

EUROPEAN COURT

14 CASES INVOLVING RELIGIOUS FREEDOM DENIED ADMISSIBILITY 1967- 1998

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Each year, the European Court denies the admissibility of countless applications, while providing a variety of explanations for its decisions. The following cases represent only a sample of these decisions for the time period, 1967 to 1998. An exhaustive list of cases denied admissibility is not available at this time.

1967

X v. The Netherlands

-- Refusal to purchase any insurance on religious grounds

<http://hudoc.echr.coe.int/hudoc/default.asp?Language=en&Advanced=1>

Farmer X objected to purchasing any form of insurance on religious grounds. He believed that God meted out prosperity and adversity to human beings and therefore it was not permissible to attempt in advance to prevent or reduce the effects of possible disasters. Consequently, he argued that a Dutch law compelling the purchase of insurance violated Article 9 as applied to him.

The Commission found that the Dutch legislation could be justified under paragraph (2) of Article 9. Paragraph 2 expressly permits such limitations of the freedom to manifest one's religion or beliefs as are necessary in a democratic society "for the protection of the rights and freedoms of others." Here, the purpose of the compulsory motor insurance scheme was to safeguard the rights of third parties who may become victims of motor accidents.

1986

H. and B. v. United Kingdom

--Fiscal Conscientious Objection

Application No. 11991/86

<http://hudoc.echr.coe.int/hudoc/ViewRoot.asp?Item=32&Action=Html&X=605141304&Notice=0&Noticemode=&RelatedMode=0>

Ms. Hibbs and Mrs. Birmingham, members of the religious Society of Friends, withheld 12% of their income tax, the proportion which would be spent by the Government on military preparations, unless it

agreed to pay the amount into a fund which would not be used for military purposes. Fundamental to the religious beliefs of Quakers is that war and the taking of steps preparatory to war is contrary to the teachings of Christ and therefore prohibited.

Ms. Hibbs and Mrs. Birmingham claimed that the legal obligation on them to pay over to the Inland Revenue income tax which they know will be used for military purposes interfered with their right to freedom of religion under Article 9 para. 1 of the Convention and was not necessary in a democratic society for any of the reasons stated in Article 9 para. 2 of the Convention.

While acknowledging that pacifism fell within the ambit of the right to freedom of religion, the Commission highlighted that the term "practice" in Article 9 para. 1 did not cover each act motivated or influenced by a religion or a belief. It further noted that the obligation to pay taxes was general in nature, without any specific conscientious implications in itself. Finally, it emphasized that Article 1, Protocol 1 expressly recognized the power of taxation to the State.

1987

Van Buitenen v. The Netherlands

-- Conscientious Objection

Application No. 11775/85

<http://hudoc.echr.coe.int/hudoc/default.asp?Language=en&Advanced=1>

Section 12 of the Netherlands' Conscientious Objections Act stipulates that the duration of substitute civilian service is one-third longer than military service, with a minimum of eighteen months served. Mr. Van Buitenen became a conscientious objector in the middle of his military service. Because he was required to serve extra time, he submitted that this extra imposition of time constituted a violation of his rights under Articles 9 and 14 of the Convention.

While the Commission noted that the Dutch government treated one who opts to do substitute civilian service differently than one who serves in the military, it found the Dutch courts' explanation for the differential treatment satisfactory. Difference in treatment is discriminatory if it "has no objective and reasonable justification," that is, if it does not pursue a "legitimate aim" or if there is not a "reasonable relationship of proportionality between the means employed and the aim sought to be realised." The Commission considered substitute civilian service less arduous and so there was a need to avoid refusal of military service for that reason. The additional time of civilian service that Mr. Van Buitenen had to serve was reasonably proportional to the different nature of the two services.

The Commission noted in response to the Article 9 complaint that Article 4 para. 3 b) of the Convention expressly recognized that civilian service may be imposed on conscientious objectors as a substitute for military service and that objections of conscience do not entitle a person to exemption from such a service.

1988

Karlsson v. Sweden

– State refusal to interfere in church disputes within the Swedish State Church

Application No. 12356/86

<http://hudoc.echr.coe.int/hudoc/default.asp?Language=en&Advanced=1>

Mr. Karlsson, a priest of the Swedish State Church, adheres to the religious view that is called "gammal kyrklighet," for which reason he is opposed to the ordination of women. He applied for a position as vicar in a parish, but the Diocesan Chapter denied his request. The Chapter explained that Mr. Karlsson had shown through his actions that he could not be expected to cooperate with female colleagues, and he did not possess the ability and the qualities deemed necessary for satisfactory work in a supervisory position in a parish with more than one priest.

