



Turkey: List of Issues Prior to Reporting (132nd Session)

Conscientious Objectors to Military Service: Violations of the ICCPR

Turkey maintains a system of obligatory military service. All male citizens become liable for service from the beginning of the calendar year of their 20th birthday. There is no recognition of the right to conscientious objection to military service, resulting in repeated prosecution (including imprisonment) and a limitation of rights which the European Court of Human Rights has described as ‘civil death’ and cruel, inhuman or degrading treatment. “Alienating the public from military service” is criminalized. Turkey continues to take no action in response to a series of European Court of Human Rights judgements finding violations of the right to freedom of thought, conscience and religion; prohibition of cruel, or degrading treatment; and the right to fair trial (in cases where the applicants were tried and convicted by military courts).¹

Suggested Questions for the List of Issues Prior to Reporting

With reference to previous concluding observations (para. 23) please report on

- (a) measures taken to adopt legislation to recognise conscientious objection to military service;
- (b) measures to suspend all proceedings against conscientious objectors.

Please also report on:

- (c) measures to expunge all criminal records for criminal records for disobedience, draft evasion, desertion, public statement;
- (d) measures to ensure that conscientious objectors are free from the risk of further prosecution and obligation of compulsory military service and can fully enjoy their political, civil, economic, social and cultural rights;
- (e) steps to remove barriers to the exercise of civil and political rights for conscientious objectors (ending “civil death”);

¹ European Court of Human Rights, Final judgement, Case Ulke v Turkey (Application No. 39437/98), Strasbourg 24th January 2006; European Court of Human Rights, Deuxième Section, Affaire *Ercep v Turquie* (Requête n° 43965/04), Arrêt, 22 novembre 2011; European Court of Human Rights, Case of *Feti Demirtas v Turkey*, Application No. 5260/07, Chamber Judgment of 17 January 2012; European Court of Human Rights, Case of *Savda v Turkey* (application no. 42730/05), Chamber Judgment of 12 June, 2012; European Court of Human Rights, Case of *Tarhan v Turkey* (application No. 9078/06). Chamber judgment of 17 July 2012; European Court of Human Rights, Deuxième Section, Affaire *Buldu et autres v Turquie* (Requête n° 14017/08), Arrêt, 3 juin 2014;

- (f) measures taken to remove Article 318 of the Penal Code criminalizing free expression on conscientious objection to military service;

Pending the full implementation of the right to conscientious objection, please report on measures to ensure that all documents related to stop and check procedures are entered and maintained on the national database and are accessible in *e-devlet* (e-state) system.

Please provide data on conscientious objection applications including the number of conscientious objectors, on monetary fines and criminal investigations, and convictions delivered in connection to conscientious objectors.

Priority Issues

- ☐ *Non-recognition of right to conscientious objection to military service (violation of Article 18)*

There is no recognition in law of the right to conscientious objection to military service (which in the jurisprudence of the Committee inheres in Article 18).

- ☐ *Prosecution of Conscientious Objectors to Military Service (violation of Articles 9 and 18)*

Conscientious objectors to military service face fines and imprisonment. We have documented 85 cases of COs who have been subject to repeated arrests, repeated fines and repeated prosecutions and punishments.

- ☐ *Civil Death of Conscientious Objectors (violation of multiple Articles (listed) and Article 26)*

Passports and identity documents contain a bar code linked to the person's entry on the GBTS (General Information Gathering System) which includes the person's military service status. If the person has not done military service they can be taken directly to the registration office and can be charged if not willing to register. In 2006 the European Court of Human Rights described the impact of non-recognition of the right to conscientious objection to military service as civil death, amounting to a violation of Article 3 of the European Convention on Human Rights, due to the breadth of civil and political rights that are violated.²

The perpetual fear of arrest when interacting with State authorities means that conscientious objectors:

- are unable to register to vote and vote (violation of Article 25)
- are unable to register travel within the country and travel out of the country as a result of stop and search and identity checks (violation of Article 12)

² European Court of Human Rights, Final judgement, Case Ulke v Turkey (Application No. 39437/98), Strasbourg 24th January 2006

- are unable to register access education and employment including through barriers to employment in public service and private sector for those who have not done military service and imprisonment for employers who do not fire employees classed as deserters or evaders (violation of Article 26)
- are unable to register be included in the social security system and they will not be entitled to a pension (violation Article 26)
- have difficulties with holding their own bank accounts due confiscation of money by the government to cover administrative fines, or fear of confiscation of money (violation Article 26).

☒ *Criminalization of Expression on Conscientious Objection (violation of Article 19)*

Article 318 of the Penal Code of Turkey criminalizes “alienating the public from military service”; in 2013, this was amended to specifically address statements or conduct that “encourage and inspire people to desert or not to participate in military service”. In November 2016 the European Court of Human Rights found that application of this law violated the right to freedom of expression in a case where a conscientious objector was prosecuted and sentenced to prison for reading a statement of solidarity with conscientious objectors from another county.³

Previous Concluding Observations

Concluding observations on the initial report of Turkey adopted by the Committee at its 106th session (15 October - 2 November 2012), CCPR/C/TUR/CO/1 of 13 November 2012

23. The Committee is concerned that conscientious objection to military service has not been recognized by the State party. The Committee regrets that conscientious objectors or persons supporting conscientious objection are still at risk of being sentenced to imprisonment and that, as they maintain their refusal to undertake military service, they are practically deprived of some of their civil and political rights such as freedom of movement and right to vote (arts. 12, 18 and 25).

The State party should adopt legislation recognizing and regulating conscientious objection to military service, so as to provide the option of alternative service, without the choice of that option entailing punitive or discriminatory effects and, in the meantime, suspend all proceedings against conscientious objectors and suspend all sentences already imposed.

Number of Conscientious Objectors to Military Service

³ European Court of Human Rights, Final judgement, Savda v. Turkey (No. 2), application No. 2458/12 of 15 November 2016.

