Does a requirement to undertake 1 day of reserve military service engender a right to conscientious objection? The recent judgment of the ECtHR in Kanatlı v. Turkey offers a new perspective.

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April 5, 2024

Işıl Kurnaz

Since around the mid-1800s, the term "conscientious objection" has been used to describe a refusal driven by an individual's moral conscious to engage in military duties. Although the right to conscientious objection is not defined in the European Convention on Human Rights (ECHR) – or indeed, in any UN instrument – it is generally considered to be derived from the broader right to freedom of thought, conscience, and religion. In the context of the ECHR, the right to conscientious objection has been grounded in Articles 9 and 4. It was first scrutinised within the Commission framework before being examined by the European Court of Human Rights Court (ECtHR, the Court) for the first time in 2000.

The ECHR's most recent judgment on conscientious objection was delivered on 12 March 2024. In Kanatlı v. Turkey, the ECtHR made an important comment on the scope of conscientious objection, considering that a refusal to participate in reserve service fell within the scope of this right. This implies that states should provide an alternative civilian option, even for reserve service. This post examines the significance of the Court's latest judgment and contextualises it within the Court's broader jurisprudence.

Facts

The applicant is a conscientious objector and pacifist activist in Cyprus. Domestic law provided that military service was made up of three stages (the recruitment stage, the active service stage and the reserve stage) and lasted for a maximum of 30 days for the reserve stage. In 2005, the applicant completed his one year of active military service. Each following year, he was called to perform one day of service in military barracks as a reservist. He did so in 2006, 2007, and 2008.

In 2008, the applicant because a representative of the European Bureau for Conscientious Objection (BEOC) in Cyprus, a federation of national associations of conscientious objectors. In 2009, he was elected to the BEOC Board of Directors and refused to perform his military service as of that year. He explained he has become a conscientious objector. He was fined approximately 140 euros pursuant to the domestic Mobilization Law. He refused to pay the fine, and was put on trial by Security Forces Court serving as a military court. During the trial,

he disclosed that he was a conscientious objector, and was therefore consciously refusing to complete the reserve military service. He stated that he was prepared to undertake alternative civil service instead. He objected to the compulsory nature of the military service and claimed that the absence of an alternative civil service was not compatible with the ECHR or the Constitution. He requested a review of the constitutionality of the relevant provisions of the domestic law, namely the Mobilisation Act.

In 2013, the Supreme Military Administrative Court determined that the relevant provisions were constitutional and that there was no constitutional requirement for an alternative civil service option to be provided. The criminal proceedings before the Security Forces Court resumed. In 2014, the Security Forces Court found that the applicant's arguments were politically motivated and aimed at legitimising war avoidance by increasing the number of conscientious objectors. It considered that the applicant could not be defined as a conscientious objector. The applicant was convicted and fined approximately 167 Euro, which could be converted into a ten-day prison sentence in the case of non-payment.

The Court of Appeal held up his conviction but found that the lower court had been mistaken to rule on the question of whether or not he was a conscientious objector. The applicant refused to pay the fine and was sentenced to 10 days of imprisonment.

In 2010 and 2011, the applicant again refused to perform the military service for which he was called up. Further proceedings were initiated against him. The charges were dropped during these proceedings.

Judgment

Before the ECtHR, Mr Kanatlı alleged that his conviction had violated Article 9. In light of the applicant's submission to the national courts, activities as an activist and continued refusal to serve in the army despite the measures taken against him, the Court considered that his refusal to perform the reserve service had been motivated by beliefs or convictions of sufficient cogency, seriousness, cohesion and importance, to fall within the scope of Article 9. It found that under the relevant domestic legislation, the 'reserve stage' was an integral part of military service. This aligned with the perspective taken by the Supreme Military Administrative Court. Thus, the applicant's complaint was deemed admissible.

The ECtHR found that the relevant national legislation required compulsory military service in the armed forces, including a complementary reserve military service, without any potential right for conscientious objection or without providing any option to undertake an alternative form of civil service. For this reason, the applicant had been subjected to a criminal investigation that had resulted in his conviction and imprisonment.

Although the present case was not related to compulsory military service, but rather to reserve military service that only lasted 1 day, the ECtHR found that the system violated Article 9. Service as a reservist was an extension of military service, performed in military barracks under the authority and supervision of army personnel. The State had not submitted that this service was hierarchically or institutionally distinct from the army.

Therefore, the Court saw no reason to depart from its previous caselaw, which had found that a system which provided no alternative service or effective and accessible procedure for the examination of a claim of conscientious objection could not be seen to strike a fair balance between competing interests.

