committee of Ministers, Eur. 4197, Parl. Ass., 30th Session, Doc. 4197 (1978) 2.
11 Council of Europe, Committee of Ministers, Recommendation no. 87(8).
12 PACE, Recommendation no. 1518 (2001), 23 May 2001.
13 Ibid., para. 5(i). Notably, 'after conscription' means that "conscripts may be called up for military service if this is considered to be necessary by the government. In most of these countries, legislation provides for the re-introduction of conscription during time of war or during time of emergency". In the case of the re-introduction of conscription, this right

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should be granted to all individuals. (For further information see Stolwijk (2005, updated in 2008), p. x.)

14 PACE, Recommendation no. 1518 (2001), 23 May 2001, para. 5(ii).

15 Ibid., para. 5(iii).

16 Ibid., para. 5(iv).

17 PACE, Recommendation no. 1742 (2006), 10–13 April 2006.

18 For further information on these resolutions see Takemura, pp. 91–92.

19 PACE, Resolution no. 1380 (2004), 22 June 2004, para. 7; see also para. 23 (iii).

20 Council of Europe, Committee of Ministers, Recommendation no. R (87).

21 Ibid., (A) Basic Principle; emphasis added.

22 Major, p. 359.

23 Decker, D. C. and Fresa, L., 'The Status of Conscientious Objection under Article 4 of the European Convention on Human Rights', *New York University Journal of International Law and Politics*, 33 (2001), p. 415.

24 Council of Europe, Committee of Ministers, Recommendation no. R (87)8, paras 2–11.

25 Ibid., para. 9.

26 Resolution no. 337 (1967) and Recommendation no. 816 (1977) by the PACE refer to specific grounds for conscientious objection (religious, ethical, moral, humanitarian, philosophical or similar motives).

27 Explanatory Report to Recommendation no. R(87)8, para. 16.

28 Ibid.

29 For further discussion on this issue see Hammer, p. 203; see also Major, pp. 375–376.

30 Hammer, p. 203.

31 Council of Europe, Committee of Ministers, Recommendation no. R (87)8, para. 15.

32 Ibid., para. 16.

33 Ibid., para. 11. For further discussion on this issue see also Hammer, p. 203.

34 Council of Europe, Committee of Ministers, Recommendation no. (2010)4, 24 February 2010.

35 Ibid, para. 1.

36 Ibid., para. 40.

37 Ibid., para. 42.

38 Article 46: "(1) Any of the High Contracting Parties may at any time declare that it recognizes as compulsory 'ipso facto' and without special agreement the jurisdiction of the Court in all matters concerning the interpretation and application of the present Convention; (2) The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain other High Contracting Parties or for a specified period; (3) These declarations shall be deposited with the Secretary-General of the

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Council of Europe who shall transmit copies thereof to the High Contracting Parties."

39 Article 19 of the ECHR: "To ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto, there shall be set up a European Court of Human Rights, hereinafter referred to as 'the Court'. It shall function on a permanent basis."

40 For further information, see Erdal, U. and Bakırcı, H. (2006), *Article 3 of the European Convention on Human Rights*, The World Organization Against Torture: Geneva, pp. 36–38.

41 *Grandrath v. the Federal Republic of Germany*, Application no. 2299/64, 10 Y.B. Eur. Conv. on H.R. 626 (1966).

42 Ibid., para. 1.

43 Ibid., para. 9.

44 Ibid., para. 10.

45 Ibid., para. 29.

46 Ibid., paras 30 and 31.

47 Ibid., para. 31.

48 Article 4 (3)(b): "(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; ... "

49 *Grandrath v. the Federal Republic of Germany*, para. 32.

50 Ibid., paras 32 and 33.

51 *X. v. Austria*, Application no. 5591/72; *X. v. the Federal Republic of Germany*, Application no. 7705/76; *Johansen v. Norway*; *A. v. Switzerland*, Application no. 10640/83, 38 Eur. Comm'n H.R. Dec. and Rep. 219 (1984); *Autio v. Finland*, Application no. 17086/90, 72 Eur. Comm'n H.R. Dec. and Rep. 245 (1990).