There is no clear data on the number of conscientious objectors to military service. An application for information was sent to the Ministry of National Defence requesting information on how many persons applied to the Ministry seeking exemption as conscientious objectors between 2016-2020. The Ministry's response stated that "there is no legal possibility to fulfil your request". However, Minister of National Defence, Hulusi Akar, stated in 2019 that "Regarding conscientious objection, in our country of 82 million, 28 persons applied in 2017, 23 persons in 2018, and 18 persons so far in 2019." We have registered 409 conscientious objectors but believe the number to be much higher.

National Legal Framework and Practice

1. Legal Framework

The Constitution of the Turkish Republic protects everyone's right to freedom of religion and conscience, however, does not refer to conscientious objection.

Article 24

Everyone has the freedom of conscience, religious belief and conviction. ...

No one shall be compelled ... to reveal religious beliefs and convictions, or be blamed or accused because of his religious beliefs and convictions.

Freedom of conscience protected under Article 24(1) is not subject to limitations.

Furthermore Article 25 stipulates that "everyone has freedom of thought and opinion" and that "no one shall be compelled to reveal his/her thoughts or opinions" and "nor be blamed or accused of his/her thoughts and opinions".

Article 72 of the Constitution regulates national service:

Article 72

National service is the right and duty of every Turk. The manner in which this service shall be performed, or considered as performed, either in the armed forces or in public service, shall be regulated by law.

Military service is not compulsory under the Constitution, on the contrary Article 72 only refers to national service and does not indicate it as military service. Instead, it refers to service in armed forces, public service or there might be the situation of being considered as performed. This clearly shows that military service is not the only way to perform national service and that recognition of the right to conscientious objection would not require a constitutional amendment. Furthermore, it demonstrates that not offering an alternative service is not compatible with the text.

Article 10 sets forth the principle of equality before the law for everyone:

Article 10

Everyone is equal before the law without distinction as to language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such grounds.

...

No privilege shall be granted to any individual, family, group or class. State organs and administrative authorities are obliged to act in compliance with the principle of equality before the law in all their proceedings.²

Under Article 90 of the Constitution international human rights treaties prevail over national legislation:

International agreements duly put into effect have the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional. In the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail.

The Law on Conscription (Askeralma Kanunu, AK, hereafter) and the Military Criminal Law (Askeri Ceza Kanunu, ACK, hereafter), are particularly pertinent and constitute the basis of the compulsory nature of military service, evader and deserter status and the ensuing administrative and criminal punitive measures applied to conscientious objectors. These laws do not include any provision on or reference to conscientious objection to military service or alternative civilian service. There is also no mechanism to which conscientious objectors could apply for an assessment of their request to be exempted from military service or request to serve in an alternative civilian service.

Glossary

Evader : Those who have not responded to the call or have not reported to the unit they have been referred to.

Draft evader: Those who have not enrolled even though they were called.

Deserter: Those who have left their unit or place where they were sent for duty without permission for more than six days.

Article 4 of the 2019 Law on Conscription stipulates that military service is compulsory:

Article 4

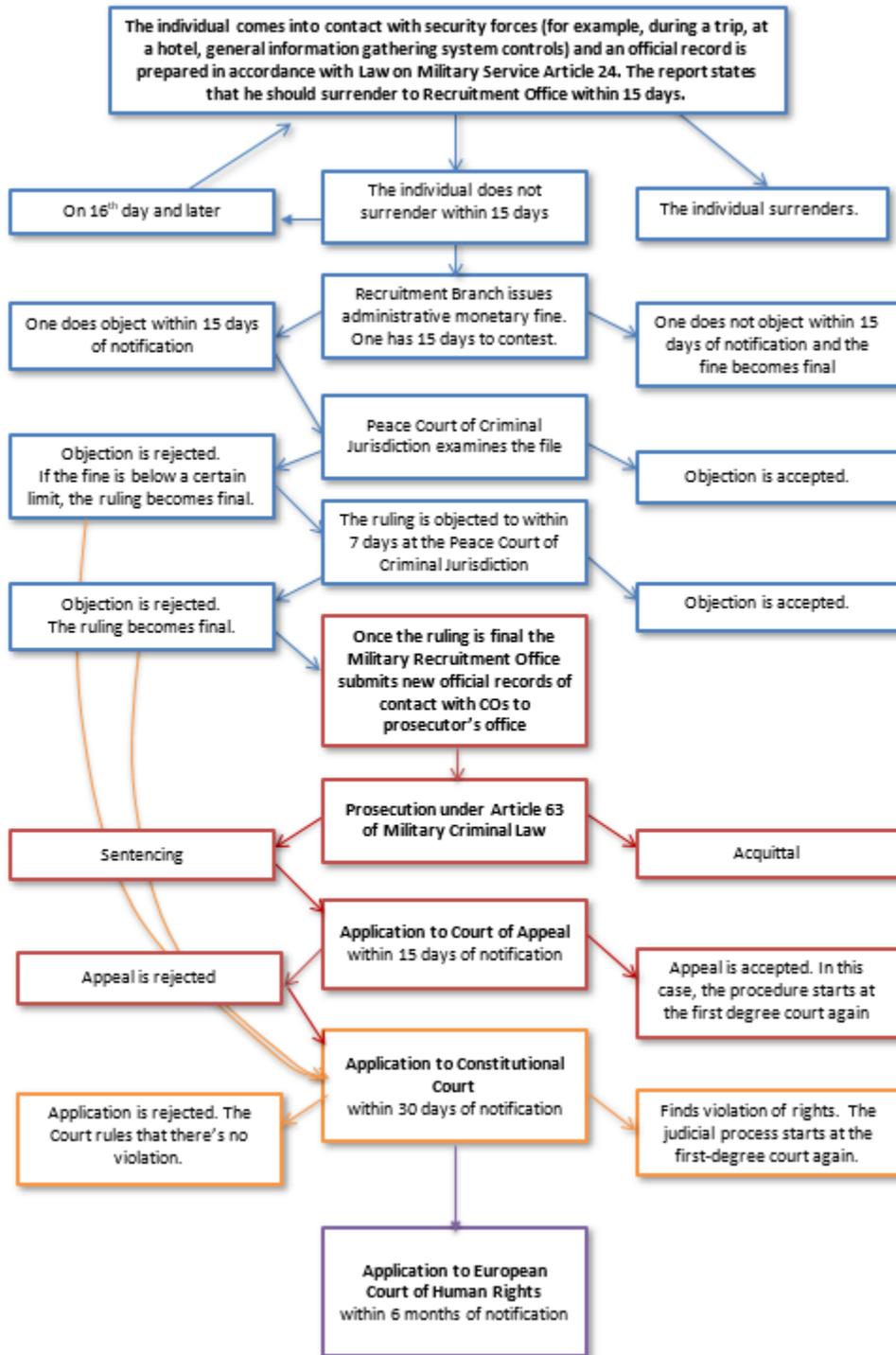
Every man who is Turkish citizen must perform military service.

