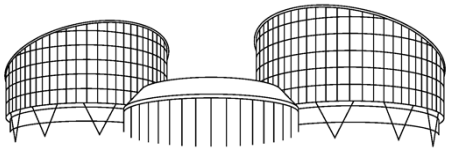

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF TELIATNIKOV v. LITHUANIA

(Application no. 51914/19)

JUDGMENT

Art 9 • Freedom of thought and conscience • Unjustified refusal to exempt conscientious objector, a Jehovah's witness, from compulsory military service • Unavailability of an alternative genuine civilian service • Fair balance not struck between interests at stake

STRASBOURG

7 June 2022

FINAL

07/09/2022

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Teliatnikov v. Lithuania,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Jon Fridrik Kjølbro, *President,*
Carlo Ranzoni,
Egidijus Kūris,
Branko Lubarda,
Gilberto Felici,
Saadet Yüksel,
Diana Sârcu, *judges,*
and Hasan Bakırcı, *Section Registrar,*

Having regard to:

the application (no. 51914/19) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Lithuanian national, Mr Stanislav Teliatnikov ("the applicant"), on 1 October 2019;

the decision to give notice to the Lithuanian Government ("the Government") of the complaints concerning his conscientious objection to military service under Article 9 of the Convention;

the observations submitted by the respondent Government and the observations in reply submitted by the applicant;

the comments submitted by the European Centre for Law and Justice, which was granted leave to intervene by the President of the Section;

Having deliberated in private on 10 May 2022,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The applicant complained, *inter alia*, that the Lithuanian legal regulation on conscientious objection had violated his right to freedom of thought, conscience and religion, under Article 9 of the Convention.

THE FACTS

2. The applicant was born in 1994. He currently lives in Konak, in the province of İzmir in Turkey. He was represented by Mr S.H. Brady Heath, a lawyer practising in London, the United Kingdom, and Ms H. Haykaz, a lawyer practising in Thun, Switzerland.

3. The Government were represented by their Agent, Ms K. Bubnytė-Širmenė.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. The applicant is a member of the Jehovah's Witnesses, a religious group whose beliefs include the conviction that service, even unarmed, within the military is to be opposed (see *Bayatyan v. Armenia* [GC], no. 23459/03, § 111, ECHR 2011). He was also appointed to the ecclesiastical position of ministerial servant (deacon) and had the status of a minister.

6. The Government have specified that in Lithuania the Jehovah's Witnesses are a registered religious community (see also paragraph 34 below, and *Ancient Baltic religious association "Romuva" v. Lithuania*, no. 48329/19, §§ 58 and 59, 8 June 2021). To date there are nine traditional religious communities and four religious communities which have been granted State recognition in Lithuania; none of these include the Jehovah's Witnesses.

I. THE APPLICANT'S CALL-UP FOR MILITARY SERVICE

7. At the beginning of June 2015 the applicant was called up for "initial mandatory military service" (*privalomoji pradinė karo tarnyba*) under Article 5 of the Law on Conscription (see paragraph 33 below).

8. On 15 June 2015 the applicant lodged a request with the Lithuanian army's Darius and Girėnas Region 2nd Unit (*Dariaus ir Girėno apygardos 2-oji rinktinė* – "the military authority"), pointing out that he was a member of the Jehovah's Witnesses, and his Bible-trained conscience compelled him to refuse military service (*karinė tarnyba*) or any alternative service (*alternatyvi tarnyba*) which would be in any way controlled, supervised or directed by the military, or which in any other way supported military activity. He also pointed out that he was a religious ministerial servant (deacon), and referred to Article 3 § 1 (7) of the Law on Conscription (see paragraph 33 below), by virtue of which he could be exempted from mandatory military service and from alternative national defence service (*alternatyvi krašto apsaugos tarnyba*). Should his request be denied, he asked for the right to perform alternative civilian service (*alternatyvi civilinė tarnyba*) in harmony with the European standard, which would not be in any way controlled, supervised or directed by the military, and which would not require him to perform work that supported the military, or to otherwise act against his conscience.

In support of his request, the applicant relied on Article 26 of the Constitution (see paragraph 32 below), Article 9 of the European Convention on Human Rights, the Court's case-law concerning conscientious objection (the applicant relied on *Bayatyan*, cited above), and the position of the United Nations Human Rights Committee in 2004 (see paragraph 44 below).

9. At that time, Article 3 § 1 (7) of the Law on Conscription, read together with Article 5 of the Law on Religious Communities and Associations (see paragraph 34 below), exempted religious ministers from military service, but only if they were members of one of Lithuania's nine "traditional" religions,

which did not include the Jehovah's Witnesses (see the ruling of the Constitutional Court which found the exemption unconstitutional, in paragraph 39 below).

10. On 7 September 2015 the military authority took a decision not to exempt the applicant from initial mandatory military service.

11. In an explanatory letter of 10 September 2015, the military authority informed the applicant that his request to be exempted from compulsory military service on the basis of Article 3 § 1 (7) of the Law on Conscription could not be granted, given that Article 5 of the Law on Religious Communities and Associations did not list Jehovah's Witnesses among the traditional religious communities and associations that had been officially recognised by the State. The military authority also wrote that "the applicant's request" for alternative national defence service (*alternatyvi krašto apsaugos tarnyba*), in the event that he was not exempted from [military] service, had been forwarded to the Commission for the Examination of Conscripts' Requests to Perform Alternative National Defence Service ("the Commission", see paragraph 38 below).

The military authority lastly noted that the Law on Conscription provided not only for exemption from compulsory military service, but also for deferment (*atidėjimas*) of initial mandatory military service or alternative national defence service (Article 15 § 1 (14) and Article 20 § 1 of that Law). One of the grounds for its suspension was that a person would suffer a disproportionately large amount of damage should he perform initial mandatory military service. Should the applicant submit a reasoned request, it would be examined. The military authority did not respond to the applicant's request to perform alternative civilian service.

12. By an order of 7 September 2015, the military authority suspended conscription in the Kaunas region. Conscripts who had expressed a wish to pursue military service could continue it either in the military, or, alternatively, in volunteer service (active reserve) (*savanorių pajėgose (aktyviame rezerve*)).

13. On 15 September 2015 the applicant lodged an appeal against the military authority's decisions of 7 September 2015 and 10 September 2015 with the Ministry of National Defence. He pointed out that, as a Jehovah's Witness, he could not perform either military service or any alternative service which was controlled by the military. He also argued that he had been discriminated against as a minister of a non-traditional religion, and referred to Articles 9 and 14 of the Convention.

14. On 23 October 2015 the military authority's decisions were upheld by the Ministry of National Defence: although the applicant's minister certificate showed that he was an active member of the Jehovah's Witnesses, who had been appointed as a ministerial servant (deacon) and had the status of a minister, given the regulation based on Article 139 of the Constitution (see paragraph 32 below), Article 3 § 1 (7) of the Law on Conscription, and

Article 5 of the Law on Religious Communities and Associations, there was no basis to exempt him from military service, as Jehovah's Witnesses did not fall within the category of traditional religions in Lithuania.

15. Furthermore, regarding the applicant's request to be exempted from both initial mandatory military service and from alternative national defence service, the military authority also referred to Article 2 § 8 of the Law on Conscription, which underlined the constitutional duty of Lithuanian citizens to perform military or alternative national defence service.

II. THE ADMINISTRATIVE COURT PROCEEDINGS REGARDING THE MILITARY AUTHORITY'S DECISIONS

A. The proceedings before the Vilnius Regional Administrative Court

1. The parties' pleadings

16. The applicant started proceedings before the Vilnius Regional Administrative Court. In his revised claim (*patikslintas ieškinys*) of 4 November 2015, the applicant argued that, as a minister of the Jehovah's Witnesses, he should be exempted from the obligation to perform both mandatory military service and alternative national defence service. He submitted that he had been discriminated against, as the Jehovah's Witnesses were not a traditional religion in Lithuania, and referred to Articles 26 and 29 of the Constitution, Articles 9 and 14 of the Convention, and the Court's judgment in *Löffelmann v. Austria* (no. 42967/98, §§ 47-55, 12 March 2009). He also asked the administrative court to refer the issue of possible discrimination, arising from Article 3 § 1 (7) of the Law on Conscription and Article 5 of the Law on Religious Communities and Associations, to the Constitutional Court.

17. Responding to the claim, the military authority explained that the decisions taken in respect of the applicant had not created actual legal consequences for him. In September 2015 the military authority had already suspended conscription, having received a sufficient number of volunteers wishing to serve in the military. Besides, a minister of a non-traditional religion could ask for the obligation to perform initial mandatory military service or alternative national defence service to be deferred for the duration of the time period when he was performing his duties as a minister.

18. On 17 November 2015 the applicant asked the military authority not to examine his request for "alternative civilian service" "for the time being" (*tuo tarpu*), given that the court proceedings regarding his appeal against the military authority's refusal to release him from "mandatory military service" were pending.