52 See, for example, *Conscientious Objectors v. Denmark*, Application no. 7565/76, 9 Eur. Comm'n H.R. Dec. & Rep. 117 (1977).

53 See, for example, *Autio v. Finland*; *Julin v. Finland*.

54 *Raninen v. Finland*, Application no. 20972/92, 84-A Eur. Comm'n H.R. Dec. and Rep. 17 (1996); *N v. Sweden.*

55 *Tsirlis and Koulompas v. Greece,* Application nos. 19233/91 and 19234/91, 29 May 1997; *Thlimmenos v. Greece*, Application no. 34369/97, 6 April 2000 (GC).

56 *Tsirlis and Koulompas v. Greece*, para. 52.

57 *Tsirlis and Koulompas v. Greece,* Eur. Comm'n H.R.'s Report, para. 120.

58 Ibid., para. 124.

59 Ibid., p. 25.

60 Ibid.

61 Vienna Convention on the Law of Treaties, 1155 UNTS 331, adopted on 23 May 1969, entered into force on 27 January 1980, Article 31(1).

62 *Tsirlis and Koulompas v. Greece*, Eur. Comm'n H.R.'s Report, p. 25.

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63 *Ülke v. Turkey*, Application no. 39437/98, 24 January 2006.
64 Prof. Kevin Boyle was a lawyer for Osman Murat Ülke at the ECtHR.
65 Boyle, K., 'Conscientious Objection in International Law and the Osman Murat Ülke Case' in Çınar and Üsterci (2009), p. 217 (footnote omitted).
66 *Ülke v. Turkey*, para. 61.
67 Ibid., paras 13–41.
68 Ibid., para. 48.
69 Ibid., para. 62.
70 Ibid., para. 64.
71 *Bayatyan v. Armenia*, Application no. 23459/03, 7 July 2011 (GC).
72 *Bayatyan v. Armenia*, 27 October 2009 (C).
73 Ibid., paras 8–40; Notably, the Alternative Service Act in Armenia was passed on 17 December 2003 and came into force on 1 July 2004.
74 Ibid., para. 37.
75 Ibid., para. 46.
76 Ibid., para. 56.
77 Ibid., para. 63.
78 Ibid.
79 Ibid, pp. 21–24.
80 Ibid, p. 23, para. 5.
81 *Bayatyan v. Armenia*, 7 July 2011 (GC), paras 85-91.
82 Ibid., para. 101.
83 Ibid., para. 102.
84 Ibid., para. 103.
85 Ibid., paras 105–107.
86 Ibid., para. 109.
87 See, *mutatis mutandis*, *Campbell and Cosans v. the United Kingdom*, 25 February 1982, § 36, Series A no. 48, and, by contrast, *Pretty v. the United Kingdom*, no. 2346/02, § 82, ECHR 2002-III.
88 *Bayatyan v. Armenia*, 7 July 2011 (GC), para. 110. The above footnote no. 87 as cited in original.
89 Ibid., para. 111.
90 Ibid., paras 124–125.
91 Ibid., para. 125.
92 *Arrowsmith v. the United Kingdom*, Application no. 7050/75, 19 Eur. Comm'n H.R. Dec. & Rep. 5 (1978), para. 3.
93 *Bayatyan v. Armenia*, 7 July 2011 (GC), para. 117.
94 Ibid.
95 Ibid.
96 Ibid., para. 118.
97 Ibid., para. 121.
98 Ibid., para. 122.

