



## The absence of an alternative to military service in Turkey is in breach of the right to conscientious objection

In today's Chamber judgment in the case **Erçep v. Turkey** (application no. 43965/04), which is not final<sup>1</sup>, the European Court of Human Rights held, unanimously, that there had been:

**A violation of Article 9 (right to freedom of thought, conscience and religion)** of the European Convention on Human Rights and,

**A violation of Article 6 (right to a fair trial)** of the Convention.

The case concerned the refusal by the applicant, a Jehovah's Witness and conscientious objector, to perform military service for reasons of conscience.

### Principal facts

The applicant, Yunus Erçep, is a Turkish national who was born in 1969 and lives in Istanbul (Turkey). He is a Jehovah's Witness who was baptised at the age of 13, and refuses to perform his military service as required by section 1 of the 1927 Act, according to which "all adult males of Turkish nationality shall be liable to conscription for military service".

The applicant was declared fit to perform military service on 6 January 1997 and was called up for the first time in March 1998. Under the relevant legislation people who failed to report for duty when called for military service were regarded as deserters.

Each time a new call-up period began, criminal proceedings for failure to report for duty were brought against the applicant in the Trabzon Military Criminal Court. He was sentenced to several terms of imprisonment for failing to report for duty following approximately 15 call-ups.

In a judgment of 7 May 2004 the military court decided to impose an aggregate sentence totalling seven months and 15 days' imprisonment. On 3 October 2005 Mr Erçep began serving his sentence. Five months later he was released on licence.

On 6 October 2006 Parliament passed a new law under which military courts no longer had jurisdiction to try civilians. The criminal proceedings still pending were transferred to the ordinary courts. Since then Mr Erçep has been tried before the criminal courts on the same charge. Since March 1998, more than 25 sets of proceedings have been brought against him. As a result of his persistent refusal to perform military service he faces further criminal proceedings with each new call-up.

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<sup>1</sup> 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](http://www.coe.int/t/dghl/monitoring/execution)

## Complaints, procedure and composition of the Court

The applicant complained that his successive convictions for refusing to serve in the armed forces amounted to a violation of Article 9 (right to freedom of thought, conscience and religion).

Relying on Article 6 (right to a fair trial), he complained of having been obliged, as a civilian, to appear before a court made up exclusively of military officers.

The application was lodged with the European Court of Human Rights on 6 October 2004.

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 9 (right to freedom of thought, conscience and religion)

The Court had recently reviewed its case-law concerning conscientious objectors, in its Grand Chamber judgment in [Bayatyan v. Armenia](#). In that judgment it had noted that Article 9 did not explicitly refer to a right to conscientious objection. However, it considered 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, constituted a conviction or belief of sufficient importance to attract the guarantees of Article 9. In the today's case the Court observed that Mr Erçep was a member of the Jehovah's Witnesses, a religious group that had consistently opposed military service. There was no reason to doubt that his objection was motivated by anything other than genuinely-held religious beliefs.

In Turkey, all citizens declared fit for national service were required to report for duty when called up and to perform military service. No alternative civilian service existed. Conscientious objectors had no option but to refuse to enrol in the army if they wished to remain true to their convictions. In so doing, they laid themselves open to a sort of "civil death" because of the numerous sets of criminal proceedings which the authorities invariably brought against them; they could face prosecution for the rest of their lives. The Court considered that that situation was not compatible with law enforcement in a democratic society.

In virtually all the member States of the Council of Europe (47 European countries) which still had military service, some form of civilian service had been introduced in order to provide alternatives for people opposed to military service for reasons of conscience.

The Court took the view that the numerous convictions imposed on Mr Erçep because of his beliefs, in a situation where no form of civilian service offering a fair alternative existed in Turkey, amounted to a violation of Article 9.

## Article 6 (right to a fair trial)

Mr Erçep complained of the fact that, as a civilian, he had had to appear before a court made up exclusively of military officers. The Court observed that, despite being accused of an offence under the Military Criminal Code, the applicant was, for criminal-law purposes, not a member of the armed forces but a civilian. Furthermore, it was clear from a judgment of the Jurisdiction Disputes Court dated 13 October 2008 that, in Turkish criminal law, a person was considered to be a member of the armed forces only from the time he or she reported for duty with a regiment.

The Court considered it understandable that the applicant, a civilian standing trial before a court composed exclusively of military officers, charged with offences relating to military service, should have been apprehensive about appearing before judges belonging to the army, which could be identified with a party to the proceedings. In such circumstances, a civilian could legitimately fear that the military court might allow itself to be unduly influenced by partial considerations.

Acknowledging that the applicant's doubts about the independence and impartiality of that court could be regarded as objectively justified, the Court held that there had been a violation of Article 6 § 1 in that regard.

## Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Turkey was to pay the applicant 10,000 euros (EUR) in respect of non-pecuniary damage and EUR 5,000 in respect of costs and expenses.

*The judgment is available only in French.*

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**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.