

1983 November 4

[HADJIANASTASSIOU, STYLIANIDES AND PIKIS, JJ.]

MICHAEL ANDREOU PITSILLIDES AND ANOTHER,  
*Appellants,*

v.

THE REPUBLIC,  
*Respondent.*

(Criminal Appeals Nos. 4408 and 4411).

*Military service—National Guard—Liability to serve in—Created by section 4 of the National Guard Laws, 1964–1981 and general call-up governed by s. 6(1)(2) and (4) of the Law—Appellants called up for service by order made under s. 6(4) of the Law and they failed to enlist as directed in the order—They cannot take avail of circular, addressed by the Minister to the Military Authorities to the effect that indulgence would be extended to those not enlisting on the date specified in the above order because appellants not only failed to enlist as specified in the order but they did not enlist at all.* 5 10

*National Guard Laws, 1964–1981—“Reasonable cause” in section 22(a) of the Law—Meaning—Religious beliefs and grounds of conscience of appellants are not “reasonable cause” if the Law does not otherwise absolve them from criminal liability due to such beliefs.* 15

*Words and phrases—“Reasonable cause” in section 22(a) of the National Guard Laws, 1964–1981.*

*Constitutional Law—Right to freedom of thought, conscience and religion—Article 18.1 of the Constitution—Limitations to, as are prescribed by Law in Article 18.6—Should be necessary in the interests, inter alia, of the security of the Republic—Final arbiter to pronounce on the existence of this necessity are the Courts—Circumstances of insurgence during the last 20 years and foreign military occupation of part of Cyprus justify the limitation of the right to freedom of religion and conscience by the imposition of compulsory military service under the National* 20 25

*Guard Laws, 1964–1981—Which are not contrary to Article 18 of the Constitution.*

*Military Service—Conscientious objection to, because of appellant's religious conviction as witness of Jehovah—National Guard Laws, 1964–1981 providing for compulsory military service—Not contrary to Article 18 of the constitution, which safeguards the right to freedom of thought, conscience and religion because compulsory military service is justified by the circumstances prevailing in Cyprus since 1963.*

10 The appellants were convicted and sentenced by the Military Court to 12 months' and 10 months' imprisonment, respectively, of the offence of not joining the National Guard when called up, contrary to section 22(a)\* of the National Guard Laws, 1964–1981. The particulars of the offence were that on the 12th  
15 day of January, 1983, whilst they were liable for military service and duly called up to join the National Guard, failed to do so without reasonable cause. On being formally charged in respect of this offence, the appellants replied that the reason for not enlisting was because, being Jehovah witnesses, their conscience  
20 did not allow them to take up arms.

The appellants were Greek Cypriots and they were of such age that they had the obligation to serve in the National Guard under s.4(1) of the relevant Law. By decision of the Council of Ministers No. 22526 dated 9.12.1982 published in the Official  
25 Gazette under Not. No. 183, Supplement No. III, and an Order of the Minister of Defence issued under s.6(4) dated 14.12.1982 published in Supplement No. III, Part II, to the Official Gazette of 17.12.1982, Not. 1422, they had to attend for enlistment at Paphos and Larnaca KEN, respectively, on 12th January, 1983.  
30 The appellants failed to comply with the call-up Order and they did not join the National Guard.

Upon appeal against conviction counsel for the appellants mainly contended:

(a) That the appellants committed no offence by not

\* Section 22(a) provides as follows:

"22(a) Anyone who is obliged to do so fails without reasonable cause, the burden of proof being on him, to comply with any order of call-up or he does not attend within the time limits prescribed in the call-up

is guilty of an offence\_\_\_\_\_".

enlisting in the National Guard on 12.1.1983, having regard to the true construction of the circular\* of the Minister of Defence dated 12.1.1983.

- (b) That the religious belief and conscience of the appellants constitute a reasonable cause that absolves them from criminal liability; and, 5
- (c) That compulsory military service is repugnant to Art. 18\*\* of the Constitution of the Republic, enshrining and safeguarding freedom of religion and conscience.

