



SUBMISSION

TO THE 142nd SESSION OF THE HUMAN RIGHTS COMMITTEE

TÜRKIYE

Conscientious objection to military service and related issues

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▪ INTRODUCTION

This submission to the 142nd Session of the Human Rights Committee (hereinafter the Committee) concerns the situation of human rights and more particularly the violation of the human right to conscientious objection to military service in the **Republic of Türkiye itself**. This report presents the human rights situation as well, concerning conscientious objectors, in the **Turkish-occupied northern part of Cyprus, for which the Republic of Türkiye is also responsible** under international law.

The right to conscientious objection to military service is not recognised by the Turkish authority, resulting in numerous human rights violations, of both civil and political, as well economic and social rights, encompassing, *inter alia*, a wide range of articles of ICCPR, including articles: 18(1), as well articles 2, 7, 9, 12, 14, 18(2), 19, 25, 26 and possibly others.

The Committee has explicitly recognized that: “The right to conscientious objection to military service inheres in [or “is inherent to”¹] the right to freedom of thought, conscience and religion. It entitles any individual to an exemption from compulsory military service if this cannot be reconciled with that individual’s religion or beliefs. The right must not be impaired by coercion”.²

▪ COUNTRY PROFILE

Population: 85,372, 377³

Minimum recruitment age: 19⁴

Duration of military service: 6 months, since 2019 (12 months for reserve officers chosen among university or college graduates).

Since 2019, paying a sum (decided yearly in January and July) a conscript can serve for 1 month (basic training) and obtain an exemption for the other 5 months.

Right to conscientious objection

There is no provision for conscientious objection to military service. Therefore, conscientious objectors are repeatedly prosecuted and imprisoned and there is a limitation on the rights which the European Court of Human Rights (hereinafter ECtHR) has described as ‘civil death’ and as a cruel, inhuman or degrading treatment.

▪ FAILURE TO RECOGNISE, RESPECT AND PROTECT THE RIGHT TO CONSCIENTIOUS OBJECTION TO MILITARY SERVICE

In the Republic of Türkiye there is no provision for conscientious objection to military service, and consequently there is a failure to recognise, protect and respect the human right to conscientious objection to military service.

The State party in its second periodic report clearly stated that: “There is no regulation on conscientious objection within the scope of military service.”⁵

Furthermore, in practice, there is not an effective procedure to receive applications for conscientious objection. In 2020, the General Directorate of Conscription of the Ministry of National Defence sent a letter to the Rize Administrative Court in connection to the Yazıcı case. The letter outlined the way

¹ UN Human Rights Committee, Communication No. 1786/2008, Jong-nam Kim et al. v. The Republic of Korea (CCPR/C/106/D/1786/2008), 1 February 2013, para. 7.4. <http://undocs.org/CCPR/C/106/D/1786/2008>

See also subsequent jurisprudence.

² UN Human Rights Committee, Communication No. 1642-1741/2007, Jeong et al. v. Republic of Korea (CCPR/C/101/D/1642-1741/2007), 27 April 2011, para. 7.3. <http://undocs.org/CCPR/C/101/D/1642-1741/2007>

³ <https://data.tuik.gov.tr/Bulten/Index?p=The-Results-of-Address-Based-Population-Registration-System-2023-49684&dil=2>

⁴ EBCO Annual Report 2023/2024, p. 146.

https://ebco-beoc.org/sites/ebco-beoc.org/files/2024-05-15-EBCO_Annual_Report_2023-24.pdf.

⁵ Human Rights Committee, Second periodic report submitted by Türkiye under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2022, (CCPR/C/TUR/2), 28 April 2023 [Date received: 3 August 2022], para. 228. <https://undocs.org/CCPR/C/TUR/2>

applications for conscientious objection will be processed. Petitions made to the military service branch will not be sent to the General Directorate on Conscription, instead the military service branches will draft a negative letter in accordance with reference to applicable legislation. The conscientious objector's application and the military service branch's letter will be sent to the military service branch where the person "liable [for military service]" is registered. Military Service Branches are asked to send information on conscientious objection applications in March, June, September and December to the Ministry of National Defence. The same document stated that the Ministry of Defence should not be informed on repetitive applications by the same conscientious objectors.⁶

The continuous failure of the Republic of Türkiye to recognise the right to conscientious objection to military service, and the consequent human rights violations of this and further human rights of conscientious objectors, have been highlighted throughout the years by numerous international human rights bodies and mandates. A non-exhaustive compilation of judgements, decisions, views, recommendations, communications and references can be found below.

- Human Rights Committee

In 2012, the Committee examined the case of *Atasoy and Sarkut v. Turkey*, two conscientious objectors on religious grounds, and found a violation of article 18(1) of ICCPR.⁷

In the same year, in its concluding observations for the initial report of the State party, the Committee stated:

"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."⁸

The Committee further stated:

"26. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations made in paragraphs 10, 13 and 23 above."⁹

In April 2014, the Special Rapporteur for Follow-up to Concluding Observations of the Committee sent a reminder to the State party noting that the information sought by the Committee had not yet been provided.¹⁰

In July 2014, the State party sent its reply to the Committee, stating:

⁶ Conscientious Objection Watch, European Bureau for Conscientious Objection (EBCO), Connection e.V., International Fellowship of Reconciliation (IFOR), War Resisters' International (WRI), *Communication in accordance with Rule 9.2. of the Rules of the Committee of Ministers regarding the supervision of the execution of judgments and of terms of friendly settlements*, 17 April 2023, p. 4.

⁷ Human Rights Committee, Communications Nos. 1853/2008 and 1854/2008, Views adopted by the Committee at its 104th session, 12 to 30 March 2012 (CCPR/C/104/D/1853-1854/2008), 19 June 2012. (Hereinafter *Atasoy and Sarkut v. Turkey*). <https://undocs.org/CCPR/C/104/D/1853-1854/2008>

⁸ Human Rights Committee, 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), 13 November 2012, para. 23. <https://undocs.org/CCPR/C/TUR/CO/1>

⁹ Ibid. para. 26.

¹⁰ Letter of the Special Rapporteur for Follow-up to Concluding Observations of the Committee, 28 April 2014. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCCPR%2FFUL%2FTUR%2F17229&Lang=en

“Article 72 of the Turkish Constitution entitled ‘National Service’ states: ‘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’. Within this context, compulsory military service has been obligated for male Turkish citizens under Article 1 of the Law no. 1111 which reads: ‘Every male Turkish citizen is obliged to perform military service in accordance with this Law’.

At present, there is no work regarding introduction of a civilian alternative for military service”.¹¹

In December 2014, the Special Rapporteur for Follow-up to Concluding Observations of the Committee informed the State party about the Committee’s decisions, including:

“- Paragraph 23: [E] The State party’s reply indicates that there are no plans to introduce a civilian alternative to compulsory military service. The Committee’s recommendation has not been implemented and the Committee reiterates its recommendation.”¹²

The same was reiterated in June¹³ and in November 2015.¹⁴

In August 2021, in the List of issues prior to submission of the second periodic report of Turkey, the Committee stated:

“Freedom of religion or belief (arts. 2, 18, 19, 25 and 26)

21. Recalling the previous recommendation of the Committee (para. 23) and the report on follow-up to the concluding observations of the Committee, please describe any steps taken within the reporting period, to recognize and regulate conscientious objection to compulsory military service. Please elaborate on the compatibility of article 318 of the Criminal Code, which criminalizes “alienating the public from military service”, with the Covenant, and discuss whether the State party intends to repeal such provisions.”¹⁵

In August 2022, the State party in its second periodic report stated:

“Freedom of religion and belief – Articles 2, 18, 19, 25 and 26

228. There is no regulation on conscientious objection within the scope of military service, nor any work underway to abolish Article 318 of TPC.”¹⁶

Therefore, it is evident that the State party continues disregarding the views, concluding observations and recommendations of the Committee, which results in a continuous violation of articles **2, 18 and 26** of ICCPR, as well as of several other articles analysed further below.