Military service is compulsory for every man between the ages of 20-41 and the duration is six months for cadets and twelve months for reserve officers and officers.

Under Article 45 of the ACK, “the fact that a person regards his action as necessary according to his conscience or religion does not prevent it from causing a punishment ensuing from doing or not doing it”. This is clearly incompatible with Article 24 of the Constitution.

The Law on Conscription sets forth the manner in which evaders and deserters will be tracked and the administrative fines applicable to them. Once the administrative monetary fine is final, criminal proceedings are initiated under the Military Criminal Law. After the finalization of the first fine, every official record becomes a criminal case, however conscientious objectors can be

fined several times due to the long period of finalization of the fines. This process will be outlined below.



Evaders and deserters are tracked in accordance with the rules laid down in Article 26(1) of the Law on Conscription. Accordingly, evaders and deserters are reported to the Ministry of Interior

in order to ensure their apprehension to perform their military service obligation. Those who are apprehended are brought to the nearest military service branch during working hours. Where there is no military service branch nearby or outside of working hours evaders and deserters are issued an official record and released immediately.

Article 24(1) of the Law on Conscription lays out the fines (administrative monetary fines) given to draft evaders and evaders (see Glossary). Those who surrender are to pay 5 TL per day, starting from the day they became draft evaders or evaders. Those who are apprehended are due to pay 10 TL *per* day. Administrative monetary fines must be paid within a month of the date the official record is issued. If this fine is not contested, it becomes final within 15 days. Conscientious objectors who fail to fulfil this obligation are faced with a risk of being apprehended repeatedly after every 15 days and to have an official report issued. In case applicants contest the monetary fine, it becomes final following a ruling of the Peace Court of Criminal Jurisdiction. Official records issued after the finalization of administrative monetary fines, criminal trial process begins under the Military Criminal Law as described in the Chart. While some persons contest the monetary administrative fines, most individuals are not able to appeal because they are not familiar with the legal process. Between November 2020- April 2021 of 31 conscientious objectors that contacted the Association for Conscientious Objection 13 said they did not know how to contest the monetary administrative fines, 15 said they did not contest and only three said they contested. Of the three, two were rejected and one is still pending.

Military service branch authorities are authorized to issue the administrative fine and they notify the military service branch directorate located in the place where the draft evader or evader is registered in the population registry.

Official records and administrative monetary fines and ensuing prosecution are closely related. As stated in Article 100(3) of the Military Criminal Law, a copy of the official record that is issued against the draft evader or evader is given to him. However, this is not consistently applied. Many conscientious objectors who provided information on their cases to the Association for Conscientious Objection have reported inconsistencies. İnan Mayıs Aru reported that he was issued approximately 30 official records, however he has only seven of these, some he was not given some he did not keep. He was issued a total of approximately 12,000 TL administrative monetary fine based on two official records issued on 1 April 2015 and 28 August 2018 respectively. Abuzer Yurtsever, has seven official records issued between 2016-2017 and he has been issued 18,666 TL administrative monetary fine on the basis of the official record of 7 December 2016. Seyda Can Yılmaz was apprehended 14 times between 2018- 2020 and thus 14 official records were issued against him. However, only one of the official records led to an administrative fine of 4,218 TL.

The administrative monetary fines can amount to a substantial sum. Arif Hikmet İyidoğan, a computer programmer who is one of the first conscientious objectors in Turkey and announced his conscientious objection to military service in 1994. While he was imprisoned for alienating the public from military service for some time for many years, he did not experience any other problems. He has been subject to stop & search since 2016. Since then, he has been imposed a total of 17,251 TL as administrative fines in relation to three different official records. His

appeals were rejected in two cases. However one of the fines was cancelled by the Çankaya Conscription Office on the basis that they made a procedural mistake before the appeal was considered on 31 December 2020. He made two individual applications to the Constitutional Court that are pending since 14 June 2019 and 30 October 2019.

The Military Criminal Law enshrines important provisions on criminal measures applicable to conscientious objectors. Under Article 63 of the Military Criminal Code No 1632, those who do not surrender to perform their military service “after the administrative fine under Article 89 of the Law on Military Service is final” will be sentenced to imprisonment for up to 3 years depending on the duration of desertion.

1.1. The Official Record

A sample record, indicating what is missing

Registration no is missing.

SAYI :

KONU: Yoklama Kaçağı/Bakaya Yakalama Tutanağı

İÇİŞLERİ BAKANLIĞI
İL EMNİYET MÜDÜRLÜĞÜ

The name of the office in charge is missing.

12.1.2020

Location is missing.

TUTANAKTIR

1. Milli Savunma Bakanlığı kayıtlarında yoklama kaçağı / bakaya olarak aranan aşağıda kimliği yazılı hükümlü 12.1.2020 tarihinde Polis tarafından yapılan uygulamada ele geçirilmiştir.

2. Hükümlüye 1111 Sayılı Askerlik Kanunu gereği en yakın Askerlik Şubesine başvurması ve askerlik işlemlerini tamamlamasına yönelik aşağıdaki talimat tebliği edilmiştir

ACIK KİMLİĞİ

T.C Kimlik No

Adı Soyadı - Doğum Tarihi : Kamil Murat DEMİR

Baba Adı : Fezki

Nüfusa Kayıtlı Olduğu İçe : Tunceli - Pertek - Kayabaf

The situation of the person (travelling, accommodating, etc.) is missing.

