HCJ 7622/02

1. David Zonstien
2. Caplan Rami
3. Uri Fien
4. Ramah Shaham
5. Maor Parsai
6. Dr. Ori Tucker-Maimon
7. Udi Elifanch
8. Yaniv Itzkowitz

v.

Judge-Advocate General

The Supreme Court Sitting as the High Court of Justice
[November 23, 2002]
Before President A. Barak, Justice D. Beinisch and Justice A. Procaccia

Petition to the Supreme Court sitting as the High Court of Justice.

Facts: Petitioners are reserve soldiers in the IDF, who refused to serve in the Administered Territories. They were subject to disciplinary proceedings, and were sentenced to their respective punishments. The subject of this petition is the decision of the Minister of Defense not to grant the petitioners an exemption from military reserve service.

Held: The Supreme Court held that exemptions from military service may be granted according to the discretion of the Minister of Defense, pursuant to section 26 of the Defense Service Law (Consolidated Version)-1986. The Court held that the question of granting exemptions to military service based on selective conscientious objections involved a delicate balance between the freedom of conscience and the public interest. Here, the public interest was that

it was neither proper nor just to exempt part of the public from a general duty imposed on all others. This was especially true when fulfilling the duty subjected a person to the ultimate trial—sacrificing his life. This is certainly true when granting exemptions may harm national security and lead to administrative unfairness and discrimination in specific cases. As such, and under the circumstances, which included the current situation in Israel, the Court held that it saw no reason to intervene in the decision of the Minister of Defense not to grant exemptions for selective conscientious objectors. The balance between the considerations that led the Minister to this decision was, according to the Court, reasonable under the circumstances.

Basic Laws cited:

Basic Law: Human Dignity and Liberty

Basic Law: The Military

Legislation cited:

Military Justice Law-1955, §§ 122, 123, 125, 168

The Defense Service Law (Consolidated Version)-1986, §§ 36, 39(c)

Israeli Supreme Court cases cited:

[1] HCJ 4062/95 *Epstien v. Minister of Defense* (unreported decision)

[2] HCJ 2700/02 *Barnowski v. Ministaer of Defense* (unreported decision)

[3] HCJ 1380/02 *Ben Artzi v. Minister of Defense*, IsrSC56(4) 476

[4] HCJ 734/83 *Shane v. Minister of Defense*, IsrSC 38(3) 393

[5] HCJ 292/83 *Temple Mount Faithful Movement v. Police Commander of the Jerusalem Region*, IsrSC 38(2) 449

[6] *See* HCJ 3261/93 *Manning v. Minister of Justice*, IsrSC 47(3) 282

[7] HCJ 399/85 *Kahane v. The Managing Committee of the Broadcasting Authority*, IsrSC 41(3) 255

[8] CA 294/91 *Jerusalem Burial Society v. Kestenbaum* IsrSC 56(2) 464

[9] CA 105/92 *Re'em Engineer Contractors v. Nazareth-Ilit Municipality* IsrSC 57(5) 19

[10] HCJ 257/89 *Hoffman v. Trustee of the Western Wall* IsrSC 48(2) 265, 355.

[11] EA 2/84 *Neiman v. Chairman of the Central Elections Committee for the Eleventh Knesset* IsrSC 39(2) 225

[12] HCJ 470/80 *Algazi v. Minister of Defense* (unreported case).