*Held*, (1) that the liability of a person for service in the National Guard is created by section 4 of the Law; that the general call-up is made by the decision of the Council of Ministers and the other arrangements—date, place etc.—by Order of the Minister under section 6(1)(2)(4); that the Order of the Minister, as published in the Gazette, is clear and definite; that the said circular was addressed to KEN Paphos and KEN Larnaca, and was not issued by virtue of the power vested in the Minister under the relevant Law; that it was not published in the Official Gazette and it was not brought to the knowledge or attention of anyone except the appropriate military authorities; that it was, therefore, not an Order in the sense of s.6(4) of the Law, and it did not and could not modify or amend Order 1422 published in the Official Gazette; that it was only an administrative direction whereby indulgence would be extended to those not enlisting on the date specified in the Order but on any subsequent date, at any rate not later than the 17th January, 1983; that the responsibility of the appellants under the Law was to join on 12th January, 1983; that they failed to do so on that date and needless to say that they did not join at all; and that, therefore, it is not permissible for them to contend that the indulgence of the circular of the Minister is of any avail to them; that the element necessary for the offence was complete on 12th January, 1983; accordingly contention (a) should fail. 10  
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\* This circular which is quoted at pp. 379–381 post., directed that the conscripts of 83 A /ESSO, called for enlistment in the National Guard from 12th–14th January, 1983, if they attended on a different date from that appointed in his Order but within the period of enlistment, to be admitted independently of the date of their attendance, and furthermore no consequences to follow if they attended out of time but at any rate not later than the 17th January, 1983.

\*\* Article 18 is quoted at pp. 383–384 post.

(2) That "reasonable" is a relative term and there must be bona fides; for the cause to be reasonable there must be good faith in it; it must be objectively fair; that the "cause" must be one that is not contrary to or incompatible with the Law of the land; that the religious beliefs and grounds of conscience of the appellants by themselves are not "reasonable cause" if the Law does not otherwise absolve them from criminal liability due to such beliefs; that as, however, they are not exempted due to such cause from service, they failed to discharge the burden cast on them; accordingly contention (b) should fail.

(3) That the limitations to be prescribed by Law, under Article 18.6 of the Constitution to which "freedom to manifest one's religion or belief shall be subject" should be necessary in the interests, inter alia, of the security of the Republic; that the final arbiter to pronounce on the existence of the necessity are the Courts of each State; that to ascertain whether it was necessary to introduce permissible limitations regard must be had to the national realities at the time of the enactment and subsequent thereto; that in the Republic of Cyprus for the last 20 years an insurgence is going on; that for a decade—from 1964–1974 this country was living under the threat and danger of foreign invasion by a neighbouring country; that in 1974 Cyprus became the victim of that threatened invasion and ever since this invasion a substantial part of the area of the Republic—about 37%—is under foreign military occupation; that the very existence of the State continues to be under express or latent danger; that these circumstances do justify the limitation of the right to freedom of religion and conscience by the imposition of compulsory military service; that in the preamble to Law 20/64 it is plainly stated that the National Guard was established for the defence of the Republic; that so long as the National Guard is used for the defence and security of the country, the Law imposing the obligation for military service on the citizens of Cyprus, irrespective of whether the right to religion and conscience is restricted, is not unconstitutional; accordingly contention (c) should, also, fail.

*Appeal dismissed.*

*Observations:* We trust that the appropriate Authorities of the Republic will, if and when in the future the circumstances of the country permit it, consider the

exemption of conscientious objection from compulsory military service and/or the imposition of alternative service.

Cases referred to:

*Grandrath v. Federal Republic of Germany*, (Application No. 2299/64) of the European Commission and Court of Human Rights. 5

**Appeal against conviction.**

Appeal against conviction by Michael A. Pitsillides and Another who were convicted on the 16th May, 1983 by a Military Court sitting at Nicosia (Criminal Cases Nos. 131/83 and 92/83) on one count of the offence of not joining the National Guard when called up contrary to section 22(a) of the National Guard Law, 1964 (Law No. 20 of 1964 as amended) and were sentenced to 12 months' and 10 months' imprisonment respectively. 10

*L.N. Clerides*, for the appellants. 15

*St. Tamassios*, for the respondent.