TALİMAT

1. 1111 Sayılı Askerlik Kanunu gereği Milli Savunma Bakanlığı tarafından yoklama kaçağı / bakaya olarak arandığım tarafıma tebliğ edildi.

2. Askerlik işlemlerimi tamamlamak üzere ilk mesai gününden itibaren toplam 15 gün içinde en yakın Askerlik şubesi başkanlığına başvuracağım. Başvururken yanımda 2 adet vesikalik fotoğraf, T.C. Kimlik kartım, mezuniyet varsa bonservis ve hastalıklarına ait belgeleri de göstereceğim.

3. Bana tanınan süre içinde en yakın askerlik şubesi başkanlığına başvurarak işlemlerimi Tamamlattırılmaması durumunda 1111. Sayılı Askerlik Kanunu ve 1632 Sayılı Askeri Ceza Kanununun ilgili hükümleri gereği hakkında cezai işlem uygulanacaktır. 12.1.2020 Saat. 20.32

TEBLİĞ EDEN

Görevli Memur

HAZIR BULUNAN

Görevli Memur

TEBELLÜĞ EDEN

Kamil Murat Demir
Yükümlü

ACIKLAMALAR.

1. Yoklama Kaçağı, saklı ve bakayalar, 1111 sayılı Askerlik Kanununun 89 ve 89'unun maddelerinin Hükümlerine göre idari para cezası ile cezalandırılır.

2. Hakkında kesinleşmiş idari para cezası bulunanlardan 1111/89'unun maddesinde yazılı yoklama kaçağı ve bakaya suçlarından herhangi birini işleyenler cezalandırılmak üzere Consuhriyet Başsavcılığına sevk edilir.

3. İdari Para cezaları hex yıl

Official records constitute the basis of fines and penalties in accordance with Article 24 of the Law on Conscription and Article 63 of the Military Criminal Law. Despite their importance, they are not uniform, often sketchy and are not handled in a consistent manner. This negligence weakens foreseeability and right to fair trial as will be shown below.

Lacking vital information - Often, there is no indication of the place, time and the circumstances (check and apprehension at a hotel or on the road) in which the official record was registered, the duration of detention of the conscientious objector or even the name of the police station or gendarmerie unit. Sometimes it is not clear by which department the official record has been issued or there is a signature but the name of the person who signed it is missing. As a result, vital information is not registered anywhere in the official record. Consequently, these official records, which have negative implications for conscientious objectors, lack substantial information that conscientious objectors who want to support their allegations of rights violations could rely on to support their cases.

Lack of copies and registration in database - Furthermore, in many cases conscientious objectors are not provided with a copy of the official record and not all are registered in the national database. Consequently, conscientious objectors can access these official records only in the case there is an administrative/criminal measure taken against them. The case of Cemal Karakuş illustrates this problem well. Karakuş, a diver in the national team, reports that he frequently travels and that he has come across stop & checks where he was issued official records more times than he could remember. However, he has only five official record copies in his possession. One of the official records is dated 31.01.2018. This apprehension took place in Alanya at the hotel where the national team were staying and he was taken to the police station just for being a draft evader, his statement was taken, and he was released after two and a half hours. He was issued an official record at each phase, including apprehension, medical examination, giving a statement. He was issued 2,978 TL administrative monetary fine and a criminal case was initiated as a result of this apprehension. It is possible to identify the details of these apprehensions and ensuing measures that are taken because the official record provides this information in an adequate manner. As described above such fundamental and important information is missing from most official records.

Kamil Murat Demir, a conscientious objector since 2018, is a journalist who frequently travels for work. Over the course of 2016-2021 he has been apprehended on account of being a draft evader approximately 50 times during travel for work or at work. On two occasions he was apprehended whilst staying at hotels. Consequently, he refrains from staying at hotels and tries to arrange accommodation where there is no requirement for official registration. He has been issued an administrative fine of 4,305 TL following an apprehension for being a draft evader in 2016. Later on, 11 criminal cases were initiated against him after administrative monetary fines became final. He was acquitted on one of them in 2019, however, the prosecutor appealed against this verdict. The case is still pending. In another case he was given 4-month imprisonment in 2018 but this was converted to 1,200 TL of judicial fine. The rest of the files, nine out of 11, and an individual application to the Constitutional Court are pending.

1.2. Shortened military service through payment

Since 2019, with the adoption of the Law on Conscription, shortened military service through payment of a sum of money has become possible under the Turkish military service system. Under Article 9 of the Law on Conscription those who pay a certain sum that is determined by the Ministry of Defense and complete one month of basic military training will be considered to have completed their military service. In case the number of those who opt for this option exceeds the number determined for the shortened military service through payment those who can opt for this option will be determined by draw.

Those who are eligible for the shortened military service through payment option and yet forfeit this right will not be given the option again. Those who have started their military service, those who have been assigned evader status and those who are draft evaders and in hiding cannot benefit from this option.

Those who opted for the shortened military service by payment, are called and have not joined the military, are considered evaders and can no longer benefit from this option. The payment they made is not automatically refunded. Refund is made upon request.

Shortened military service through payment is not an option in times of war and mobilization.

It is important to underline that shortened military service through payment is not a suitable option for conscientious objectors and it is not available for all conscientious objectors. Unfortunately, in the consideration of an asylum case in the Netherlands, shortened military service by payment was considered as “a right” to justify rejection of asylum claims. Similarly, in the case of B.Ş. a Turkish court also considered the shortened military service by payment as an option for conscientious or other objectors to military service.