[13] HCJ 630/89 *Machnes v. The Chief of Staff* (unreported case).
[14] *Kol Ha'am v. Minister of Interior* IsrSC 7(2) 871
[15] HCJ 953/89 *Indor v. Mayor of Jerusalem* IsrSC 55(4) 683, 689-91

United States Supreme Court cases cited:

[16] *Gillette v. United States*, 401 U.S. 437 (1971)

German cases cited:

[17] BverfGE 12, 45, 55

Israeli books cited

[18] L. Shlef, The Voice of Dignity: Conscientious Objection Due to Civic Loyalty (1989)

Foreign books cited:

[19] Conscientious Objection in the EC Countries (1992)
[20] N. Keijzer, Military Obedience (1978)
[21] C. Evans, Freedom of Religion Under the European Convention on Human Rights (2001)
[22] M. Walzer, Obligations: Essay on Disobedience, War and Citizenship (1970)

Foreign articles cited:

[23] K. Greenwalt, *All or Nothing at All: The Defeat of Selective Conscientious Objection*, 1971 Sup. Ct. Rev. 31
[24] Ben. P. Vermeulen, *Conscientious Objection in Dutch Law*, *in* Conscientious Objection in the EC Countries (1992)

Miscellaneous:

[25] The Proclamation of Independence of the State of Israel

Petition denied.

For the petitioners— Avigdor Feldman; Michael Sfarad
For the respondent— Anar Helman; Yuval Roitman

JUDGMENT

Justice A. Barak

Facts and Proceedings

1. The eight petitioners before us serve in the IDF reserves. They were called to reserve duty, and all reported to duty except petitioner number six. When they discovered that their service would be in the area, they informed their commanding officers of their objection to serving in that region. Petitioner number six, who was aware that his service would be in the area, informed the authorities, at the outset, that he would not be reporting to duty. The petitioners were consequently brought to disciplinary trial before military judicial officers for refusing to comply with an order, an offence under section 12 of the Military Justice Law-1955, and for not complying with an order, an offence under section 123 of the law. They were sentenced to periods of detention ranging from 28 to 35 days.

2. Following his conviction, petitioner number one approached this court with a petition directed against the decision to subject him to a disciplinary hearing before a military judicial officer, as opposed to a Military Court. *See* HCJ 5026/02. On July 16, 2002 a judgment was given approving the parties' agreement that the petitioner would withdraw his petition and instead approach the Judge-Advocate General [hereinafter the respondent], with a request to rescind the disciplinary judgment, under section 186 of the law. The petitioner, along with six of the other petitioners before us (save petitioner number eight), then approached the respondent with that request. They based their request that the disciplinary judgments be rescinded on the argument that the actions attributed to the petitioners do not constitute offences. They offered two reasons for this. First, petitioners asserted the defense found in section 125 of the law—that service in the area inherently involves illegal activity, and refusing to carry out illegal orders constitutes a

recognized legal defense. Second, petitioners asserted that the orders they were given violated their right to freedom of conscience and were thus unreasonable and invalid.

3. On August 3, 2002, respondent denied the requests of petitioners 1–7 to rescind the disciplinary judgments handed down against them. The respondent's decision stated that the petitioner's actions were offences, that the petitioners have no available defense, and that the orders themselves were reasonable. The decision emphasized that the army's activities in the area are legal and accord with the standards of international and humanitarian law—the goals of the activities in the area are to preserve peace and security and protect Israeli civilians from terrorist activities. As to the existence of a defense of conscientious objection, the decision added that such a defense only applies where there is a general conscientious objection to serving in the military altogether, and not in a case where one has selective objections which stem from ideological and/or political perspectives. The decision also stated that the procedure employed by petitioners was unlawful. The applicants should have refused the call to duty itself (a "direct attack"), and not acted as they did by reporting to duty, then refusing to comply with a specific order, and only then raising an argument of defense (an "indirect attack"). Petitioners' application was denied for these reasons, which brought about the petition before us.