*Cur. adv. vult.*

HADJIANASTASSIOU, J.: The judgment of the Court will be delivered by Mr. Justice Stylianides. 20

STYLIANIDES, J.: The appellants were convicted and sentenced to 12 months' and 10 months' imprisonment, respectively, by the Military Court of the offence of not joining the National Guard when called up, contrary to section 22(a) of the National Guard Law No. 20 of 1964, as amended by Laws 1964-1981. 25

The particulars of the offence, as set out in the charge-sheet, are that the accused on the 12th day of January, 1983, whilst they were liable for military service and duly called up to join the National Guard, failed to do so without reasonable cause.

These appeals were directed originally against both conviction and sentence but in the course of the hearing learned counsel for the appellants, rightly in our view, with the leave of the Court withdrew the appeal against sentence. 30

The facts of both appeals are identical. The appellants are Greek Cypriots. They are of such age that they have the obligation to serve in the National Guard under s.4(1) of the relevant Law. By decision of the Council of Ministers No. 35

22.526 dated 9.12.1982 published in the Official Gazette under Not. No. 183, Supplement No. III, and an Order of the Minister of Defence issued under s. 6(4) dated 14.12.1982 published in Supplement No. III, Part II, to the Official Gazette of 17.12.1982, Not. 1422, they should attend for enlistment at Paphos and Larnaca KEN, respectively, on 12th January, 1983. The appellants failed to comply with the call-up Order and they did not join the National Guard. On being formally charged in respect of this offence, the appellants replied that the reason for not enlisting is because, being Jehovah witnesses, their conscience does not allow them to take up arms.

The grounds of appeal, as ultimately argued before us, are:-

- (1) The appellants committed no offence by not enlisting in the National Guard on 12.1.1983, having regard to the true construction of the circular of the Minister of Defence dated 12.1.1983 (exhibit No. 8);
- (2) The religious belief and conscience of the appellants constitute a reasonable cause that absolves them from criminal liability; and,
- (3) Compulsory military service is repugnant to Art. 18 of the Constitution of the Republic, enshrining and safeguarding freedom of religion and conscience.

*GROUND No. 1:*

The Minister of Defence for administrative purposes issued the following circular (exhibit No. 8):-

“ΕΠΕΙΓΟΝ

ΠΡΟΣ: Τα ΚΕΝ Λάρνακας και  
Πάφου και όλα τα Σ. Γραφεία

ΥΠΟΥΡΓΕΙΟ ΑΜΥΝΗΣ  
ΓΕΝ. ΕΠΙΤ. ΕΘΝ. ΦΡΟΥΡΑΣ  
ΔΝΣΗ ΣΤΡΑΤΟΛΟΓΙΚΟΥ/Ι  
Τηλ. 43061

ΚΟΙΝ: Υπουργείο Αμύνης/  
Γραφείο Στρατολογίας  
ΓΕΕΦ/Ιον-3ον ΕΓ-ΔΣΛ  
Ι-ΙV ΣΔΙ/Ιον ΕΓ-ΦΕΝ  
Φ.83Α /ΕΣΣΟ

Φ. 421.1/16/180251  
Σ. 1339  
Λευκωσία 22 Δεκ. 82.

ΘΕΜΑ: Πρόσκληση Στρατευσίμων 83 Α /ΕΣΣΟ

ΣΧΕΤ: α. 22526/9-12-82 Απόφαση Υπουργ. Συμβουλίου  
β. 1422/14-12-82 Διάταγμα Υπουργού Αμύνης.

1. Οι τραπεύσιμοι της 83 Α/ΕΣΣΟ, που κλήθηκαν για κατάταξη στις τάξεις της Εθνικής Φρουράς από 12 μέχρι και 14 Ιανουαρίου 1983, αν παρουσιαστούν σε διαφορετική ημερομηνία από αυτή που καθορίστηκε με το (α) σχετικό, αλλά μέσα στις προθεσμίες κατατάξεως της ΕΣΣΟ, να γίνονται δεκτοί, αδιάκριτα από την ημερομηνία παρουσιάσεως τους. 5

2. Ακόμη, να γίνονται δεκτοί για κατάταξη, χωρίς καμιά συνέπεια, και εκείνοι που θα παρουσιαστούν εκπρόθεσμα μετά τις 14.1.1983 και μέχρι 17-1-1983.

Χριστόδουλος Βενιαμίν 10  
Υπουργός

Ακριβές Αντίγραφο  
(Υπ.) Τχης(Σ) Ευτύχιος Αποστολάκης  
Τμηματάρχης/1".

