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RELIGIOUS VALUES AND THE POSITION OF THE BASIC TREATY WITH THE HOLY SEE IN NATIONAL LAW

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Abstract

The Slovak Republic was founded in 1993 as a sovereign state. Although the Constitution states that it is a secular state, a Basic Treaty was concluded between the Slovak Republic and the Holy See. There was never any intention that the Basic Treaty should intervene in the secularity of the state; instead the focus is on regulating the relationship between the two subjects of international law. One of the most important provisions in the Basic Treaty is the right to conscientious objection, which justifies or excludes the implementation of some obligations and duties. The present study concerns the religious values upheld in the Basic Treaty and primarily the relationship between the Slovak Republic's other international obligations arising from the European Convention for the Protection of Human Rights and Fundamental Freedoms. How should the national authorities apply the law in cases where there is a potential conflict between these two international treaties? We analyse the position of the Basic Treaty in national law, conscientious objection, and the case law of the European Court of Human Rights (ECtHR) to clarify the position of decision-making bodies given the lack of a precise definition in bilateral relations or international law. We use ECtHR case law as our source of guidance on how to interpret and apply conscientious objection in accordance with Slovakia's legal obligations and while respecting its values.

Keywords: human, rights, values, Holy See, Convention for the Protection of Human Rights and Political Freedoms

1. Introduction

The Slovak Republic was founded as a sovereign independent state on 1 January 1993. Since then, its ambition has been to become a relevant actor in international relations, as is evident from its status as contracting party to various international multilateral treaties and conventions, and the numerous bilateral treaties it has concluded. As stated in Article 1 (2) of the Constitution of the

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Slovak Republic: "The Slovak Republic acknowledges and adheres to general rules of international law, international treaties by which it is bound, and its other international obligations" [Act No. 460/1992 Coll., Constitution of the Slovak Republic as amended]. The process of negotiating, adopting and implementing international treaties is governed by national law and conforms to the relevant provisions of the Vienna Convention on the Law of Treaties [Vienna Convention on the Law of Treaties, https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf, accessed on 13.06.2020].

According to the Vienna Convention on the Law of Treaties, a treaty must have the consent of the contracting parties, be binding, and executed in good faith. The concept known as *pacta sunt servanda*, which means agreements must be upheld, is a principle of the international law of treaties. Without proper implementation of this principle, no international agreement would be binding or enforceable. There is no single treaty format and nor is there a specific procedure for concluding treaties. Most importantly, the treaty must have the consent of and be ratified by the state for the effectiveness of the treaty to be established. A valid and effective treaty should be implemented and interpreted in good faith and in accordance with the ordinary meanings of its terms, given the context, object, and purpose of the treaty. Where the text is ambiguous, additional means of interpretation can be employed, including the use of *travaux préparatoires*, and consideration of the circumstances within which the treaty was concluded.

The Slovak Republic concludes international treaties that reflect its strategic foreign policy priorities. Accordingly, the Slovak Republic became a member of the Council of Europe on 30 June 1993. Slovakia's membership of the Council of Europe required ratification of a key document - the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter 'Convention'). This international human rights treaty occupies a special position in the Slovak national law, as, according to article 154c of the Constitution of the Slovak Republic: "International treaties on human rights and fundamental freedoms which the Slovak Republic has ratified and were promulgated in the manner laid down by a law before taking effect of this constitutional act, shall be a part of its legal order and shall have precedence over laws if they provide a greater scope of constitutional rights and freedoms" [Act No. 460/1992 Coll., Constitution of the Slovak Republic as amended]. Constitutional amendment 90/2001 Coll. introduces Article 7 para 5 of the Constitution thus: "International treaties on human rights and fundamental freedoms and international treaties for whose exercise a law is not necessary, and international treaties which directly confer rights or impose duties on natural persons or legal persons and which were ratified and promulgated in the way laid down by a law shall have precedence over laws" [Constitutional Act No. 90/2001 Coll. of laws amending Act no. 460/1992 Coll. - Constitution of the Slovak Republic]. The Convention is to be implemented in Slovakia through

both constitutional provisions, where there is violation or potential violation of human rights or fundamental freedoms.