Petitioners' Arguments

4. Petitioners claim that respondent's decision not to rescind the disciplinary judgments is flawed and that this flaw justifies the intervention of this Court and the invalidation of petitioners' convictions. Petitioners based their claim on the same arguments that they asserted in their application to respondent when they requested that he rescind the judgments. Their first argument is that they can assert the defense found in section 125 of the law, since the occupation of the area and the military activities therein are illegal and in opposition to customary international law, fundamental principles of law, as well as the Basic Law: Human Dignity and Liberty. Their second argument is that their actions do not constitute an offense, as they enjoy the constitutional defense of freedom

of conscience. In this regard, petitioners state that the nature of their service in the area requires them to perform acts which are radically at odds with their conscience, and that the orders they were given were wholly unreasonable. As such, petitioners assert, this constitutional defense should be recognized even with regard to an objection to a specific order regarding specific activities in a specific location, considering the special circumstances which are inherent to in any international conflict, the significance of freedom of conscience, and the extent to which this conscience is injured. Petitioners supplemented their petition with the opinions of Professors Joseph Raz, David Hed and Alon Harel who, the petitioners claim, support their position – that they enjoy a constitutional defense which allows them to conscientiously object, even selectively.

5. In his reply, respondent requested that we deny this petition. Regarding the first argument, respondent claimed that military service in the area is legal and accords with the standards of international law. Respondent asserts that this Court's judgments, in various petitions, support this claim—the objective of the activities in the area is to preserve public order and defend the nation against an unrelenting wave of brutal terrorism. Regarding petitioners' second argument, respondent claimed that petitioners' objection to military service is selective—and not general—and, as such, only serves as a disguise for their political ideology. Respondent asserts that the issue at hand is not purely a question of conscience and, consequently, the petitioners are not entitled to an exemption. As such, the army is prohibited from considering the petitioners' motivations for their objections, as that would entail the consideration of questions of political ideology. Furthermore, respondent asserts that petitioners' course of action was flawed in that they attacked the legality of the orders ("indirect attack"), as opposed to attacking the call to service itself ("direct attack"). As such, respondent's decision was acceptable, and this petition should be denied. Respondent supplemented his response with the opinions of Professors Avi Sagi and Ron Shapirah which, he claims, support his position—that the freedom of conscience and the right to object, as far as they stand, apply neither to the petitioners nor to the arguments upon which they base their request.

The Dispute

6. During arguments before us on October 23, 2002—which the parties agreed to see as having issued an order to show cause—petitioners and respondent significantly limited their arguments. Petitioners dropped their first argument, that the activities carried out in the area are inherently illegal and in conflict with local and international law. Respondent abandoned his claim that the course of action taken by petitioners provides sufficient grounds for the denial of this petition. Thus, we have only one issue to resolve. We will do so without expressing our opinion regarding the other questions which had previously been raised before us. The issue regards the legality of the decision of the Minister of Defense not to grant petitioners an exemption from reserve duty for selective conscientious objection. Petitioners argue that no distinction should be made between general and selective objection, since both are based on the individual's freedom of conscience. In a democratic state, this freedom should be recognized by granting exemptions from service in both situations. Respondent's position is that selective objections are not a protected expression of the freedom of conscience—it should not be recognized because, in the current reality in Israel, doing so would almost certainly cause substantial damage to national security. Moreover, respondent asserts, the army is not even permitted to weigh considerations of selective objection, as they are fundamentally ideological and/or political.

The Normative Framework

7. The Defense Service Law (Consolidated Version)-1986, § 39(c) exempts from military service "a female person of military age who has proved… that reasons of conscience… prevent her from serving in defense service." What is the law regarding a male of military age who requests an exemption from military service? This issue is governed by section 36 of the law:

> The Minister of Defense may, by order, if he sees fit to do so for reasons connected with the size of the regular forces or

> reserve forces in the Israeli Defense Forces or for reasons connected with the requirements of education, security, settlement or the national economy or for family or other reasons
>
> (1) exempt a person of military age from the duty of regular service or reduce the period of his service;
>
> (2) exempt a person of military age from the duty of reserve service for a specific period or absolutely;

All agree that exemptions for conscientious reasons are included in those "other reasons" which allow the Minister of Defense to exempt a person from regular or reserve service. *See* HCJ 4062/95 *Epstien v. Minister of Defense* (unreported decision) [1]; HCJ 2700/02 *Barnowski v. Minister of Defense* (unreported decision) [2]. Justice M. Cheshin noted as much:

> The Minister of Defense and those acting on his behalf agree that those "other reasons" include conscientious reasons for objection, in other words, a person of military age may be exempt from regular service if he is a conscientious objector and objects to the framework of military service as a matter of principle

HCJ 1380/02 *Ben Artzi v. Minister of Defense* [3]. A special military committee for exercising the Minister of Defense's authority was established, which would investigate issues of conscientious objection. *See Baronowski* [2].