Commentary: Expanding the Right to Conscientious Objection

Kanatlı builds on the Court's previous case law on conscientious objection. In the section that follows, I will briefly set out the case law upon which it is based to elucidate how the Court expands the right to conscientious objection in this judgment by applying it to reserve service.

For many years, the Court held that conscientious objection was within the scope of the discretionary power of the states. In *Ülke v. Turkey* (2006) and *Bayatyan v. Armenia* (2011), it adopted two pioneering decisions on the issue, however. In *Ülke*, the applicant was called up for compulsory military service and objected to performing this duty as he was a conscientious objector. The domestic court sentenced him to 6 months imprisonment and a fine. He was convicted on 8 occasions of 'persistent disobedience' and finally served 701 days of imprisonment. The ECtHR held that due to the nature of the obligatory military service, the applicant risked an infinite number of prosecutions and convictions. There had been a violation of Article 3 as the legal framework in force did not provide an adequate measure for a person's refusal to perform military service on grounds of his or her beliefs.

Four years later in *Bayatyan,* although the Third Section of the ECtHR held by a majority that the Convention did not enshrine a right to conscientious objection, the Grand Chamber overturned the previous ruling based on the living instrument doctrine and concluded that there had been a breach of Article 9. The Grand Chamber acknowledged that prior to this, it had never ruled on the question of the applicability of Article 9 to conscientious objectors, unlike the Commission which had refused to apply that Article to such persons. The Commission had drawn a link between Articles 9 and 4.3(b) of the Convention, finding that the latter left the choice of recognising a right to conscientious objection to Contracting States (para 99).

After the *Bayatyan* decision, the Court handed down several other decisions where it found that State Parties' failure to recognise the right to conscientious objection violated the Convention. For instance, in *Tarhan v Turkey* the Court found a violation of Article 9 due to the non-recognition of the right to conscientious objection and the proceedings conducted

against the applicant on that basis. Meanwhile, in *Savda v Turkey,* the Court reiterated that the system in Turkey allowed for no exceptions on the grounds of conscience and resulted in serious criminal sanctions being imposed on those who refused to comply. The penalties imposed against conscientious objectors when no measures were in place to take account of their convictions and beliefs could not be seen as necessary in democratic society and led to a violation of Articles 3 and 9. Article 6.1 was also violated due to the lack of independence and impartiality of the military court.

This brief overview of the Court's previous jurisprudence brings us to the ruling in *Kanatlı v Turkey*. Before commencing our analysis, it should be noted that the claimant is a citizen of the Turkish Republic of Northern Cyprus, and the incident occurred in Cyprus. However, due to the effective control of the Republic of Turkey in Northern Cyprus and the fact that Northern Cyprus is not recognised as a state, applications are filed against Turkey, and the violation decision is rendered against Turkey.

The Court's ruling in *Kanatlı* is important as it shows that the scope of Article 9 covers not only active military service but also reserve military service – even if this service only lasts for one day. This judgment was the first interpretation by the ECtHR of whether such reserve service was covered by the right to conscientious objection. It is significant that the Court held that this service amounted to an extension of military service as it was performed in military barracks under the authority and supervision of army personnel and was thus, neither hierarchically nor institutionally distinct from the army. It was on this basis that the Court found that its previous caselaw could be applied: a system which provides no alternative service or effective and accessible procedure for the examination of a claim of conscientious objection does not comply with Article 9. This decision is significant as it requires Turkey not only to provide an alternative to active military service, as established by the previous judgments referenced earlier, but also for reserve military service.

Another long-term impact of this decision will be on individual applications before Turkish Constitutional Court. Turkey is a country where the right to conscientious objection is not recognised, but there is no constitutional obstacle to its recognition. The Turkish Constitutional Court has not yet decided on the conscientious objection files before it which means that there had not yet been a single decision rendered as to whether conscientious objection is right or not at the domestic level. The Kanatlı judgment of the ECtHR, which states that the absence of civilian service as an alternative to compulsory military service is not necessary in a democratic society, may play an important role in the Constitutional Court's evaluation of short-term reserve military service and in its consideration of the need for alternative civilian service for this reserve service as well.

Conclusion

As explained above, the decision in *Kanatlı* builds on the Court's previous jurisprudence and expands the scope of the right to conscientious objection under Article 9 to the context of reserve military service. This is a welcome decision as it increases the protection available to pacifist objectors under the Convention.

Author's Note: I would like to thank my supervisor, Prof. Giuseppe Martinico, for his endless support and comments on this post, which helped to solidify the legal basis of my arguments and correct any errors in my analysis.