2. Slovak national law and Slovakia's contractual obligations with the Holy See

"Since the beginning of its functioning, the Constitutional Court has been acting in accordance with the principle of *pact sunt servanda* and it consistently rules that the fundamental rights and freedoms under the Constitution must be interpreted and applied in light the light and spirit of international human rights and freedoms (PL. ÚS 5/93, PL. ÚS 15/98, PL. ÚS 17/00). The Constitutional Court thus always, except in cases when the wording of the Constitution excludes so, takes into account the wording of these treaties and the relevant case-law while defining the content of fundamental rights and freedoms enshrined in the Constitution". [I. ÚS 5/02, Finding of the Constitutional Court of the Slovak Republic of 21 May 2003]

As Drgonec has argued, "the most important opinion of the Constitutional Court on the relationship between the Constitution of the Slovak Republic and international treaties states: International human rights treaties occupy a special position in the system of legal sources in the Slovak Republic. Under the conditions set out in Article 11 of the Constitution of the Slovak Republic international treaties are supreme to the laws, but not to the Constitution of the Slovak Republic" [1].

Not all international treaties have supremacy to the laws. The Constitution of the Slovak Republic recognises the supremacy of:

a) international treaties on human rights and fundamental freedoms,
b) international treaties which can be exercised without requiring a law to be laid down (so-called self-executing treaties),
c) international treaties which directly confer rights or impose duties on natural persons or legal persons.

International treaties fulfilling conditions to be sources of law are important because of their direct legal relevance, but also indirectly as a means of interpreting constitutional norms. "In providing interpretation of the constitution, rights and freedoms guaranteed by international treaties on human rights and fundamental freedoms have supported importance, as the constitution cannot be interpreted in a way that would constitute a breach of such international treaty, if the Slovak Republic is the contracting party (mutatis mutandis II. ÚS 48/97, PL. ÚS 15/98). In definition of the content of the constitutionally guaranteed rights and freedoms, the Constitutional Court considers, if not excluded by the constitution, on the content of the relevant international treaties and the case law (mutatis mutandis II. ÚS 55/98). In other words, the ECtHR's interpretation of the rights and freedoms guaranteed by the Convention is one of the orientational guidelines used by the Constitutional Court to postulate the normative content of related rights and freedoms guaranteed by the Constitution (I. ÚS 3/2001, finding of the CC of 20 December

2001, p. 537-538).” [1, p. 135] According to this, the Convention is used as the interpretational rule in the protection of human rights and fundamental freedoms in the Slovak Republic.

As a subject of international law, the Slovak Republic has concluded several international treaties establishing obligations, including the Basic Treaty between the Slovak Republic and the Holy See (hereinafter ‘Basic Treaty’), “aiming to set clear unambiguous rules for both parties’ coexistence and cooperation that reflect the quality and interaction of its relationship” [2]. Prior to the conclusion of the international treaty between the state and the Holy See, there was a debate as to whether regulating bilateral relations on state territory was both necessary and positive. In the case of the Slovak Republic, the intention to conclude an international treaty with the Holy See was based “on the confessional affiliation in the census” [2]. Šmíd has argued: “international treaties contain the quantitatively balanced rights and obligations of the contracting parties. The principle of the equality of the parties is understand such that similar obligations are to be equally distributed between the two parties. States having good relations with the Holy See tend to adopt significant content and a wide range of obligations and rights. In this sense, the Basic Treaty regulates a wide ranging relationship.” [2, p. 78] Following the conclusion of the Basic Treaty, a further four treaties were agreed, one of which deals with conscientious objection. As Šmíd has stated, “this is both an important and a complex question. All the related provisions must be dealt with honestly and carefully to prevent discrimination or possible abuse of the law arising out of a refusal to perform civic duties.” [3]

