

Volume 13, Issue 2, Spring 2013

Court: European Court of Human Rights

Case: Bayatyan v. Armenia

Date: 07/07/2011

Written By: Jacob Radecki

Summary of Case:

Applicant Vahan Bayatyan was an Armenian Jehovah's Witness who objected to mandatory military service on religious grounds. After his arrest and conviction, which occurred during the period of Armenia's accession to the Convention, he appealed to the European Court of Human Rights, alleging that his rights to freedom of conscience were violated under Article 9 of the Convention. The Court held that prior case law viewing the status of conscientious objectors as the sole purview of the member state should be overturned. Considering the question in the light of Article 9, the Court held that Bayatyan's right to freedom of conscience was violated.

Background:

Vahan Bayatyan is a Jehovah's Witness and citizen of Armenia. He was baptized into the Society of Friends at the age of 16, in 1999. In 2000, he was registered for military service, and in 2001, he was declared eligible for the draft. That year, he sent letters to the General Prosecutor of Armenia, the Military Commissioner of Armenia, and the Human Rights Commission of the National Assembly stating that he conscientiously objected to military service because of his sincerely held religious beliefs, and proposing alternative civilian service.

In May of 2001, Bayatyan was summoned for military service. On May 4th, after a military official questioned his mother about his whereabouts, Bayatyan fled his home. Several days later, on May 29, 2001, after more attempts by military officials to contact Bayatyan, the Commission for State and Legal Affairs of the National Assembly replied to Bayatyan's earlier letter. In that letter, the Commission stated that since no alternative service law existed, he must serve in the Armenian army. When Bayatyan returned home in June 2001, he lived under arrest until September 2002.

Procedural History:

On August 1, 2001, the Erebuni District Prosecutor instituted criminal proceedings against Bayatyan. Neither Bayatyan nor his family were made aware of this decision until his arrest in September 2002, despite the fact that he had met with the prosecutor on numerous prior occasions. On April 26, 2002, the Convention for the Protection of Human Rights and Fundamental Freedoms had entered into force in Armenia. It is under this Convention that Bayatyan would later bring his claim to the European Court of Human Rights.

During his trial, Bayatyan reiterated his conscientious objection to military service. He was found guilty of a violation of the Armenian Criminal Code of 1961 under Article 75, which read: "Evasion of a regular call-up to active military service is punishable by imprisonment for a period of one to three years."

Though he was initially sentenced to one year and six months in prison, the prosecutor lodged an appeal seeking a heavier punishment on November 29, 2002. As a justification, the prosecutor stated that Bayatyan never accepted his guilt and that the crime would lead to "social danger." In response, Bayatyan argued that the judgment imposed violated Article 23 of the Constitution and Article 9 of the Convention. Article 23 of the Constitution of Armenia states that "[e]veryone has the right to freedom of thought, conscience and religion." Similarly, Article 9 of the Convention says that this right to freedom of conscience should not be abridged, except to uphold the values of a democratic society and to further the freedom of others in society.

The Court of Appeal granted the prosecutor's appeal and increased Bayatyan's sentence to two and a half years. On January 24, 2003, the Court of Cassation upheld the judgment of the Court of Appeal, stating that the rights guaranteed by Article 23 of the Constitution were limited by Article 44, which stated: "The fundamental rights and freedoms of man and the citizen enshrined in Articles 23-27 of the Constitution can be restricted only by law if necessary for the protection of State security and public safety, public order, public health and morals and the rights, freedoms, honour and reputation of others."

On July 22, 2003, Bayatyan was released on parole after serving about ten and a half months of his sentence. That same day, he filed an application against the Republic of Armenia under Article 34 of the Convention. Article 34 permits individual applications from those who believe their fundamental rights under the Convention have been violated. In his complaint, Bayatyan alleged that his conviction for refusal to serve in the Armenian military violated his right to freedom of conscience.

The Chamber Judgment:

The Chamber judgment of October 27, 2009, held that, because Article 9 must be read in light of Article 4 § 3 (b) of the Convention, the choice to recognize conscientious objectors lies with each adhering State. Thus Bayatyan's conviction must be upheld. Article 4 states in part that:

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: . . .
 - (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.

Discussion:

The court's opinion extensively detailed the systematic recognition of conscientious objections to mandatory military service by Council of Europe members in accordance with the principles of the Convention. The court similarly noted other international organizations recognizing freedom of conscience, including the European Union the United Nations, and the Organization for Security and Cooperation in Europe.

The main question at issue was whether Bayatyan's conviction violated Article 9 of the Convention, noted above, or whether Article 4 should be read in conjunction with Article 9, as the Chamber applied it.

Bayatyan submitted that his conviction did violate Article 9, and that the lack of accommodation for conscientious objectors in Armenia similarly violated legally binding commitments made by Armenia in

acceding to the Convention in 2002. The government of Armenia averred that, at the time of Bayatyan's arrest and conviction, they were acting in accordance with the ECHR's interpretation of Article 9 at the time.

Joint observations by Amnesty International and Friends World Committee for Consultation (Quakers) submitted that any failure by a State to provide legal recourse for conscientious objectors violated Article 9.

The Grand Chamber's Rationale:

The Court noted that while the European Commission on Human Rights had agreed to apply Article 9 in the context of Article 4, it had never itself addressed whether Article 9 should be applied to conscientious objectors.

The Court then detailed the historical shift in member states to regimes recognizing conscientious objector status, noting that only Azerbaijan and Turkey have yet to comply. The Court then stated that, because the Convention should be viewed as a living document and the consensus of the member states had clearly changed, Article 4 should no longer be applied to Article 9.

Additionally, the Court stated that because the Armenian government had begun accession to the Council of Europe, Armenia had impliedly agreed to not convict conscientious objectors and to allow for alternative service.

Holding:

Addressing the case only under Article 9, the Court held that Bayatyan's arrest and conviction constituted an unnecessary interference to his freedom. The Court awarded EUR 10,000 for damages and an additional EUR 10,000 for costs and expenses.

Dissent:

Judge Gyulumyan disagreed with the majority's holding, arguing that Article 4 should still be read in conjunction with Article 9. Gyulumyan further expressed that accession to the Convention and the Council of

Europe did not commit Armenia to legally binding obligations immediately, but within three years.