(a) The Vilnius Regional Administrative Court's decision

19. On 13 September 2016 the Vilnius Regional Administrative Court, on the basis of a request by the applicant, suspended the proceedings pending the Constitutional Court's ruling in a similar case, which also involved a Jehovah's Witness. The Constitutional Court delivered a ruling on 4 July 2017 (see paragraph 39 below).

20. Having resumed the examination of the applicant's case, on 20 September 2017 the administrative court granted his appeal in part. Referring to the materials in the case file, the court pointed out that on 15 June 2015 the applicant had asked the military authority in writing to release him from mandatory military service and from alternative national defence service, and, should that request be denied, to allow him to perform alternative civilian service (see paragraph 8 above).

21. The court noted that it appeared from the military authority's decision of 7 September 2015 that the latter "had not granted" (*netenkino*) the applicant's request to be discharged from mandatory military service. Likewise, it appeared from the explanatory letter of 10 September 2015 that the military authority had informed the applicant that it would refer the question of alternative national defence service to the Commission. Accordingly, the military authority "had not addressed at all" (*apskritai nepasisakė*) the applicant's request regarding the possibility of performing alternative civilian service which was unrelated to performing military actions or supporting them. From the military authority's decisions in respect of the applicant, it was not clear whether he had a right to perform alternative civilian service, and whether such service had been possible at all. Those decisions had also lacked any reference to any legal regulations concerning the possibility of performing alternative civilian service. Even though, by the decision of 23 October 2015, the Ministry of National Defence had upheld the military authority's decisions, the Ministry had not expressed its position about alternative civilian service either. The court therefore directed the military authority to re-examine the applicant's request of 15 June 2015. The court also quashed the military authority's decision of 7 September 2015 and the Ministry of National Defence's decision of 23 October 2015.

B. The proceedings before the Supreme Administrative Court

1. The parties' pleadings

22. The military authority and the Ministry of National Defence both lodged appeals.

23. In its appeal of 20 October 2017, the military authority argued, among other things, that the applicant lacked an interest in lodging a complaint against its decision, given that conscription had been suspended when a sufficient number of conscripts had showed an interest in serving. According

to the information it possessed, the applicant had not been invited to perform initial mandatory military service the following year either. Furthermore, the applicant's complaint was without merit, given the Constitutional Court's findings relating to the obligation to perform military or alternative national defence service.

24. In its appeal on the same date, 20 October 2017, the Ministry of National Defence argued that the applicant's request to be permitted to perform alternative civilian service had been unrelated to [the obligation] to perform military service, for the Law on Conscription "did not even provide for alternative *civilian* service" (*net nenumato alternatyvios* civilinės *tarnybos*; emphasis added by the Ministry of National Defence). That kind of service was not established by any legal instruments. Article 16 of the Law on Conscription only provided for the conditions for alternative national defence service (*alternatyvioji krašto apsaugos tarnyba*). The Ministry also referred to the Constitutional Court's finding that under the Constitution a person's belief cannot form the basis for release from the constitutional obligation to perform mandatory military service or alternative national defence service under Article 139 § 2 of the Constitution (see paragraphs 32 and 39 below).

25. On 9 November 2017 the applicant lodged a written objection to both appeals, requesting, *inter alia*, that the Supreme Administrative Court suspend his case and refer to the Constitutional Court a question on whether the State's failure to include an exemption in the Law on Conscription from both mandatory military service and alternative national defence service for conscientious objectors breached the right to freedom of religion under Article 26 of the Constitution, and whether it was also contrary to Article 9 of the Convention. That question had not been answered by the Constitutional Court in its ruling of 4 July 2017, for in that ruling that court had only examined whether ministers of traditional religions should be released from initial mandatory military service or alternative national defence service. Thus, the Constitutional Court had not examined the issue of whether persons, such as the applicant, who because of their conscientious objection were not able to perform mandatory military service or alternative national defence service, should be released from the obligation to perform that service. For the applicant, the Constitutional Court's decision, on which the military authority and the Ministry of National Defence had relied in their appeals of 20 October 2017, to the effect that citizens of the Republic of Lithuania could "for no reason" (*dėl jokios priežasties*) be released from mandatory military service or alternative national defence service, was "obviously unjust" (*tai, žinoma, neteisinga*). The applicant noted that he had never agreed to alternative national defence service: on 17 November 2015 he had asked only that the examination of his request for alternative civilian service be postponed until the administrative court had examined his request for discharge "from both mandatory military service and from alternative

national defence service" (see paragraph 18 above). As pointed out by the military authority, alternative civilian service had not even been established by law in Lithuania.

26. The applicant further observed that the military authority's decisions had made no mention of the fact that the applicant's conscience did not allow him to perform mandatory military service or alternative national defence service. Those decisions were silent on his rights under Article 26 of the Constitution, Article 9 of the Convention, and Article 18 of the ICCPR. The military authority had "erroneously limited itself" (*neteisingai apsiribojo*) in its decisions by only referring to Article 3 § 1 (7) of the Law on Conscription, with regard to ministers of "traditional religions", inasmuch as it was not applicable to the applicant. Conversely, the military authority had not even considered the applicant's request to be released from military service because of his "religious beliefs" (*dėl religinių įsitikinimų*) under the above-mentioned provisions of the Constitution, the Convention and the International Covenant on Civil and Political Rights. As a consequence, the Vilnius Regional Administrative Court had quashed those decisions and returned the question to be decided afresh.

27. The applicant asked that the Vilnius Regional Administrative Court's decision of 20 September 2017 be upheld, and the appeals of the military authority and the Ministry of National Defence be dismissed.

2. The Supreme Administrative Court's ruling

28. By a final and unappealable ruling of 10 April 2019, the Supreme Administrative Court granted the appeals by the military authority and the Ministry of National Defence and quashed the Vilnius Regional Administrative Court's decision of 30 September 2017.

29. Referring to the Constitutional Court's ruling of 4 July 2017, the Supreme Administrative Court held that the constitutional duty of a citizen to perform mandatory military service or alternative national defence service applied both to ministers of churches and religious organisations that were considered traditional in Lithuania, and also to ministers of non-traditional religious communities and associations. There was thus a legal basis for holding that the military authority's decision not to release the applicant from mandatory military service, by directly applying the Constitution as it had been interpreted by the Constitutional Court, despite the fact that Article 3 § 1 (7) of the Law on Conscription was in breach of the Constitution, "in essence was lawful" (*iš esmės teisėtas*).

30. Accordingly, there were no grounds to exempt the applicant from his constitutional duty to perform mandatory military or alternative national defence service. Furthermore, it had been explained to the applicant that the request for alternative national defence service, if he was not released from military service, would be examined by the Commission. That decision by the military authority corresponded to the requirements stemming from the

Constitution, that arose from a citizen's constitutional duty to perform military or alternative national defence service. It had been explained to the applicant that he had the possibility of deferring the performance of military duty (*atidėti karo prievolės atlikimą*), on the basis of Article 15 § 1 (14) or Article 20 § 1 of the Law on Conscription (see paragraph 33 below). In order to defer it was necessary to firstly submit a request (*pareikštine tvarka*) for the performance of military duty, and, as a precondition, to be declared fit to perform military duty and then alternative national defence service; only then could it be considered whether there was a basis for postponement of the military obligation.

31. Lastly, in the light of the Constitutional Court's findings (see paragraph 39 below), there was no basis for finding that the particular characteristics of the applicant, based on his social status, could cast doubt on whether the clarification in the provisions of the Constitution regarding the obligation to perform military service included persons such as the applicant. This was undoubtedly directly applicable to the applicant, so there was no legal basis to turn to the Constitutional Court.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution and legislation

32. The Constitution reads:

Article 26

"Freedom of thought, conscience, and religion shall not be restricted.

Everyone shall have the right to freely choose any religion or belief and, ... to profess his religion ...

...

The freedom to profess and spread religion or belief may not be limited otherwise than by law and only when this is necessary to guarantee the security of society, public order, the health or morals of people, or other basic rights or freedoms of the person ..."

Article 27

"Convictions, practised religion, or belief may not serve as a justification for ... failure to observe laws."

Article 29

"All persons shall be equal before the law ...

Human rights may not be restricted; no one may be granted any privileges on the grounds of ... social status, belief, convictions, or views."

Article 43

"The State shall recognise the churches and religious organisations that are traditional in Lithuania; other churches and religious organisations shall be recognised provided that they have support in society, and their teaching and practices are not in conflict with the law and public morals..."

Article 139

"The defence of the State of Lithuania against a foreign armed attack shall be the right and duty of each citizen of the Republic of Lithuania.

The citizens of the Republic of Lithuania must perform military or alternative national defence service according to the procedure established by law ..."