- Working Group on Arbitrary Detention

Before reaching the Committee, some conscientious objectors’ cases have reached the Working Group

¹¹ Permanent Mission of Türkiye to the United Nations, Geneva, (2014/62441669-BMCO DT/6758533), 22 July 2014. “Additional Information submitted by the Government of Turkey on the issues specified in paragraphs 10, 13 and 23 of the Concluding Observations of the Human Rights Committee on the Initial Report of Turkey (CCPR/C/TUR/1)”, p. 3. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCCPR%2FAFR%2FTUR%2F18277&Lang=en

¹² Letter of the Special Rapporteur for Follow-up to Concluding Observations of the Committee, 1 December 2014. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCCPR%2FFUL%2FTUR%2F19336&Lang=en

¹³ Letter of the Special Rapporteur for Follow-up to Concluding Observations of the Committee, 9 June 2015. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCCPR%2FFUL%2FTUR%2F20922&Lang=en

¹⁴ Letter of the Special Rapporteur for Follow-up to Concluding Observations of the Committee, 19 November 2015. https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCCPR%2FFUL%2FTUR%2F22344&Lang=en

¹⁵ Human Rights Committee, List of issues prior to submission of the second periodic report of Turkey, (CCPR/C/TUR/QPR/2), 25 August 2021, para. 21. <https://undocs.org/CCPR/C/TUR/QPR/2>

¹⁶ Human Rights Committee, Second periodic report submitted by Türkiye under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2022, (CCPR/C/TUR/2), 28 April 2023 [Date received: 3 August 2022], para. 228. <https://undocs.org/CCPR/C/TUR/2>

on Arbitrary Detention.

Already in 1999, when Turkey was not yet a State party to ICCPR, the WGAD had examined the case of conscientious objector Osman Murat Ülke, who had been repeatedly sentenced for his refusal to perform military service. In an opinion which nowadays appears obsolete, the WGAD had found that the first detention was not arbitrary, but that the subsequent ones were arbitrary, as they were in violation of *ne bis in idem* principle.¹⁷

However, in 2008, when the WGAD examined the case of conscientious objector Halil Savda, who had been repeatedly prosecuted and placed in detention for his refusal to perform military service, it noted that “The Government, however, errs when it claims that a right to conscientious objection has not yet been recognized as a human right under international law”, and cited the jurisprudence of the Committee.¹⁸

- UN Special Rapporteurs

Several UN Special Rapporteurs have raised issues concerning conscientious objectors throughout the years.

In 2000, the failure of the State party to recognise the right to conscientious objection was highlighted by the **Special Rapporteur of the Commission on Human Rights on the elimination of all forms of intolerance and of discrimination based on religion or belief**, in the context of the Special Rapporteur’s visit to Turkey in 1999.

The Special Rapporteur cited, *inter alia*, the information provided by the government:

“40. According to the Ministry of Foreign Affairs, all conscripts are free to practice their religion provided they respect military rank and discipline. Military courts have no direct competence to issue judgements on matters relating to freedom of religion and belief. Nevertheless, if a conscript refuses to execute the orders of a superior officer, on grounds of freedom of religion and belief, military criminal law provides for trial by the military tribunals. Under current law, military service is compulsory for all males. A simple declaration of conscientious objection does not constitute a crime. On the other hand, statements that slander or denigrate the Army may be prosecuted by the military tribunals. With respect to conscientious objection, non-governmental sources will be cited (see below).”¹⁹

However, the Special Rapporteur also noted the information provided by non-governmental sources: “45. Legislation does not recognize the right of conscientious objection based on religion and belief. In this regard, the Special Rapporteur recalls resolution 1989/59 of 8 March 1989 of the Commission on Human Rights, which has been reaffirmed on several occasions, among others in resolution 2000/34 of 20 April 2000, in which the Commission recognized the right of everyone to have conscientious objections to military service as a legitimate exercise of the right to freedom of thought, conscience and religion, as laid down in article 18 of the Universal Declaration of Human Rights and article 18 of the International Covenant on Civil and Political Rights, and recommended that member States with compulsory military service should, where they have not done so already, establish alternative forms of service for conscientious objectors, which should be of a noncombatant or civilian character, in the

¹⁷ UN Economic and Social Council, Commission on Human Rights, Civil and political rights, including questions of torture and detention, Opinions adopted by the Working Group on Arbitrary Detention, (E/CN.4/2001/14/Add.1), 9 November 2000, Opinion No. 36/1999 (Turkey), pp. 53-55. <https://undocs.org/E/CN.4/2001/14/Add.1>

¹⁸ UN General Assembly, Human Rights Council, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, Opinions adopted by the Working Group on Arbitrary Detention, (A/HRC/10/21/Add.1), 4 February 2009, Opinion No. 16/2008 (Turkey), pp. 139-147. See particularly para. 35 of the Opinion. <https://undocs.org/A/HRC/10/21/Add.1>

¹⁹ UN General Assembly, Elimination of all forms of religious intolerance, Interim report of the Special Rapporteur of the Commission on Human Rights on the elimination of all forms of intolerance and of discrimination based on religion or belief, Addendum 1, Situation in Turkey, (A/55/280/Add.1), 11 August 2000, para. 40. <https://undocs.org/A/55/280/Add.1>

public interest and not of a punitive nature.”²⁰

And the Special Rapporteur concluded:

“139. Finally, in accordance with the resolutions of the Commission on Human Rights (for example Resolution 1998/77 recognizing the right of everyone to have conscientious objections to military service as a legitimate exercise of the right to freedom of thought, conscience and religion) and General Commentary No. 22 (48) of 20 July 1993 of the Commission on Human Rights (sic), and on the basis of the Turkish Constitution, which enshrines freedom of belief, the Special Rapporteur believes that regional characteristics and tensions are not sufficient to justify, in Turkey or anywhere else, a categorical rejection of conscientious objections, and recommends that legislation be adopted to guarantee the right to conscientious objections, particularly for religious beliefs.”²¹

In June 2005, the **Special Rapporteur on freedom of religion or belief, jointly with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on torture**, sent a Communication to the Turkish government raising the issue of the conscientious objector Mehmet Tarhan, who had been arrested, prosecuted and tortured, as well as the broader issue of conscientious objection to military service.²²

Following the response of the government, the Special Rapporteur, in her observations, noted that: “The Special Rapporteur is grateful for the Government’s response to this communication. However, she would like to underline that she did not raise the issue of conscientious objection under article 8 of the ICCPR but rather under article 18 ICCPR. Moreover, the right to conscientious objection has been addressed by the Human Rights Committee, which stressed, in paragraph 11 of its General Comment 22 that although the International Covenant on Civil and Political Rights does not explicitly refer to a right to conscientious objection, the Committee believes that such a right can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one’s religion or belief.”²³

- **European Court of Human Rights**

The **ECtHR** has issued numerous judgements concerning Turkish conscientious objectors.