One of the most discussed obligations arising from the Basic Treaty signed in 2000 is the individual’s right to exercise conscientious objection in accordance with the religious and ethic’s principles of the Catholic Church. Although the provisions and conditions under which conscientious objection can be exercised should be laid out in a treaty, as stipulated in Article 7 of the Basic Treaty [Announcement of the Ministry of Foreign Affairs of the Slovak Republic No. 326/2001 Coll. of laws], no such treaty has hitherto been signed. But what exactly does conscientious objection mean? According to the draft Basic Treaty, conscientious objection is to be understood as an exemption under the principle of freedom of conscience, which entitles any person to refuse to act in ways that person considers as contravening the religious and ethic’s principles of the Catholic Church’s Magisterium. “The right to conscientious objection applies to the following areas and activities:

a) activity in armed forces and armed corps, including performance of military service, according to the Slovak Constitution;
b) health-care activity, especially as regards abortion, artificial or assisted fertilization, experiments with, and disposal of, human organs, human embryos and human sex cells, euthanasia, cloning, sterilization and contraception;
c) educational activity, especially activity relating to Articles 12 and 13 of the Basic Treaty;

d) judicial decision-making and provision of legal services;
e) employment and other related labour relations, as well as other relations the content of which applies to the subject matter of this Treaty;
f) acting related to genocide, execution of captives without lawsuit, torture, soldierly cruelty and persecution of defenceless civil population." [Treaty between the Slovak Republic and the Holy See on the Right to Exercise Objection of Conscience. Draft of 5th November 2004, after the Legislative Council revision, https://vatikanskezmluvy.wordpress.com/2010/08/27/treaty-between-the-slovak-republic-and-the-holy-see-on-the-right-to-exercise-objection-of-conscience/, accessed on 13.06.2020]

The proper and precise exercise of conscientious objection should be the *sine qua non* of fulfilling the positive obligation to the Convention, as the international human rights treaty. The qualitative analysis presented here of the balance between the obligations arising out of the Convention on the one hand and out of the Basic Treaty on the other is based on an interpretation provided by the European Court for Human Rights (hereinafter 'ECtHR') in relation to freedom of thought, conscience, and religion. The aim is to assess the extent to which the national regulation of this freedom as guaranteed in Article 24 of the Constitution of the Slovak Republic conforms to the ECtHR interpretation of case law relating to Article 9 of the Convention and Article 7 of the Basic Treaty. The analysis presents substantial arguments for its application in Slovakia, and other Council of Europe countries.

3. Analysis of values regulated by treaties with the Holy See and practical application

The Convention guarantees everyone freedom of thought, conscience and religion, as stated in Article 9. "This right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance. 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." [European Convention for the Protection of Human Rights and Fundamental Freedoms, https://www.echr.coe.int/Documents/Convention_ENG.pdf, accessed on 13.06.2020]

Freedom of conscience can also be applied in the sense of conscientious objection in areas where conscience can be applied. It can be applied as objection to an obligation set out in the law that derives from the individual's conscience, as stated in Article 7 of the Basic Treaty. Article 24 (1) of the Constitution of the Slovak Republic guarantees freedom of conscience as an absolute right. That means this freedom can only be regulated in the form of a law and "may be restricted only by a law, if it is regarding a measure necessary

in a democratic society for the protection of public order, health and morals or for the protection of the rights and freedoms of others" (Article 24 (4)).

Therefore one has to first understand the framework within which conscience objection can be exercised under the Basic Treaty. This analysis is based on the ECtHR's judgements that provide the legal framework for interpreting the Convention, and which should be used as the main guidance relating to the practice of freedom of thought, conscience, and religion in the Slovak Republic.

3.1. Medical staff exercising conscientious objection to abortion

The ECtHR set out its position on conscientious objection to abortion in R.R. v. Poland of 26 May 2011, in which the applicant, who had been refused an abortion sought on the grounds of a genetic defect, claimed her right to private life and family life as guaranteed by Article 8 of the Convention had been violated when the doctors she had expected would perform the abortion exercised their right to conscientious objection. "In so far as the Government referred in their submissions to the right of physicians to refuse certain services on grounds of conscience and referred to Article 9 of the Convention, the Court reiterates that the word 'practice' used in Article 9 § 1 does not denote each and every act or form of behaviour motivated or inspired by a religion or a belief (see Pichon and Sajous v. France, no. 49853/99, ECHR 2001-X). For the Court, States are obliged to organise the health services system in such a way as to ensure that an effective exercise of the freedom of conscience of health professionals in the professional context does not prevent patients from obtaining access to services to which they are entitled under the applicable legislation." [R.R. v. Poland, application no. 27617/04, § 206, ECHR 2011, http://hudoc.echr.coe.int/eng?i=001-104911, accessed on 13.06.2020].

