

AUSTRIA

EXENCIONES AL CUMPLIMIENTO DEL SERVICIO CIVIL ALTERNATIVO AL SERVICIO MILITAR POR PARTE DE LAS COMUNIDADES DE CREENCIAS DE CARÁCTER RELIGIOSO EN AUSTRIA: EL CASO KOPPI V. AUSTRIA¹

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1. PLANTEAMIENTO DEL PROBLEMA

El asunto hace referencia a la demanda presentada contra Austria ante el TEDH por parte del ciudadano austriaco Matthias Stefan Koppi, por no haber sido declarado exento del cumplimiento del servicio civil alternativo al servicio militar, pese a haberse declarado objetor de conciencia.² El demandante

¹ Trabajo realizado dentro del Proyecto de Investigación: “Instrumentos jurídicos de integración de la diversidad”. DER2009-06965. (Subprograma JURI). Con el patrocinio del Departamento de Educación, Universidades e Investigación del Gobierno Vasco (Resolución 30 de octubre de 2007).

² Para el caso de los Testigos de Jehová puede verse: TORRES GUTIÉRREZ, ALEJANDRO. El estatuto de los Testigos de Jehová en Austria: Caso Verein der Freunde der Christengemeinschaft and others v. Austria y Casos Löffelmann, Gütl y Lang v. Austria. En: Laicidad y Libertades. Escritos jurídicos. Número: 9. Volumen II. 2009. Páginas 283 a 342.

era miembro de la Federación de las Comunidades Evangélicas de Austria, *Bund Evangelikaler Gemeinden in Österreich*”, que es una comunidad de creencias de carácter religioso registrada en Austria, *eingetragene Bekenntnisgemeinschaft* conforme a la Ley Federal sobre reconocimiento de la personalidad jurídica de las Comunidades de creencias de carácter religioso de 1998,³ pero no una confesión religiosa en sentido estricto.⁴

³ BGBl 19/1998.

⁴ Sobre la distinción entre ambas categorías puede consultarse la monografía: TORRES GUTIÉRREZ, ALEJANDRO. *El Derecho de Libertad de Conciencia en Austria*. Dykinson. Madrid. 2006. 494 páginas. Otras obras del autor sobre esta materia:

- 1) TORRES GUTIÉRREZ, ALEJANDRO. *El reconocimiento estatal de las Confesiones Religiosas en Austria: la Ley Federal sobre reconocimiento de la personalidad jurídica de las comunidades confesionales de carácter religioso. (BGBl. 19/1998)*. En: *Laicidad y Libertades. Escritos Jurídicos*. Número 1. Madrid. 2001. Páginas 455 a 490.
- 2) TORRES GUTIÉRREZ, ALEJANDRO. *El desarrollo jurídico en Austria de la Ley federal sobre reconocimiento de la personalidad jurídica de las comunidades confesionales de carácter religioso. (BGBl. 19/1998). El caso de la Comunidad Libre de Cristo - Comunidad Pentecostal*. En: *Laicidad y Libertades. Escritos Jurídicos*. Número 2. Madrid. 2002. Páginas 353 a 382.
- 3) TORRES GUTIÉRREZ, ALEJANDRO. *Reconocimiento jurídico de las minorías religiosas en Austria*. En: AMÉRIGO, FERNANDO. (Coord.) *Religión, Religiones, Identidad, Identidades. Minorías*. Actas del V Simposio de la Sociedad Española de Ciencias de las Religiones. SECR. Valencia. 2003. Páginas 401 a 423.
- 4) TORRES GUTIÉRREZ, ALEJANDRO. *Riconoscimento giuridico delle minorie religiose in Austria*. En: *Il Diritto Ecclesiastico*. Fasc 2-2004. Giuffrè. Milán. 2004. Páginas 424 a 444.
- 5) TORRES GUTIÉRREZ, ALEJANDRO. *Du Droit Fondamental à la Libertè Religieuse en Autriche*. En: *Civitas Europa*. Volumen 13. Diciembre de 2004. Bruylant. Bruselas. 2004. Páginas 275 a 292.
- 6) TORRES GUTIERREZ, ALEJANDRO. *El derecho de asociación religiosa y la autonomía interna de las Confesiones Religiosas en la jurisprudencia reciente del Tribunal Constitucional austriaco*. En: *Laicidad y Libertades. Escritos Jurídicos*. Número 4. Madrid. 2004. Páginas 525 a 527.
- 7) TORRES GUTIÉRREZ, ALEJANDRO. *Interpelaciones a la Comisión Europea en el Parlamento Europeo sobre la legislación en materia de libertad religiosa en Austria en el año 2004*. En: *Laicidad y Libertades. Escritos Jurídicos*. Número 5. Volumen II. Madrid. 2005. Páginas 63 a 65.