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99 Ibid.
100 Ibid., para. 123.
101 Ibid., para. 124.
102 Ibid., para. 125.
103 Ibid., para. 124.
104 Ibid., para. 126.
105 Ibid., para. 112.
106 Ibid., para. 128.
107 Ibid., p. 39, para. 3.
108 Ibid., p. 38, para. 2.
109 *Erçep v. Turkey*, Application no. 43965/04, 22 November 2011.
110 Ibid., para. 29.
111 Ibid., para. 44.
112 Ibid., para. 46.
113 Ibid.
114 Ibid., para. 59.
115 Ibid., para. 58.
116 Ibid., para. 59.
117 Ibid., paras 59, 63, 64, and 65.
118 Ibid., para. 60.
119 Ibid., paras 58–64.
120 Ibid., para. 65.
121 Ibid., para. 66.
122 Ibid., paras 68–69.
123 Ibid., para. 71.
124 Ibid., para. 43.
125 *Bukharatyan v. Armenia*, Application no. 37819/03, 10 January 2012; *Tsaturyan v. Armenia*, Application no. 37821/03, 10 January 2012.
126 *Fethi Demirtaş v. Turkey*, Application no. 5260/07, 17 January 2012.
127 Ibid., paras 6–67.
128 Ibid., paras 94–125.
129 Ibid., para. 91.
130 Ibid., para. 89.
131 Ibid., para. 91.
132 Ibid., paras 92 and 93.
133 *Savda v. Turkey*, Application no. 42730/05, 12 June 2012.
134 Ibid., para. 5.
135 Ibid., para. 80–85.
136 Ibid., para. 107–111.
137 Ibid., paras 90–94.
138 Ibid., para. 96.
139 Ibid., para. 100.

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140 *Tarhan v. Turkey*, Application no. 9078/06, 17 July 2012.
141 Ibid., para. 5.
142 Ibid., paras 85 and 101.
143 See, for example, *Bayatyan v. Armenia*, 7 July 2011 (GC), para. 110; *Erçep v. Turkey*, para. 54.
144 Brett, D., 'COMMENTARY: Bayatyan – a European Court Judgment with an Impact Far Beyond Armenia', *Forum 18*, 26 July 2011, available at http://www.forum18.org/Archive.php?article_id=1597 (accessed 10 January 2012).
145 See, for example, *Çağlar Buldu and others v. Turkey*, Application no. 14017/08 (At the time of writing (March 2014) a final judgment had not been handed down by the ECtHR).
146 Brett, D., available at http://www.forum18.org/Archive.php?article_id=1597 (accessed 10 January 2012).
147 Hammarberg, T., 'Judgments Issued by the European Court Cannot be Ignored', 19 July 2011, available at http://commissioner.cws.coe.int/tiki-view_blog_post.php?postId=154 (accessed 8 January 2012).
148 Çınar, Ö. H. (2005), *Avrupa İnsan Hakları Mahkemesi Kararlarının Türk Hukukuna Etkisi*, İnsan Hakları Derneği İstanbul Şubesi Yayınları: İstanbul, pp. 113–128.
149 European Social Charter, ETS 35, adopted on 18 October 1961.
150 For further information see Brillant, R., 'The Supervisory Machinery of the European Social Charter: Recent Development and their Impact' in de Búrca G, de Witte B. (eds) (2005), *Social Rights in Europe*, Oxford University Press: New York, pp. 31–44.
151 See Rule 2(1) and 2(2) of the Rules of the European Committee of Social Rights.
152 *Quaker Council for European Affairs v. Greece*, Complaint no. 8/2000, 25 April 2001 (Decision on the merits).
153 Article 1(2) states: "With a view to ensuring the effective exercise of the right to work, the Contracting Parties undertake: ... 2. to protect effectively the right of the worker to earn his living in an occupation freely entered upon ..."
154 *Quaker Council for European Affairs v. Greece*, 25 April 2001, paras 8 and 25. At the time the applicant applied to the European Committee, normal military service in the army lasted 18 months, 19 months in the air force and 21 months in the navy. Reduced military service lasted for 12, 6 or 3 months.
155 *Quaker Council for European Affairs v. Greece*, 28 June 2000, para. 2 (Decision on the admissibility).
156 *Quaker Council for European Affairs v. Greece*, 25 April 2001, para. 25.
157 Council of Europe, Committee of Ministers, Resolution no. ResChs(2002)3, 6 March 2002.

