

# European Court of Human Rights affirms the right to conscientious objection to military service

**Joint statement of Amnesty International, Conscience & Peace Tax International, International Commission of Jurists, Quaker United Nations Office, Geneva, and War Resisters' International**

The Grand Chamber of the European Court of Human Rights, in a ground-breaking judgment issued today in the case of *Bayatyan v. Armenia* (Application no. 23459/03, 1/6/2011), has ruled that states have a duty to respect individuals' right to conscientious objection to military service as part of their obligation to respect the right to freedom of thought, conscience and religion set out in Article 9 of the European Convention on Human Rights. In the light of this judgment, the above-named organizations call on Turkey and Azerbaijan, the only two parties to the Convention who do not yet provide for conscientious objection to military service, to take immediate steps to do so. Moreover, Armenia should amend its Alternative Service Act to ensure that it provides a genuine alternative service of a clearly civilian nature, which should be neither deterrent nor punitive in character, in line with European and international standards.

This is the first time that the right of conscientious objection to military service has been explicitly recognised under the European Convention on Human Rights.

The above-named organisations welcome this judgment in which the European Court of Human Rights has interpreted this right in line with the long-standing interpretation of the equivalent provisions of the International Covenant on Civil and Political Rights by the UN Human Rights Committee, the body set up under that treaty to monitor states parties' compliance with its provisions.

The *Bayatyan v Armenia* case concerned a Jehovah's Witness who was sentenced to two and a half years in prison following his refusal of military service on the grounds of conscientious objection. Amnesty International, Conscience & Peace Tax International, International Commission of Jurists, Quaker UN Office and War Resisters' International submitted a joint third party intervention (<http://quno.org/humanrights/CO/coLinks.htm#QUNOPUB>) to the Grand Chamber which highlighted the UN Human Rights Committee's long-standing position that conscientious objection to military service is protected under the right to freedom of thought, conscience and religion. The organizations also highlighted recommendations of the Parliamentary Assembly and Committee of Ministers of the Council of Europe and provided the Court with information about the recognition of the right to conscientious objection to military service in the 47 member states of the Council of Europe.

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## Background

The case concerned Armenian conscientious objector Vahan Bahatyan, born in 1983, who lives in Yerevan, Armenia. He is a Jehovah's Witness who for reasons of conscience refused to perform military service. In 2001 he was sentenced to a prison term of one and a half years. His sentence was increased by one year after the Prosecutor appealed for a harsher sentence, claiming that his conscientious objection was "unfounded and dangerous". When this decision was confirmed by the Armenian Supreme Court, Bayatyan took his case to the European Court.

On accession to the Council of Europe in 2000, Armenia committed itself "to adopt, within three years of accession, a law on alternative service in compliance with European standards and, in the meantime, to pardon all conscientious objectors sentenced to prison terms or service in disciplinary battalions, allowing them instead to choose, when the law on alternative service has come into force, to perform non-armed military service or alternative civilian service"<sup>1</sup>. The Alternative Service Act of 17 December 2003 made provision for conscientious objectors to military service including the creation of an "Alternative Civilian Service". At no time was Bayatyan given the option of performing this service; moreover those Jehovah's Witnesses who did embark on the service found that it was not clearly civilian in nature and included requirements such as the swearing of a military oath and the wearing of military uniforms that were unacceptable to them. More than 80 Jehovah's Witnesses have been imprisoned in the last four years for refusing this "alternative civilian service", which in its nature, in its duration (42 months, the longest stipulated anywhere in the world, and one-and-three-quarter times that of military service) and in its close supervision by the military authorities, is clearly not in accordance with European and international standards.

This judgment by the 17-person Grand Chamber of the European Court is the result of its review of an October 2009 judgment in the case by a seven-person Chamber which ruled that Article 9 of the European Convention on Human Rights did not protect conscientious objection to military service.

Article 9 of the European Convention on Human Rights and Article 18 of the International Covenant on Civil and Political Rights (ICCPR) contain almost identical provisions on the right to freedom of thought, conscience and religion. All states which are party to the European Convention are also party to the ICCPR. Since 1993, the UN Human Rights Committee, the body of independent experts established under the ICCPR to monitor states' compliance with its provisions, has interpreted this as including the right to conscientious objection to military service. This is the first case where the European Court has ruled on this issue. Earlier European Court cases, such as *Ulke v Turkey*<sup>2</sup>, where the repeated imprisonment and other penalties imposed on a conscientious objector for the refusal of military service were found to constitute inhuman or degrading treatment, had not addressed conscientious objection to military service as such.

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<sup>1</sup> Opinion No. 221 (2000) of the Parliamentary Assembly of the Council of Europe (PACE): Armenia's application for membership of the Council of Europe, 28 June 2000

<sup>2</sup> *Ulke v Turkey*, Application number 39437/98, Judgment of 24 January 2006