El demandante entendía estar amparado por las cláusulas contenidas en la Ley de Servicio Civil de Austria, *Zivildienstgesetz*, que prevén la exención del mismo de los miembros de las confesiones religiosas reconocidas por el Estado que desempeñan servicios específicos directamente relacionados con el culto, o la instrucción religiosa, y que él, en su condición de estudiante de teología en el seminario de St. Chrischona, se encontraba en una posición semejante, por lo que debería haber sido declarado exento del cumplimiento del servicio civil alternativo.

El artículo 13a §1 de la Ley del Servicio Civil prevé la exención de la obligación de prestar dicho servicio civil alternativo al servicio militar a los siguientes miembros de las confesiones religiosas reconocidas por el Estado:⁵

- 1) Sacerdotes ordenados.
- 2) Personas dedicadas al cuidado espiritual o enseñanza eclesiástica tras la graduación en estudios teológicos.
- 3) Los miembros de las órdenes religiosas que hayan prestado un voto solemne.

8) TORRES GUTIÉRREZ, ALEJANDRO. *Análisis de la nueva legislación federal sobre el estatuto legal de las Iglesias Orientales Ortodoxas, la redenominación dada a la Iglesia "Evangélica"-Metodista, y la nueva política de extranjería en materia de integración de inmigrantes en Austria*. En: *Laicidad y Libertades. Escritos jurídicos*. Número: 6. Volumen II. 2006. Páginas 35 a 69.

9) TORRES GUTIÉRREZ, ALEJANDRO. *Reconocimiento de personalidad jurídica de los Testigos de Jehová en Austria: El caso Religionsgemeinschaft der Zeugen Jehovas and others v. Austria*. En: *Laicidad y Libertades. Escritos jurídicos*. Número: 8. Volumen II. 2008. Páginas 419 a 479.

10) TORRES GUTIÉRREZ, ALEJANDRO. *El estatuto de los Testigos de Jehová en Austria: Caso Verein der Freunde der Christengemeinschaft and others v. Austria y Casos Löffelmann, Güll y Lang v. Austria*. En: *Laicidad y Libertades. Escritos jurídicos*. Número: 9. Volumen II. 2009. Páginas 283 a 342.

⁵ Koppi v. Austria, § 17.

- 4) Los estudiantes de teología que se encuentren preparando para asumir una función clerical.

El demandante entendía encontrarse en una situación en la Federación de las Comunidades Evangélicas de Austria, *Bund Evangelikaler Gemeinden in Österreich*”, análoga a la de aquellos miembros de una confesión religiosa reconocida por el Estado austriaco que están exentos de dicho servicio.⁶ Sostenía que aunque dicha entidad no poseía cátedras ni facultades dentro de las universidades estatales o confesionales, ofrecía sin embargo una formación semejante en el seminario bíblico al cual había asistido, y en el que había sido preparado para el ejercicio del cuidado pastoral, *Seelsorge*,⁷ y para el ejercicio de la predicación, lo cual debería ser considerado como una preparación dirigida al ejercicio de su función clerical. Asimismo argumentaba que se había dedicado en su localidad a impartir instrucción religiosa a adolescentes de entre 11 y 14 años de edad, y había trabajado como predicador y participado en los servicios religiosos, y que aunque tales tareas no requerían el ejercicio de una función clerical, le habían sido confiadas en tanto en cuanto se encontraba preparando para el desempeño de dicha función clerical.⁸

El Gobierno austriaco alegó que el demandante nunca había puesto de manifiesto ante las autoridades austriacas que se encontrase estudiando teología en una universidad o en otra institución de rango semejante, y que su implicación en actividades ligadas al servicio divino y la predicación había comenzado en un momento posterior al de su solicitud de exención de dicho servicio civil.⁹

El TEDH pone de manifiesto que este tipo de privilegios, consistente en reconocer la exención del servicio militar o del servicio civil alternativo a las personas que forman parte del clero

⁶ Koppi v. Austria, §§ 3 y 19.

⁷ Cura de almas, sic.

⁸ Koppi v. Austria, § 24.