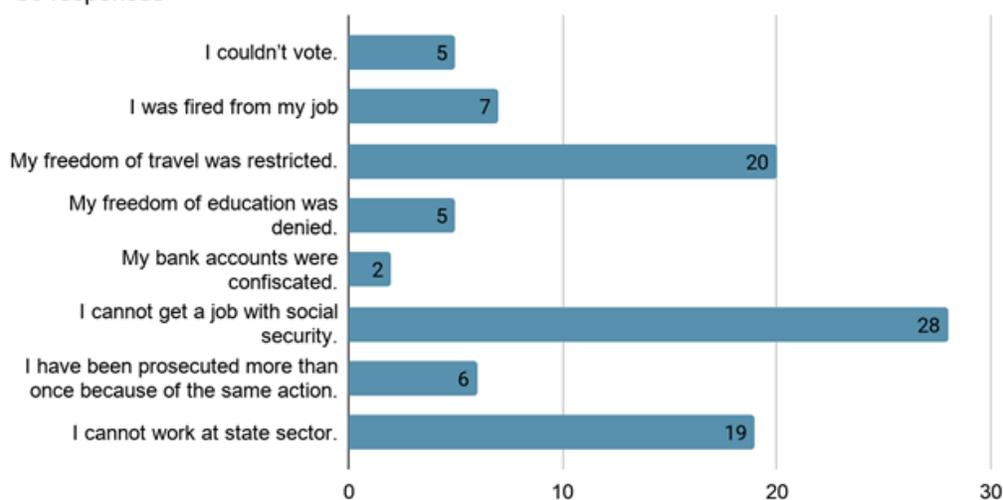
In their correspondence with the CoE CM, the Turkish authorities have referred to the possibility of fulfilling the obligation to perform military service by payment. However, clearly, this cannot be considered a solution to human rights violations that conscientious objectors are subject to. Firstly, the payment option does not constitute an alternative service therefore the finding of the ECtHR that the interference Article 9 originates from the lack of alternative service is not addressed. Secondly, approximately 4,400 EUR must be paid to benefit from this option and this is an amount about 17 times the net minimum wage (2.825 TL, approximately 250 Eur) therefore not easily accessible. It is common that individuals feel compelled to take bank credit in order to afford the necessary sum. Thirdly, everyone who opts for military service by payment must perform basic military training for one month. This requires wearing of the uniform, obedience to orders, and all routine aspects of ordinary military service. This is not acceptable for individuals who object to military service and wearing of the uniform categorically. Finally, under Article 9(6) of the Law on Conscription those who have already started their military service and those who have the status of enrolment or enlistment evaders or deserters or those in hiding cannot benefit from this option.

2. Restrictions on key human rights

In addition to interference in their right to freedom of thought, conscience and religion, conscientious objectors experience restrictions on a number of human rights. Once a conscientious objector to military service evades the draft or deserts the military public authorities identify them as evader or deserter. This status becomes part of the information linked to their national identity number and information. Furthermore, it has implications for the exercise of a number of human rights. In *Ülke v. Turkey*, the ECtHR had stated that “The clandestine life, amounting almost to “civil death”, which the applicant has been compelled to adopt is incompatible with the punishment regime of a democratic society”. This situation remains a reality for conscientious objectors as a result of the unending cycle of stop & checks, fines, criminal prosecutions and restrictions on a wide range of human rights.

The Turkish authorities’ limited response to conscientious objection does not address these issues. The implications of the non-recognition of the right to conscientious objection on other human rights are also not considered by the international human rights compliance control mechanisms. These rights include, *inter alia*, participation in public affairs and the right to vote, freedom of movement, right to education, opportunity to earn one’s living.

Which violations have you suffered because of not fulfilling the compulsory military service? (You are free to mark more than one category)
36 responses



Participation in public affairs and the right to vote

Under Article 67(1) of the Constitution, citizens have the right to vote, to be elected, to engage in political activities independently or in a political party, and to take part in a referendum. However, 67(5) stipulates that “privates and corporals at arms, cadets, ... shall not vote”.

It is interesting that even Osman Murat Ülke, who applied to the ECtHR in order to seek remedy to the human rights violations he experienced as a consequence of being a conscientious objector in Turkey, after having won his case in 2006 continues to be subject to restrictions, including on the right to vote. Even though the Turkish authorities are under an obligation to eliminate any consequences of the violation on Ülke, his status in Turkey remains “soldier” and “deserter”. Therefore, in accordance with Article 67 of the Constitution he cannot vote. Before the 31 March 2019 general elections, he received his voter card. However, on the day of the

election when he went to vote, he was told that there is a note indicating that he could not vote, and the electoral officers did not allow him to vote.

Similarly, another conscientious objector, Murat Demiroğlu, who has declared his objection since 2013, has deserter status. In February he came across a stop & check and was taken to the Zeytinburnu Military Service Branch. Even though he informed the authorities that he is a conscientious objector, the authorities transferred him to the military unit without informing him and recorded as a "soldier" in the database. Demiroğlu learnt this six days before the elections through a telephone message he received from the provincial election council. Since he had not received the document indicating he is a cadet (*sülüs*) and thus did not yet have "military person" (*asker kişi*) status he could not vote nor could he carry out his role as an electoral observer he had taken on as a member of the political party with which he is affiliated.

As stated above every citizen has the right to be elected under Article 67 of the Constitution, however in order to be eligible to be elected as a member of parliament, under Article 76 of the Constitution, one must be exempt or deferred from military service or must have fulfilled their military service. Since conscientious objectors' status remains as persons who have not fulfilled their military service, they are not eligible to stand for elections.

Freedom of movement

Article 23 of the Constitution protects everyone's freedom of movement.

There is no explicit restriction on the freedom of movement on persons who are performing their military service. However, as demonstrated below, a direct consequence of the combination of widespread practice of stop & search and identity checks and Article 26 of the Law on Conscription on the tracking of draft evaders, evaders and deserters, is that conscientious objectors are subject to stop & search, apprehension and official record is issued against them. In order to avoid this process conscientious objectors are not free to move freely.

Under Article 26(1) of the Law on Conscription, draft evaders, evaders and deserters are reported to the Ministry of Interior to ensure their apprehension to perform their military service. Once they are apprehended, they are either brought to the nearest Conscription Branch and/or released, given an official record, and asked to submit to the nearest Conscription Branch within 15 days under Article 36(2).