8. The possibility of granting exemptions from military service for conscientious reasons is not unique to our situation or to Israel. Justice M. Elon correctly stated that "the issue of conscientious objection has been much debated by jurists and philosophers, and has experienced many developments and various stages." HCJ 734/83 *Shane v. Minister of Defense*, [4] at 401. Indeed, the question of granting exemptions for conscientious reasons has often been raised over the course of human history. Originally, these reasons were principally religious. In time, they expanded to include reasons of conscience which were not necessarily religious. These non-religious reasons are founded on serious

moral considerations – an individual's perspective regarding right and wrong, which that individual considers himself bound to act in accordance with, and which acting against would severely injure that individual's conscience. *See* BVerfGE 12, 45, 55 [17]. Different countries have reacted to this problem in various ways. Many of the modern, democratic countries have established explicit statutory provisions which grant an exemption from military service for conscientious objectors. *See* L. Shlef, *The Voice of Dignity: Consciencious Objection Due to Civic Loyalty* (1989) [18]; *Conscientious Objection in the EC Countries* (1992) [19]; N. Keijzer *Military Obedience* 265 (1978) [20]; C. Evans, *Freedom of Religion Under the European Convention on Human Rights* 170 (2001) [hereinafter Evans] [30].

9. The justification for granting exemptions from military service for reasons of conscience is not simple. In *Artzi* [3], Justice M. Cheshin correctly noted "the question of exempting persons of military age from the duty of regular service due to conscientious objection is not at all an easy question." Ultimately, we are dealing with a delicate balance between conflicting considerations. *See* K. Greenwalt, *All or Nothing at All: The Defeat of Selective Conscientious Objection*, 1971 Sup. Ct. Rev. 31, 47 [23]. On one side stands the important principle of freedom of conscience. "Every person in Israel is entitled to freedom of conscience… as it is one of the basic principles upon which the State of Israel is founded." *See* HCJ 292/83 *Temple Mount Faithful Movement v. Police Commander of the Jerusalem Region*, [5] at 454. Freedom of conscience originates in the Proclamation of Independence [25], and is derived from the democratic nature of the State. It is evident in the central status of human dignity and liberty in our legal system. *See* HCJ 3261/93 *Manning v. Minister of Justice*, [6] at 286. The need to take the objector's conscience into account stems from our respect for individual dignity and for the need to allow its development. It is derived from a humanist position and from the value of tolerance. "Democratic government is founded on tolerance… This is tolerance of the actions and opinions of others… In a pluralistic society such as ours, tolerance is a unifying force which allows us to live together." HCJ 399/85 *Kahane v. The Managing Committee of the Broadcasting*, [7] at 278. *See also* CA 294/91

Jerusalem Burial Society v. Kestenbaum, [8] at 481; CA 105/92 *Re'em Engineer Contractors v. Nazareth-Illit Municipality*, [9] at 210; HCJ 257/89 *Hoffman v. Trustee of the Western Wall*, [10] at 355.

10. On the other hand stands another consideration—it is neither proper nor just to exempt part of the public from a general duty imposed on all others. This is especially true when fulfilling the duty subjects a person to the ultimate trial—sacrificing his life. This is certainly true when granting exemptions may harm security and lead to administrative unfairness and discrimination in specific cases.