⁹ Koppi v. Austria, § 21.

de una confesión religiosa, muestran la importancia que para el legislador tienen las funciones específicas que desempeñan estas personas integradas en las confesiones religiosas, desde una perspectiva colectiva,¹⁰ por lo que dichos privilegios tienen como objeto poder garantizar el adecuado funcionamiento de las confesiones religiosas, por lo que promueven un objetivo que entra dentro del campo protegido por el artículo 9 del CEDH.¹¹

El Tribunal viene a reiterar su doctrina según la cual para que un caso concreto suponga una violación del artículo 14 del CEDH, es preciso que se dispense un trato diferente a personas que se encuentran en situaciones relevantemente similares. Tales diferencias de trato serían discriminatorias si no tienen una justificación objetiva o razonable. En otras palabras, si ello no persigue un fin legítimo o si no hay una relación de proporcionalidad entre los medios empleados y el fin que se persigue conseguir. Los Estados parte del CEDH vendrían a disponer de un cierto margen de apreciación a la hora de analizar si existen diferencias de trato, (y en qué medida las hay), en otras situaciones similares.¹²

El TEDH no acepta el argumento del Gobierno de Austria según el cual la denegación de la exención no se debía exclusivamente al hecho de no pertenecer a una confesión religiosa reconocida, sino a una mera comunidad de creencias de carácter religioso, sino a otros motivos, como no cumplir otros requisitos adicionales como el no haber seguido unos estudios de teología en una Universidad u otra institución análoga. Esta toma de posicionamiento por parte del TEDH se debe a que la autoridad gubernativa austriaca competente había basado expresamente su denegación a la exención en el cumplimiento del servicio civil alternativo, precisamente sobre la base de la no

¹⁰ Koppi v. Austria, § 27.

¹¹ Koppi v. Austria, § 28.

¹² Koppi v. Austria, § 29.

pertenencia del demandante a una confesión religiosa plenamente reconocida por el Estado.¹³

Sin embargo el TEDH admite que entra dentro del artículo 9 del CEDH la posibilidad de reservar la concesión de privilegios tales como las exenciones en el cumplimiento del servicio civil alternativo, exclusivamente a los miembros de las confesiones religiosas plenamente reconocidas por el Estado.¹⁴ Y añade que aunque el colectivo en cuestión goza del estatuto limitado de comunidad de creencias de carácter religioso al amparo de la Ley de 1998, no hay constancia de que haya solicitado su pleno reconocimiento como confesión religiosa por parte del Estado, dentro del marco previsto en la Ley de reconocimiento de las confesiones religiosas de 20 de mayo de 1874, aún en vigor, y tampoco hay evidencia alguna sobre que tal solicitud haya sido eventualmente denegada de una forma arbitraria por las autoridades austriacas, de manera incompatible con el artículo 9 del CEDH.¹⁵

Por lo tanto, entiende el TEDH que al ser el demandante miembro de una mera comunidad de creencias de carácter religioso cuando solicitó la exención del servicio civil, no se encontraría en una situación similar o análoga a la de un miembro de una confesión religiosa plenamente reconocida por parte del Estado.¹⁶

¹³ Koppi v. Austria, § 31.

¹⁴ Koppi v. Austria, § 33.

¹⁵ Koppi v. Austria, § 34. Véase también: CELADOR ANGÓN, ÓSCAR. Libertad de conciencia y Europa. Un estudio sobre las tradiciones constitucionales comunes y el Convenio Europeo de Derechos Humanos. Dykinson. Madrid. 2011. Páginas 212 y siguientes.

¹⁶ Koppi v. Austria, § 35.

ANEXO

CASO KOPPI V. AUSTRIA ¹⁷

In the case of Koppi v. Austria,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Christos Rozakis, *President*,
Nina Vajić,
Elisabeth Steiner,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens,
George Nicolaou, *judges*,
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 19 November 2009,
Delivers the following judgment, which was adopted on that date.

PROCEDURE

81. The case originated in an application (no. 33001/03) against the Republic of Austria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Austrian

¹⁷ El texto íntegro del caso se puede descargar de la Base de Datos del Tribunal Europeo de Derechos Humanos:
<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=koppi%20%7C%20austria&sessionId=80876529&skin=hudoc-en>

national, Mr Matthias Stefan Koppi (“the applicant”), on 29 September 2003.

82. The applicant was represented by Mr R. Kohlhofer., a lawyer practising in Vienna. The Austrian Government (“the Government”) were represented by their Agent, Mr F. Trauttmansdorff, Head of the International Law Department at the Federal Ministry for European and International Affairs.

