

Aapo Järvinen v Finland, Communication No. 295/1988, UN Doc. CCPR/C/39/D/295/1988 (1990)

1) Reference Details

Jurisdiction: UN Human Rights Committee, Thirty-ninth session

Date of decision: 25 July 1990

Case Status: Concluded by the Human Rights Committee

Link to full case: <http://www1.umn.edu/humanrts/undocs/session39/295-1988.html>

2) Facts

Until the end of 1986 Finnish applications for exemption from military service were resolved in accordance with the Law on Military Service without Arms and Civil Service. Under this law, every conscript whose religious or ethical convictions does not allow them to fulfil their compulsory military service in the armed service may be exempted from service in peacetime and be assigned to unarmed or to civilian service. The length of military service was eight months. The duration of unarmed service was 11 months, to be achieved in the Defence Force in roles that do not require bear arms. The length of civil service lasted 12 months and had to be performed in public administration services, municipalities or hospitals.

On 9 June 1986, the author, who had been called for military service, presented to the competent authorities a written statement stating that his ethical beliefs did not permit him to meet an armed or unarmed service in the Forces Finnish Defence.

In January 1987, he submitted a new application for exemption from military service, which was accepted in February 1987. On 9 June 1987, the author began alternative civilian service. Under the new provisions, the term of civilian service is determined in accordance with the provisions in force at the time of the service order. Accordingly, Mr Järvinen's term of service was 16 months, because he did not receive the order assigning him to alternative civilian service until the legal amendment became effective.

The author claimed that his length of service constituted discrimination. In reply to this complaint of discrimination filed by the author, the Parliamentary Ombudsman of Finland, on 17 February 1988, concluded that there had been no evidence of any intention on the part of the authorities deliberately to prolong the procedure in Mr Järvinen's case.

3) Law

National Law

- Law on Military Service without Arms and Civil Service
- Article 67 of the Parliamentary Act, Ordinance implementation of Law No. 647/85
- Act No. 647/85 (the Act on the Temporary Amendment to the Act on Unarmed and Civilian Service)

International Law

- UN International Covenant on Civil and Political Rights 1966, Article 26

4) Legal Arguments

The Author

The author argued that he was the victim of discrimination, because the people who choose alternative service have a service period of 16 months, while the duration of military service is only eight months. While the author acknowledged that the 12 month period operating prior to 1987 was not necessarily discriminatory in accordance with the provisions of Article 26 of the Covenant, he contended that the extension of 12 to 16 months was not justified and constituted discrimination.

The author argued that a period of 16 months was disproportionately higher than that applicable to military conscripts, as it is twice as long. In the author's view, the Government of Finland did not have valid arguments to support the proposition that increasing the length of alternative service for 16 months was a reasonable and non-discriminatory measure which was proportionate to the intended aim. According to the author, it was the Government's intention to introduce a punitive element in the extension of the alternative service.

Furthermore, the author submitted that the criteria for any differentiation in the term(s) of service was neither reasonable nor objective, as the prolongation of the term of service is applied to all groups of conscientious objectors except for one specific group, Jehovah's Witnesses, who are exempt from all forms of service through an Act on the Exemption of Jehovah's Witnesses from Military Service which had been in force since the beginning of 1987.

State Party

The State party argued that since States parties have no obligation to establish an alternative service they can determine the conditions as they see fit, provided that such conditions are not in themselves a violation of the Covenant.

Furthermore, the State party considered that although the period of service for persons who perform civilian service was longer than that of the recruits who meet the armed service this did not reveal an intention to discriminate within the meaning of Article 26.

In regard to the general exemption of Jehovah's Witnesses from all types of service, the State party noted that the Act on Exemption of Jehovah's Witnesses from military service was adopted in accordance with Article 67 of the Parliamentary Act, which provides the procedural requirements for enacting constitutional legislation and asserted that that Act cannot be regarded as discriminatory within the meaning of Article 26 of the Covenant.

5) Decision

Merits

The Committee set out that the main question before it was whether the specific conditions in which the author must provide alternative service may constitute a violation of Article 26 of the Covenant. The Committee explained that the fact that the Covenant itself does not establish the right to conscientious objection did not change the situation. The Committee stated that the

prohibition of discrimination laid down in Article 26 is not limited to the rights guaranteed under this Covenant.

The Committee opined that in determining whether the prolongation of the term for alternative service from 12 to 16 months which was applied to Mr Järvinen was based on reasonable and objective criteria, the Committee needed to consider the *ratio legis* of Act No. 647/85 (the Act on the Temporary Amendment to the Act on Unarmed and Civilian Service) which stated:

"As the convictions of conscripts applying for civilian service will no longer be examined, the existence of these convictions should be ascertained in a different manner so as not to let the new procedure encourage conscripts to seek an exemption from armed service purely for reasons of personal benefit or convenience. Accordingly, an adequate prolongation of the term of such service has been deemed the most appropriate indicator of a conscript's convictions."

Taking the *ratio legis* into consideration the Committee held that the legislation was based on practical considerations and had no discriminatory purpose. The Committee set out that in all the circumstances, the extended length of alternative service was neither unreasonable nor punitive.

The Committee did not consider the authors arguments made in connection to the exemption of Jehovah's Witnesses.