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Greek conscientious objector did not enjoy the necessary procedural safeguards in having his request for alternative civilian service examined

Registry of the European Court (15.09.2016) - In today's **Chamber** judgment¹ in the case of [Papavasilakis v. Greece](#) (application no. 66899/14) 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 the authorities' refusal to grant Mr Papavasilakis the status of conscientious objector and to allow him to do alternative civilian work instead of military service.

The Court found in particular that the Greek authorities had failed in their duty to ensure that the interviewing of conscientious objectors by the Special Board took place in conditions that guaranteed procedural efficiency and the equal representation required by domestic law.

Mr Papavasilakis had been interviewed by a Board made up primarily of servicemen, two of the civilian members of the Board being absent but not replaced; that the Minister of Defence's final decision, on the basis of a draft ministerial decision following the Board's proposal, did not afford the requisite safeguards of impartiality and independence; that the scrutiny of the Supreme Administrative Court concerned only the lawfulness of the decision, not the merits, and was based on the assessments of the Special Board.

Principal facts

The applicant, Leonidas Papavasilakis, is a Greek national who was born in 1988 and lives in Ikaria (Greece).

In January 2013 Mr Papavasilakis requested authorisation to carry out alternative civilian work because he was a conscientious objector. He appeared before the army's Special Board to explain the reasons for his request, referring in particular to the religious education he had received from his mother, a Jehovah's Witness, and the position he had adopted in life, rejecting any connection with war, violence or destruction in all its forms. The Special Board, with only three of its members sitting, unanimously rejected the request. On the same grounds as those given by the Special Board, the Minister of Defence rejected Mr Papavasilakis' request in July 2013. He appealed against that decision to the Supreme Administrative Court, challenging in particular the composition of the Special Board on the day it took its decision, on account of the absence of two of its members, university professors who had not been replaced. The Supreme Administrative Court dismissed his case in 2014 and he was ordered to pay a fine, with default interest, for insubordination. He appealed against the fine and that matter is still pending before the Mytilene Administrative Court;

though the authorities have already seized a sum from his bank account.

Complaints, procedure and composition of the Court

Relying on Article 6 (right to a fair hearing), Mr Papavasiliakis complained that the Supreme Administrative Court had not fairly examined his complaint about a violation of Article 9 of the Convention based on the fact that the Special Board hearing his case had been composed of a majority of servicemen. Relying on Article 9 (freedom of thought, conscience and religion), he complained that his request had not been examined in proper or impartial conditions, as the absence of two board members had resulted, in his view, in an erroneous interpretation of his beliefs and the denial of the requested status. Under Article 9 taken together with Article 11 (freedom of assembly and association), he alleged that the rejection of his request for conscientious objector status constituted a breach of his negative freedom not to become a follower of a particular religion or a member of an anti-militarist organisation. The Court decided to examine his complaints under Article 9 of the Convention.

The application was lodged with the European Court of Human Rights on 4 October 2014. Judgment was given by a Chamber of seven judges, composed as follows:

Mirjana **Lazarova Trajkovska** (the former Yugoslav Republic of Macedonia), *President*,
Ledi **Bianku** (Albania),
Kristina **Pardalos** (San Marino),
Linos-Alexandre **Sicilianos** (Greece),
Robert **Spano** (Iceland),
Armen **Harutyunyan** (Armenia),
Pauliine **Koskelo** (Finland),
and also Abel **Campos**, *Section Registrar*.

Decision of the Court

Article 9 (freedom of thought, conscience and religion)

Domestic law provided that the Special Board, when it examined applications for exemption from military service for conscientious objectors, had to be composed of two university professors, one senior or other advisor at the State Legal Council and two high-ranking army officers. Accordingly, if at the time it interviewed Mr Papavasiliakis the Special Board had sat with all of its members present, the majority would have been civilians. However, only the two officers and the chairman were present on that day. In the Court's view Mr Papavasiliakis could thus have legitimately feared that, not being a member of a religious community, he would not succeed in conveying his ideological beliefs to career officers with senior positions in the military hierarchy.

The Court also took the view that if members of the Board were unable to sit on the day when a conscientious objector was to be interviewed, arrangements had to be made so that it would meet in the conditions of equal representation laid down by domestic law², even though its decision was only advisory and the Minister of Defence would take the final decision about alternative civilian service after receiving the Board's opinion.

The Court observed that Article 3 of the Minister of Defence's decision, entitled "Alternative service of conscientious objectors", provided that, following the deliberation and drafting of the report, the Board's rapporteur sent the file to the civilian recruitment service at the army headquarters, for transmission to the Minister of Defence, appending thereto a draft ministerial decision in accordance with the Board's proposal. In those conditions, the Minister of Defence's final decision did not afford the requisite safeguards of impartiality and independence either, especially where, as in the present case, the person concerned was interviewed by a board composed of a majority of senior army officers.

As to the scrutiny of the Supreme Administrative Court in respect of the Defence Minister's decision, it concerned only the lawfulness of the decision and did not extend to

the merits. That scrutiny was based on the assessments of the members of the Special Board.

Consequently, the Court took the view that the competent authorities had failed in their duty under Article 9 of the Convention to ensure that the interviewing of conscientious objectors by the Special Board took place in conditions that guaranteed procedural efficiency and the equal representation required by domestic law. There had thus been a violation of Article 9 of the Convention.

Article 41 (just satisfaction)

The Court held that Greece was to pay Mr Papavasilakis 2,000 euros (EUR) in respect of nonpecuniary damage and EUR 3,000 in respect of costs and expenses.

The judgment is available only in French.
