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## ECtHR judgement on Russian CO case disregards 53 years of international human rights standards

On the 7<sup>th</sup> of September 2020 the Grand Chamber panel of the European Court of Human Rights rejected the request to refer the case of **Dyagilev v. Russia** (no. 49972/16) to the Grand Chamber, thus rendering the judgement of 10 March 2020 final. In this judgement, by majority of four (4) to three (3), the European Court of Human Rights (Third Section), found that there has been no violation of article 9 of the European Convention of Human Rights in the case of conscientious objector (CO) Maksim Andreyevich Dyagilev, whose application for CO status and alternative civilian service had been dismissed by a military recruitment commission, and subsequently by courts.

In this judgement, a small majority of judges found that the military recruitment commission “satisfies the *prima facie* requirement of independence” despite the fact that three out of seven of its members are representatives of the Ministry of Defence.

In this ECtHR judgement a slim majority disregards all other relevant international and regional human rights standards set by numerous UN and European institutions for more than half a century.

First of all, in this case the majority of ECtHR judges appear to ignore that “no court and no committee can examine a person’s conscience”, and that “in order to be recognized as a conscientious objector, a declaration setting out the individual's motives should suffice in order to obtain the status of conscientious objector”, as **European Parliament’s** resolutions have repeatedly stated for over 30 years.<sup>i</sup>

Furthermore, the ECtHR disregards the fact that both the **UN Human Rights Council**,<sup>ii</sup> and its predecessor, the then **UN Commission on Human Rights**,<sup>iii</sup> have, since 1998, welcomed the fact that some States accept claims of conscientious objection as valid without inquiry. In this case, not only was Dyagilev’s claim not accepted without inquiry, but, as pointed out in the dissenting opinion of 3 judges, the “assessment was based on an overly burdensome standard of proof”.

In this judgement the ECtHR appears to ignore the international and regional human rights standards concerning any applications for conscientious objector status.

In 1967 the **Parliamentary Assembly of the Council of Europe**, decided that: “Where the decision regarding the recognition of the right of conscientious objection is taken in the first instance by an administrative authority, the decision-taking body shall be **entirely** separate from the military authorities and its composition shall guarantee **maximum** independence and impartiality.”<sup>iv</sup> [emphasis added]

Similarly, the then **UN Special Rapporteur on religious intolerance**, set the relevant standard as long ago as 1986: “The decision concerning their status should be made, when possible, by an impartial tribunal set up for that purpose or by a regular civilian court, with

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the application of all the legal safeguards provided for in international human rights instruments. There should always be a right to appeal to an independent, civilian judicial body. The decision-making body should be **entirely** separate from the military authorities and the conscientious objector should be granted a hearing, and be entitled to legal representation and to call relevant witnesses.”<sup>v</sup> [emphasis added] The same standards continue to be cited today by the **UN Special Rapporteur on freedom of religion or belief** as the role is named now.<sup>vi</sup>

It is obvious that a military recruitment committee with any representatives of the Ministry of Defence, let alone three (3) out of seven (7) members, is not “**entirely**” separate from the military authorities. Furthermore, insofar it is the military members and not the civilian ones which raise questions of independence and impartiality, as it appears to be accepted by the ECtHR [see *Papavasiliakis v. Greece*, no. 66899/14], a composition which would guarantee “**maximum**” independence and impartiality should have been one with the **minimum** [i.e. zero] participation of military members.

Most importantly, in this case the ECtHR does not take into account the recommendations of the UN Human Rights Committee which, in 2009, urged Russia to “consider placing the assessment of applications for conscientious objector status **entirely** under the control of civilian authorities.”<sup>vii</sup> [emphasis added]

The OHCHR has also adopted a similar standard noting that: “Independent and impartial decision-making bodies should determine whether a conscientious objection to military service is genuinely held in a specific case. Such bodies should be placed under the full control of civilian authorities.”<sup>viii</sup>

It is worth noting that this ECtHR judgement, which appears to accept a minority of military members in the bodies examining applications for CO status, contradicts its own rationale on whether even a single member may affect the independence and impartiality of a body. For example, in the case of *Canevi and Others v. Turkey*, no. 40395/98, which is not related to conscientious objectors, the ECtHR found a violation of Article 6.1 of the European Convention of Human Rights (right to fair trial), because of the participation of a single military member in a tribunal. If even a single (1) military officer affects the impartiality and independence of a tribunal in a case which has nothing to do with the army it is absolutely clear that the same would be true when the issue at stake is directly related to the army as it involves a conscientious objector *opposing* the army and the military service.

In conclusion, this year’s ECtHR judgement in the **Dyagilev v. Russia** case contradicts longstanding international and regional human rights standards concerning the recognition of COs, as well as its’ own broader rationale on independence and impartiality. In any case, the ECtHR may be responsible for the European Convention for Human Rights, but its judgement does not preclude the possibility for Dyagilev himself, as well as other conscientious objectors in similar position, to seek justice at a different level, such the UN Human Rights Committee, for violation of a different treaty, the International Covenant on Civil and Politic Rights.

This ECtHR ruling, concerning a single case with specific characteristics, adopted by a majority of just one judge, and not examined by the Grand Chamber does not set a general precedent for Russia and cannot annul the growing jurisprudence on the right to conscientious objection to military service.

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<sup>i</sup> European Parliament, Resolution on conscientious objection and alternative service, (A3-15/89), [known as Schmidbauer Resolution], as published in the Official Journal of the European Communities C291, 13 October 1989, para. A (page 123) and para. 4 (page 124). See also: European Parliament, Resolution on conscientious objection, (1-546/82), [known as Macciocchi Resolution], 7 February 1983, as published in the Official Journal of the European Communities C 68, 14 March 1983, para. 3 (page 15).

<sup>ii</sup> UN Human Rights Council, Resolution 24/17 (A/HRC/RES/24/17), 8 October 2013, para. 7. Available at <http://undocs.org/A/HRC/RES/24/17>.

<sup>iii</sup> UN Commission on Human Rights, [Resolution 1998/77](#), Conscientious objection to military service, 22 April 1998, (E/CN.4/RES/1998/77), para. 2.

<sup>iv</sup> Council of Europe, Parliamentary Assembly, [Resolution 337 \(1967\)](#), Right of conscientious objection, para. b2.

<sup>v</sup> Report submitted by Mr. Angelo Vidal d Almeida Ribeiro, Special Rapporteur appointed in accordance with Commission on Human Rights resolution 1986/20 of 10 March 1986 (E/CN.4/1992/52), 18 December 1991, para. 185. <http://undocs.org/E/CN.4/1992/52>.

<sup>vi</sup> Rapporteur's Digest on Freedom of Religion or Belief, p. 45.

<https://www.ohchr.org/Documents/Issues/Religion/RapporteursDigestFreedomReligionBelief.pdf>.

<sup>vii</sup> UN Human Rights Committee, Concluding observations on the sixth periodic report of the Russian Federation, (CCPR/C/RUS/CO/6), 24 November 2009, para. 23.

Available at <http://undocs.org/CCPR/C/RUS/CO/6>.

<sup>viii</sup> OHCHR, Approaches and challenges with regard to application procedures for obtaining the status of conscientious objector to military service in accordance with human rights standards, 24 May 2019, para. 60, (g). Available at: <http://undocs.org/A/HRC/41/23>.

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