83. The applicant alleged that he had been discriminated against in the exercise of his rights under Articles 4 and 9 of the Convention on account of his religion as he was liable for military or alternative civilian service, whereas members of recognised religious societies holding religious functions comparable to his own were exempted.

84. By a decision of 5 January 2006 the Court declared the application partly admissible.

85. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

86. The applicant was born in 1982 and lives in Rankweil.

87. The applicant is a member of the “Bund Evangelikaler Gemeinden in Österreich”, which became a registered religious community (*eingetragene Bekenntnisgemeinschaft*) under the Registered Religious Communities Act 1998 (*Bundesgesetz über die Rechtspersönlichkeit von religiösen Bekenntnisgemeinschaften*) on 11 July 1998.

88. From 2000 to 2001 the applicant attended the one-year course of the St Chrischona theological seminary (*Bibelschule*) in Switzerland. Since then he has been giving religious instruction to the youth and has been working as a municipal preacher (*Prediger*).

89. On 27 September 2000 the applicant filed a request with the Federal Minister for Internal Affairs (*Bundesminister für Inneres*) for recognition as a conscientious objector (*Zivildiensterklärung*).

90. On 16 November 2000 the Minister for Internal Affairs recognised the applicant as a conscientious objector. Accordingly, he was exempted from the duty to perform military service but liable to perform civilian service (*Zivildienst*).

91. On 20 December 2000 the applicant requested the Minister of Internal Affairs to apply section 13a § 1 of the Civilian Service Act in conformity with the Constitution and to exempt him from the obligation to perform civilian service. He submitted that this provision exempted members of recognised religious societies who performed specific services relating to worship or religious instruction from the obligation to perform civilian service, whereas he, as a student of the theological seminary St. Chrischona, had a comparable clerical position within a registered religious community, namely the “Bund Evangelikaler Gemeinden in Österreich”. Consequently, he should be also exempted from civilian service.

92. On 18 January 2002 the Minister of Internal Affairs dismissed the applicant's request. The decision referred to the findings of the Constitutional Court (*Verfassungsgerichtshof*) in a decision of 11 November 1998, in which it had held that exemption from the obligation to perform civilian service under section 13a of the Civilian Service Act merely applied to members of recognised religious societies and could not be extended to members of registered religious communities.

93. On 13 March 2002 the applicant filed a complaint with the Constitutional Court.

94. On 7 October 2002 the Constitutional Court declined to deal with the complaint for lack of prospects of success.

95. On the applicant's request the Constitutional Court transmitted his complaint to the Administrative Court (*Verwaltungsgerichtshof*).

96. On 18 February 2003 the applicant supplemented his complaint.

On 18 March 2003 the Administrative Court, referring to the above-mentioned decision of 11 November 1998 by the Constitutional Court, dismissed the complaint. This decision was served on the applicant's counsel on 9 April 2003.

II. RELEVANT DOMESTIC LAW

A. The Civilian Service Act

97. Section 13a § 1 of the Civilian Service Act (*Zivildienstgesetz*) provides as follows:

“An exemption from the obligation to perform civilian service shall apply to the following members of recognised religious societies:

1. ordained priests,
2. persons involved in spiritual welfare or in clerical teaching after graduating in theological studies,
3. members of a religious order who have made a solemn vow, and
4. students of theology who are preparing to assume a clerical function.”

B. Religious societies and religious communities

98. For a detailed description of the legal situation in Austria in this field see *Löffelmann v. Austria*, no. 42967/98, §§ 23-39, 12 March 2009.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN TOGETHER WITH ARTICLE 9

99. The applicant complained that the fact that he was not exempt from military service or alternative civilian service, while assuming a function within the Federation of Evangelical Communities in Austria (Bund Evangelikaler Gemeinden in Österreich) which was comparable to those of members of recognised religious societies who were exempt from such service, constituted discrimination on the ground of his religion, as prohibited by Article 14 of the Convention taken together with Article 9.

100. Article 14 of the Convention provides:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

Article 9 provides as follows:

- “1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”

101. The Government pointed out that the obligation to perform civilian service was a substitute service for conscientious objectors who refused military service. Section 13a § 1 of the Civilian Service Act stipulated exemptions from this obligation which were linked to membership of a recognised religious society. However, there were also further criteria with which the applicant did not comply either. The applicant had stated that his function would be comparable to that of persons involved in spiritual welfare or in clerical teaching after graduating in theology or who were preparing for such functions. In this connection, the Government stressed that the applicant had not stated during the domestic proceedings that he would study theology at a university or any equivalent institution. Furthermore, the applicant's submissions that he would perform divine service and engage in preaching activity had not been substantiated and were, in any event, irrelevant, as he had started doing that work long after the impugned decisions in the present case were issued. In his application the applicant had stated that he was still a "student". Therefore, notwithstanding his religious denomination, the applicant had failed to prove that he complied with the criteria of the above provision. Thus, there was no need to consider whether or not the applicant had been discriminated against on account of his confession. Furthermore, members of recognised religious societies who did not comply with the criteria laid down in section 13a § 1 of the Civilian Service Act were not exempt from civilian service.