11. In balancing these conflicting considerations, many of the modern democracies have, as we have seen, concluded that it would be proper, in all things related to exemption from military service, to attribute greater weight to considerations of conscience, as well as those of personal development, humanism and tolerance, over opposing considerations. Consequently, many modern legal systems grant military service exemptions to pacifists, who conscientiously object to bearing arms and participating in war. This balance presumes that national security may be preserved without drafting those who request exemptions. However, it seems that all agree that, where security needs are extreme, not even pacifists should be exempted. *See* M. Walzer, *Obligations: Essay on Disobedience, War and Citizenship* 138 (1970) [22] [hereinafter Walzer]. "Civil rights are not a national suicide pact … Civil rights derived from the existence of the State, and they should not be used as a weapon for its annihilation." *See also* EA 2/84 *Neiman v. Chairman of the Central Elections Committee for the Eleventh Knesset*, [11] at 310. Moreover, although many democratic countries recognize pacifism as a cause for military service exemption, many of them require that the pacifists perform national service and impose various sanctions if they refuse to do so. *See* Evans, [21] at 170.

12. The question at hand arises against this normative background. This question involves striking the proper balance between these aforementioned interests, where the request for exemption from service does not involve a general objection to bearing arms and fighting in war, whatever its cause—but an objection to a *specific* war or military

operation. The question concerns the law regarding *selective* objection. We presume that the selective objector acts, as does his colleague the "full" objector, out of conscientious motives. Our fundamental point of departure is that the selective objector's refusal to serve in a particular war is based on true conscientious reasons, just as is the case with the "full" objector. Of course, this factual presumption raises evidential difficulties. However, in those situations where these problems may be overcome, and there is no reason to presume that they are impossible to overcome, we come face to face with the fundamental issue of the status of the selective conscientious objector.

13. This issue is not unique to us. It has arisen in modern democratic states, and has been resolved in various ways. Most of the democratic states that recognize military service exemptions due to "full" conscientious objection do not acknowledge selective conscientious objection as a cause for exemption. For example, United States federal law recognizes exemption for those who object to participating "in war in any form." *See* the Military Selective Service Act of 1967, § 456(j), *codified at* 50 U.S.C. App. § 456(j) (2002). The United States Supreme Court has held that this provision, which denies selective objectors military exemptions, is constitutional. *Gillette v. United States*, 401 U.S. 437 (1971). Germany and France have also adopted this position. Nevertheless, there are some democratic states which do grant exemptions to selective objectors. This is the case in Holland. *See* Ben. P. Vermeulen, *Conscientious Objection in Dutch Law*, *in* Conscientious Objection in the EC Countries, [19] at 276. A similar approach has been taken by Australia, where section 61A(i) of the Defense Act of 1903, after its 1992 amendment, specifies that military service exemptions are granted to "persons whose conscientious beliefs do not allow them to participate in a particular war or particular warlike operations." Aside from these two positions are other states, such as Spain, which have not yet come to a decision in this matter. What is the law in Israel?

14. This question arose in HCJ 470/80 *Algazi v. Minister of Defense* (unreported case) [12]. The petitioner was in the army and requested not to serve in the area. The petition was denied. Justices M. Bejski and S. Levin noted in their judgment:

> No military system can accept the existence of a general principle which allows any soldiers to dictate where they will serve, whether for economic, social, or conscientious reasons.