Mr. Karlsson argued that the Chapter's decision finding him unqualified for the position violated Article 9. In response, the Commission referred to the existing case law that demonstrated that the High Contracting Parties were not obligated to ensure that churches within their jurisdiction grant religious freedom to their members and servants. "The freedom of religion thus does not include the right of a clergyman, within the framework of a church in which he is working or to which he applies for a post to practise a special religious conception."

1990

D. and E.S. v. United Kingdom – Kosher food in prison

Application No. 13669/88

<http://hudoc.echr.coe.int/hudoc/default.asp?Language=en&Advanced=1>

D. and E.S., two prisoners, are Orthodox Jews. They strictly follow Jewish dietary laws which require that they only eat Kosher food and that the food be prepared, cooked and served in a prescribed manner. While the prison system did offer a vegan diet, the vegetables and pulses provided for in the vegan diet were often cooked together in the same pots with food for other diets, mixed in the same pots and margarines containing animal fats often substituted for Tomor margarine, and the applicants were unable to eat the cooked items in the vegan diet. The Society for the Welfare of Jewish Prisoners offered to supply to all strictly orthodox Jewish prisoners Kosher food identical in content to that received by other prisoners at no cost to the prison authorities, to supply freezers and any other equipment necessary for this purpose and, furthermore, to meet any additional staff costs incurred. This offer was initially refused.

The applicants complained that the refusal of the prison authorities to facilitate the supply of an adequate Kosher diet in prison constituted a violation of their right to freedom of religion, contrary to Article 9 of the Convention.

However, the Commission did not address Article 9 concerns in its decision to deny admissibility. Instead, it discussed Rule 21(4) of the English Prison Rules, which requires that the food provided to prisoners "shall be wholesome, nutritious, well prepared and served reasonably varied and sufficient in quantity." It pointed out that the duty of the Secretary of State to provide nutrition to prisoners could arguably be interpreted as requiring the taking into account of the special dietary requirements of prisoners and, further, that the reference to "food" in Rule 21(4) "should be interpreted as a reference to food which prisoners are able to consume having regard to the existence of any impediment on religious or other grounds." It therefore found that D. and E.S. could have challenged the Secretary of State's decision in judicial review proceedings on the basis that he had misinterpreted and misapplied the relevant provisions governing the supply of food to prisoners. Consequently, it denied admissibility for failure to exhaust all judicial remedies.

H. v. Greece

– Refusal to give Christian designation to the Jehovah's Witnesses

Application No. 16319/90

<http://hudoc.echr.coe.int/hudoc/default.asp?Language=en&Advanced=1>

H., a Jehovah's Witness, requested that his municipal registration form indicate his religion as "Christian Jehovah's Witness." The practice of the authorities of the City of Thessaloniki was to indicate the religion as "Jehovah's Witness," omitting the Christian designation.

H. submitted that the above practice was dictated by the Orthodox Church of Greece, and violated his rights under Article 9 of the Convention.

While acknowledging that the complaint fell within the scope of Article 9 of the Convention, the Commission based its decision on H.'s failure to lodge an appeal challenging the legality of the refusal of the municipal authority under the provisions of the Greek Constitution with the Greek administrative courts. It denied admissibility because H. had not exhausted the remedies available to him under Greek law.

1991

Autio v. Finland

-- Conscientious Objection

Application No.17086/90

<http://hudoc.echr.coe.int/hudoc/default.asp?Language=en&Advanced=1>

Mr. Autio, like Mr. Van Buitenen, complained that the length of his substitute civilian service was discriminatory in comparison with the length of ordinary military service. He alleged that the discrimination related to the enjoyment of his right to freedom of thought, conscience and religion and invoked Article 14 in conjunction with Article 9 of the Convention.

The Commission noted that for the purposes of Article 14 of the Convention, a difference in treatment is discriminatory if it "has no objective and reasonable justification," that is, if it does not pursue a "legitimate aim," or if there is no "reasonable relationship of proportionality between the means employed and the aim sought to be realized." In considering the proportionality of the differential, it accepted, on one hand, that genuine conscientious objectors, whose conviction did not allow them to opt for the shorter military service, may find the duration of their service unreasonable. On the other hand, it considered that the legislation under review had relieved all those opting for substitute service from the duty to prove the genuineness of their conviction. Therefore, it found that the differential treatment did not amount to a violation of Article 14 read in conjunction with Article 9 of the Convention.

Choudhury v. United Kingdom – Blasphemy Laws

Application No. 17439/90

<http://hudoc.echr.coe.int/hudoc/default.asp?Language=en&Advanced=1>

Mr. Choudhury, a Moslem, applied for a summons for criminal prosecution of blasphemy against Salman Rushdie (author of the book "Satanic Verses") and the Viking Penguin Publishing Co. (the publisher of the book) on the grounds that the author and publishers unlawfully and wickedly published in the book blasphemous libels against Almighty God (Allah), the Prophet Abraham and his son Ishmad, Mohammed the Holy Prophet of Islam, his wives and companions and the religion of Islam. However, the application was dismissed on the basis that the offense of blasphemy relates only to Christianity.