In 2006, when the ECtHR had not yet examined the issue of the right to conscientious objection in relation to the right to freedom of thought, conscience and religion (which happened in 2011 in the *Bayatyan v. Armenia* case²⁴), the court examined the case of conscientious objector **Osman Murat Ülke**,²⁵ who “has already been sentenced eight times to terms of imprisonment for refusing to wear uniform”,²⁶ and repeatedly imprisoned, and found a violation of article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (also known as the European Convention on Human Rights – hereinafter ECHR), concerning torture, inhuman and degrading treatment.²⁷ The court found 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”.²⁸ (The concept of “civil death” will be examined in detail further below.)

²⁰ Ibid. para. 45.

²¹ Ibid. para. 139.

²² UN Economic and Social Council, Commission on Human Rights, Civil and political rights, including the question of religious intolerance, Addendum, Summary of cases transmitted to Governments and replies received, (E/CN.4/2006/5/Add.1), 27 March 2006, paras. 355-364. <https://undocs.org/E/CN.4/2006/5/Add.1>

²³ Ibid. para. 364.

²⁴ ECtHR, Case of *Bayatyan v. Armenia* (Application No. 23459/03), 7 July 2011. <https://hudoc.echr.coe.int/eng?i=001-105611>

²⁵ ECtHR, Case of *Ülke v Turkey* (Application No. 39437/98), 24 January 2006. <https://hudoc.echr.coe.int/eng?i=001-72146>

²⁶ Ibid. para. 60.

²⁷ Ibid. paras. 63-64.

²⁸ Ibid. para. 62.

In 2011, the ECtHR examined the case of **Yunus Erçep**,²⁹ a conscientious objector on religious grounds (Jehovah's Witness), who had been repeatedly sentenced by military courts, and imprisoned, for his refusal to perform military service for reasons of conscience, and this time, (following the *Bayatyan v. Armenia* case), the court found a violation of article 9 of ECHR, concerning the right to freedom of thought, conscience and religion, as well a violation of article 6, concerning the right to fair trial, because, despite being a civilian, he had been sentenced by military courts.

In 2012, the ECtHR examined the case of conscientious objector **Feti Demirtaş**,³⁰ also a Jehovah's Witness, who had been forcibly conscripted, repeatedly sentenced by military courts, taken into custody and placed in pre-trial detention in military prisons where he was ill-treated and threatened by prison officers.³¹ The court found violations of article 3 of ECHR, related to his ill-treatment, including the multiple prosecutions and the cumulative nature of the sentences, article 9 (freedom of thought, conscience and religion), as well as article 6 (fair trial), because, despite being a conscientious objector, he had been sentenced by military courts.

In the same year, the ECtHR examined the case of conscientious objector **Halil Savda**,³² who had been also repeatedly prosecuted, convicted and put in prison. The court found that there has been a violation of article 9 (freedom of thought, conscience and religion). As cited in the legal summary of the case: "No convincing or compelling reason justifying the failure to recognise the right to conscientious objection in respect of compulsory military service had been put forward. [...] A system that did not provide for alternative service or for a procedure as described above failed to strike the proper balance between the general interest of society and that of conscientious objectors. It followed that the relevant authorities had failed to comply with their obligation under Article 9."³³ The Court also found violations of article 3 of ECHR, related to the multiple prosecutions and sentences, and the "civil death", as well as of article 6 (fair trial), because, despite having declared himself a conscientious objector, he had been sentenced by military courts.

Still in 2012, in the case of conscientious objector **Mehmet Tarhan**,³⁴ the ECtHR found again violations of Articles 9 and 3 of ECHR, including for the ill-treatment he suffered from soldiers.

In 2014, in the cases of Jehovah's Witnesses **Çağlar Buldu, Barış Görmez, Ersin Ölgün and Nevzat Umdu**,³⁵ the ECtHR found violations of articles 9, 3 and 6 of ECHR.

- Committee of Ministers of Council of Europe

The **Committee of Ministers of the Council of Europe**, which supervises the execution of final judgments of the ECtHR, in its most recent decision, in June 2024 stated:

"Having regard to the final judgments transmitted by the Court to the Committee in these cases and in particular to the violations of Articles 3 and 9 of the Convention established on account of the applicants' repetitive prosecutions and convictions for refusing to carry out compulsory military service as pacifists and conscientious objectors, as a result of which they are compelled to lead clandestine lives amounting to "civil death", and the absence of a procedure to establish their status as conscientious objectors;

²⁹ ECtHR, Case of *Erçep v. Turkey* (Application No. 43965/04), 22 November 2011.

Available in French at: <https://hudoc.echr.coe.int/eng?i=001-107532>

³⁰ ECtHR, Case of *Feti Demirtaş v. Turkey* (Application No. 5260/07), 17 January 2011.

Available in French at: <https://hudoc.echr.coe.int/eng?i=001-108617>

³¹ *Feti Demirtaş v. Turkey*, Legal Summary. Available at: <https://hudoc.echr.coe.int/eng?i=002-5>

³² ECtHR, Case of *Savda v Turkey* (Application No. 42730/05), 12 June 2012.

Available in French at: <https://hudoc.echr.coe.int/eng?i=001-111414>

³³ *Savda v Turkey*, Legal Summary. Available at: <https://hudoc.echr.coe.int/eng?i=002-3892>

³⁴ ECtHR, Case of *Tarhan v. Turkey* (Application No. 9078/06), 17 July 2012.

Available in French at:

<https://hudoc.echr.coe.int/eng?i=001-112199>

³⁵ ECtHR, Case of *Buldu and others v. Turkey* (Application No. 14017/08), 3 June 2014.

Available in French at: <https://hudoc.echr.coe.int/eng?i=001-144352>

Noting the statistical data provided by the authorities on the number of conscientious objectors in Türkiye since 2006; and also the information concerning Law No. 7179, adopted in 2019, which reduced the duration of compulsory military service from 12 months to six and introduced the option of “military service by payment”, allowing conscripts to reduce their military service to only one month in exchange for payment of a fixed fee;

Underlining, however, once again that the option of “paid military service” and reduction of the length of compulsory military service cannot alleviate the need for the legislative amendments, as those measures do not offer an alternative to mandatory military service;

Reiterating the obligation of every State, under the terms of Article 46, paragraph 1 of the Convention to abide by the final judgments of the Court to which they are a party, fully, effectively and promptly; EXPRESSED ITS DEEP CONCERN that the first judgment in this group became final in 2006 and that, despite two interim resolutions adopted by the Committee in 2007 and 2009, and its repeated calls on the authorities, no concrete steps have been taken to introduce the legislative reforms necessary to protect the applicants and others in their situation from similar, continuous violations of their Convention rights;

DEEPLY REGRETTED in this context that three of the applicants in these cases (Osman Murat Ülke, Yunus Erçep and Ersin Ölgün) are still considered draft evaders and continue to face the threat of criminal and administrative proceedings as well as numerous restrictions on their daily lives that amounts to a situation of “civil death”, that criminal proceedings have been pending against Mehmet Tarhan since 2005, that the proceedings initiated by Barış Görmez before the Constitutional Court are still pending and that Ersin Ölgün was once again fined in December 2023 for not reporting for military service;

INVITED the authorities to provide information on annulment or reimbursement of the fine if it has been paid by the applicant;

STRONGLY URGED the authorities therefore to take without further delay all necessary measures to put an end to the violation of the applicants’ rights under the Convention and to adopt rapidly the legislative or other reforms necessary to prevent similar violations of the Convention;

ENCOURAGED them to draw inspiration from the experience of other member States which have put in place or are putting in place systems and procedures to comply with judgments finding violations of Article 9 on account of the absence of an alternative service for those who refuse to perform military service on grounds of conscience and to address the Court’s findings in the present groups of cases within the framework of the new Human Rights Action Plan and the new Judicial Reform Strategy Paper;

INVITED the authorities to provide information on the above issues by the end of March 2025 at the latest.”³⁶

- Office of the UN High Commissioner for Human Rights

The OHCHR has also consistently reported on the situation of conscientious objectors in Türkiye.³⁷

- UN Universal Periodic Review

In the context of the Universal Periodic Review, the Republic of Türkiye has received numerous recommendations not only about freedom of religion or belief, but also explicitly concerning the right

³⁶ Interim Resolution CM/ResDH(2024)126 - Execution of the judgments of the European Court of Human Rights - Four cases against Türkiye (Application No. 39437/98), 13 June 2024.

