



## Lack of civilian service as an alternative to military service precluded recognition of conscientious objection, in breach of the Convention

In today's Chamber judgment<sup>1</sup> in the case of [Mushfig Mammadov and Others v. Azerbaijan](#) (application no. 14604/08) the European Court of Human Rights held, unanimously, that there had been:

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

The case concerned the applicants' refusal on religious grounds to serve in the army.

The Court observed that the criminal prosecutions and convictions of the applicants on account of their refusal to perform military service had stemmed from the fact that there was no alternative service system under which individuals could benefit from conscientious objector status. That amounted to an interference which had not been necessary in a democratic society.

The case highlighted an issue relating to the lack of legislation on civilian service as an alternative to military service in Azerbaijan. The enactment of such a law corresponded to a commitment entered into by Azerbaijan on its accession to the Council of Europe and was also a requirement under the country's own Constitution.

### Principal facts

The applicants, Mushfig Faig oglu Mammadov, Samir Asif oglu Huseynov, Farid Hasan oglu Mammadov, Fakhraddin Jeyhun oglu Mirzayev and Kamran Ziyafaddin oglu Mirzayev, are five Azerbaijani nationals who were born in 1983, 1984, 1987, 1993 and 1994 respectively and live in Baku and Ganja (in the case of Mr Fakhraddin Jeyhun oglu Mirzayev) (Azerbaijan). All five state that they are Jehovah's Witnesses.

The applicants, who are all of age to be called up for military service, informed their local military commissariats or recruitment offices that they wished to be exempted from such service and, in the case of most of them, to perform alternative civilian service. They were all prosecuted under Article 321.1 of the Penal Code and sentenced to imprisonment. Their appeals were dismissed.

### Complaints, procedure and composition of the Court

Relying on Article 9 (right to freedom of conscience, thought and religion), the applicants complained about their convictions for having refused to serve in the army. Relying on Article 4 of Protocol No. 7 (right not to be tried or punished twice), the first applicant alleged that his second conviction amounted to a violation of that provision.

The applications were lodged with the European Court of Human Rights on 7 March 2008, 18 July 2011, 3 December 2013 and 21 August 2015.

1. 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).

Judgment was given by a Chamber of seven judges, composed as follows:

Angelika **Nußberger** (Germany), *President*,  
Ganna **Yudkivska** (Ukraine),  
Yonko **Grozev** (Bulgaria),  
Síofra **O’Leary** (Ireland),  
Mārtiņš **Mits** (Latvia),  
Lətif **Hüseynov** (Azerbaijan),  
Lado **Chanturia** (Georgia),

and also Claudia **Westerdiek**, *Section Registrar*.

## Decision of the Court

### Article 9

The Court observed that the applicants’ objection to performing military service had been based on sincere religious convictions which had come into serious and insuperable conflict with their military service obligations.

The Court reiterated that freedom of thought, conscience and religion was one of the cornerstones of a “democratic society” within the meaning of the Convention. That freedom presupposed, *inter alia*, the liberty to adhere, or not to adhere, to a religion and the right to decide whether or not to practice it. According to its established case-law, the Court allowed States Parties some margin of appreciation to assess the existence and extent of the necessity of interference. The Court’s task was to ascertain whether the measures taken at the domestic level were justified in principle and proportionate.

The Court noted that when Azerbaijan had acceded to the Council of Europe it had undertaken to enact, within two years of its accession, a law on alternative service in conformity with European standards. Furthermore, Article 76 § 2 of the Azerbaijani Constitution authorised persons whose convictions were incompatible with the performance of active military service to carry out alternative service in place of that compulsory service. The Court noted, however, that no law had yet been enacted on an alternative service.

The criminal prosecutions and convictions of the applicants on account of their refusal to perform military service had stemmed from the fact that there was no alternative service system under which individuals could benefit from conscientious objector status, and amounted to an interference which had not been necessary in a democratic society. There had therefore been a violation of Article 9 of the Convention.

### Article 4 of Protocol No. 7

The complaint under that provision was out of time, since it had been lodged more than six months after 29 December 2010, the date of the last decision given by the Supreme Court dismissing the appeal on points of law lodged by Mr Mushfig Faig oglu Mammadov. That complaint therefore had to be rejected.

### Article 46

The Court observed that the present case highlighted an issue relating to the lack of legislation on civilian service as an alternative to military service in Azerbaijan. The enactment of such a law corresponded to a commitment entered into by Azerbaijan on its accession to the Council of Europe, and was also a requirement under Article 76 § 2 of its Constitution.

The Court considered it necessary to point out that such a situation in principle called for legislative action by the State in order to fulfil its obligations to enable the applicants and other persons in the same situation to benefit from the right to conscientious objection.

#### [Just satisfaction \(Article 41\)](#)

The Court held that Azerbaijan was to pay 5,000 euros (EUR) to the first applicant, EUR 8,400 to the second applicant, EUR 10,800 to the third applicant, EUR 9,600 to the fourth applicant and EUR 3,500 to the fifth applicant in respect of non-pecuniary damage, and EUR 161 to the first applicant, EUR 430 to the second applicant, EUR 195 to the third applicant, EUR 83 to the fourth applicant and EUR 100 to the fifth applicant 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.