33. The Law on Conscription (*Karo prievolės įstatymas*), in so far as relevant, reads as follows:

Article 2. Main Definitions in this Law

"2. Alternative national defence service – the service of conscripts who owing to religious or pacifist beliefs cannot perform armed service, which is an alternative to mandatory military service.

8. Conscription (*karo prievolė*) – the constitutional duty of a citizen of the Republic of Lithuania to perform military or alternative national defence service.

9. Conscript – a citizen of the Republic of Lithuania of full age who is subject to conscription.

18. Mandatory military service – initial mandatory military service performed by a conscript, service in the reserve or service during mobilisation.

19. Initial mandatory military service – the preparation of conscripts to defend the State with a weapon ..."

Article 3. Exemption from Mandatory Military Service

"1. The following citizens shall be exempted from mandatory military service:

...

(3) persons, who by the decision of the Military Medical Examination Commission ... have been declared unfit for mandatory military service owing to their health status;

...

(7) ministers of religious communities and associations considered traditional in Lithuania and recognised by the State." [This provision was declared unconstitutional on 4 July 2017; see paragraph 39 below]

Article 5. Conditions of Regular Initial Mandatory Military Service

"1. Regular initial mandatory military service (*nuolatinė privalomoji pradinė karo tarnyba*) shall be performed in military units in accordance with the programmes approved by the commander-in-chief of the army.

2. Conscripts shall be called up for regular initial mandatory military service from the reserve of untrained military personnel from 19 to 26 years of age [inclusive] ...

3. The duration of regular initial mandatory military service shall be nine months ...”

Article 6. Conscription Order for Initial Mandatory Military Service

“4. Conscription shall be carried out until the number of conscripts who are to perform initial mandatory military service is reached... Conscripts who are willing to perform initial mandatory military service shall be summonsed first, then in succession conscripts included in the list for the current year who have not expressed willingness to perform it.

...

6. Conscripts shall be assigned to perform initial mandatory military service in compliance with the order established by law, after their health has been examined and it has been established that they are fit to perform initial mandatory military service.”

Article 15. Deferment of Initial Mandatory Military Service on an Individual Basis

“1. Initial mandatory military service shall be deferred in respect of the following conscripts:

...

(13^1) [provision in force as of 1 January 2018] [conscripts] who are members of Lithuanian religious communities or associations, which have the rights of a legal entity, who in compliance with the order set forth by canons, regulations or other provisions of those communities or associations have been elected or designated to perform pastoral work in those communities or associations;

(14) in compliance with the order of the Minister of Defence, those for whom the performance of initial mandatory military service would cause disproportionately significant damage to personal or social interests, which could be avoided if the conscript performed initial mandatory military service at another time.”

Article 16. Conditions for Performing Alternative National Defence Service

“1. Alternative national defence service shall be performed instead of initial mandatory military service or basic military training and service during mobilisation.

2. The duration of alternative national defence service, performed instead of initial mandatory military service, shall be 10 months ...

3. Alternative national defence service, which is performed instead of mandatory military service during mobilisation, shall last until demobilisation is announced.

4. Conscripts shall perform alternative national defence service at State or municipal institutions, as labour useful to the community. Conscripts shall be assigned to serve in positions which do not require the use of weapons, special measures or coercion.

5. Conscripts who perform alternative national defence service shall have applied to them the same supply conditions as conscripts undertaking initial mandatory military service ... (except for living quarters and clothing) ...

6. The order of the performance of alternative national defence service at State and municipal institutions shall be set forth by the Government or the authorised institution.”

Article 17. Assignment to Perform Alternative National Defence Service Instead of Initial Mandatory Military Service ...

"1. Conscripts who wish to perform alternative national defence service until the call-up for initial mandatory military service ... may at any time submit a request to a national defence system institution which administers conscription to perform alternative national defence service. The grounds for the request must be religious or pacifist beliefs, which do not allow for the performance of service with a weapon.

2. The requests of conscripts as regards the performance of alternative national defence service shall be examined by a Special Commission formed of representatives of associations, traditional religious communities and associations, and universities. The latter commission shall submit recommendations concerning whether there are grounds for conscripts' requests... Taking into account the recommendations of the Special Commission, the national defence system institution which administers conscription shall adopt a decision to find the request to perform alternative national defence service to be either well founded or not well founded.

3. A conscript shall be assigned to perform alternative national defence service if he is selected for initial mandatory military service ..., if it is established that he is fit to perform initial mandatory military service ... having examined his health ... and if his request to perform this service is found to be well founded by the Commission indicated in paragraph 2 of this Article."

Article 20. Deferment of Alternative National Defence Service

"1. Alternative national defence service, performed instead of initial mandatory military service or basic military training, shall be deferred with regard to those conscripts whose requests to perform alternative national defence service are found to be well founded by the commission indicated in Article 17 § 2 of this Law."

Article 26. Conditions of Military Service After Mobilisation is Announced

"1. When general mobilisation is announced, all reserve military conscripts of Lithuania are called to perform military service ...

2. When mobilisation is announced, [military] [s]ervice is performed in military units ..."

34. The Law on Religious Communities and Associations (*Religinių bendruomenių ir bendrijų įstatymas*) specifies that the State recognises nine traditional religious communities and associations existing in Lithuania, which form part of Lithuania's historical, spiritual and social heritage: Roman Catholic, Greek Catholic, Evangelical Lutheran, Evangelical Reformed, Russian Orthodox, Old Believer, Judaist, Sunni Muslim, and Karaite (Article 5). There are also other recognised (non-traditional) religious associations (see *Romuva*, cited above, § 59).

35. The Code of Administrative Law Violations (*Administracinių teisės pažeidimų kodeksas*) provides that failure to discharge conscription obligations, as set out by the Law on Conscription, is punishable by a fine of 30 to 60 euros (EUR). Such a violation, if committed repeatedly, is punishable by a fine of EUR 60 to 140 (Article 560).

36. The Criminal Code provides:

Article 314. Evasion of Conscription Into Mandatory Military Service

"1. A military conscript who evades conscription into mandatory military service by impairing his health, simulating an illness or health disorder, forging documents or using other means of deception shall be punished by arrest or by a custodial sentence for a term of up to three years.

2. A military conscript who evades conscription into mandatory military service, in the absence of the characteristics indicated in paragraph 1 of this Article, shall be considered to have committed a misdemeanour and shall be punished by a fine or by arrest."

B. The Government Resolutions on alternative national defence service

37. On 23 February 2000 the Government passed Resolution no. 206 establishing the Regulations for Performing Alternative National Defence Service in State and Municipal Institutions (*Alternatyviosios krašto apsaugos tarnybos atlikimo valstybės ir savivaldybių institucijose ir įstaigose tvarkos aprašas*).

Those Regulations provide that alternative national defence service is exercised by the performing of labour which is useful to the community (paragraph 2). Conscripts are to be assigned to alternative service by the national defence system institution which administers conscription, according to the applications submitted by other State or municipal institutions in which the number of conscripts in question and the proposed location and functions of the service are to be indicated (paragraph 8). Should no civilian work assignment be available, the conscript will be assigned to perform an alternative service in the national defence institutions (paragraphs 7 and 9). A conscript who has been assigned to perform alternative national defence service at a State or municipal institution must show up at the military institution which manages that service; its specialist must accompany the conscript to his place of work (paragraph 12). The head of the institution where the conscript performs his work must notify the military in writing about the conscript's tasks and duties. The conscript cannot be dismissed without the military's approval (paragraphs 14 and 22).

38. On 23 February 2000 the Government passed Resolution no. 207 establishing the Regulations on the Commission for the Examination of Conscripts' Requests to Perform Alternative National Defence Service (*Karo prievolininkų prašymų atlikti alternatyviąją krašto apsaugos tarnybą nagrinėjimo komisijos sudarymo ir jos nuostatai*). In so far as relevant, the Regulations read:

I. General Provisions

"3. The Special Commission shall act on a voluntary basis (*veikia visuomeniniais pagrindais*). The Ministry of National Defence shall provide the Special Commission with the necessary means and premises.

3^1. The Special Commission, which shall consist of 8 members, shall be formed of the appointed representatives of associations, traditional religious communities, religious associations and universities ..."

II. Functions, Rights and Duties of the Special Commission

"4. The Special Commission shall examine the requests of conscripts to be allowed to perform alternative national defence service, and shall decide whether conscripts are unable to perform service using weapons owing to their religious or pacifist beliefs.

5. The Special Commission has the right:

(1) To receive information from State institutions, ... organisations, and individuals, which is necessary for the examination of the requests of conscripts.

(2) To invite conscripts who apply as regards the performance of alternative national defence service to sessions.

6. The Special Commission must examine the request of a conscript to be allowed to perform alternative national defence service, hear him, and provide the institution which administers conscription with recommendations concerning whether the request is well founded."