<https://search.coe.int/cm/eng?i=0900001680b05d3e>

³⁷ UN Office of the High Commissioner for Human Rights, Conscientious Objection to Military Service, New York and Geneva, 2012, pp. 35, 36, 61.

https://www.ohchr.org/sites/default/files/Documents/Publications/ConscientiousObjection_en.pdf

A/HRC/23/22, 3 June 2013, para. 62. See also paras. 10, 18, 19, 20 and note 28. <https://undocs.org/A/HRC/23/22>

A/HRC/35/4, 1 May 2017, paras. 44, 49. <https://undocs.org/A/HRC/35/4>

A/HRC/41/23, 24 May 2019, note 23. <https://undocs.org/A/HRC/41/23>

A/HRC/50/43, 11 May 2022, para. 37. See also note 29. <https://undocs.org/A/HRC/50/43>

A/HRC/56/30, 23 April 2024, note 11. <https://undocs.org/A/HRC/56/30>

See also: E/CN.4/2006/51, 27 February 2006, para. 53. <https://undocs.org/E/CN.4/2006/51>

to conscientious objection to military service.

In the context of the Second Cycle, it received the following recommendations, which “did not enjoy the support of Turkey”:

- “151.12. Adopt laws recognizing and regulating the right to conscientious objections and ensure that the civilian alternative to military service has no punitive or discriminatory effects (Croatia)”
- “151.13. Adopt laws that recognize and guarantee the right to conscientious objection to military service, ensuring that any genuinely civilian alternative is not punitive in length (Germany)”
- “151.14. Recognize the right to conscientious objection and to offer a civilian alternative to military service (Slovenia)”³⁸

In the context of the Third Cycle, it received the following recommendations:

- “45.184 Consider revising the current law according to which the right to conscientious objection to military service is a criminal act (Croatia)”
- “45.185 Consider the introduction of civil service for conscientious objectors to military service (Croatia)”³⁹

Both recommendations were “noted”.⁴⁰

9

▪ **PERSECUTION, CRIMINALISATION AND PUNISHMENT OF CONSCIENTIOUS OBJECTORS (art. 9)**

Conscientious objectors in the Republic of Türkiye face persecution and a combination of interrelated administrative and criminal punishment.

The arrests, detentions, and post-conviction imprisonments constitute a violation of **art. 9 of ICCPR**, because according to the jurisprudence of the Committee “*just as detention as punishment for the legitimate exercise of the right to freedom of expression, as guaranteed by article 19 of the Covenant, is arbitrary, so too is detention as punishment for the legitimate exercise of freedom of religion and conscience, as guaranteed by article 18 of the Covenant*”,⁴¹ and that “*deprivation of liberty as punishment for the legitimate exercise of a right protected under the Covenant, including freedom of religion and conscience as guaranteed by article 18 of the Covenant, is ipso facto arbitrary in nature*”.⁴²

- **Security checks, issue of official records and administrative monetary fines**⁴³

Evaders and deserters are tracked in accordance with the rules laid down in Article 26(1) of the Law

³⁸ UN General Assembly, Human Rights Council, Report of the Working Group on the Universal Periodic Review, Turkey, (A/HRC/29/15), 13 April 2015, para. 151, recommendations 151.12 – 151.14. See also para. 43.

<https://undocs.org/A/HRC/29/15>

³⁹ UN General Assembly, Human Rights Council, Report of the Working Group on the Universal Periodic Review, Turkey, (A/HRC/44/14), 24 March 2020, para. 45, recommendations 45.184 - 45.185. <https://undocs.org/A/HRC/44/14>

⁴⁰ UN General Assembly, Human Rights Council, Report of the Working Group on the Universal Periodic Review, Turkey, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, (A/HRC/44/14/Add.1), 24 June 2020, Response to recommendations 45.184 - 45.185.

<https://undocs.org/A/HRC/44/14/Add.1>

⁴¹ *Young-kwan Kim et al. v. Republic of Korea*, para. 7.5; *Petromelidis v. Greece*, para. 9.8.

⁴² *Bae et al. v. Republic of Korea*, para. 7.6; *Arslan Begenchovich Begenchov v. Turkmenistan*, para. 6.5.

⁴³ The following paragraphs, describing the situation, are mainly based on the joint communication of civil society organisations, including Connection e.V., in the context of follow-up for the execution of ECtHR judgements:

Conscientious Objection Watch, European Bureau for Conscientious Objection (EBCO), Connection e.V., International Fellowship of Reconciliation (IFOR), War Resisters' International (WRI), *Communication in accordance with Rule 9.2. of the Rules of the Committee of Ministers regarding the*

supervision of the execution of judgments and of terms of friendly settlements, 17 April 2023, p. 8.

<https://drive.google.com/file/d/18QEC1kf6jVwsT7DxetoB7Rfh8HnvDbQg/view>

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. When draft evaders (yoklama kaçağı) and evaders (bakaya) are apprehended, mostly during general security checks (GBT), they are issued an “official record” (tutanak) and released. These records are the legal basis of issuing administrative fines.

Administrative fines are regulated under Article 24/1,2,3 of the Law on Conscription. Those who surrender pay a certain amount of Turkish liras (TL) per day, starting from the day they became evaders or deserters. Those who are caught pay double per day, and the amounts should be reconsidered at the beginning of every calendar year in accordance with the Misdemeanor Law. Administrative monetary fines must be paid within a month. If this fine is not contested, it becomes final in 15 days.

Conscientious objectors who reject the payment of the administrative monetary fine are faced with a risk of being apprehended repeatedly after every 15 days and to have an official report issued.

According to the data obtained by Conscientious Objection Watch, 43 people in 2021 and 38 people in 2022 stated that their freedom of movement was restricted due to their military obligation. Most of the applicants stated that they were subjected to multiple rights violations at the same time.⁴⁴

İnan Mayıs Aru, reported that he was issued approximately 30 official records. 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. As a consequence of these official records he was prosecuted in six different criminal cases and sentenced to 10 months imprisonment and 500 TL fine. His appeal to the sentence was also rejected.⁴⁵

According to the report of the Association for Conscientious Objection, published in May 2021, conscientious objectors have been fined for a total of 575,517 TL (approx. € 37,000 as of March 2022) in 85 case filed until April 2021.⁴⁶

While some persons contest the monetary administrative fines, most individuals are not able to appeal because they are not familiar with the legal procedures. In 2022, out of 148 conscientious objectors that contacted the organization Conscientious Objection Watch, 19 said they did not know how to contest the monetary administrative fines, 27 said they did not contest and only 5 said they contested.⁴⁷

- **Criminal investigation based on Military Criminal Law No. 1632 of 22 May 1930**

Under Article 63/1, once the administrative monetary fine becomes final, those without an admissible excuse, are sentenced to prison ranging from two months to six months if they surrender within four months, and from four months to one year if they are apprehended. They are sentenced to four months to two years if they surrender after one year and if they are apprehended the sentence is from six months to three years.