"URGENT" 15

TO: KEN Larnaca and  
Paphos and all  
E. Offices

MINISTRY OF  
DEFENCE GEN. STAFF  
OF NAT. GUARD.  
ENLISTMENT  
SECTION/1 20  
Tel. 4306  
F. 421.1/16/180251

COPY TO: Ministry of defence/

Enlistment Office

S.1339

ΓΕΕΦ/Ιον-3ον ΕΓ-ΔΣΛ

Nicosia 22 Dec. 82.

25

I-IV ΣΔΙ/Ιον ΕΓ-ΦΕΝ

Φ.83 Α'/ΕΣΣΟ

SUBJECT: *Call-up of conscripts of 83 Α'/ΕΣΣΟ*

REF: a. 22526/9-12-82 Decision of the Council of Ministers

b. 1422/14-12-82 Order of the Minister of Defence. 30

1. The conscripts of 83 Α'/ΕΣΣΟ, called-up for enlistment in the ranks of the National Guard from 12 till the 14 January, 1983, if they appear on a different date from that fixed by (a) above, but within the appointed period of enlistment of ΕΣΣΟ, to be accepted, irrespective of the date of their attendance. 35

2. Also, to be accepted for enlistment without any, con-

sequence, those who will appear out of time after 14.1.1983 and until 17.1.1983.

Christodoulos Veniamin  
Minister

- 5 True copy  
(Sgd) Head of Dept. (Σ) Eftychios Apostolakis  
Head of Dept./1").

10 By this document the Minister directed that the conscripts of 83 A'/ΕΣΣΟ called for enlistment in the National Guard from 12th-14th January, 1983, if they attended on a different date from that appointed in his Order but within the period of enlistment, to be admitted independently of the date of their attendance, and furthermore no consequences to follow if they attended out of time but at any rate not later than the 17th  
15 January, 1983.

It was submitted by counsel for the appellants that in view of the contents of exhibit No. 8 the appellants could not be validly charged or found guilty that they committed the offence on 12th January, 1983.

20 The liability of a person for service in the National Guard is created by section 4 of the Law. The general call-up is made by the decision of the Council of Ministers and the other arrangements—date, place, etc.—by Order of the Minister (section 6(1), (2) and (4) ). The Order of the Minister, as  
25 published in the Gazette, is clear and definite.

30 Exhibit No. 8 was addressed to KEN Paphos and KEN Larnaca. It was not issued by virtue of the power vested in the Minister under the relevant Law. It was not published in the Official Gazette; it was not brought to the knowledge or attention of anyone except the appropriate military authorities. It was, therefore, not an Order in the sense of s.6(4) of the Law. It did not and could not modify or amend Order 1422 published in the Official Gazette, as aforesaid. It was only an administrative direction whereby indulgence would be extended  
35 to those not enlisting on the date specified in the Order but on any subsequent date, at any rate not later than the 17th January, 1983.

The responsibility of the appellants under the Law was to

join on 12th January, 1983. They failed to do so on that date and needless to say that they did not join at all. Therefore, it is not permissible for them to contend that the indulgence of the circular of the Minister is of any avail to them. The element necessary for the offence was complete on 12th January, 1983. We find no merit in this ground. 5

*GROUND No. 2-REASONABLE CAUSE:*

Section 22(a) of Law No. 20 of 1964, as amended by s. 8 of Law No. 22 of 1978, reads:—

“22. Πᾶς ὄστις— 10

(α) ὄν ὑπόχρεος νὰ πράξῃ τοῦτο παραλείπει ἀνευ εὐλόγου αἰτίας, τὸ βᾶρος ἀποδείξεως τῆς ὁποίας θὰ βαρύνῃ αὐτὸν, νὰ συμμορφωθῇ πρὸς οἰανδήποτε διαταγὴν κλήσεως ἢ δὲν προσέρχεται ἐντὸς τῶν ὑπὸ τοιαύτης διαταγῆς καθοριζομένων προθεσμιῶν. 15

.....  
 εἶναι ἔνοχος ἀδικήματος καὶ ὑπόκειται εἰς φυλάκισιν μὴ ὑπερβαίνουσιν τὰ δύο ἔτη ἢ εἰς χρηματικὴν ποινὴν μὴ ὑπερβαίνουσιν τὰς πεντακοσίας λίρας, ἢ εἰς ἀμφότερας τὰς ποινὰς ταύτας”.