The ECtHR's approach was also interpreted by the European Centre for rights and justice in a way, that ECtHR had recognised, that Article 9 of the Convention contains right for the objection of conscience not only in relation to military service, but also in relation to abortions done by medical staff. [Herrmann v. Germany, no 9300/07, § 117, 26 June 2012, http://hudoc.echr.coe.int/eng?i=001-111690, accessed on 13.06.2020]. In case P. and S. v. Poland, judgment of 30 October 2012, the ECtHR ruled as follows: "In this connection, the Court notes that Polish law has acknowledged the need to ensure that doctors are not obliged to carry out services to which they object, and put in place a mechanism by which such a refusal can be expressed. This mechanism also includes elements allowing the right to conscientious objection to be reconciled with the patient's interests, by making it mandatory for such refusals to be made in writing and included in the patient's medical record and, above all, by imposing on the doctor an obligation to refer the patient to another physician competent to carry out the same service. However, it has not been shown that these procedural requirements were complied with in the present case or that the applicable laws governing the exercise of medical professions were duly

respected." [P. and. S. v. Poland, no. 57375/08, § 107, 30 October 2012, http://hudoc.echr.coe.int/eng?i=001-114098, accessed on 13.06.2020].

3.2. Pharmacists exercising conscientious objection to selling contraceptives

In Pichon and Sajous v. France the ECtHR dealt with an application from the owners of the only pharmacy in the town of Salleboeuf who had refused to sell three women their prescribed contraceptives. The first instance Police Court in Bordeaux had sentenced them to a fine of 5,000 French francs and awarded compensation of 1,000 francs to the women on the grounds that ethical and religious principles are not considered a legitimate reason for the refusal to sell contraception. The Court stated: "Consequently, as long as the pharmacist is not expected to play an active part in manufacturing the product, moral grounds cannot absolve anyone from the obligation to sell imposed on all traders by the law (Article L 122-1 of the Consumer Code)" [Pichon and Sajous v. France, Application no. 49853/99 (Dec.) 02 October 2001, Reports of Judgments and Decisions 2001-X, http://hudoc.echr.coe.int/eng?i=001-22644, accessed on 13.06.2020].

The Bordeaux Court of Appeal upheld the Police Court's judgment. It noted that the applicants had never disputed that they had committed the acts of which they were accused and that they had stated that their conduct was dictated by religious reasons. It further observed: "The offences of refusing to sell for which the defendants stood trial did not stem in any way from a practical impossibility to satisfy their customers but were committed in the name of religious convictions which cannot be interpreted as a legitimate reason within the meaning of Article L 122-1 of the Consumer Code. Thus the failure to stock this type of product in their dispensary was not the cause but indeed the consequence of this refusal on principle." [http://hudoc.echr.coe.int/eng?i=001-22644]. Both Courts had underlined the distinction between contraceptives and abortifacients, with strict rules applying to the prescription and registration of abortifacients, requiring the signature of a mayor or police officer under Article L 645 of the Public Health Code.

The applicants lodged an appeal against that judgment based on points of law. They relied heavily on Article 9 of the Convention, asserting that the freedom to manifest one's religion implied that a pharmacist was entitled not to stock contraceptives whose use amounted to an interference with their religious beliefs. In a judgment of 21 October 1998 the Court of Cassation dismissed the appeal. It agreed with the Court of Appeal's finding that "personal convictions ... [could] not constitute for pharmacists, who have the exclusive right to sell medicines, a legitimate reason within the meaning of Article L 122-1" [http://hudoc.echr.coe.int/eng?i=001-22644].