Almost all criminal cases result in convictions. In a few cases, in the first-degree court, where violations of the Law on Notifications, or procedural issues were raised, conscientious objectors to military service have been acquitted.⁴⁸

Inan Mayıs Aru, as stated above, has been sentenced to 10 months imprisonment and 500 TL fine. His appeal to the sentence was also rejected.

In the case of Alparslan Kaya the court ruled 4 months and 5 days imprisonment; however, the

⁴⁴ <https://vicdaniret.org/the-multiplier-effect-of-the-violation-of-the-right-to-conscientious-objection-report-released/>

⁴⁵ 11th Criminal Chamber of Bursa Regional Court of Appeals-, 2023/18 E, 2023/693 K.

⁴⁶ Yildirim, M. and Üçpınar, H., Conscientious Objection to Military Service in Turkey, Association for Conscientious Objection, 2021. <https://vicdaniret.org/conscientious-objection-to-military-service-in-turkey-report-is-released/>

⁴⁷ https://drive.google.com/file/d/1mM_04THHwuw_e3kYgRkEWwT51JZUbnIm/view

⁴⁸ 11th Criminal Chamber of Bursa Regional Court of Appeals, 2023/18 E, 2023/693 K.

pronouncement of the verdict was suspended.⁴⁹

The appeal against the judicial fine of 6,000 liras imposed on conscientious objector U.G. because of being a deserter, was rejected by the 5th Criminal Chamber of Erzurum Regional Court of Appeal.⁵⁰ In another case, the appeal against the 10-month prison sentence given to U.G. was also rejected and the decision was finalized.⁵¹

Similar to the other cases, the procedural irregularities related to the notifications, the unconstitutionality and the right to conscientious objection were not discussed in the judgements.

- Denial of public rights and execution of sentence made heavier by criminal courts

Criminal Courts, when ruling on the application of Criminal Law provisions in favour of the accused and on whether public rights (such as guardianship) should be restricted, consider whether the person “regrets” the action and whether he will commit the same crime.

Due to the nature of conscientious objection, the actions of conscientious objectors are not single acts but are continuous, therefore the provisions are not applied in favour of conscientious objectors. In addition to being constantly exposed to stop-and-check, being repeatedly fined and prosecuted, conscientious objectors’ sentences are not converted to monetary fines and they can be banned from benefiting from certain public rights. The ban from public rights may include prohibition on becoming a legal guardian or taking a role in the management of a foundation or association, even not being able to carry out a profession that is subject to registration in a professional organization, such as a lawyer.

▪ VIOLATION OF *NE BIS IN IDEM* PRINCIPLE (arts. 14(7), 18(2))

The repeated punishment of conscientious objectors in the Republic of Türkiye has been documented in numerous cases that reached international human rights bodies (WGAD, ECtHR and the Committee – e.g. cases of **Osman Murat Ülke**,⁵² **Yunus Erçep**,⁵³ **Feti Demirtaş**,⁵⁴ **Halil Savda**,⁵⁵ **Cenk Atasoy** and **Arda Sarkut**.⁵⁶)

Such a repeated punishment of conscientious objectors is in violation of the *ne bis in idem* principle (Article 14.7 of ICCPR), as it has been found by the **Committee** in its General Comment 32 (2007),⁵⁷ in its concluding observations concerning other State parties⁵⁸ and in its jurisprudence.⁵⁹

⁴⁹ İstanbul 17th High Criminal Court, 2023/360 D.ış

⁵⁰ 5th Criminal Chamber of Erzurum Regional Court of Appeals, 2020/1129 E, 2023/823 K.

⁵¹ 14th Criminal Chamber of İstanbul Regional Court of Appeals, 2022/1893 E., 2023/882 K.

⁵² UN Economic and Social Council, Commission on Human Rights, Civil and political rights, including questions of torture and detention, Opinions adopted by the Working Group on Arbitrary Detention, (E/CN.4/2001/14/Add.1), 9 November 2000, Opinion No. 36/1999 (Turkey), pp. 53-55. <https://undocs.org/E/CN.4/2001/14/Add.1>
ECtHR, Case of *Ülke v Turkey* (Application No. 39437/98), 24 January 2006.

<https://hudoc.echr.coe.int/eng?i=001-72146>

⁵³ ECtHR, Case of *Erçep v. Turkey* (Application No. 43965/04), 22 November 2011.

Available in French at: <https://hudoc.echr.coe.int/eng?i=001-107532>

⁵⁴ ECtHR, Case of *Feti Demirtaş v. Turkey* (Application No. 5260/07), 17 January 2011.

Available in French at: <https://hudoc.echr.coe.int/eng?i=001-108617>

⁵⁵ ECtHR, Case of *Savda v Turkey* (application no. 42730/05), 12 June 2012.

Available in French at: <https://hudoc.echr.coe.int/eng?i=001-111414>

UN General Assembly, Human Rights Council, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, Opinions adopted by the Working Group on Arbitrary Detention, (A/HRC/10/21/Add.1), 4 February 2009, Opinion No. 16/2008 (Turkey), pp. 139-147.

<https://undocs.org/A/HRC/10/21/Add.1>

⁵⁶ Human Rights Committee, Communications Nos. 1853/2008 and 1854/2008, Views adopted by the Committee at its 104th session, 12 to 30 March 2012 (CCPR/C/104/D/1853-1854/2008), 19 June 2012. (Hereinafter *Atasoy and Sarkut v. Turkey*). <https://undocs.org/CCPR/C/104/D/1853-1854/2008>

⁵⁷ Para. 55. <http://undocs.org/CCPR/C/GC/32>

⁵⁸ E.g. Human Rights Committee, Concluding observations on the second periodic report of Greece, 3 December 2015, CCPR/C/GRC/CO/2, paras. 37-38. <http://undocs.org/CCPR/C/GRC/CO/2>

⁵⁹ E.g. *Petromelidis v. Greece*, paras. 9.10, 9.11, 10. <https://undocs.org/CCPR/C/132/D/3065/2017>

The **WGAD**, besides the violation of Article 14(7)⁶⁰, has also found that “repeated incarceration in cases of conscientious objectors is directed towards changing their conviction and opinion, under threat of penalty”,⁶¹ and thus it contravenes also **Article 18(2)** of the ICCPR, which prohibits “coercion which would impair his freedom to have or to adopt a religion or belief of his choice”.

Therefore, Connection e.V. **kindly invites the Committee to include articles 14(7) and 18(2)** among the articles taken into consideration as far as it concerns the conscientious objectors in the State party.

▪ **CONSTITUTIONAL COURT NOT AN EFFECTIVE REMEDY**

Individual complaints to the Constitutional Court do not constitute an effective remedy. With the introduction of the individual application mechanism, since 23 September 2012 conscientious objectors have had the possibility to apply.

