

Thlimmenos v Greece (Application no. 34369/97)

1) Reference Details

Jurisdiction: European Court of Human Rights

Date of Decision: 6 April 2000

Case Status: Decided on merits

Link to Full Case:

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&key=32275&portal=hbkm&source=external&table=285953B33D3AF94893DC49EF6600CEBD49>

2) Facts

The applicant, a Greek National, was refused an appointment as a chartered accountant on the basis of a previous criminal conviction which comprised of disobeying, due to his religious beliefs as a Jehovah's Witness, an order to wear military uniform. He alleged violation of his right to freedom of religion, and discrimination on these grounds, as well as a violation of his right to a hearing within reasonable time.

3) Law

The applicant alleged violation of Article 14 (prohibition of discrimination) read in conjunction with Article 9 (freedom of thought, conscience and religion) of the European Convention on Human Rights. He also alleged that the domestic court proceedings did not comply with Article 6 of the European Convention on Human Rights Convention (right to a hearing within reasonable time).

The applicant sought to challenge the validity of Article 70 of the Military Criminal Code in force until 1995 which detailed the consequences of failing to carry out an order. Under section 23 of Law no. 2510/1997, a person has the right to conscientious objection, providing his application is lodged within a period of three months starting from 1 January 1998. The applicant asserted that he was not made aware of this time limit.

4) Legal Arguments

The Applicant

The applicant submitted that his non-appointment was directly linked to the manifestation of his religious beliefs, and that the exclusion of someone from the chartered accountancy profession on the grounds that he had refused to serve in the armed forces due to his religious beliefs did not serve a useful purpose. The applicant argued that rather than excluding every person convicted of a serious crime, the legitimacy of the exclusion should be made dependent on the nature of the offence in question, the time which had lapsed since the offence, and the motives behind the offence. Thus the Government's failure to take account of fact that the applicant, through his religion, fell within a different class to most other criminal offenders, amounted to a violation of Article 14 in conjunction with Article 9.

The Government

The Government argued that the facts of the case did not fall within the ambit of Article 9, and thus Article 14 did not apply. It asserted that the rule excluding all persons convicted of a crime applied to all civil service posts, and in this sense the law was both

neutral and in the public interest. This distinction was absolute which meant that there could be no distinction on a case by case basis. The State considered that the refusal to perform unarmed military service at a time of general mobilization was a serious offence in relation to the defence, safety and independence of the nation; thus the sanction imposed could not be deemed disproportionate. The Government further submitted that the obligation to perform military service did not include exceptions on the grounds of religion or conscience, and that the applicant had been convicted on the grounds of insubordination, a conviction which was beyond the competence of the Court to examine. Thus, even if Article 14 was applied, there still existed a reasonable and objective justification for the Government's lack of distinction between the Applicant and other persons convicted of a serious crime and that, as the law stood, persons of other religions would also be excluded from the chartered accountancy profession.

European Commission on Human Rights

The Commission considered that the facts of the case fell within the ambit of Article 9, and therefore Article 14 could be applied. Further to this, the Commission opined that the right to freedom from discrimination not only encompassed the obligation to treat persons the same in analogous situations, but to treat differently persons whose situations were different. The Commission considered that there was no objective and reasonable justification for the failure to treat differently persons convicted for refusing to serve in the armed forces on religious grounds from persons convicted of other serious crimes.

5) Decision

The Court determined that the facts of the case fell within the ambit of Article 9, and unanimously found a violation of Article 14 in conjunction with Article 9 on the basis that the state had, without objective and reasonable justification, failed to treat differently persons whose situations differed greatly. As the applicant had also served a prison sentence for his refusal to wear military uniform, further sanctions were deemed disproportionate to the crime. As his refusal to wear a military uniform stemmed from religious convictions, his conviction for refusing could not imply that he was morally or mentally unfit to join the chartered accountancy profession; thus his exclusion did not pursue a legitimate aim. The Court opined that it was not necessary to determine whether there had been a violation of Article 9 on its own. It also found a violation of Article 6, deeming that the length of proceedings instituted by the applicant to challenge the authorities' failure to appoint him did not meet the "reasonable time" requirement. Under Article 41, the applicant was awarded non-pecuniary damages (GRD 6,000,000) and costs and expenses (GRD 3,000,000).