C. The case-law of the Constitutional Court

39. In a ruling of 4 July 2017 regarding the compatibility of certain provisions of the Law on Conscription with the Constitution, the Constitutional Court declared Article 3 § 1 (7) of the Law on Conscription (the wording of 23 June 2011), to be in conflict with Articles 29 and 139 § 2 of the Constitution. The proceedings concerned the Vilnius Regional Administrative Court's request to investigate whether aforementioned provision of the Law on Conscription, insofar as priests of only the religious communities and associations considered traditional in Lithuania and recognised by the State were exempted from mandatory military service, was in conflict with Article 29 of the Constitution.

The Constitutional Court held:

"In accordance with Article 139 § 2 of the Constitution, a law may establish only such conditions for exemption from the constitutional duty of citizens to perform military service or alternative national defence service as are related to objective circumstances on account of which the citizens cannot perform this duty ... [B]eing a minister of a religious community or association (that is, having a certain social status relating to the professed religion) is not related to any such circumstances on account of which citizens would be objectively unable to perform the duty in question and which could constitutionally justify their exemption from this duty, especially in view of the fact that, under the Constitution, persons who are unable to perform military service owing to their religious or other convictions have the right to perform alternative national defence service instead of military service, as well as the fact that the fulfilment of the

constitutional duty to perform military or alternative national defence service may be deferred for important reasons.

Consequently, under Article 139 § 2 of the Constitution, having the status of a minister of a church or religious organisation does not provide a basis for exempting a person from his constitutional duty as a citizen to perform military or alternative national defence service.

...

[T]he legal regulation established in ... [Article 3 §1 (7)] of the Law on Conscription authorising exemption from mandatory military service, that is from the constitutional duty of citizens to perform military or alternative national defence service, in the absence of any constitutionally justifiable basis, violated the requirement, stemming from Article 139 § 2 of the Constitution, that a law may establish only such conditions for exempting citizens from their constitutional duty to perform military or alternative national defence service that are related to objective circumstances owing to which citizens are unable to perform this duty... [S]uch a law led to a constitutionally unjustifiable difference between ministers of the religious communities and associations considered traditional in Lithuania and other citizens; therefore, that law also violated the principle of the equality of the rights of persons, which is consolidated in Article 29 of the Constitution."

In its summary of the ruling, the Constitutional Court also stated:

"By this ruling ...

...

[T]he Constitutional Court pointed out that ... convictions, practised religion, or belief may not serve as a justification for ... failure to observe laws ... and, while implementing his or her rights and exercising his or her freedoms, everyone must observe the Constitution and laws and must not restrict the rights and freedoms of other people ... Among other things, this means that, on the grounds of his or her convictions, practised religion, or belief, no one may refuse to fulfil constitutionally established duties, *inter alia*, the duty of a citizen to perform military or alternative national defence service, or demand the exemption from these duties.

...

The Constitutional Court also noted that, under Article 139 § 2 of the Constitution, the legislature may provide for the possibility of deferring the fulfilment of the constitutional duty of citizens to perform military or alternative national defence service in cases where the citizen is temporarily unable to perform this service owing to the important reasons specified in the law or the important interests of the person, family, or society which might be injured if such service were not deferred at a given time. Once the reasons for deferring service are no longer applicable, the citizen must perform military or alternative national defence service."

D. Materials and case-law of the administrative courts relied on by the parties

40. On 23 May 2019, in reply to a certain K.M.'s request to undertake alternative national defence service that would not be controlled by the military structures, the director of the Military Conscription and Recruitment Service of the Lithuanian Armed Forces responded:

> "It is noteworthy that the alternative national defence service does not provide for the possibility of performing civilian service which is entirely independent of the control and supervision of the national defence structures. Taking into account the concluding observations of the United Nations Human Rights Committee of 26 July 2018 on the fourth periodic report of Lithuania, the summoning procedures for the performance of permanent compulsory military service are suspended until an entirely civilian service is available or other decisions are taken.
>
> As the situation changes, you will be informed regarding the submission of data and documents and about the health check, according to the procedure prescribed by the legal acts governing initial compulsory military service, namely through the public list of military conscripts (www.sauktiniai.karys.lt), and by contacting you at the contact details provided."

41. In another case, a plaintiff – a minister of Jehovah's Witnesses – asked the Military Conscription and Recruitment Service of the Lithuanian Armed Forces ("the Service") to be released from the obligation to perform mandatory military service and alternative national defence service, and to be permitted to perform civilian service. Instead, the Service took the decision not to defer initial mandatory military service in respect of the applicant. For his part, on appeal by that plaintiff, the Minister of Defence quashed the Service decision and ordered it to re-examine the plaintiff's request. That being so, the Minister of Defence pointed out that the Law on Conscription did not provide for a possibility to release from military service only on the ground that a person belonged to a religious community. The plaintiff then appealed against the Minister's decision, arguing that the Minister had erroneously held that the plaintiff's religious convictions, as a Jehovah's Witness, would not be violated if he were to perform alternative national defence service.

42. By a decision of 23 July 2018, the Vilnius Regional Administrative Court rejected the plaintiff's complaints. The court considered that the applicant had not proven that the alternative national defence system, as regulated by Regulations established by Government Resolution no. 206, would be frightening or punitive (*yra bauginamo ar baudžiamojo pobūdžio*), so as to be contrary to the plaintiff's religious beliefs. The court also held that the Minister of Defence's decision had been lawful and well founded. Under the doctrine of the Constitutional Court, a citizen's conscience had to be orientated to the provisions of the Constitution, which were the yardstick of proper behaviour as a citizen. There could be no conflict between a person's conscience and his or her religious beliefs. Any inner conflicts should be decided so that the provisions of the Constitution were adhered to. The regional court "could not entirely understand" why a citizen who did not wish to perform either the military obligation or alternative national defence service would wish to make use of the judicial institutions of the State, which he would not like to defend, so that those judicial institutions would protect his "hypothetical right" (*tariama teisė*) not to defend the State. The first-instance court had also considered that, in the light of the Constitution, the

plaintiff's beliefs were equal to the point of view and beliefs of others, and thus could not be given a privileged position. In other words, the plaintiff's constitutional obligation, under Article 139 § 2 of the Constitution, could not be transformed into a supposed right. Lastly, regarding the plaintiff's arguments that alternative national defence service would be contrary to his "Bible-trained" conscience (*išlavinta Biblijos*), the Vilnius Regional Administrative Court held that it could not evaluate whether the Bible should be interpreted as broadly as that. Moreover, on that question it was impossible to ask Jehovah for his opinion, and in *Chambers v. God* (case no. 1075/462 in the Douglas County District Court in Nebraska, United States of America), it had already been decided that God had no postal address to which a court summons could be sent. In sum, the plaintiff should above all adhere to his duties under the Constitution.

43. By a ruling of 17 June 2020 (case no. A-405-502/2020), the Supreme Administrative Court dismissed the plaintiff's appeal and left the first instance court's decision unchanged. During those court proceedings the Service had acknowledged that "at present" (*šiuo metu*) in Lithuania, the possibility of performing alternative civilian service had not been provided for by law. As is apparent from the Supreme Administrative Court's ruling, it "perceived" (*galima teigti*) the plaintiff's request (to release him from the obligation to perform mandatory military service or alternative national defence service, and to permit him to perform alternative civilian service) as the plaintiff's wish to "defer the military obligation" (*atidėti karo prievolę*) until there was a possibility to perform alternative civilian service. Nevertheless, given that the Service's initial decision – not to discharge the applicant from initial mandatory military service – had been quashed, and the Service had not yet taken the decision in respect of the applicant, it would be premature to decide the plaintiff's case.

II. RELEVANT INTERNATIONAL MATERIALS

44. Having considered the second periodic report of Lithuania (CCPR/C/LTU/2003/2), the United Nations Human Rights Committee, at the 2192nd meeting, held on 1 April 2004, adopted the following concluding observations (CCPR/CO/80/LTU):

> "17. The Committee reiterates the concern expressed in its concluding observations on the previous report about conditions of alternative service available to conscientious objectors to military service, in particular with respect to the eligibility criteria applied by the Special Commission and the duration of such service as compared with military service. The Committee recommends that the State party clarify the grounds and eligibility for performing alternative service to persons objecting to military service on grounds of conscience or religious belief, to ensure that the right to freedom of conscience and religion is respected by permitting in practice alternative service outside the defence forces, and that the duration of service is not punitive in nature (arts. 18 and 26)."

45. In *Cenk Atasoy v. Turkey* and *Arda Sarkut v. Turkey* (Communication no. CCPR/C/104/D/1853-1854/2008), the United Nations Human Rights Committee held:

> "10.4 ... The Committee reiterates that the right to conscientious objection to military service is inherent to the right to freedom of thought, conscience and religion. It entitles any individual to an exemption from compulsory military service if the latter cannot be reconciled with the individual's religion or beliefs. The right must not be impaired by coercion. A State party may, if it wishes, compel the objector to undertake a civilian alternative to military service, outside of the military sphere and not under military command. The alternative service must not be of a punitive nature, but must rather be a real service to the community and compatible with respect for human rights."