This mechanism, however, cannot be considered a general measure to prevent similar violations or to offer remedy, for two reasons:

- there is a need for legislative changes to recognize the right to conscientious objection and to establish a conscientious objection application procedure.
- between 2012 and September 2023, at least 64 individual applications have been made by Jehovah’s Witnesses and anti-militarist conscientious objectors to the Constitutional Court. The Constitutional Court has not yet finalized a judgement dealing directly with the right to conscientious objection to military service.⁶²

12

▪ **“CIVIL DEATH” OF CONSCIENTIOUS OBJECTORS**

The ECtHR, in the case of *Ülke v. Turkey*,⁶³ found 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”.⁶⁴ Consequently the court found a violation of article 3 of the ECHR, concerning **torture, inhuman or degrading treatment**.⁶⁵ Thus, the court introduced the concept of “**civil death**” which was cited in several other cases.⁶⁶

The state of “civil death” that the ECtHR has referred to in *Ülke v. Turkey* in 2006 remains a reality for

Nurjanov v. Turkmenistan, para. 9.7. <http://undocs.org/CCPR/C/117/D/2225/2012>

See also: *Abdullayev v. Turkmenistan*, para. 7.5. *Nasyrlayev v. Turkmenistan*, para. 8.5. *Aminov v. Turkmenistan*, para. 9.5. *Matyakubov v. Turkmenistan*, para. 7.5.

⁶⁰ Working Group on Arbitrary Detention, Opinion 16/2008 (Turkey), para. 39 (pp. 145-146).

<http://undocs.org/A/HRC/10/21/Add.1>.

And previously:

Opinion No. 24/2003 (Israel), paras. 30-31 (p. 22). <http://undocs.org/E/CN.4/2005/6/Add.1>

Opinion No. 36/1999 (Turkey) para. 10 (p. 55). <http://undocs.org/E/Cn.4/2001/14/add.1>

⁶¹ United Nations, Economic and Social Council, Commission on Human Rights, Report of the Working Group on Arbitrary Detention “Civil and political rights, including the question of torture and detention”, (E/CN.4/2000/4), 20 December 2000 (Recommendation 2: detention of conscientious objectors), paras. 91-94.

<https://www.refworld.org/reference/themreport/unchr/2000/en/39863>

⁶² Conscientious Objection Watch, Briefing to the OHCHR, 2023, p. 11.

https://drive.google.com/file/d/1KMVPfdUfZ6pPAOYG5iWYDZmN_c7uyisr/view

⁶³ ECtHR, Case of *Ülke v Turkey* (Application No. 39437/98), 24 January 2006. <https://hudoc.echr.coe.int/eng?i=001-72146>

⁶⁴ *Ibid.* para. 62.

⁶⁵ *Ibid.* paras. 63-64.

⁶⁶ ECtHR, Case of *Erçep v. Turkey* (Application No. 43965/04), 22 November 2011, paras. 43, 58 and 80.

Available in French at: <https://hudoc.echr.coe.int/eng?i=001-107532>

ECtHR, Case of *Feti Demirtaş v. Turkey* (Application No. 5260/07), 17 January 2011, para. 107.

Available in French at: <https://hudoc.echr.coe.int/eng?i=001-108617>

ECtHR, Case of *Savda v Turkey* (Application No. 42730/05), 12 June 2012, para. 80.

Available in French at: <https://hudoc.echr.coe.int/eng?i=001-111414>

ECtHR, Case of *Tarhan v. Turkey* (Application No. 9078/06), 17 July 2012, para. 44.

Available in French at: <https://hudoc.echr.coe.int/eng?i=001-112199>

ECtHR, Case of *Buldu and others v. Turkey* (Application No. 14017/08), 3 June 2014, para. 74.

Available in French at: <https://hudoc.echr.coe.int/eng?i=001-144352>

conscientious objectors. Therefore, a further analysis of this concept is needed.

Certainly, one of the fundamental elements of this concept is the **repeated punishment**, with the unending cycle of prosecution, trials and fines, which has already been examined above. However, of equal importance is the wide range of human rights (both civil and political, as well economic and social), which are affected because of this situation of continuous illegality and clandestine life for many years, decades or even for the entire life of conscientious objectors.

The Conscientious Objection Watch received 73 responses to the survey on the restrictions experienced by conscientious objectors between January - December 2022.⁶⁷ 59 out of 73, who filled out the form in 2022, responded to the question "What violations/restrictions of rights have you been subjected to due to your military obligation?" According to the responses:

- 38 stated that their freedom of movement was restricted
- 38 stated that they could not work with insurance
- 34 stated that they could not work in public institutions.
- 17 stated that they were dismissed from their jobs
- 11 stated that their right to education was violated.
- 10 stated that they could not vote.
- 6 stated that their bank accounts were confiscated.⁶⁸

It is necessary to examine more in detail some of these restrictions which correspond to specific articles of ICCPR.

- **Freedom of movement (art. 12)**

The Committee, in its concluding observations of 2012, have expressed its regret, inter alia, for the fact that conscientious objectors “are practically deprived of some of their civil and political rights such as freedom of movement”, citing also art. 12 of ICCPR.⁶⁹

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

There is no explicit restriction on the freedom of movement of persons who are performing their military service. However, as it was reported in the joint communication of civil society organisations, including Connection e.V., in the context of follow-up for the execution of ECtHR judgements,⁷⁰ a direct consequence of the combination of widespread practice of stop-and-search and identity checks and Article 26 of the Law on Conscription on the tracking of draft evaders and evaders, is that conscientious objectors are subject to stop-and-search, apprehension and an official record is issued against them. Avoiding this process prevents conscientious objectors from moving 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

⁶⁷ The figures here are compiled from the quarterly bulletins published by Conscientious Objection Watch.

⁶⁸ Conscientious Objection Watch, European Bureau for Conscientious Objection (EBCO), Connection e.V., International Fellowship of Reconciliation (IFOR), War Resisters' International (WRI), *Communication in accordance with Rule 9.2. of the Rules of the Committee of Ministers regarding the supervision of the execution of judgments and of terms of friendly settlements*, 17 April 2023, p. 7. <https://drive.google.com/file/d/18QEC1kf6jVwsT7DxetoB7Rfh8HnvDbOg/view>

⁶⁹ Human Rights Committee, 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), 13 November 2012, para. 23. <https://undocs.org/CCPR/C/TUR/CO/1>

⁷⁰ Conscientious Objection Watch, European Bureau for Conscientious Objection (EBCO), Connection e.V., International Fellowship of Reconciliation (IFOR), War Resisters' International (WRI), *Communication in accordance with Rule 9.2. of the Rules of the Committee of Ministers regarding the supervision of the execution of judgments and of terms of friendly settlements*, 17 April 2023, p. 8. <https://drive.google.com/file/d/18QEC1kf6jVwsT7DxetoB7Rfh8HnvDbOg/view>

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 them 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 are 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 Conscientious Objection Watch that they feel compelled to change their lifestyle to avoid stop-and-search practices. According to the data obtained by Conscientious Objection Watch, 43 people in 2021 and 38 people in 2022 stated that their freedom of movement was restricted due to their military obligation.⁷¹

Ersan Uğur Gör tells his experience in a report prepared by the Conscientious Objection Watch: *“When I go to other cities for work, the customers book hotels, but I explain my situation and stay without registering. I don't mind being issued a record, but I don't prefer to be dragged out of bed in the middle of the night. For this reason, I prefer not to stay in hotels as much as possible.”*⁷²

Gökhan Soysal, lawyer, says in the same report: *“As a lawyer and also one of the lawyers of conscientious objectors and anti-war activists with whom I was in contact, I frequently travel to other cities. Since I had to stay overnight during these trips, I was issued records many times as a result of GBT checks...I even hesitated to attend hearings in other cities where there was a high probability of a verdict hearing, except in cases where my clients were under arrest. When I travelled out of the city for these hearings, I tried to stay at my friends', if any, or in the places of acquaintances of the clients.*

*I had to stay in the apartments of people I did not know at all.”*⁷³

- **Right to vote and to be elected (art. 25)**

The Committee, in its concluding observations of 2012, have expressed its regret for the fact that conscientious objectors “are practically deprived of some of their civil and political rights such as freedom of movement and right to vote”, citing also art. 25 of ICCPR.