The freedom of movement of conscientious objectors is highly restricted due to a number of possible checks that would lead to their being identified as draft evaders, evaders or deserters. This, then, starts a process that leads to prosecution.

The General Information Gathering (Genel Bilgi Toplama, GBT) is an identity checking technology that police officers use to access up to date information on persons, including their status related to military service, criminal or suspect records. This is used during identity or passport controls. Furthermore, identity checks at hotels and general searches in bus rides lead to restrictions for conscientious objectors. In residential areas the police force and outside of residential areas the gendarmerie is authorized to stop cars and carry out checks. Such checks are also carried out as a result of information that is mandatory to be provided by hotels and similar accommodations on the guests who check in. As soon as they are identified as evaders or deserters, either on the road or at the hotel, they are apprehended, and they are either

brought to a police station and/or to military branches or an official record is issued. At times, because a police officer or a gendarme does not have the official record slip with them this process may take hours. This process could potentially happen in the life of a conscientious objector as many times as he may encounter the police or gendarmerie.

Many conscientious objectors have reported to the Association for Conscientious Objection that they feel compelled to change their lifestyle in order to avoid stop & search practices. Aru and Korkmaz' cases illustrate this well. İnan Mayıs Aru has lived in different parts of Turkey over the years and was given approximately 30 official records during his travels. He now travels less and lives in a village in the Western Turkey. Still, he says that he is always careful to choose his route in a way so as not to encounter the gendarmerie. Utku Korkmaz, who announced his conscientious objection in 2014 was apprehended from different hotels on 14 July 2014, 18 March 2016 and 26 March 2016 and he no longer prefers accommodation in hotels that require official check in / registration.

The Right to education

Under Article 41(1) of the Law on Conscription the high-school or university registration of students who have not fulfilled their military service - taking into account their right to postponement for a certain period of time - will be frozen. Those whose registration has been frozen this way cannot benefit from any public-funded bursary or student accommodation.

Zana Aksu's case illustrates this situation. Aksu has been a conscientious objector since 2012. After successfully passing the 2019 university entrance exam he was offered a place at the Applied English and Translation Department at Siirt University School of Social Sciences. However, he was not allowed to register because he could not provide a document attesting that he did not have a certificate demonstrating that he no longer has military service obligation.

Opportunity to earn one's living

Article 48 and 49 of the Constitution protect everyone's right to work.

Under Article 41 (2) of the Law on Conscription, evaders and draft evaders cannot be employed in civil service or private service and those who employ them will be prosecuted. In addition, Article 48 (6) of the Law Civil Servants stipulates that in order to qualify as a civil servant one must not be under the obligation to fulfill military service. Article 75(1) of the Military Criminal Code stipulates that those who do not terminate the employment of a person who is considered evader or draft evader upon the receipt of an official notification from the Government will be sentenced to imprisonment from three months to one year. Where this is repeated from one to three years. This is applicable to any employment situation including, private sector and public sector, including municipalities, banks and associations and professional organizations working for public benefit.

For example, in 2016 the employer of T.K., a conscientious objector and software developer received a notification from the Ministry of National Defence which stipulated that based on the, then in force, Article 93 Law on Military Service and Article 75 of the Military Criminal Law criminal prosecution will be initiated if T.K. failed to report to the military service branch. As a

result of T.K.'s failure to comply with the requirements of the notification, his employment contract was terminated within a month. The action was challenged at administrative court however with no result. Consequently, an individual application was made to the Constitutional Court in 2019.

The Case of U.Y.

U.Y. has been a conscientious objector since 2000. Since then he was subjected to restrictions of several of his human rights. Yet, his dismissal from his job in 2016 because of his conscientious objector status led him to feel compelled to leave the country. He had been working as a senior database developer at an insurance company when in November 2016, the Ministry of National Defence sent a notification to the employer informing him that U.Y. is being sought as a draft evader / deserter nationwide. The notification asked the employer to ensure that U.Y. submits to the nearest military service branch "to be taken under arms" as soon as possible and that the document attesting to this be submitted to the workplace within 15 days. Furthermore, the employer was warned that if these requirements are not fulfilled, as the head of the institution / business owner, that a criminal complaint will be made to the public prosecutor's office requesting the opening of an investigation for the crime of employing a deserter under Article 93 of the Military Service Law and Article 75 of the Military Criminal Code.

U.Y. signed the notification by stating that he "refused to do military service, rights such as work and peace are the most fundamental social rights". As a result, the employer immediately terminated the employment contract with a just cause as of 14 December 2016, although U.Y. had been working as a Senior Database Developer since 16.06.2015.

Following the termination decision, an administrative lawsuit was filed, but the relevant court rejected the lawsuit on the grounds that the notification sent to the workplace by the Military Service Branch would not have any relevant consequences on its own and did not examine the claims of unconstitutionality in any way. The appeal application against this decision was also rejected. Furthermore, the application made to the Constitutional Court in 2018 against this decision was rejected in 2018. Consequently, an application to the ECtHR was made on 13.06.2019.

As a direct result of these developments, because there is no opportunity to work and live in Turkey, U.Y. has settled in Montenegro in 2017. However, due to his health problems and needs for treatment he felt compelled to return to Turkey again in 2020.

Denial of public rights and execution of sentence made heavier

U.G. is a businessman who decided to become a conscientious objector when he was serving in the army. He did not go back to the military unit when he was on leave and announced his objection on 1 October 2014, after which his legal status became a deserter. Since then, three criminal cases have been initiated against him. In 2018 he was sentenced to 5 months imprisonment which was converted to 3,000 TL judicial fine on account of not returning to the military unit from leave. Then in 2020 he was sentenced to 10 months of imprisonment which was converted to 6,000 TL judicial fine on account of being a deserter. On 23.01.2021 he was sentenced to 10 months' imprisonment and deprivation of some of the rights, for being a deserter. The decision has been appealed and a decision is pending.