46. As regards the situation in Lithuania, in the concluding observations (CCPR/C/LTU/CO/4) on the fourth periodic report in July 2018, the United Nations Human Rights Committee held as follows:

> **Freedom of thought and belief**
>
> "25. The Committee notes the information provided by the State party that military service based on conscription has not taken place since its reintroduction in 2015, as quotas have been fulfilled by volunteers. However, it is concerned that the alternative national defence service does not provide for alternative civil service independent of military control and supervision and the institutions of the national defence system, and that salaries are not comparable to those of military service (arts. 18 and 26).
>
> 26. The State party should ensure that the Law on Conscription provides for conscientious objection in a manner consistent with articles 18 and 26 of the Covenant, ensuring that it provides for an alternative to military service outside of the military sphere and not under military command and on comparable salary terms, bearing in mind that article 18 protects freedom of conscience based on religious and non-religious beliefs."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

47. The applicant complained, under Article 9 of the Convention, that despite his genuinely held religious beliefs and his conscience, he was denied the right to refuse military service. Even though he had never denied his civic obligations, no alternative civilian service had been provided for by Lithuanian law.

Article 9 of the Convention reads as follows:

> "1. Everyone has the right to freedom of thought, conscience and religion; this right includes ... 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.
>
> 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."

A. Admissibility

1. The parties' arguments

(a) The Government

(i) As to victim status

48. The Government firstly argued that the complaint was inadmissible *ratione personae*. The applicant had never faced the risk of actual initial mandatory military service or alternative national defence service, given that on 15 September 2015 conscription was suspended (see paragraph 12 above). To the Government's knowledge, the applicant was not called for initial mandatory military service the following year either. Furthermore, the applicant had never come before the Military Medical Examination Commission, and thus had never been declared fit for military service.

In addition, he had never been prosecuted, convicted or in any way forced to perform military service.

49. Given the applicant's date of birth, 27 May 1994, and his age, which was twenty-seven at the time of the Government's submissions of 10 March 2021, and Article 5 § 2 of the Law on Conscription (see paragraph 33 above), which sets out that conscripts aged from nineteen to twenty-six may be summoned to perform initial military service, it could be stated that the applicant would never again be called up for initial mandatory military service, as he would not meet the age requirement.

50. According to the Government, it had not yet been necessary to enforce conscription in the military as, until now, all recruitment quotas had been filled by volunteers, which was also the case with regard to the applicant's situation. Those who had applied for alternative national defence service had therefore not been required to serve in any capacity so far. There was no situation in which a person who had asked to be conscripted into alternative national defence service had in fact performed it, as up to the present date such questions had been resolved with the help of deferment, which had been acceptable to those persons.

51. It followed that the applicant could not claim to be a victim of the alleged violation of Article 9 of the Convention.

(ii) As to the exhaustion of domestic remedies

52. The Government suggested that the applicant had failed to exhaust the remedies provided by the Law on Conscription, namely the possibility of asking to perform "alternative national defence service", and an opportunity to ask for deferment of military service, in accordance with Articles 15 and 16 of that legislation (see paragraph 33 above). In fact, having asked the military authority to suspend the examination of, as seen by the Government, his request of 15 June 2015 concerning the possibility of performing alternative national defence service (see paragraph 18 above), the applicant

had prevented the domestic authorities from assessing such a possibility for him, in compliance with the applicant's needs.

(iii) As to the matter being resolved

53. The Government pointed out that, following the Constitutional Court's ruling of 4 July 2017, neither ministers of traditional religious organisations nor ministers of those religious organisations which were not traditional in Lithuania were exempt from military service. Furthermore, the Constitutional Court had noted that the legislature could establish the possibility of deferring the execution of the constitutional duty to perform military service or alternative national defence service, if, for important reasons, a citizen could not perform that service (see paragraph 39 above). For the Government, it might be presumed that the military authority, in applying Article 3 § 1 (7) of the Law on Conscription in the applicant's case (see paragraphs 10 and 11 above), albeit before the Constitutional Court's ruling, had interpreted it in the light of the Constitution in the way in which the Constitutional Court did so afterwards.

54. That said, the above guidelines of the Constitutional Court had been implemented by the legislature when a new provision, Article 15 § 1 (13^1) of the Law on Conscription, in force from 1 January 2018, was introduced. That provision permitted conscripts who were members of Lithuanian religious communities and who had been elected or designated for pastoral work to defer military service, irrespective of whether they were ministers of traditional religious communities or not (see paragraph 33 above).

55. The above-mentioned constitutional doctrine and the subsequent legislative change were sufficient to provide a conscript who was a minister of a religious community with the possibility of evading mandatory military service by way of deferment, which the applicant wished to do by asking the military authority to exempt him from initial mandatory military service. Even noting that the applicant had not suffered any tangible consequences, the situation complained about had therefore been redressed, since the legal provision differentiating ministers on the basis of whether they belonged to traditional or non-traditional religious organisations had been removed from the Lithuanian legal system.

(b) The applicant

(i) As to victim status

56. The applicant firstly pointed out that, from the very beginning, he had expressed conscientious objection to initial mandatory military service or to alternative national defence service, a request which was then denied by the military authority.

57. The applicant acknowledged that he had never been summoned before the medical commission. Nevertheless, the Government's argument that he

lacked victim status because, in their words, "up to [the present] date [he] had not experienced any practical, not to mention negative, consequences for [his] refusal to perform initial mandatory military service or alternative national defence service", was misleading. The Government had ignored the well-known case-law and approach of the Court, and had confused a decision violating a Convention right and the enforcement of that decision. If the Court were to follow the Government's argument, the right to conscientious objection to military service could be recognised only following a person's criminal conviction. Such "logic" would mean that a State could, at will, enact unlawful legislation targeting people as long as it did not start enforcing criminal punishments. Indeed, the current legislation and social situation fell short of the requirements set out in the Convention.

58. The applicant also contended that he had never sought to evade his duty as a citizen, for from the outset he had been willing to perform alternative civilian service. Yet because of his situation, certain members of the public saw him as a traitor to his country.

59. Lastly, the applicant submitted that, should Lithuania adopt a new Government policy or enact legislation in response to an emergency situation, or declare a state of war, he could still be called up for military service. If he refused, as he most certainly would do, he could be criminally convicted.

(ii) As to the exhaustion of domestic remedies

60. The applicant submitted that, as a genuine conscientious objector to military service, he was unable to participate in any form of service directly or indirectly related to the military. He had chosen to initiate only those legal actions that were capable of providing redress in respect of his conscientious objection. It would have made no sense for him to ask to perform alternative national defence service, since this service was not a genuine civilian service. It was connected to the military, and violated his deeply held religious convictions. That was why, when called for military service, he had immediately asked to be exempted from both initial mandatory service and from alternative national defence service. If that request was not to be granted, he had asked for the right to perform a genuine alternative civilian service. Although he had reiterated the latter request from the start of the proceedings, the authorities had repeatedly ignored his demand. This was even acknowledged by the Vilnius Regional Administrative Court, but to no avail; the issue was afterwards overlooked by the military authority and the Supreme Administrative Court. Even now, the Government continued to ignore that central issue, namely the lack of a genuine alternative civilian service.

61. The applicant likewise disagreed with the Government's argument that he should have asked for deferment of military service. From the reading of the Law on Conscription he considered that deferment (1) was regulated and controlled by the Minister of Defence; (2) referred to "conscripts", that

is, it was wording that applied to persons belonging to the military; (3) was only a temporary measure that should end with the person returning to mandatory military service; and (4) was assessed on a case-by-case basis according to the discretionary views of the authorities who determined the existence of a personal or social interest justifying the deferment. Accordingly, a deferment was not an effective or an adequate solution for a genuine conscientious objector to military service, such as the applicant. The deferment regime merely shifted the problem without resolving it.

(iii) As to the matter being resolved

62. For the applicant, the Government's argument regarding the changes to Lithuanian legislation, following the Constitutional Court's ruling, allowing deferment of military service for ministers of all religious denominations, was flawed on two counts. Firstly, as submitted above, the deferment was not equivalent to exemption. It was merely a temporary measure; it was assessed on a case-by-case basis, and it could be called into question at any time. It was also dependent on the State's needs. If Lithuania were to consider increasing its military effort, or if it were to engage in war, the deferment could be called into question. The applicant's conscientious objection, in contrast, was not determined by changes of circumstances or the State's military strategy. It was not subjective or dependent on the discretionary power of third parties. It stood by itself and remained constant whatever the circumstances, no matter if he were to face criminal punishment or even death.