The applicants had claimed in their application to the ECtHR that the national judicial authorities had not considered freedom of religion under Article 9 of the Convention. The ECtHR ruled that: "The Court would point out that the main sphere protected by Article 9 is that of personal convictions and religious

beliefs, in other words what are sometimes referred to as **matters of individual conscience**. It also protects acts that are closely linked to these matters such as acts of worship or devotion forming part of the practice of a religion or a belief in a generally accepted form. The Court also reiterates that Article 9 lists a number of different ways which manifestation of one's religion or belief may take, namely worship, teaching, practice and observance (see the Kalaç v. Turkey judgment of 1 July 1997, Reports of Judgments and Decisions 1997-IV, p. 1209, § 27, and Cha'are Shalom Ve Tsedek v. France [GC] no. 27417/95, 27 June 2000, ECHR 2000-VII, § 73)." [http://hudoc.echr.coe.int/eng?i=001-22644] Although the Court had recognised character of freedom of religion as a matter of individual conscience, it left some space to manoeuvre or balance it with interest of others or public interest. In justification of that judgment, the Court stated: "However, in safeguarding this personal domain, Article 9 of the Convention does not always guarantee the right to behave in public in a manner governed by that belief. The word 'practice' used in Article 9 § 1 does not denote each and every act or form of behaviour motivated or inspired by a religion or a belief. The Court notes that in the instant case the applicants, who are the joint owners of a pharmacy, submitted that their religious beliefs justified their refusal to sell contraceptive pills in their dispensary. It considers that, as long as the sale of contraceptives is legal and occurs on medical prescription nowhere other than in a pharmacy, the applicants cannot give precedence to their religious beliefs and impose them on others as justification for their refusal to sell such products, since they can manifest those beliefs in many ways outside the professional sphere. It follows that the applicants' conviction for refusal to sell did not interfere with the exercise of the rights guaranteed by Article 9 of the Convention and that the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. For these reasons, the Court, by a majority, declares the application inadmissible." [http://hudoc.echr.coe.int/eng?i=001-22644] The judgment was adopted by a majority of four to three votes. Dissenting opinions were based on the Supreme Court of the US judgment (Ehlert v. United States, 402 US 99 (1971), 103-104) which prohibits discrimination against such conscientious objectors whose opinions become clear too late to merit presentation.

3.3. Lawyer exercising conscientious objection to performing state assignments relating to clients held in police custody

In the decision on Mignot v. France [Mignot contre la France, Application no. 37489/97 (December), decision of the Commission for Human Rights of 21 October 1998, http://hudoc.echr.coe.int/eng?i=001-29948, accessed on 13.06.2020], the Commission for Human Rights acknowledged that conscience as presented in relation to the exercise of conscientious objection falls within the ambit of Article 9 of the Convention for the Protection of Human Rights and Fundamental Freedoms. But this cannot be confused with the personal

conscience of a lawyer who is no longer an officer of the court but a private person.

3.4. Draftee exercising conscientious objection to military service

The first ruling recognising conscientious objection to military service under Article 9 of the Convention was the judgment of the Grand Chamber of the European Court for Human Rights of 7 July 2011 in Bayatan v. Armenia [Bayatan v. Armenia, Application no. 23459/03, judgment of 7 July 2011, http://hudoc.echr.coe.int/eng?i=001-105611, accessed on 13.06.2020]. In this case, the Court had to determine whether Article 9 applies to a person exercising conscientious objection. It had not been applied by the European Commission for Human Rights, the Court's predecessor, for three decades because of the link between Article 9 and Article 4 para 3 (b) of the Convention that held that military service or any other service performed as an alternative to military service did not constitute forced labour or compulsory labour in cases where the person refused to perform military service on the basis of freedom of conscience in countries recognising the right to object. The European Commission for Human Rights found that Article 4 para 3 (b) of the Convention independently recognised the right of the contracting parties to exercise conscientious objection and that conscientious objectors had been excluded from protection under Article 9, as it could not be interpreted as guaranteeing freedom from prosecution for refusing to perform military service.