Mr. Choudhury argued that under Article 9 of the Convention that the United Kingdom had not given the Moslem religion protection against abuse or scurrilous attacks, and that without that protection there would inevitably be a limited enjoyment of the right to freedom of religion provided for by that Article. He also maintained that since the United Kingdom extended protection to the Christian religion and not to other religions, this differential treatment offended Article 14. At the domestic trial, counsel for the publisher conceded that there might be a breach of Article 9 of the Convention if criticism or agitation against a church or religious group reached such a level that the church or its members were prevented from manifesting their beliefs in the way set out in Article 9. Yet the lower court found that "nothing remotely like that had been demonstrated by the applicant."

The Commission found that the freedom of Article 9 of the Convention may not extend to guarantee a right to bring any specific form of proceedings against those who, by authorship or publication, offend the sensitivities of an individual or of a group of individuals.

1992

Spetz v. Sweden

– State interference in disputes within the Pentecostal Movement

Application No. 20402/92

<http://hudoc.echr.coe.int/hudoc/default.asp?Language=en&Advanced=1>

In 1952, the government of Sweden issued a decision conferring the right to celebrate marriages to the Pentecostal Movement. According to the decision, only officials of Pentecostal congregations with specified qualifications were to be authorized. The Pentecostal Movement organized a Marriage Board to authorize its own celebrants.

In 1989, the Marriage Board revoked the right of the applicant's Congregation to celebrate marriages because the Congregation was no longer considered to be part of the Pentecostal Movement. A government decision of 1991 found that the pastors of the applicant's Congregation right to conduct marriage had been revoked by the Marriage Board's decision. It noted that a public authority had been conferred on the Marriage Board, which was limited to officials of the Pentecostal Movement. As a consequence, the Board had to make sure that a prospective celebrant was a member of a Pentecostal congregation, and that, as a

further consequence, an official of a congregation that no longer belonged to the Movement could not invoke an authorization by the Marriage Board. This decision voided 21 marriages that had been conducted by the pastors of the applicant's Congregation.

The applicants, four pastors and one couple, claimed that they have been denied their rights to freedom of religion in violation of Article 9 of the Convention. They submitted that the Marriage Board's decision to revoke the right of the Congregation to celebrate marriages and, as a consequence, the applicant pastors' authorizations to conduct marriage ceremonies was a means of punishment directed at the applicants' Christian faith and the work that had been carried out within the Congregation. The pastors had thus, because of their position on certain questions of faith, been prohibited from exercising part of their profession.

The Commission reaffirmed that Article 9 did not oblige the States to ensure that churches within their jurisdiction grant religious freedom to their members and servants, consistent with previous case-law. "A church is free to enforce uniformity in religious matters, and it is not obliged to accept a pastor as its servant or to allow him to carry out certain duties. The pastor's right to freedom of thought, conscience and religion vis-à-vis the church is guaranteed by his right to leave the church."

1994

ISKCON and 8 Others v. United Kingdom

– City planning and religious freedom

Application No. 20490/92

<http://hudoc.echr.coe.int/hudoc/default.asp?Language=en&Advanced=1>

The International Society for Krishna Consciousness Ltd. ("ISKCON") operated a manor house for the purposes of theological education. In 1987, the local authority served an enforcement notice on ISKCON alleging that, "by using the land for "the purposes of a residential educational college and a religious community and public worship and public entertainment in connection with religious festivals" ISKCON had materially changed the use of the land, and that this material change of use amounted to a breach of planning control.

ISKCON alleged a violation of Article 9 of the Convention. While it accepted that the enforcement notice appeared to satisfy the requirements of lawfulness and legitimate purpose in Article 9 para. 2, it considered that the interference was not "necessary in a democratic society."

The Commission found that ISKCON could not derive from the Convention a right to "exemption from the ordinary planning controls (provided due attention was paid to their interests), the individual applicants must accept that the enforcement of those planning controls affects the modalities of their worship and, so far as relevant, the education of their children."

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1995

Heudens v. Belgium

– Conscientious Objection

Application No. 24630/94

<http://hudoc.echr.coe.int/hudoc/default.asp?Language=en&Advanced=1>

Mr. Heudens, a Jehovah's Witness, claimed that Belgium's failure to provide an exemption from performing military service and substitute civilian service violated Article 9 of the Convention. He highlighted that certain other European countries had made arrangements in respect of Jehovah's Witnesses, such as full exemption from military service, a symbolic sentence that is not executed, or service performed in a way which is compatible with the beliefs of Jehovah's Witnesses. In addition, he argued that, under Article 14 of the Convention Belgium discriminated against him on the basis of his religion. While Belgium had created alternatives for different kinds of conscientious objectors, such as performing military service without having to carry arms and different kinds of substitute civilian service, the government had taken no specific measures for conscientious objectors who on moral grounds fully refused to fulfil their military obligations. Total conscientious objectors were sentenced to prison for their convictions.