63. Secondly, even if, for argument's sake, deferment were to resolve the issue for the applicant – which it did not – the Lithuanian authorities still had not settled the issue that remained at the core of this case. The Constitutional Court had not addressed the question of whether Lithuania's failure to provide a genuine alternative civilian service for conscientious objectors was unconstitutional and whether it was a violation of the Convention.

2. The Court's assessment

(a) As to victim status

64. The Court reiterates that, in order to be able to lodge a petition by virtue of Article 34, a person, non-governmental organisation or group of individuals must be able to claim to be the victim of a violation of the rights set forth in the Convention. In order to claim to be a victim of a violation, a person must be directly affected by the impugned measure: the Convention does not envisage the bringing of an *actio popularis* for the interpretation of the rights it contains or permit individuals to complain about a provision of national law simply because they consider, without having been directly affected by it, that it may contravene the Convention. However, it is open to a person to contend that a law violates his rights, in the absence of an

individual measure of implementation, if he is required either to modify his conduct or risks being prosecuted or if he is a member of a class of people who risk being directly affected by the legislation (see *Tănase v. Moldova* [GC], no. 7/08, § 104, ECHR 2010). The Court has also found that an applicant was a victim of a violation because he or she was "liable to criminal prosecution", although that person had not yet been charged or sentenced (see *Dudgeon v. the United Kingdom*, 22 October 1981, §§ 37 and 40, Series A no. 45).

65. Turning to the circumstances of the present case, the Court firstly finds that the applicant has been personally affected by the decisions of the military authority and the Ministry of National Defence, which were maintained by the Supreme Administrative Court. As is apparent from the reading of that court's ruling, the applicant's request to be recognised as a conscientious objector to military service has essentially been denied, as was his request for a referral to the Constitutional Court (see paragraphs 28-31 above).

66. The Court has already held that the rejection of the applicant's application for conscientious objector status may be regarded as an interference with Article 9 of the Convention (see *Papavasilakis v. Greece*, no. 66899/14, § 50, 15 September 2016).

67. That being so, the Government's objection regarding the applicant's victim status must be dismissed.

(b) As to the exhaustion of domestic remedies

68. The Court has repeatedly held that the only remedies which Article 35 § 1 requires to be exhausted are those that relate to the breach alleged and are capable of redressing the alleged violation. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness: it falls to the respondent State to establish that these conditions are satisfied (see, more recently, *Magyar Kétfarkú Kutya Párt v. Hungary* [GC], no. 201/17, § 52, 20 January 2020, and the case-law cited therein).

69. In the present case the applicant had requested to be released from the obligation to perform both initial mandatory service and alternative national defence service, which he saw as not being analogous to genuine civilian service (see paragraphs 8, 16, 25 and 26 above). Accordingly, the Court is not persuaded by the Government's argument that alternative national defence service could have been satisfactory for what the applicant has described as his Bible-trained conscience. In other words, alternative national defence service was not a remedy capable of providing redress in respect of the applicant's complaints (see *Sejdovic v. Italy* [GC], no. 56581/00, § 46, ECHR 2006-II). Besides, the Court takes note of the Vilnius Regional Administrative Court's finding that the applicant's argument regarding his request to perform alternative civilian service, and the existence of civilian

service, as such, had been ignored by the military authority and the Ministry of National Defence; that query has not been answered by the Supreme Administrative Court either (see paragraphs 21, 26, 28-31 above).

70. The Court also gives weight to the applicant's argument that deferment of initial mandatory military service, or of alternative national defence service, rather than unconditional discharge from the obligation to ever fulfil either of those types of service, would have resulted in nothing more than mere postponement of the situation of inner conflict that the applicant states he was in (see paragraphs 8 and 61 above). Thus, deferment of military service cannot be seen as a remedy to be exhausted.

71. It follows that the Government's objection must be dismissed.

(c) As to the matter being resolved

72. Under Article 37 § 1(b) of the Convention, the Court may "at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that ... the matter has been resolved ...". To be able to conclude that this provision applies to the instant case, the Court must answer two questions in turn: firstly, whether the circumstances complained about directly by the applicant still obtain and, secondly, whether the effects of a possible violation of the Convention on account of those circumstances have also been redressed (see *El Majjaoui and Stichting Touba Moskee v. the Netherlands* (striking out) [GC], no. 25525/03, § 30, 20 December 2007, and the cases cited therein).

73. In the instant case, for the Court it suffices to note that, although the distinction between ministers of traditional and non-traditional religious organisations and associations has been declared unconstitutional (see paragraph 39 above), the outcome of the Constitutional Court's finding is the opposite result to that argued for by the applicant. Namely, rather than releasing ministers of all religious denominations, such as the applicant, from the obligation to perform military service, the Constitutional Court ruled that no ministers, irrespective of religious organisation or association, can be exempted from the obligation to perform military service.

74. Furthermore, as rather recently confirmed by the Ministry of National Defence and the Lithuanian army, the domestic law does not establish an opportunity to perform genuine civilian service (see paragraphs 40 and 43 above), this having been the second limb of the applicant's complaint before the domestic authorities (see paragraphs 8 *in fine*, 20 and 25 *in fine* above). The Court will revert to these aspects when examining the merits of the applicant's complaint, but at this stage they are sufficient to hold that the measures taken by the authorities do not constitute sufficient redress in respect of the applicant's complaint (see, *mutatis mutandis*, *Sisojeva and Others v. Latvia* (striking out) [GC], no. 60654/00, § 97, ECHR 2007-I, with further references). It follows that the matter has not been resolved within the meaning of Article 37 § 1 (b) of the Convention.

(d) Conclusion

75. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

(i) As to existence of interference

76. For the applicant, his failure to report for military service was a manifestation of his religious beliefs. The refusal to permit him to be exempted from military and alternative national defence service, or to allow him to carry out a genuine civilian service, thus constituted a denial of his right to be recognised as a conscientious objector, and amounted to an interference with his rights under Article 9 of the Convention. Additionally, the applicant remained at the behest of the military authorities and under threat of being criminally prosecuted, should the Lithuanian authorities decide to call him up for military service because of a lack of conscripts. The refusal to recognise his right to conscientious objection was, therefore, far from hypothetical.

(ii) As to the interference being prescribed by law

77. The applicant did not dispute that the State's refusal to allow him to be exempted from military or defence service had a basis in law. Prior to the Constitutional Court's ruling of 4 July 2017, the legislature had made it clear that in his situation, the applicant was obliged to report for military service, as he was not a religious minister of one of the nine religions recognised by the State as "traditional" under Article 3 § 1 (7) of the Law on Conscription. Following the Constitutional Court's ruling, there was no doubt that the new Article 15 § 1 (13^1) of the Law on Conscription, which entered into force on 1 January 2018 (see paragraph 33 above), did not exempt conscientious objectors from initial mandatory military service or alternative national defence service, but only allowed for temporary deferment. Furthermore, the provisions of the Law on Conscription and the enabling Government Resolution no. 206 of 23 February 2000 clearly demonstrated that the existing "alternative national defence service" cannot be viewed as a genuine civilian service which would permit the applicant, as a genuine and sincere conscientious objector, to carry out his national service.

78. That being so, the applicant nevertheless invited the Court to note the vagueness of Article 15 of the Law on Conscription, which regulated the conditions for deferment. That provision showed that 1) the procedure of

deferment was regulated and controlled by the Ministry of National Defence, 2) the grounds for deferment did not explicitly refer to religious objection, and 3) the expression "disproportionately significant damage to his personal or social interests" allowed for an excessively large margin of interpretation when it came to reviewing a request for deferment. In the light of the Court's well-known requirements of foreseeability (the applicant referred to *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 84, ECHR 2000-XI), the applicant had some doubts as to whether this provision complied with the Convention.

(iii) As to interference being "necessary" in a democratic society

79. For the applicant, there had been no convincing and compelling reasons to justify the refusal to recognise his right of conscientious objection to military service. Such refusal could not have been justified by alternatives to military service, which were not effective.

As to the Government's argument that the applicant had failed to apply for a medical examination to determine whether he should be declared fit to perform mandatory military service (see paragraph 83 below), this was not true, given that the applicant had never even received a summons to submit to a medical examination. In any case, exemption for health reasons, as implied by the Government, was unsuitable for the recognition of the rights of a conscientious objector. Right from the start, the applicant had expressed his willingness to serve his country, provided that such service did not conflict with his deeply held conscientious stand. In other words, the applicant, as a member of the Jehovah's Witnesses, had sought to be exempted from military service not for reasons of personal benefit or convenience but on the ground of his genuinely held religious convictions, in a similar way to Mr Bayatyan (see *Bayatyan*, cited above, § 124).