(“22. Any person who— 20

(a) being obliged to do so neglects, without reasonable cause, the burden of proof being on him, to comply with any order of call up or does not attend within the time prescribed in the call up

.....  
 shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding two years or to a fine not exceeding five hundred pounds or to both such sentences”). 25

It was canvassed by counsel for the appellants that they discharged the burden of proof cast on them; that their failure to enlist was due to a reasonable cause, the reasonable cause being their religious belief; they are Jehovah witnesses, and their religious beliefs do not allow them to take up arms. 30

Learned counsel for the respondent contended that there is no finding by the trial Court that the defendants are Jehovah 35

witnesses or that their religious beliefs do not allow them to take up arms or that the ground for not enlisting in the National Guard on the appointed date was due to the aforesaid reasons.

5        Though the judgment of the Military Court cannot be praised  
for the clarity of its findings, nevertheless, having regard to the  
fact that any ambiguity has to be in favour of the accused and  
the tenor of the judgment as a whole, we are of the view that  
the trial Court has found that the true facts were that the  
appellants failed to enlist because they are Jehovah witnesses  
10 and their religious beliefs do not allow them to take up arms.  
There was ample evidence before the trial Court to arrive at  
such finding.

“Reasonable” is a relative term and there must be bone fides;  
for the cause to be reasonable there must be good faith in it;  
15 it must be objectively fair. The “cause” must be one that is  
not contrary to or incompatible with the Law of the land.

The religious beliefs and grounds of conscience of the appel-  
lants by themselves are not “reasonable cause” if the Law does  
not otherwise absolve them from criminal liability due to such  
20 beliefs. As, however, they are not exempted due to such cause  
from service, they failed to discharge the burden cast on them.

We need not elaborate further on what may or may not be  
in other cases a reasonable cause in the sense of s.22(a) of the  
Law.

25 *GROUND No. 3:*

The last and main ground on which these appeals were argued  
is that the provision of the National Guard Law creating the  
obligation for the appellants to serve in the National Guard  
is repugnant to Article 18 of the Constitution in the sense that  
30 military service violates their right to freedom of conscience  
and religion.

This Article proclaims and safeguards the freedom of thought,  
conscience and religion. It reads as follows:-

35        “1. Every person has the right to freedom of thought,  
conscience and religion.

2. All religions whose doctrines or rites are not secret  
are free.

3. All religions are equal before the law. Without prejudice to the competence of the Communal Chambers under this Constitution, no legislative, executive or administrative act of the Republic shall discriminate against any religious institution or religion. 5

4. Every person is free and has the right to profess his faith and to manifest his religion or belief, in worship, teaching, practice or observance, either individually or collectively, in private or in public, and to change his religion or belief. 10

5. The use of physical or moral compulsion for the purpose of making a person change or preventing him from changing his religion is prohibited.

6. Freedom to manifest one's religion or belief shall be subject only to such limitations as are prescribed by law and are necessary in the interests of the security of the Republic or the constitutional order or the public safety or the public order or the public health or the public morals or for the protection of the rights and liberties guaranteed by this Constitution to any person. 15 20

7. Until a person attains the age of sixteen the decision as to the religion to be professed by him shall be taken by the person having the lawful guardianship of such person.

8. No person shall be compelled to pay any tax or duty the proceeds of which are specially allocated in whole or in part for the purposes of a religion other than his own". 25

Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms that was ratified by Law No. 39 of 1962, provides:- 30

"1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance. 35

2. Freedom to manifest one's religion or beliefs shall

be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others”.

Useful reference may be made to similar provisions of Article 18 of the International Covenant on Civil and Political Rights that came into force on 23rd March, 1976, and was ratified by the Republic of Cyprus by Law No. 14 of 1969.