The Commission highlighted that the Convention and its Protocols did not guarantee any right to conscientious objection and that Article 9 of the Convention did not give conscientious objectors the right to be exempted from military or substitute civilian service, nor did it prevent a Contracting State from imposing sanctions on those who refuse such service.

1996

C.J. and J.J. and E.J. v. Poland

– Religious classes and freedom not to express religious beliefs

Application No. 23380/94

<http://hudoc.echr.coe.int/hudoc/default.asp?Language=en&Advanced=1>

The school system in Poland requires parents to fill out a form indicating whether their child will attend voluntary religious instruction or an alternate course in ethics. The applicants contended that their right to respect for their private life and their freedom of thought and conscience had been breached since they were obliged to make a public declaration about their convictions in religious matters, thus violating Articles 9 and 10 of the Convention.

The Commission found no indication of interference with the applicants' rights and freedoms guaranteed by Article 9 of the Convention.

Pendragon v. United Kingdom

– Freedom to observe Druid ceremony at Stonehenge

Application No. 31416/96

<http://hudoc.echr.coe.int/hudoc/default.asp?Language=en&Advanced=1>

The Glastonbury Druidic Order held services at Stonehenge during the spring and autumn equinox and summer and winter solstice, attracting about thirty people on each occasion. Because non-Druidic people also held festivals in the surrounding area at the summer solstice, which one year caused a serious disturbance, the English Heritage closed Stonehenge for the summer solstice. The enactment of the Public Order Act 1986 (as amended) ("the Act"), conferred various powers on the police which were used to prevent public order disturbances at Stonehenge at the time of the summer solstice.

Mr. Pendragon, a member of the Druidic Order, complained that his rights under Articles 9, 10 and 11 of the Convention were violated, in that he was prevented from being present or carrying out a Druid ceremony at Stonehenge at the sunrise of 21 June 1995 and was arrested and detained in police custody. He further submitted that the law in the United Kingdom failed to protect his rights sufficiently under Articles 9, 10 and 11 of the Convention. Finally, he alleged a violation of Article 14 of the Convention, because by prohibiting all people from celebrating the summer solstice at Stonehenge, Druids were disproportionately discriminated against, since the summer solstice has particular significance for their beliefs.

The Commission observed that there was no evidence that Druids were treated in any way differently from any other groups of people wishing or attempting to observe the summer solstice in the vicinity of Stonehenge. It further found that the ban on observing the summer solstice in the vicinity of Stonehenge cannot be said to have had a disproportionate effect on Druids as opposed to other groups who wanted to observe the summer solstice due to different beliefs or purely secular reasons. Finally, the Commission failed to find any evidence of any discriminatory treatment of the applicant in connection with his arrest and detention.

1998

Keller v. Germany

–Prevention campaign against Scientology in Bavarian schools

Application No. 36283/97

<http://hudoc.echr.coe.int/hudoc/default.asp?Language=en&Advanced=1>

The Federal Government and the Governments of the Länder adopted joint strategies with a view to reducing the influence of Scientology organizations, which they viewed as particularly dangerous. The Government of the Land of Bavaria ordered schools to inform pupils of all ages and their parents about the goals, strategies and operating procedures of Scientology. It published in an issue of the magazine *Schulreport* an article entitled "All Clear? Information about Scientology," which was distributed to Bavarian schools. The article depicted Scientologists as having standard personalities with characteristics such as obesity/anorexia, loss of strength and altered beard-growth, whose thinking processes were narrowed and weakened, and who were held up as conditioned and brain-washed "zombies" without free will, as well as the assessment of the applicants' beliefs as "a crude mixture of science fiction, psychoanalysis and manipulative practices of totalitarian systems."

Mr. Keller, a Scientologist, submitted that he and the other applicants were the victims of the information campaign in Bavaria concerning Scientology. They argued that the article constituted "a direct attack - couched in prejudiced and unnecessarily offensive terms" - on the peaceful enjoyment of their right to thought, conscience and religion as guaranteed by Article 9 of the Convention.

The Commission recalled that an applicant could not claim to be the victim of a breach of the rights or freedoms protected by the Convention unless there was a sufficiently direct connection between the applicant and the injury he maintains he suffered as a result of the alleged breach. It further observed that the article complained of contained information about Scientology and members of the worldwide organization in general and was not aimed at any identifiable person belonging to it. The Commission did not link the local negative attitude of their neighborhood and the local press towards the Scientologists to the information disseminated about Scientology and therefore found that the effects of the contested measures were too indirect and remote as to affect the applicants' rights under Article 9 of the Convention.