80. The State had also made it clear that it had not introduced an alternative service of a genuinely civilian nature, this fact having been recognised by the military authority (the applicant referred to the 2019 letter from the military authority, see paragraph 40 above). Instead of explaining why it had been procrastinating for all these years, the Government had preferred to put the blame on the applicant for having exercised his freedom of conscience and having refused to participate in the existing system, which was inadequate. In the applicant's words, the Government was now "back-pedalling" by claiming that alternative national defence service was of a "genuinely civilian nature", which it was not. The alternative national defence service was directly connected to the military. Although the alternative national defence service contained some civilian aspects, its military characteristics were overwhelming. As such, it was another form of military service, that is an unarmed military service.

81. Although the Government had contended that the applicant had had an alternative to military service, as he could have requested deferment of

initial mandatory military service or alternative national defence service, this would not resolve the issue but only delay it. Neither of these so-called alternatives conformed to the requirements set out by the Court in cases involving conscientious objectors to military service.

82. The applicant did not take issue with the current Commission's composition, as described by the Government (see paragraph 86 below). Even so, the Commission's sole role was to determine whether a conscript could be allowed to participate in alternative national defence service (unarmed military service) instead of armed military service. This alternative service lacked the necessary requirement of offering an authentic alternative to military service in the form of a genuinely civilian service. The existence and the composition of the Commission could not therefore suffice to redress the fundamental defects of the whole system.

(b) The Government

83. The Government considered that the military authority's refusal to grant the applicant's request to exempt him from initial mandatory military service and alternative national defence service had not amounted to an interference with his freedom to manifest his religion. An individual first should be declared fit to perform mandatory military service; yet the applicant had never appeared before the medical commission. Besides, he had never been prosecuted or administratively sanctioned, let alone convicted. Furthermore, the call for mandatory service during the relevant year had been suspended (see paragraph 12 above). Thus, the applicant had not faced any risk of the actual performance of military service whatsoever.

84. In order to reconcile a possible conflict between an individual conscience and military obligations under the Constitution, Articles 2 § 2 and 16 § 4 of the Law on Conscription established an alternative national defence service. Under the rules established by the Government Resolution (see paragraph 38 above), conscripts would thus be assigned to serve in positions which did not require the use of a weapon, special measures, or coercion; alternative national defence service was to be performed while working in institutions and doing socially useful labour. The duration of alternative national defence service was set according to Article 16 §§ 2 and 3 of the Law on Conscription, namely that under normal conditions it was ten months (the duration of the mandatory initial military service was nine months). This notwithstanding, it should be noted that conscripts who performed mandatory military service performed their service around the clock while the alternative national defence service was performed during the working hours of the civilian institution.

85. It was worth mentioning that under Article 17 § 1 of the Law on Conscription, conscripts must themselves in their request provide the grounds for their pacifist or religious beliefs which did not allow them to perform armed service. The legal instruments did not establish precise criteria for the

assessment of conscripts' religious or pacifist beliefs, thus a Commission independent of military power was set up to serve that purpose (see paragraph 38 above). That Commission examined conscripts' requests to be allowed to perform alternative national defence service, and submitted relevant recommendations as regards the substantiation of those requests. On the basis of the Commission's recommendations, the national defence system institution which administered conscription would adopt a decision on whether the request to be allowed to perform alternative national defence service was well founded or not.

86. At the time relevant to the case at issue, by an order of the Minister of Defence of 21 July 2015, the Commission was composed of a chairman, from Vytautas Magnus University, and members – representatives of Lithuanian Sports University, the Lithuanian Catholic Federation "Ateitis", the New Religions Research and Information Centre, the Evangelical Reformed Church of Lithuania, the Human Rights Monitoring Institute, the National Assembly of Active Mothers, and the Lithuanian Centre for Human Rights, and a secretary – a private, T.P., from the Lithuanian Armed Forces. In 2015 the military authorities received five requests either for exemption from conscription or for deferment of mandatory military service or to be allowed to perform alternative national defence service, and four of those requests were granted. In 2016 there was one such request, which was granted; in 2017 there were ten such requests and eight of them were granted; in 2018 there were fourteen such requests and eleven were granted; in 2019 twenty-one requests were received and three of them were granted; and in 2020 there were twenty-seven such requests and four of those were granted.

87. Having regard to the provisions of the Law on Conscription and Government Resolution no. 206 (see paragraph 37 above), it could also be held that alternative national defence service was not deterrent or punitive in character. This was the case with regard to the nature of the labour, the scale of the control, the clothing requirements, and the application of the rules while performing alternative national defence service in Lithuania.

(c) The third-party intervener

88. The European Centre for Law and Justice firstly referred to the case-law of the United Nations Human Rights Committee, from which it followed that the right to conscientious objection deserved general, but not absolute protection.

89. Secondly, the intervener referred to the principle of dynamic and evolutive interpretation, as adopted by the Court in *Bayatyan* (cited above, §§ 110 and 112), as well as to several instruments of the Council of Europe, which demonstrated that nearly all Council of Europe Member States have recognised the principle of conscientious objection. To this day, the Court has acknowledged the right to conscientious objection not only in connection

with service in the army, but also in connection with service of a military character, including with regard to Jehovah's Witnesses and pacifists.

90. Thirdly, the intervener pointed out that it was the responsibility of the State to ensure that respect for the objector's freedom of conscience was balanced against other competing rights and interests. Failure to offer a compromise was sufficient to constitute a violation of freedom of conscience and religion. Furthermore, it was not enough to propose a compromise; that compromise must be sincere and fair. It must respect the objector's convictions and not constitute a punishment in disguise.

2. The Court's assessment

(a) As to the existence of the interference

91. The Court has already had an opportunity to hold that applicants' refusal to be conscripted into military or alternative service was a manifestation of their religious beliefs, and their conviction for evasion of conscription therefore amounted to an interference with their freedom to manifest their religion, as guaranteed by Article 9 § 1 (see *Adyan and Others v. Armenia*, no. 75604/11, § 60, 12 October 2017). While acknowledging that in the present case the applicant has never been convicted, the Court nevertheless notes its case-law to the effect that the rejection of the applicant's application for conscientious objector status may be regarded as an interference with his right to freedom of thought and conscience as safeguarded by Article 9 of the Convention (see *Papavasilakis*, cited above, § 50). On the facts of this case the Court has no reason to doubt that the applicant's opposition to military service is motivated by "a serious and insurmountable conflict between the obligation to serve in the army and a person's conscience or his deeply and genuinely held religious or other beliefs, [constituting] a conviction or belief of sufficient cogency, seriousness, cohesion and importance to attract the guarantees of Article 9" (see paragraph 8 above; see also *Bayatyan*, cited above, § 110).

92. Accordingly, it finds that there has been an interference with the applicant's right to freedom of thought and conscience as safeguarded by Article 9 of the Convention. Such an interference will be contrary to Article 9 unless it is "prescribed by law", pursues one or more of the legitimate aims set out in paragraph 2 and is "necessary in a democratic society" (see, among other authorities, *İzzettin Doğan and Others v. Turkey* [GC], no. 62649/10, § 98, 26 April 2016).

(b) Whether the interference was justified

(i) Prescribed by law and legitimate aim

93. The Court finds that the interference had a basis in law, namely initially the Law on Conscription and subsequently also the Constitutional

Court's ruling of 4 July 2017, given how that court interpreted the obligation to perform military service (see paragraphs 11 and 39 above).

94. As could be perceived from the Supreme Administrative Court's ruling in the applicant's case, the interference – the obligation to perform mandatory military or alternative national defence service – stemmed from the constitutional duty of a citizen (see paragraph 29 above). Although it does not appear to have been explicitly argued by the Government, that constitutional duty could be seen as having been aimed at the protection of public safety as well as the rights and freedoms of others. Be that as it may, the Court considers it unnecessary to determine conclusively whether that aim was legitimate for the purposes of Article 9 § 2, since, even assuming that it was, the interference was in any event incompatible with that provision for the reasons set out below (see, *mutatis mutandis*, *Bayatyan*, cited above, § 117).

(ii) Necessary in a democratic society

95. The general principles on freedom of thought, conscience and religion, as one of the foundations of a "democratic society" within the meaning of the Convention, and the States' margin of appreciation in this area have been set out in *Adyan and Others* (cited above, §§ 63-65).

96. The Court has specifically held that any system of compulsory military service imposes a heavy burden on citizens. It will be acceptable if it is shared in an equitable manner and if exemptions from this duty are based on solid and convincing grounds. A system which imposes on citizens an obligation which has potentially serious implications for conscientious objectors, such as the obligation to serve in the army, without making allowances for the exigencies of an individual's conscience and beliefs, would fail to strike a fair balance between the interests of society as a whole and those of the individual (see *Bayatyan*, cited above, §§ 124 and 125).

97. On the facts of this case, the Court observes that the applicant, as a member of the Jehovah's Witnesses, sought to be exempted from military service not for reasons of personal benefit or convenience but on the ground of his genuinely held religious convictions, and had noted these grounds in his statement to the military authority in 2015 (see paragraph 8 above; see also *Bayatyan*, cited above, § 124).