This interpretation confirmed the initial proceeding by the Chamber of the Court in the case of Baytan where "the Chamber first noted that the majority of Council of Europe member States had adopted laws providing for alternative service for conscientious objectors. However, Article 9 had to be read in the light of Article 4 § 3 (b) of the Convention, which left the choice of recognising conscientious objectors to each Contracting Party. Thus, the fact that the majority of the Contracting Parties had recognised this right could not be relied upon to hold a Contracting Party which had not done so to be in violation of its Convention obligations. This factor could not therefore serve a useful purpose for the evolutive interpretation of the Convention. The Chamber found that, in such circumstances, Article 9 did not guarantee a right to refuse military service on conscientious grounds and was therefore inapplicable to the applicant's case. It concluded that, in view of the inapplicability of Article 9, the authorities could not be regarded as having acted in breach of their Convention obligations by convicting the applicant for his refusal to perform military service." [Bayatan v. Armenia, Application no. 23459/03, judgment of 27 October 2009, http://hudoc.echr.coe.int/eng?i=001-95386, accessed on 13.06.2020].

In its justification, the Grand Chamber relied on argumentation based on the UN Human Rights Council's view adopted on 3 November 2006 in the cases of Yeo-Bum Yoon v. Republic of Korea and Myung-Jin Choi v. Republic of Korea [Communications nos. 1321/2004 and 1322/2004, UN doc. CCPR/C/88/D/1321-1322/2004, 23 January 2007], in which the UNHRC had to

deal with the complaints of two convicted Jehovah's Witnesses in a country where the right to conscientious objection was not recognised. The UNHRC held that: "The Committee ... notes that Article 8, paragraph 3, of the Covenant (ICCPR) excludes from the scope of 'forced or compulsory labour', which is proscribed, 'any service of a military character and, in countries where conscientious objection is recognised, any national service required by law of conscientious objectors'. It follows that Article 8 of the Covenant itself neither recognises nor excludes a right of conscientious objection. It follows that Article 8 of the Covenant itself neither recognises nor excludes a right of conscientious objection. Thus, the present claim is to be assessed solely in the light of Article 18 of the Covenant, the understanding of which evolves as that of any other guarantee of the Covenant over time in view of its text and purpose." [Bayatan v. Armenia, Application no. 23459/03, judgment of 7 July 2011, http://hudoc.echr.coe.int/eng?i=001-105611, accessed on 13.06.2020].

The Court also took into consideration Article 10 (2) of the Charter of Fundamental Rights, which is part of European Union law and has the same legal power as the founding treaties. This provision explicitly recognises that conscientious objection corresponds to national law regulating its application [Charter of Fundamental Rights of the European Union (2016 C 2020/02). OJ C 202/389, 7 June 2016]. According to the explanation to the Charter, "The right guaranteed in paragraph 2 corresponds to national constitutional traditions and to the development of national legislation on this issue" [Explanations relating to the Charter of fundamental rights (2007/C 303/02) OJ C 303/17, 14 December 2007]. Therefore there is no common regulation of conscientious objection; rather it is recognised by individual states. We can confirm that the European Union reserved its right to recognise conscientious objection where it is recognised by the Member State, and that each Member State recognises conscientious objection to military service.

Conscientious objection has also been discussed by the Council of Europe. The Parliamentary Assembly and Committee of Ministers continued its previous discussion and recommendations [Recommendation 478 (1967) - Right of conscientious objection and Recommendation 816 (1977) Right of conscientious objection to military service] and adopted Recommendation 1518 (2001). This latter Recommendation states that "the right to conscientious objection was a fundamental aspect of the right to freedom of thought, conscience and religion enshrined in the Convention. It pointed out that only five member States had not yet recognised that right and recommended the Committee of Ministers to invite them to do so." [Recommendation 1518 (2001) Exercise of the right of conscientious objection to military service in Council of Europe member states] In 2006 the Parliamentary Assembly adopted Recommendation 1742 (2006) concerning the human rights of members of the armed forces, "calling upon the member States, inter alia, to introduce into their legislation the right to be registered as a conscientious objector at any time and the right of career servicemen to be granted such status" [Recommendation 1742 (2006) Human rights of members of the armed forces].