This problem also arose in the case of *Shane* [4]. There, a soldier had refused to fulfill a reserve order which required him to serve in South Lebanon. He claimed that according to his "conscientious outlook, the IDF's presence in Lebanon is illegal and is not in accord with any fundamental justification of military activity." The court held that this argument was invalid. Justice M. Elon wrote:

> This is a case of a draft objection, which is based on ideological-political reasons not to fight in a *particular location*. Recognizing such an objection damages the operation of Israel's democratic system of decision-making, and leads to discrimination in military drafting. Such selective objection is not even recognized in those states which acknowledge the right to general objection as a cause for exemption from military service. *A fortiori*, the right to selective objection should not be recognized in the Israeli legal system, which does not see draft objection as excusing a male of military age from military service. It would be proper to add an additional comment. This important, complicated issue of balancing the law against the freedom of conscience—of balancing, on the one hand, the need to maintain military service to protect the sovereignty of the State and the safety of its residents against, on the other hand, the objection to participate in war for personal conscientious reasons—must take the particular circumstances of time and location into account. The severe state of security in Israel should not be compared to the state of security in other countries, which dwell within secure borders. This essential difference is a substantial and significant factor.

[4] at 402-03. This position was adopted in yet another case. *See* HCJ 630/89 *Machnes v. The Chief of Staff* (unreported case) [13]. In the

petition here we have been asked, for two reasons, to depart from this ruling—it having been mistaken when it was originally handed down and, furthermore, because it does not comply with the Basic Law: Human Dignity and Liberty, which was passed since that decision was handed down, and which establishes the constitutional status of the freedom of conscience.

15. We do not think that there is room to deviate from the decisions of the Court regarding selective conscientious objection. As we have seen, granting an exemption from military service due to conscientious objection is in the discretion of the Minister of Defense. This discretion is based on a delicate balance between conflicting considerations. In striking this balance, the Minister of Defense came to the conclusion that there is room to grant exemptions from military service in cases of "full" objection. This balance does not necessarily require that a similar exemption should be granted in the case of selective conscientious objection. We are willing to presume—without ruling in the matter—that considerations of freedom of conscience, personal development and tolerance, which are taken into account regarding the exemption for military service in the case of "full" conscientious objection, should similarly be taken into account regarding exemptions due to selective conscientious objection. This presumption is not self-evident. Yet, we are willing to accept this presumption for the purpose of this petition. There is a certain power to the argument that, from the point of view of the individual himself who claims conscientious objection—and assuming that we believe his objection is conscientious and not political or social—there is no essential difference between "full" conscientious objection and selective conscientious objection.

Petitioner number one expressed this well when responding to the charges against him for refusing to fulfill his reserve service in the area:

> In my opinion it is comparable to giving a religious person non-kosher food.

If we believe this—and it was not argued before us that the petitioner's argument is a cover for considerations which are not conscientious—then

apparently there is no essential difference, from the perspective of the conscience of the objector, between "full" objection and selective objection. Hence, we are willing to presume—again, without ruling on the matter—that, on our metaphorical scales, the side bearing conscience, personal development and tolerance justifies granting exemptions from military service not only to the "full" conscience objector, but also to the selective conscientious objector. How shall we regard the other side of those metaphoric scales? What is the proper balance between the conflicting considerations? Is there a difference between the "full" conscientious objector and the selective conscientious objector regarding this "other hand"? We think there is a difference.

16. In our opinion, refusal to serve in the army for "full" conscientious reasons is not similar to refusal to serve in army for selective conscientious reasons. Indeed, the weight of the side which leans towards recognizing conscientious objection is much heavier in the case of selective conscientious objection then in "full" conscientious objection. However, the severe problem of granting an exemption from fulfilling a duty, a duty that is imposed on all, is apparent. The phenomenon of selective conscientious objection would be broader than "full" objection, and would evoke an intense feeling of discrimination "between blood and blood." Moreover, it would affect security considerations themselves, since a group of selective objectors would tend to increase in size. Additionally, in a pluralistic society such as ours, recognizing selective conscientious objection may loosen the ties which hold us together as a nation. Yesterday, the objection was against serving in South Lebanon. Today, the objection is against serving in Judea and Samaria. Tomorrow, the objection will against vacating this or that settlement. The army of the nation may turn into an army of different groups comprised of various units, to each of which it would be conscientiously acceptable to serve in certain areas, whereas it would be conscientiously unacceptable to serve in others. In a polarized society such as ours, this consideration weighs heavily. Furthermore, it becomes difficult to distinguish between one who claims conscientious objection in good faith and one who, in actuality, objects to the policy of the government or the Knesset. It is a fine distinction—occasionally an exceedingly fine distinction—between objecting to a state policy and

between conscientious objection to carrying out that policy. The ability to manage an administrative system which will act impartially is especially complicated in selective conscientious objection. *See* Walzer, [22] at 143. Justice Marshall correctly noted in *Gillette*, [16] at 456:

> [T]here is considerable force in the Governments contention that a program of excusing objectors to particular wars may be impossible to conduct with any hope of reaching fair and consistent results.

17. As such, selective conscientious objection requires striking a separate balance. This balance can not be derived from the balance struck in the case of "full" conscientious objection. What is the necessary balance in the case of selective objection? We need not analyze all aspects of this issue. We are willing to presume—again, without ruling in the matter—that the State may cause harm to the conscience of the conscientious objector (whether selective or "full") only where substantial harm would otherwise almost certainly be caused to the public interest. *Compare Temple Mount Faithful Movement*, [5] at 454; HCJ 87, 73/53 *Kol Ha'am v. Minister of Interior*, [14] at 882; HCJ 953/89 *Indor v. Mayor of Jerusalem*, [15] at 689-91. The Minister of Defense decided that in contemporary Israel, both in light of its inner conflicts and in light of current events, exemptions from military service will not be granted to selective conscientious objectors. It is our opinion that, even by the strict standard enunciated above, the balance struck by the Minister of Defense is a balance which a reasonable defense minister, acting reasonably, would have been permitted to strike.

For these reasons, the petition is denied.

Justice D. Beinisch

I agree with the judgment and reasoning of my colleague, the President. I find it necessary to emphasize that I too am of the opinion that, in the current situation—where Israeli society is split and polarized, and includes groups and persons who, due to their strong moral conscience and belief in the truth of their ways—it becomes difficult to

identify legitimate selective conscientious objection.

Many among us desire to set the limits of obedience according to their own beliefs and consciences, and even according to their own political perspectives. The distinction between selective conscientious objection and one's political worldview is in fact, as the President has stated, "fine—and occasionally exceedingly fine." Political conflicts in Israeli society agitate its most sensitive nerves. Israeli society is characterized by its intense ideological conflicts, including conflicts based on reasons of conscience and reasons of religious faith. These conflicts are generally legitimate in an open and pluralistic society. Society can withstand such conflicts when they are played out in a democratic arena.

Even if they are sincere, conscientious and faith-based considerations do not stand alone. Against them stand considerations of preserving the security and peace of Israeli society. Since its establishment, the State of Israel has been in a situation that requires military action. This has always been the position of the Israeli government regarding national security. Petitioners themselves served in fighter units and participated in military activities. Their current objection is to serving in the area, which is held by the IDF. This is in objection to the steps being taken there during the military actions against terrorism. The questions which arose as a result of the war against terrorism are at the heart of an intense political conflict. If this conflict is conducted within the army it may substantially harm the army.

According to the Basic Law: The Military, the army is under the authority of the government. The Minister of Defense is the government official responsible for the army. The government is responsible for national security, and the minister acts on its behalf. According to the Defense Service Law, the Minister of Defense has broad discretion in granting exemptions from military service, including those granted for conscientious reasons. Therefore, I concur with the Presidents opinion that the decision to attribute the decisive weight to security needs—due to the tangible fear that recognizing selective objection will damage the framework of the military—stands up to judicial review and does not establish a cause for our intervention.

Justice A. Procaccia

I concur with the President's judgment and Justice Beinisch's comments.

Petition Denied
December 30, 2002

TRANSLATED BY: Leora Dahan
EDITED BY: Eli Greenbaum

Comments, questions and suggestions are all welcomed, and may be directed towards elig@supreme.court.gov.il

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