10 These Articles safeguard religious liberty which is not to be confused with religious tolerance. Tolerance as a legal concept is premised on the assumption that the State has ultimate control over religion and the churches, and whether and to what extent religious freedom will be granted and protected is a matter of state policy. The right of religious liberty is a fundamental right. The days that oppressive measures were adopted and cruelties and punishments inflicted by Governments in Europe and elsewhere for many ages, to compel parties to conform in their religious beliefs and modes of worship to the views of the most numerous sect, and the folly of attempting in that way to control the mental operations of persons and enforce an outward conformity to a prescribed standard, have gone. Mankind has advanced and the right to freedom of thought, conscience and religion is now a fundamental right and was so pronounced and safeguarded in many legislations but it acquired universality by Article 18 of the Universal Declaration of Human Rights adopted and proclaimed by the General Assembly of the United Nations Resolution 217 A (III) of 10th December, 1948.

30 Conscience and religion are not confined to the belief or the relation of a human being to a Creator. Religion or conviction refer to theistic, non-theistic and atheistic convictions. It includes convictions such as agnosticism, free thinking, pacifism, atheism and rationalism. Freedom of religion and conscience includes freedom of belief, freedom of practice, freedom of manifestation by worship, teaching and observance, freedom of association of religious bodies and freedom of religious education, freedom to change one's religion, freedom to manifest both one's religion and convictions. (See *Svolou-Vlachou*

—*The Constitution of Greece*, (1954) Part I, Volume “A”, pp. 67–68; *Marinos—Religious Liberty*, (1972) p. 11; and *Sgouritsas & Yorghopoulos—Constitutional Law*, (1966) Volume “B”, Part “B”, pp. 111 et seq.).

One of the main purposes of the concern with human rights is to ensure that divergent opinions can be accommodated, respected and acted out, in such a way that due attention is paid both to the common good and the concerns of the individuals. 5

Mr. Clerides for the appellants argued extensively that compulsory military service is contrary to paragraph 1 of Article 18 of the Constitution and not to the manifestation of the religion that is liable to limitations necessary for the grounds set out in paragraph 6 of Article 18 of the Constitution. He referred this Court to a number of cases brought before the European Commission and Court of Human Rights for violation of Article 9 of the Convention. 10 15

In *Application No. 2299/64* by Albert Grandrath against the Federal Republic of Germany, the Commission, after referring to Article 9 of the Convention and Article 4, paragraphs 2 and 3 of the Convention, which provide as follows— 20

“(2) No one shall be required to perform forced or compulsory labour.

(3) For the purpose of this Article, the term ‘forced or compulsory labour’ shall not include: 25

(a) .....

(b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service”, 30

proceeded:—

“As in this provision it is expressly recognised that civilian service may be imposed on conscientious objectors as a substitute for military service, it must be concluded that objections of conscience do not, under the Convention, entitle a person to exemption from such service”. 35

(See Art. 10.2 and 3(b) of our Constitution).

In *Application No. 5591/72* decision was given on 2nd April, 1973. The applicant was convicted and given a suspended prison sentence for having refused to serve compulsory military service. He claimed that as a Roman Catholic it was impossible  
5 for him to serve as an armed combatant. The opinion of the Commission as set out in the *Collection of Decisions of the Commission for 1973* (p. 161) reads as follows:-

“The applicant has complained that he was punished for  
10 having refused to carry out his military service in the Austrian army although he had objected to military service on the ground of his religious convictions. He alleges that thereby his right to freedom of conscience and religion, as is provided for under Art. 9 of the Convention, had been violated. The Commission, in this respect, has first  
15 had regard to the provisions of this Article according to which ‘Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to  
20 manifest his religion or belief, in worship, teaching, practice and observance’. In interpreting this provision the Commission has also taken into consideration the terms of Art. 4(3)(b) of the Convention which states that forced or  
25 compulsory labour shall not include ‘any service of a military character or, in cases of conscientious objectors, in countries where they are recognised, service exacted instead of compulsory military service’. This provision clearly shows that, by including the words ‘in countries where they are recognised’ in Art. 4(3)(b), a choice is  
30 left to the High Contracting Parties to the Convention whether or not to recognise conscientious objectors and, if so recognised, to provide some substitute service for them.

The Commission, for this reason, finds that Art. 9,  
35 as qualified by Art. 4(3)(b) of the Convention, does not impose on a state the obligation to recognise conscientious objectors and, consequently, not to make special arrangements for the exercise of their right to freedom of conscience and religion as far as it affects their compulsory military  
40 service. It follows that these Articles do not prevent a

state, which has not recognised conscientious objectors, from punishing those who refuse to do military service. Consequently, the application is, as regards this complaint, manifestly ill-founded under Art. 9 of the Convention and must be rejected under Art. 27(2)".