98. The military authority, whose decision was upheld by the Ministry of National Defence (see paragraphs 10, 11 and 14 above), refused to exempt the applicant from military service for reasons which, although based on existing legal regulation, imposed on citizens an obligation which had potentially serious implications for conscientious objectors, failing to allow any conscience-based exceptions and penalising those who, like the applicant, refused to perform military service. Likewise, the Supreme Administrative Court upheld the military authority's decision (see paragraph 28 above), without giving much consideration to whether there

were weighty grounds not to exempt the applicant from his duty to perform mandatory military service or alternative national defence service. In fact, any such analysis is clearly absent from the Supreme Administrative Court's ruling, which went even further to hold that the applicant's social status could not cast any doubt as to his obligation to perform the military duty (see paragraph 30 above).

99. In this connection, the Court also takes notice of the more recent case-law of the administrative court, which tends to emphasise the individual's constitutional obligation *vis-à-vis* the State, in contrast to that individual's right to religious freedom and conscientious objection (see paragraph 42 above). Be that as it may, it has already held that pluralism, tolerance and broadmindedness are hallmarks of a "democratic society". Although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of people from minorities and avoids any abuse of a dominant position. Thus, respect on the part of the State towards the beliefs of a minority religious group such as that of the applicant, by providing it with the opportunity to serve society as dictated by their conscience might ensure cohesive and stable pluralism and promote religious harmony and tolerance in society (see *Bayatyan*, cited above, § 126).

100. Regarding the deferment of the military obligation – the option referred to by the Government – the Court can only observe that not only is this option a temporary solution, as argued by the applicant, but, as explained by the Supreme Administrative Court, it entails steps, such as the applicant being obliged to submit a request to be declared fit for military duty (see paragraph 30 *in fine* above), which do not appear to correlate well with the applicant's right to conscientious objection.

101. Lastly, when quashing the military authority's decision, the Vilnius Regional Administrative Court pointed out that the military authority had entirely omitted to consider the applicant's request to perform alternative civilian service (see paragraph 21 above). This aspect of limited examination, at the domestic level, of the applicant's grievance under Article 9 of the Convention was noted by the applicant in his appeal to the Supreme Administrative Court, where the applicant also pointed out that the Constitutional Court's ruling of 4 July 2017 had resolved only the issue of the release from military service of ministers of all religious denominations, but had left the matter of civilian service unresolved (see paragraphs 25 and 26 above).

102. In the Court's opinion, such a system of mandatory military service failed to strike a fair balance between the interests of society as a whole and those of the applicant, who had never refused to comply with his civic obligations in general. On the contrary, he explicitly requested that the authorities provide him with the opportunity to perform alternative civilian

service (see paragraphs 8 and 25 above), being prepared, for convincing reasons, to share the societal burden equally with his compatriots engaged in compulsory military service by performing alternative civilian service (see, *mutatis mutandis*, *Bayatyan*, cited above, § 125).

103. The Court next turns to the matter of the alternative national defence system, seen by the applicant as lacking the characteristics of genuine civilian service, and by the Government as a proper alternative to the mandatory initial military service.

104. Eleven years ago the Court noted that almost all the member States of the Council of Europe which ever had or still have compulsory military service had introduced alternatives to such service in order to reconcile the possible conflict between individual conscience and military obligations. Accordingly, a State which has not done so enjoys only a limited margin of appreciation and must advance convincing and compelling reasons to justify any interference. In particular, it must demonstrate that the interference corresponds to a "pressing social need" (see *Bayatyan*, cited above, § 123, and the case-law cited therein).

105. The Court has also held that the right to conscientious objection guaranteed by Article 9 of the Convention would be illusory if a State were allowed to organise and implement its system of alternative service in a way that would fail to offer – whether in law or in practice – an alternative to military service of a genuinely civilian nature and one which was not deterrent or punitive in character. It is therefore necessary to determine whether the alternative national defence service available to the applicant at the material time complied with those requirements (see *Adyan and Others*, cited above, § 67).

106. The Court acknowledges the fact that the work performed by alternative national defence service workers is of a civilian nature; yet, this is of no consequence. In *Adyan and Others* (cited above, § 68), the Court held that "the nature of the work performed is only one of the factors to be taken into account when deciding whether alternative service is of a genuinely civilian nature. Such factors as authority, control, applicable rules and appearances may also be important for the determination of that question."

107. In the present case the Court refers to several aspects of the Regulations established by Government Resolution no. 206 regarding alternative national defence service (see paragraph 37 above), as well as to certain provisions of the Law on Conscription, that places the service directly under the supervision and control of the military, which makes this service similar to the one considered in *Adyan and Others* (cited above). In particular, it refers to the following elements: 1) persons performing alternative national defence service are referred to as "military conscripts" and/or "military draftees" throughout the Law on Conscription and the Regulations; 2) the type of work to be performed is assigned by the military (paragraphs 6 and 8 of the Regulations; and Article 17 § 2 of the Law on Conscription); 3) if no

civilian work assignment is available, "the military conscript will be assigned to perform alternative service in the national defence system institutions" (paragraph 9 of the Regulations); 4) the "military conscript" is taken to his assigned place of work by the military and is given the same "provisions (except for living quarters and clothing)" as "military service soldiers" (paragraphs 12 and 13 of the Regulations; and Article 16 § 5 of the Law on Conscription); 5) the manager of the institution where the "military conscript" performs his work immediately notifies the military in writing about "the [military conscript's] appointment, specific tasks, conditions and work time", and provides the military with a monthly "time roster" for the "military conscript" (paragraphs 14 and 20.4 of the Regulations); 6) a "military conscript" performing alternative national defence service "cannot be dismissed" for disciplinary violations by the manager of the institution where he is working, without the approval of the military (paragraph 22 of the Regulations). Besides, under Article 26 of the Law on Conscription (see paragraph 33 above), in the event of mobilisation, the "military conscript" performing "alternative national defence service" may be "summoned to perform military service". These observations show that alternative national defence service is intrinsically linked to military service, and therefore cannot be seen as separate civilian service.

108. This is not merely the Court's own view. In 2018 the same position was taken by the United Nations Human Rights Committee, in a report concerning the human rights situation in Lithuania, wherein the latter emphasised that Lithuania "should ensure that the Law on Conscription provides for conscientious objection in a manner consistent with articles 18 and 26 of the Covenant, ensuring that it provides for an alternative to military service outside of the military sphere and not under military command" (see paragraph 46 above).

109. The Court has also held that States are allowed to establish procedures to "assess the seriousness of the individual's beliefs and to thwart any attempt to abuse the possibility of an exemption on the part of individuals who are in a position to perform their military service" (see *Papavasilakis*, cited above, § 54). At the same time, the positive obligation on States is not confined to ensuring that their domestic legal system includes a procedure for examining applications for conscientious objector status. It also encompasses the obligation to provide for an effective and accessible investigation into such matters (see *Savda v. Turkey*, no. 42730/05, § 98, 12 June 2012). One of the fundamental conditions for an investigation to be considered effective is the independence of the individuals conducting it (see *Dyagilev v. Russia*, no. 49972/16, § 63, 10 March 2020). In the instant case, even acknowledging that the applicant took no issue with the Commission's composition, which was described by the Government (see paragraphs 82 and 86 above), the Court cannot but note that, under Article 17 § 3 of the Law on Conscription (see paragraph 33 above), and, as acknowledged by the Government (see

paragraph 85 above), the Commission's decision is merely a recommendation which is transmitted to the national defence system institution which administers conscription, which takes the final decision whether the objector's request to perform alternative national defence service is well founded or not.

110. In the light of the foregoing, the Court finds that the system in Lithuania failed to strike a fair balance between the interests of society and those of the applicant who has deeply and genuinely held beliefs. Accordingly, the refusal by the State to respect the applicant's conscientious objection to military service was not necessary in a democratic society.

111. There has accordingly been a violation of Article 9 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

112. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

113. The applicant claimed 2,000 euros (EUR) in respect of non-pecuniary damage.

114. The Government viewed the claim as excessive, but preferred not to speculate what sum could be considered as just for the alleged suffering, if any.

115. The Court considers that the applicant has suffered non-pecuniary damage on account of the violation found. It considers, having regard to the particular circumstances of the case, that such damage is sufficiently compensated by its finding of a violation of Article 9 of the Convention.

B. Costs and expenses

116. The applicant also claimed EUR 5,000 for the costs and expenses incurred before the Court.

117. The Government considered the claim to be unfounded.

118. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 3,000 for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

C. Default interest

119. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* unanimously the application admissible;

2. *Holds* that there has been a violation of Article 9 of the Convention;

3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 7 June 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı Registrar	Jon Fridrik Kjølbro President