Despite the court cases U.G., his conscientious objection remains. His determination is considered within the concept of “committing the same crime over and over again” and the penalties are given taking into account “recurrence” principle. For this reason, in the last court decision the prison sentence was not converted to a judicial fine. Furthermore, under Article 53(1c) of the Turkish Criminal Law a decision was made to deny him public rights (*kamu haklarından yasaklanma*), i.e. throughout the court case he could not be a legal guardian. In addition, under Article 58(6,7), the penalty is made heavier in accordance with “recurrence”. Potentially other ongoing court cases will also be subject to these provisions once they come to this stage.

Similarly, in the criminal case of Akin Kasapoğlu the sentence has not been reduced because “the accused has committed this crime intentionally”. The six months prison sentence was postponed however Article 53 of the Criminal Law was applied and Kasapoğlu was denied public rights. As a result, he cannot be a legal guardian or take a role in the management of a foundation or association, even not be able to carry out a profession that is subject to registration in a professional organization, such as a lawyer.

3. Lack of Domestic Remedies and Approaches of the Judiciary

It is important to state at the outset that an effective domestic remedy for conscientious objectors is non-existent since Turkey does not recognize the right to conscientious objection and courts, consistently, have not utilized Article 90 of the Constitution which provides the possibility to directly apply relevant provisions of international human rights treaties where national legislation is incompatible with the former. Instead, courts apply legislation applicable to evaders and deserters. As long as the legal status conscientious objectors remain as evader or draft evader, they will continue to be subject to administrative and judicial fines. This is not compatible with the *ne bis in idem* principle. Nevertheless, conscientious objectors feel that their direct applications to international human rights mechanisms that require the exhaustion of domestic remedies, may consider their applications inadmissible if they do not first exhaust domestic remedies - even if it is evident that since the right to conscientious objection is not recognized their claims will not be successful.

Constitutional Court

Individual application to the Constitutional Court system was introduced into the Turkish legal order by the constitutional amendments approved as a result of a public referendum held on 12 September 2010. The system enables any person in Turkey to lodge a complaint with the Constitutional Court if he or she considers that his or her rights and freedoms have been violated. Together with the introduction of the individual application mechanism, an important domestic remedy mechanism has become available for conscientious objectors, since 2012.

Numerous individual applications have been made by conscientious objectors to the Constitutional Court (see Annex). However, so far, the AYM has postponed deliberation on the application. In 2016, it was reported in the media that the Constitutional Court referred an individual application involving conscientious objection to the Plenary. However at the time of

writing of this Report the Constitutional Court is yet to deliver a judgment dealing directly with the right to conscientious objection.

The Constitutional Court however delivered a decision of inadmissibility regarding the application of U.Y., a conscientious objector, and the case is now pending with the ECtHR. Mr. Y's employer was informed on 30 November 2016 by the Ministry of Defence on the status as an evader and unless it was ensured that he submitted to a Recruitment Branch and that a document to this end is submitted to the Recruitment Branch within 15 the employer would be subject to investigation for unlawfully employing an evader. Thus the employer ended the applicant's contract. In its inadmissibility decision the Constitutional Court, did not address the right to conscientious objection and referred solely to the right to fair trial and found the application manifestly ill founded.

This remedy in itself does not constitute a general measure to prevent similar violations. The need for legislative changes that recognize the right to conscientious objection, establish an independent mechanism to receive and process applications as well as the institution of civilian alternative service remain.

The earliest application known to the authors is Osman Murat Ülke's application from 2014. The basis for the non-implementation of the ECtHR judgment is a structural problem, that of non-recognition of the right to conscientious objection. For this reason, the implementation of the pilot decision procedure in accordance with Article 75 of the Rules of Procedure of the AYM is requested.

Furthermore, there are more than 47 applications both from Jehovah's Witnesses and anti-militarist conscientious objectors. A number of applications from 2015-6, made by conscientious objectors Vedat Zencir, Davut Erkan, M.C.S., and Utku Korkmaz. Some of the applicants have more than one application. Cemal Karakuş' four applications from 2018 and Arif Hikmet İyidoğan's two applications from 2019.

In applications made to the Constitutional Court, decisions for stay of execution are also requested in order to prevent further violations of the applicants' rights. However, the AYM either does not examine these requests at all and does not even provide a response or rejects them on the grounds that "there is no serious danger to the life or security or moral integrity of the applicant".

Although Davut Erkan, who worked as a lawyer, in his application of 2015 and after official records issued against him requested *interim* measures on 23.01.2018 and 02.04.2019, he did not receive any response from the Constitutional Court. Similarly, no response was received in the case of Vedat Zencir, who made an individual application to the court in 2015, requests for interim measures in 2016 following measures taken against him.

In the individual application of Kamil Murat Demir, who was apprehended more than 50 times, and in the individual application of U.G., who has a deserter status and has been sentenced to imprisonment, the Constitutional Court decided that "there is no serious danger to the life or security or moral integrity of the applicant" without thoroughly examining the applications.

The Constitutional Court is expected to deliver a judgment in line with the ECtHR jurisprudence in order to be considered an effective domestic remedy. In light of its decision on the case of Y. and its postponement of the applications so far, however, it has not yet functioned as an effective domestic remedy.

First degree courts

Almost all criminal cases result in convictions. Neither the claims of unconstitutionality nor the arguments on conscientious objection nor other procedural objections are considered in these decisions. In a rare case where conscientious objection claims were discussed the judge referred to the ECtHR's *Bayatyan v. Armenia* judgment and held that the conscientious objector B.Ş. was not a religious objector and his motivation was to avoid compulsory military service. The ruling also referred to shortened military service by payments as a solution to B.Ş.'s conundrum. In few of the cases in the first-degree courts, where violations of the Law on Notifications, or procedural issues were raised, conscientious objectors to military service were acquitted.

With the exception of a few cases, prison sentences are converted to monetary fine. In the cases of conscientious objector İnan Mayıs Aru, six months prison sentence was converted to 3,000 TL judicial fine in 2017, Zana Aksu, two months prison sentence was converted to 1,200 TL judicial fine in 2018, and Kamil Murat Demir four months prison sentence was converted to 2,400 TL judicial fine.