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In *Grandrath's case* (supra) Eustathiades gave an individual opinion in which he stated:-

"Having regard to the applicant's religious convictions, the fact of requiring him to perform a substitute civilian service constitutes an interference with his freedom of conscience as guaranteed by Article 9, paragraph (1), of the Convention".

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But further down he said:-

"It is the constant jurisprudence of the Commission that it is primarily a matter for each Contracting State to decide whether or not such special circumstances exist as justify restrictions to be imposed in regard to a right guaranteed by the Convention according to the specific provisions contained in the Article of the Convention which guarantees such right".

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Limitation prescribed by Law should be necessary in the interests, inter alia, of the security of the Republic. The final arbiter to pronounce on the existence of the necessity are the Courts of each State. To ascertain whether it was necessary to introduce permissible limitations regard must be had to the national realities at the time of the enactment and subsequent thereto.

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In the Republic of Cyprus for the last 20 years an insurgence is going on. For a decade—from 1964–1974—this country was living under the threat and danger of foreign invasion by a neighbouring country. In 1974 Cyprus became the victim of that threatened invasion and ever since this invasion a substantial part of the area of the Republic—about 37%—is under foreign military occupation. The very existence of the State continues to be under express or latent danger. These circumstances do justify the limitation of the right to freedom of religion and conscience by the imposition of compulsory military service. In the preamble to Law 20/64

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it is plainly stated that the National Guard was established for the defence of the Republic. So long as the National Guard is used for the defence and security of the country, the Law imposing the obligation for military service on the citizens of Cyprus, irrespective of whether the right to religion and conscience is restricted, is not unconstitutional.

It is a sad event, unconstitutional in nature, that the National Guard was used in the summer of 1974 for the mass suppression of the rights of the citizens of the Republic and in an attempt to overthrow the constitutional order of the country. This is an exception and was directed by a military junta of another country and not by the Authorities of the Republic.

Mr. Clerides referred this Court to Law 731/77 of Greece which governs the position of conscientious objectors in that country and to the Resolution on Conscientious Objectors of the Parliamentary Assembly of the Council of Europe dated 4th February, 1983. Neither of the two is part of the Law of this country. The Court interprets and applies the laws of the country, i.e. the Constitution, Conventions ratified and legislation enacted locally.

Before concluding, however, we would like to place on record that this country cherishes the fundamental human rights, and this Court feels proud of the record both of the Court and of the country in the sphere of the protection of human rights. We are mindful of the resolutions and decisions adopted by international organs on the subject of conscientious objection, including the General Assembly of the United Nations, Resolution 11 B (XXVII) of 1971; Resolution 1982/30 adopted on 10th September, 1982, on conscientious objection to military service whereby the right of all persons to refuse military service or police forces, to pursue wars of aggression or to engage in other illegal warfare and to refuse military service on grounds of conscience or deeply held personal conviction and their responsibility to offer instead of military service and other service in the social or economic field, including work for the economic progress and development of their country was recognized; the World Congress on Disarmament Education of 1980, final document, para. 6; the Princeton Declaration of the Third Assembly of the World Conference on Religion and

Peace upholding the right of citizens to conscientious objection to military service; the statement of the participants in the 1968 meeting of the World Council of Churches held at Uppsala; the statement of the participants in the Second Assembly of the World Conference on Religion and Peace held at Louvain, Belgium, in 1974, that governments should be persuaded to recognize the right of conscientious objection and make alternative forms of humanitarian service; and the resolution on conscientious objection of 4.2.1983 of the Parliamentary Assembly of the Council of Europe whereby efforts to include a right of conscientious objection in the Convention of Human Rights is supported. 5 10

We trust that the appropriate Authorities of the Republic will, if and when in the future and circumstances of the country permit it, consider the exemption of conscientious objection from compulsory military service and/or the imposition of alternative service. As we have already said, the present situation does not warrant it. 15

Conscientious objection should be recognised not only if the objectors base their objection on religious ground but also if they base it on any humanistic ground whatsoever. The conviction must be a genuine one and the test for the scrutiny of the genuineness should be more or less stringent. 20

In view of the aforesaid these appeals are hereby dismissed.

*Appeals dismissed.* 25