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

⁷¹ <https://vicdaniret.org/the-report-conscientious-objection-to-military-service-in-turkey-ulke-group-cases-against-turkey-is-released/>

⁷² ibid

⁷³ ibid

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 was a note indicating that he could not vote, and the electoral officers did not allow him to vote.⁷⁴ Nevertheless, he didn’t experience any restriction during the May 2023 election, contrary to the previous practice and regulations.⁷⁵

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.⁷⁶

- **Inhuman and degrading treatment (art. 7)**

The pervasive and consistent interference in several fundamental human rights, as illustrated above, paralyzes the lives of conscientious objectors and continues to constitute “civil death” thus amounting to a breach of Article 3 of the ECHR, as the ECtHR has consistently found.

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As cited in the *Ülke v. Turkey*: “the Court considers that, taken as a whole and regard being had to its gravity and repetitive nature, the treatment inflicted on the applicant has caused him severe pain and suffering which goes beyond the normal element of humiliation inherent in any criminal sentence or detention. In the aggregate, the acts concerned constitute degrading treatment within the meaning of Article 3 of the Convention.”⁷⁷

An equivalent comprehensive approach, examining the situation “as a whole” and “in the aggregate”, is needed also in the case of ICCPR.

Therefore, the equivalent **article 7** of ICCPR, prohibiting cruel, inhuman or degrading treatment or punishment, should also be invoked.

- **Freedom of expression (art. 19)**

In the list of issues, the Committee asked: “Please elaborate on the compatibility of article 318 of the Criminal Code, which criminalizes “alienating the public from military service”, with the Covenant, and discuss whether the State party intends to repeal such provisions.”⁷⁸

⁷⁴ Conscientious Objection Watch, European Bureau for Conscientious Objection (EBCO), Connection e.V., International Fellowship of Reconciliation (IFOR), War Resisters' International (WRI), *Communication in accordance with Rule 9.2. of the Rules of the Committee of Ministers regarding the supervision of the execution of judgments and of terms of friendly settlements*, 17 April 2023, p. 7. <https://drive.google.com/file/d/18QEC1kf6jVwsT7DxetoB7Rfh8HnvDbOg/view>

⁷⁵ Conscientious Objection Watch, Briefing to the OHCHR, 2023, p. 14.

https://drive.google.com/file/d/1KMVPfdUfZ6pPAOYG5iWYDZmN_c7uyisr/view

⁷⁶ Conscientious Objection Watch, European Bureau for Conscientious Objection (EBCO), Connection e.V., International Fellowship of Reconciliation (IFOR), War Resisters' International (WRI), *Communication in accordance with Rule 9.2. of the Rules of the Committee of Ministers regarding the supervision of the execution of judgments and of terms of friendly settlements*, 17 April 2023, p. 8. <https://drive.google.com/file/d/18QEC1kf6jVwsT7DxetoB7Rfh8HnvDbOg/view>

⁷⁷ ECtHR, Case of *Ülke v Turkey* (Application No. 39437/98), 24 January 2006, para. 63.

<https://hudoc.echr.coe.int/eng?i=001-72146>

⁷⁸ Human Rights Committee, List of issues prior to submission of the second periodic report of Turkey, (CCPR/C/TUR/QPR/2), 25 August 2021, para. 21. <https://undocs.org/CCPR/C/TUR/QPR/2>

The reply of the State party is that there is not “any work underway to abolish Article 318 of TPC.”⁷⁹

There have been many ECtHR judgements related to freedom of expression and the military.⁸⁰

Some of them have been directly related to conscientious objection. In 2007 the ECtHR found, *inter alia*, a violation of article 10 of ECHR about freedom of expression in a case involving sharing a speech of conscientious objector Osman Murat Ülke.⁸¹

In 2016 the ECtHR found that application of article 318 of the Criminal Code 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.⁸²

▪ VIOLATIONS OF THE RIGHT TO CONSCIENTIOUS OBJECTION IN THE TURKISH-OCCUPIED NORTHERN PART OF CYPRUS

Since the Turkish army invaded the northern part of the Republic of Cyprus in 1974, that part is ruled by a Turkish Cypriot administration. In 1983, “The Turkish Republic of Northern Cyprus” (“TRNC”) was proclaimed. The entity has not been recognised by any country except Turkey. “TRNC” has its own armed forces and conscription system.⁸³

The length of military service is 12 months.⁸⁴

- Responsibility of the Republic of Türkiye in the Northern part of Cyprus

In its recent judgement in the case of *Kanathlı v. Türkiye*, (see below), the ECtHR has reiterated the legal responsibility of the Republic of Türkiye for the human rights situation in the northern part of Cyprus, including, in this case, the human rights of conscientious objectors. The relevant paragraph⁸⁵ refers to previous judgements of the ECtHR⁸⁶ such as:

“Having effective overall control over northern Cyprus, its responsibility cannot be confined to the acts of its own soldiers or officials in northern Cyprus but must also be engaged by virtue of the acts of the local administration which survives by virtue of Turkish military and other support. It follows that, in terms of Article 1 of the Convention, Turkey's “jurisdiction” must be considered to extend securing the entire range of substantive rights set out in the Convention and those additional Protocols which she has ratified, and that violations of those rights are imputable to Turkey.”⁸⁷

⁷⁹ Human Rights Committee, Second periodic report submitted by Türkiye under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2022, (CCPR/C/TUR/2), 28 April 2023 [Date received: 3 August 2022], para. 228. <https://undocs.org/CCPR/C/TUR/2>

⁸⁰ E.g. ECtHR Case of *Ergin v. Turkey* (No. 6), (Application no. 47533/99), 4 May 2006.

<https://hudoc.echr.coe.int/eng?i=001-75327>

See also para. 30 citing similar cases.

⁸¹ ECtHR, *Onaran c. Turquie* (Application no 65344/01), 5 June 2007.

Available in French at:

<https://hudoc.echr.coe.int/eng?i=001-80851>

⁸² ECtHR, Case of *Savda v. Turkey* (No. 2), (application No. 2458/12), 15 November 2016.

Available in French at: <https://hudoc.echr.coe.int/eng?i=001-168960>

⁸³ War Resisters' International, Country report and updates: Cyprus.

https://wri-irg.org/en/programmes/world_survey/country_report/en/Cyprus

⁸⁴ EBCO Annual Report 2023/2024, p. 66.

https://ebco-beoc.org/sites/ebco-beoc.org/files/2024-05-15-EBCO_Annual_Report_2023-24.pdf.

⁸⁵ ECtHR, case of *Kanathlı v. Türkiye* (application no. 18382/15), 12 March 2024, para 25.

Available in French at: <https://hudoc.echr.coe.int/fre?i=001-231540>

⁸⁶ ECtHR, *Chypre c. Turquie* [GC], (application no. 25781/94), 10 May 2001, para. 77.

<https://hudoc.echr.coe.int/eng?i=001-59454>

ECtHR, *Djavit An c. Turquie*, (application no. 20652/92), 20 February 2003, paras. 18-23.

<https://hudoc.echr.coe.int/?i=001-60953>

ECtHR, *Boyacı c. Turquie* (déc.), (application no 36966/04), 23 September 2014, para. 31.