102. The Government further submitted that, as the Contracting States were under no obligation to accept a refusal to perform military service for religious reasons, non-exemption of a person from military or alternative civilian service did not raise any concerns under Article 9 of the Convention. In any event, the applicant's submissions did not indicate that the obligation to perform military or alternative civilian service entailed any concrete interference with his rights under Article 9.

103. The applicant contested these arguments and maintained that if the relevant domestic legislation provided for

exemptions from military or alternative civilian service, it should do so without any discrimination.

104. He further maintained that he held a function comparable with that of members of a recognised religious society. While it was true that the Bund Evangelikaler Gemeinden in Österreich had neither chairs nor faculties within state or church universities, it offered nonetheless intensive clerical training which consisted of theoretical studies and practical exercises. The applicant pointed out that the Biblical seminary he visited had prepared him to exercise pastoral care (*Seelsorge*) and to do preaching and had to be considered as comprehensive training for a clerical function. The applicant had been giving religious instruction to adolescents aged between 11 and 14 years in his municipality, had worked as a preacher and had performed divine service since February 2002 at the latest. In any event, the above provisions did not require the exercise of a clerical function but were complied with when the person concerned was preparing for such function. The Austrian authorities and courts had only linked the granting of an exemption from civilian service to membership of a recognised religious society and had not examined whether or not the person concerned performed comparable functions for the purposes of section 24(3) of the Military Service Act.

105. As the Court has consistently held, Article 14 of the Convention complements the other substantive provisions of the Convention and the Protocols. It has no independent existence since it has effect solely in relation to “the enjoyment of the rights and freedoms” safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application unless the facts at issue fall within the ambit of one or more of the latter (see, among many other authorities, *Van Raalte v. the Netherlands*, 21 February 1997, § 33, *Reports of Judgments and Decisions* 1997-I, and *Camp and Bourimi v. the Netherlands*, no. 28369/95, § 34, ECHR 2000-X).

106. Furthermore, the freedom of religion as guaranteed by Article 9 entails, *inter alia*, freedom to hold religious beliefs and to practise a religion. While religious freedom is primarily a matter of individual conscience, it also implies, *inter alia*, freedom to manifest one's religion, alone and in private, or in community with others, in public and within the circle of those whose faith one shares. Article 9 lists the various forms which manifestation of one's religion or belief may take, namely worship, teaching, practice and observance (see, as a recent authority, *Leyla Şahin v. Turkey* [GC], no. 44774/98, §§ 104-105, ECHR 2005-XI, with further references).

107. In the Court's view, the privilege at issue – namely the exemption from the obligation to perform military service and also alternative civilian service, afforded to religious societies in respect of those who are part of their clergy – shows the significance which the legislature attaches to the specific function these representatives of religious groups fulfil within such groups in their collective dimension. Observing that religious communities traditionally exist in the form of organised structures, the Court has repeatedly found that the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 affords (see *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 62, ECHR 2000-XI).

108. As the privilege at issue is intended to ensure the proper functioning of religious groups in their collective dimension, and thus promotes a goal protected by Article 9 of the Convention, the exemption from military service granted to specific representatives of religious societies falls within the scope of that provision. It follows that Article 14 read in conjunction with Article 9 is applicable in the instant case.

109. The Court has established in its case-law that in order for an issue to arise under Article 14 there must be a difference in the treatment of persons in relevantly similar situations (*D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 175, ECHR

2007). Such a difference of treatment is discriminatory if it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. The Contracting State enjoys a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment (*Stec and Others v. the United Kingdom* [GC], nos. 65731/01 and 65900/01, §§ 51-52, ECHR 2006-VI; *Burden v. the United Kingdom* [GC], no. 13378/05, § 60, 29 April 2008).

110. In the instant case, the Court first observes that the exemption from military service under section 24(3) of the Military Service Act is exclusively linked to membership of recognised religious societies performing specific services of worship or religious instruction. The applicant claimed that he performed similar services within the Bund Evangelikaler Gemeinden in Österreich. However, the Bund Evangelikaler Gemeinden in Österreich was at the time a registered religious community and not a religious society, and there was thus no room for an exemption under the above-mentioned legislation.