In the case of B.K., the court ruled that considering the statements of the accused the court was not convinced that he would not violate the law again and therefore decided not to convert the prison sentence, of one month and 20 days, to a judicial fine. Similar to the other cases listed above, the procedural irregularities related to the notifications, unconstitutionality and the right to conscientious objection were not discussed.

In stark contrast to the above, in 2012 two Turkish military court decisions concerning conscientious objection claims have partially recognized the right to conscientious objection to military service as a human right. The military court decisions came despite no specific Turkish legislation either recognising this right or regulating its implementation. While since 2012 no similar court decisions were reached these decisions will be addressed in detail as they may shed some light into how the judiciary would assess claims for conscientious objectors if the right were recognized.

These court decisions demonstrate the limits of the right to conscientious objection as recognized by these military courts. Two requirements stood out: first, the courts required that the religion held by the conscientious objector is known to reject military service; and secondly, that the conscientious objector's "sole and undivided" motivation for rejecting military service is his conscientious objection declared at the start of compulsory military service. One case concerned a Jehovah's Witness conscientious objector, Baris Görmez, the other a Muslim conscientious objector, Muhammed Serdar Delice. In both cases military courts to some degree relied on the changed jurisprudence of the ECtHR on conscientious objection following the *Bayatyan v. Armenia* case. However, in both cases a key factor was the declared religions of the conscientious objectors. Both courts applied Article 90 of the Turkish Constitution which states

that in cases of conflict between international agreements in the area of fundamental rights and domestic laws, the provisions of international agreements will prevail.

Malatya Military Court's 2012 Delice decision sets out the Turkish military judiciary's interpretation of the right to conscientious objection to military service. Delice declared his conscientious objection approximately five months after he had been conscripted. He declared that his conscientious objection was based on his Islamic and nationalist beliefs. The Military Court interpreted the ECtHR's approach to the right to conscientious objection as one based on the theological position of a religious group and excluded the beliefs of the individual. It ruled out an individual rejecting military service according to his own views. Instead, the Military Court relied on the rejection of military service by an intellectual, religious or political group, as such. It referred to the example of Jehovah's Witnesses, stating: "persons who are members of the Jehovah's Witnesses reject military service, because they are part of this group or institution which fundamentally rejects military service".

Based on this understanding, a young man claiming conscientious objection to military service would have to be a member of a religious group considered by a court to be categorically opposed to military service. In the Malatya Military Court's view, Delice belonged to "Islam which is not a belief or ideological movement that rejects the performance of military service".

This view of Islam was a theological statement by the court. But when Delice wanted to bring in the mufti of Malatya as an expert witness, the court rejected his request. In excluding the mufti, the court cited Law on Criminal Procedure. Article 62 of this Law states that experts must take an oath saying that they will perform their tasks based on science. The Court stated that "the religious sphere is intrinsically related to beliefs and is dogmatic, hence any view expressed from this field cannot be based on science and includes subjective elements".

This explanation seems to contradict the Court's view that Islam does not reject the performance of military service. On the one hand, the Court maintains that religious views cannot be presented in proceedings by experts, as they are not scientific and include subjective elements. Yet on the other, it bases its decision on its own theological assessment.

According to the Military Court, Delice had Islamic and nationalist views when he was conscripted. According to the Court, he only declared his conscientious objection to military service after he "saw wrongs and deficient aspects of military service for himself and thus declared his conscientious objection". The Court also argued that Delice did not from the beginning of his military service have a "one and undivided purpose" of conscientious objection. The Court thus ignored in relation to conscientious objection a key part of international law's understanding of freedom of religion or belief, which is also found in the ECHR's Article 9 – the right to change beliefs.

Under this ruling, a conscientious objector must demonstrate that his objection exists before conscription, and that it is his "one and undivided purpose" - i.e. that he has no other reasons for wanting to leave military service. According to the Court, in Delice's statement to the Prosecutor he said that he wanted to leave military service for a number of reasons. According to his statement, these included financial difficulties and the hostile reactions of some of his

fellow-soldiers and commanders towards him because he was performing namaz (Muslim prayers) in the military.

The Delice decision also touches on the question of whether a conscientious objector is tried by a military or a civil court. Since Delice was already performing his military service when he declared his conscientious objection, the Court noted that according to Article 9 of Law No 353 ("On the Establishment of Military Courts and Tribunal Procedure") he was under the jurisdiction of the military courts. This reasoning seems to imply that if a person objects to being conscripted before he joins the military he may be tried by a civil court. It will be interesting to see how and in which courts newer conscientious objection claims lodged before conscription will be dealt with. Delice has appealed against the ruling, and the High Court of Appeals decision and its reasoning is still pending.

Isparta Military Court recognised the right to conscientious objection to military service when it acquitted Jehovah's Witness Baris Görmez on 13 March 2012. He had spent a total of four years in prison from November 2007 and had been charged with "rejecting wearing of the uniform" and "rejecting orders". As in the Delice case, the Court relied on the changed jurisprudence of the ECtHR.

The decisions concerning Görmez and Delice were received both as milestone decisions that recognise the right to conscientious objection and as disappointing – especially in the case of Delice. The Istanbul branch of Mazlumder (Association of Human Rights and Solidarity for Oppressed People) organised a press conference, at which Delice's lawyer Mahir Orak complained that Malatya Military Court "developed a new stalling method by saying that there is no conscientious objection in Islam". Orak also considered that the Delice and Görmez decisions were contradictory.

Consequently, despite Turkey's international human rights commitments and the constitutional protection of the right to freedom of thought, conscience and religion the right to conscientious objection is not recognized in law or through judicial decisions. Conscientious objectors' right to freedom of thought, conscience and religion, freedom of movement, right to education, the right to elect and to be elected and opportunities to make a living are highly and constantly restricted. Therefore, a punitive system that is not compatible with international human rights standards remains in force.

Further Detailed Information

This submission is based on our May 2021 report "**CONSCIENTIOUS OBJECTION TO MILITARY SERVICE IN TURKEY**". This report will be published on www.vicdaniret.org