In 2011, only Azerbaijan and Turkey as Council of Europe contracting parties did not have laws for the full application of conscientious objection to military service. The Grand Chamber ruled that although Article 9 of the Convention does not explicitly mention conscientious objection, it keeps in mind that a refusal to perform military service based on a serious and insurmountable conflict between the duty to serve in the army and personal conscience or religious or another belief is sufficient for it to require protection under Article 9 of the Convention. Bayatyan v. Armenia was followed by a similar case, Erçep v. Turkey [Erçep c. Turquie, application no 43965/04, judgment of 22 November 2011 (French), http://hudoc.echr.coe.int/eng?i=001-107533, accessed on 13.06.2020], in which the Court confirmed that exemption from the obligation to perform military service has to be grounded in strong and convincing reasons because the obligation to perform military service has to be exercised equally. Devout religious belief, but not interest or personal views, is such a reason that may justify application for withdrawing from military service. The applicant had never refused to fulfil his civic duties and had explicitly requested he be allowed to perform an alternative civic service, but he was not enabled to do so and was imprisoned. It is evident that "such a system does not provide for the requisite balance between the interests of society and those of conscientious objectors. Consequently it [the Court] rules that, as the applicant was sentenced without any provision to allow the constraints of his conscience and convictions to be taken into account, those sentences cannot be considered a necessary measure in a democratic society as defined by Article 9 of the Convention" [http://hudoc.echr.coe.int/eng?i=001-107533].

The court used a similar justification in its judgment on Feti Demirtaş v. Turkey [Feti Demirtaş v. Turkey, application no. 5260/07, judgment of 17 January 2012 (French), http://hudoc.echr.coe.int/eng?i=001-108617, accessed on 13.06.2020], stating that his later demobilisation on the grounds he was suffering adjustment disorder, confirmed in a psychiatric report by the military hospital, at the time of his detention had no effect on the violation of conscientious objection, and in its judgment on Buldu and Others v. Turkey [Buldu et autres c. Turquie, application no 14017/08, judgment of 3 June 2014 (French), http://hudoc.echr.coe.int/eng?i=001-144814, accessed on 13.06.2020]. The case law relating to this issue is fairly extensive, and other judgments have followed, such as Tsaturyan v. Armenia [Tsaturyan v. Armenia, application no 37821/03, §§ 29-32, 10 January 2012, http://hudoc.echr.coe.int/eng?i=001-108504, accessed on 13.06.2020] and Bukharatyan v. Armenia with the same outcome [Bukharatyan v. Armenia, no 37819/03, §§ 33-36, 10 January 2012, http://hudoc.echr.coe.int/eng?i=001-108502, accessed on 13.06.2020].

4. Conclusions

A valid and effective treaty must be implemented and interpreted in good faith and in accordance with the ordinary meanings of its terms, given the context, object, and purpose of the treaty. Freedom of conscience is guaranteed

by the Constitution of the Slovak Republic, the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the Basic Treaty between the Slovak Republic and the Holy See. These three documents were adopted at different times. Their legal character is such that they complement one another. Freedom of conscience can be applied in the sense of conscientious objection in cases where freedom of conscience is applicable. The challenge for the signatory state is to find an appropriate balance between positive obligations where the interpretation of conscientious objection is regulated in different way in different treaties.

Although there is ECtHR case law relating to several areas of conscientious objection such as military service, legal services, health-care services, and so on, it is not possible to issue specific guidelines or rigid regulations. Based on the cases analysed, we can conclude that the situation regarding conscientious objection is clear - it can be applied as the objection to an obligation defined in the law based on an individual's conscience. The material conditions of each case are the decisive factor of applicability. The signatory country of a treaty with the Holy See should focus on two main issues: first, a treaty should be concluded setting out conscientious objection in order to prevent misunderstandings, misinterpretations, or failures of justice. Second, when negotiating such a treaty, existing obligations arising from other international treaties, especially human rights treaties, must be taken into consideration so the relationship between the international treaties is complementary rather than competitive. Legislators should regulate values in a formal manner, keeping in mind applicable practice, and thereby avoiding situations in which administrative and judicial authorities have to act in the absence of regulation.

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