111. The Government argued that the applicant had not been discriminated against, because the criterion that a person applying for exemption from military service must be a member of a religious society was only one condition among others and the applicant would not, in any event, have fulfilled the further conditions as he had not completed a course of theological studies at university or at a comparable level of education. The Court is not persuaded by this argument. Since the competent authority explicitly based its refusal of the applicant's request on the ground that he did not belong to a religious society, there is no need to speculate as to what the outcome would have been if the decision had been based on other grounds.

112. The Court has to examine therefore whether the applicant, who does not belong to a religious group which is a religious society within the meaning of the 1874 Recognition Act,

may claim to be in a relevantly similar or analogous position to a member of such a group performing one of the functions described in Section 13a § 1 of the Civilian Service Act.

113. The Court would point out at the outset that the criterion of belonging to a recognised religious society, on which the Austrian authorities had relied in refusing the applicant's request for exemption from civilian service is not, as such, discriminatory. In the case of *Religionsgemeinschaft der Zeugen Jehovas and Others* (no. 40825/98, 31 July 2008) the Court made it clear that a difference in treatment between religious groups which resulted in granting a specific status in law – to which substantial privileges were attached – while refusing this preferential treatment to other religious groups which had not acceded to this status, was compatible with the requirements of Article 14 read in conjunction with Article 9 as long as the State set up a framework for conferring legal personality on religious groups to which a specific status was linked, all religious groups which so wished had a fair opportunity to apply for this status and the criteria established were applied in a non-discriminatory manner (*ibid.*, § 92). In other words such a privileged status is a right which a religious community may apply for if it feels that such status would facilitate the religious society's pursuance of its religious aims. By its very nature, such a decision on the status of a legal person has repercussions for those persons who are affected by legal provisions in their position as members of that community and, accordingly, have to assume the consequences arising from their membership.

114. It is therefore essential that the religious community of which the applicant is a member and on the basis of which membership he sought exemption from civilian service should have been registered, upon its own request, as a religious community within the meaning of the 1988 Religious Communities Act. Further there is no indication that the religious community applied for recognition as a religious society within the meaning of the 1874 Recognition Act and that such a request was refused, even less that it was refused on grounds

incompatible with the requirements of Article 9 of the Convention.

115. This being so the Court considers that the applicant, being a member of a registered religious community when applying for exemption from civilian service under section 13a (1) of the Civilian Service Act had not been in a relevantly similar or analogous situation as a member of a recognised religious society. There has therefore been no violation of Article 14 taken in conjunction with Article 9 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

116. The applicant also relied on Article 9 of the Convention in complaining that he was not exempt from military service, unlike persons assuming a comparable function in religious communities recognised as religious societies.

117. In the circumstances of the present case the Court considers that the substance of this complaint has been sufficiently taken into account in its above assessment that led to the finding that there had been no violation of Article 14 read in conjunction with Article 9 of the Convention. It follows that there is no cause for a separate examination of the same facts from the standpoint of Article 9 of the Convention alone.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN TOGETHER WITH ARTICLE 4

118. The applicant complained that the fact that he was not exempt from military service while assuming a function within a religious community which was comparable to that of members of recognised religious societies who were exempt from military service constituted discrimination on the ground of his religion

prohibited by Article 14 of the Convention, taken together with Article 4.

Article 4 §§ 2 and 3 of the Convention reads as follows:

- “2. No one shall be required to perform forced or compulsory labour.
3. For the purpose of this article the term 'forced or compulsory labour' shall not include:
 - (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of [the] Convention or during conditional release from such detention;
 - (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
 - (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
 - (d) any work or service which forms part of normal civic obligations.”

119. The Court considers that, in view of its finding under Article 14, read in conjunction with Article 9 of the Convention, there is no need to examine this question also from the point of view of Article 14 read in conjunction with Article 4, all the more so as the core issue, whether the difference in treatment was based on the criterion of “being a member of a religious society”, has already been sufficiently dealt with above.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been no violation of Article 14 of the Convention taken in conjunction with Article 9 of the Convention;

2. *Holds* that there is no separate issue under Article 9 of the Convention alone;
3. *Holds* that it is not necessary to examine the complaint under Article 14 taken in conjunction with Article 4 §§ 2 and 3 (b) of the Convention.

Done in English, and notified in writing on 10 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President