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158 Normal military service is nine months. See Brett, D. (2013), 'Annual Report: Conscientious Objection to Military Service in Europe 2013', European Bureau for Conscientious Objection: Brussels, p. 47.

159 European Committee of Social Rights: Conclusions 2008 (Revised)—vol. 1 (Albania, Andorra, Armenia, Azerbaijan, Belgium, Bulgaria, Cyprus, Estonia, Finland, France, Georgia, Ireland, Italy), pp. 187, 230–231, 268, 365–366.

160 Charter of Fundamental Rights of European Union is available at http://www.europarl.europa.eu/charter/default_en.htm (accessed 15 January 2012); see also Steiner, J. and Woods, L. (2003), *Textbook on EC Law*, 8th edn, Oxford University Press: Oxford, pp. 162–163.

161 Article 10 (Freedom of thought, conscience and religion) states: "1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance; 2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right."

162 European Union Network of Independent Experts on Fundamental Rights (June 2006), 'Commentary of the Charter of Fundamental Rights of the European Union', CFR-CDF, p. 106.

163 At the time of writing (March 2014) the EU has five candidate members (Iceland, Montenegro, Serbia, the Former Yugoslav Republic of Macedonia, and Turkey). Iceland does not possess an army. Montenegro, the Former Yugoslav Republic of Macedonia, and Serbia do not have compulsory military service, while Turkey has compulsory military service. In addition, Turkey does not recognise conscientious objection. For further information see Çınar, Ö. H., 'A View on International Implementation of the Right to Conscientious Objection' in Çınar and Üsterci (2009), p. 184; Brett (2013), p. 44.

164 The Treaty of Lisbon was signed on 13 December 2007, by the heads of state and governments of the 27 member states, OJ C 306 of 17 December 2007.

165 European Union, (1 December 2009), 'Explaining the Treaty of Lisbon', MEMO/09/531.

166 Article 6(1) states that "the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adopted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties". See also Article 51(1) stating that "The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiary and to the member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles

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and promote the application thereof in accordance with their respective powers." However, since three member states (t United Kingdom, Poland, and Czech Republic) utilised the Protocol in order to opt out of the Charter, it will not apply fully to those member countries as interpreted by the European Court of Justice.

167 European Parliament, Resolution on Conscientious Objection, 7 February 1983, Doc.1-546/82.

168 Ibid., para. 2.

169 Decker and Fresa, p. 416.

170 European Parliament, Resolution doc. A3-15/89, 1989 O. J. (C 291) 122, 11 (1989), para. G/4.

171 Ibid., para. B and G/1.

172 Ibid., paras G/9 and G/11.

173 Ibid., paras G/3, G/5, G/6, G/7, G/10 and G/11.

174 European Parliament, Resolution on Conscientious Objection in the Member States of the Community, 19 January 1994, Doc. O. J. (C 44) 103.

175 Ibid., para. F/9.

176 Ibid., para. F/4.

177 Ibid., para. F/14.

178 European Parliament Resolution Report, (13 September 2006), 2006/2118(INI), para. 37.

179 Organization for Security and Co-operation in Europe and Office for the Democratic Institutions and Human Rights (2005), 'OSCE Human Dimension Commitments: Thematic Compilation', 2nd edn, vol. II, OSCE Office for Democratic Institutions and Human Rights: Warsaw, p. xv; Organization for Security and Co-operation in Europe and Office for the Democratic Institutions and Human Rights (2008), 'Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel', OSCE Office for Democratic Institutions and Human Rights: Warsaw, p. 11.

180 CSCE, Document of the Copenhagen Meeting on the Human Dimension of the CSCE, 29 June 1990, para. 18.1.

181 Ibid., para. 18.4.

182 Ibid., para. 18.5.

183 OSCE, (2005), p. xviii.

184 Although Turkey signed the Document of the Copenhagen Meeting on the Human Dimension of the CSCE on 29 June 1990, thereby making a political promise to recognise the right to conscientious objection to military service, Turkey has not recognised this right so far (March 2014).

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