<https://hudoc.echr.coe.int/?i=001-147391>

⁸⁷ ECtHR, *Chypre c. Turquie* [GC], no 25781/94, para. 77. <https://hudoc.echr.coe.int/eng?i=001-59454>

This case refers also to previous judgements where the ECtHR found, *inter alia*, that:

“Of particular significance to the present case the Court held, in conformity with the relevant principles of international law governing State responsibility, that the responsibility of a Contracting Party could also arise when as a consequence of military action – whether lawful or unlawful – it exercises effective control of an area outside its national territory. The obligation to secure, in such an area, the rights and freedoms set out in the Convention, derives from the fact of such control whether it be exercised directly, through its armed forces, or through a subordinate local administration... [...]

It is not necessary to determine whether, as the applicant and the Government of Cyprus have suggested, Turkey actually exercises detailed control over the policies and actions of the authorities of the 'TRNC'. It is obvious from the large number of troops engaged in active duties in northern Cyprus ... that her army exercises effective overall control over that part of the island. Such control, according to the relevant test and in the circumstances of the case, entails her responsibility for the policies and actions of the 'TRNC'... Those affected by such policies or actions therefore come within the 'jurisdiction' of Turkey for the purposes of Article 1 of the Convention. Her obligation to secure to the applicant the rights and freedoms set out in the Convention therefore extends to the northern part of Cyprus.”⁸⁸

The Republic of Türkiye, maintaining a military force of about 33,800 troops⁸⁹ or more⁹⁰ in the northern part of Cyprus, has effective control of it, and that it does not have the consent of the Republic of Cyprus.⁹¹

The Committee has acknowledged the fact of the occupation and that the State party of the Republic of Cyprus does not have effective control over all of its territory. In the context of the second periodic report of the Republic of Cyprus, the Committee stated:

“The Committee notes that the State party, as a consequence of events which occurred in 1974 and which resulted in the occupation of part of the territory of Cyprus, is not in a position to exercise control over all of its territory and consequently cannot ensure the application of the Covenant in areas not under its control.”⁹²

Similarly, in the context of the third periodic report the Committee stated:

“The Committee notes that the State party, as a consequence of events that occurred in 1974 and resulted in the occupation of part of the territory of Cyprus, is still not in a position to exercise control over all of its territory and consequently cannot ensure the application of the Covenant in areas not under its jurisdiction.”⁹³

Consequently, in the same concluding observations, the Committee, while it has raised concerns about the legislation concerning conscientious objectors in the Republic of Cyprus,⁹⁴ nevertheless,

⁸⁸ Ibid. para. 76 citing excerpts from ECtHR, Case of Loizidou v. Turkey, (Application no. 15318/89), paras. 52-56.

<https://hudoc.echr.coe.int/eng?i=001-58007>

⁸⁹ International Institute of Strategic Studies (IISS), *The Military Balance 2020*, p. 96.

⁹⁰ France 24, “Cyprus still starkly divided on 50-year anniversary of Turkish invasion”, 20 July 2024.

<https://www.france24.com/en/europe/20240720-cyprus-still-starkly-divided-on-50-year-anniversary-of-turkish-invasion>

⁹¹ RULAC, Military occupation of Cyprus by Türkiye.

<https://www.rulac.org/browse/conflicts/military-occupation-of-cyprus-by-turkey#collapse2accord>

⁹² UN Human Rights Committee, Consideration of reports submitted by State parties under article 40 of the Covenant, Comments of the Human Rights Committee, Cyprus (CCPR/C/79/Add.39), 3 August 1994, para. 3.

<https://undocs.org/CCPR/C/79/Add.39>

⁹³ UN Human Rights Committee, Consideration of reports submitted by State parties under article 40 of the Covenant, Concluding Observations of the Human Rights Committee, Cyprus (CCPR/C/79/Add.88), 6 April 1998, para. 3.

<https://undocs.org/CCPR/C/79/Add.88>

⁹⁴ UN Human Rights Committee, Consideration of reports submitted by State parties under article 40 of the Covenant, Comments of the Human Rights Committee, Cyprus (CCPR/C/79/Add.39), 3 August 1994, para. 19.

<https://undocs.org/CCPR/C/79/Add.39>

UN Human Rights Committee, Consideration of reports submitted by State parties under article 40 of the Covenant, Concluding Observations of the Human Rights Committee, Cyprus (CCPR/C/79/Add.88), 6 April 1998, para. 17.

<https://undocs.org/CCPR/C/79/Add.88>

reasonably, it has never attributed responsibility to that State party for conscientious objectors in the northern part of Cyprus, where there is no legislation at all.

However, the issue of conscientious objectors in the northern part of Cyprus needs to be addressed and the situation of conscientious objectors living in that area should be reviewed. The only possibility to address it is at the examination of the periodic report of the State party, which is responsible and exercises control over that territory, i.e. the Republic of Türkiye.

Worth noting that in similar cases of **military occupation**, the Committee, in its concluding observations has consistently supported the **applicability of the Covenant**,⁹⁵ and has raised concerns and made recommendations concerning persons who are not citizens of the State party, but who are under its effective control, e.g. the Palestinians living under Israeli occupation, both prior⁹⁶ as well after⁹⁷ the UN recognition of the State of Palestine in 2012.

Finally, it should be noted that independent human rights organisations, such as Amnesty International, for many years have been addressing not only the *de facto* authorities of the “TRNC” but also, and primarily, the Turkish authorities for conscientious objectors imprisoned in the northern part of Cyprus.⁹⁸

- **The right to conscientious objection to military service for reservists**

Insofar, some of the known cases of conscientious objectors in the Turkish-occupied northern part of Cyprus concern reservists refusing to perform reserve service (or duty).

Relevant international and regional human rights standards.

- The right to conscientious objection for reservists, after they have performed (the basic) military service derives from the right to change beliefs and is equivalent to the right to conscientious objection after enlistment in the armed forces, i.e. during military service. The article 18 of the ICCPR stipulates that the right to freedom of thought, conscience and religion “shall include freedom to have or to adopt a religion or belief of his choice”. The **Committee**, interpreting this phrasing, points out that the freedom “to have or to adopt” a religion or belief, necessarily entails the freedom to choose a religion or a belief, including the right of somebody to change them.⁹⁹ Moreover, the equivalent Article 18 of the Universal Declaration of Human Rights explicitly states that “this right includes freedom to change his religion or belief”. As for the cases of persons liable to compulsory military service, the Committee has expressed its great concern “to hear that individuals cannot claim the status of conscientious objectors once they have entered the armed forces, since that does not seem to be consistent with the

⁹⁵ CCPR/C/79/Add.93, para. 10. <https://undocs.org/CCPR/C/79/Add.93>

CCPR/CO/78/ISR, para. 11. <https://undocs.org/CCPR/CO/78/ISR>

CCPR/C/ISR/CO/3, para. 5. <https://undocs.org/CCPR/C/ISR/CO/3>

CCPR/C/ISR/CO/4, para. 5. <https://undocs.org/CCPR/C/ISR/CO/4>

CCPR/C/ISR/CO/5, para. 6. <https://undocs.org/CCPR/C/ISR/CO/5>

⁹⁶ E.g. CCPR/C/79/Add.93, paras. 13, 17-18, 21- 24, as well 26-27. <https://undocs.org/CCPR/C/79/Add.93>

CCPR/CO/78/ISR, paras. 11-12, 15-17, 19-20. <https://undocs.org/CCPR/CO/78/ISR>

CCPR/C/ISR/CO/3, paras. 5, 11, 14, 16-18, 21, 27. <https://undocs.org/CCPR/C/ISR/CO/3>

⁹⁷ CCPR/C/ISR/CO/4, paras. 5-7, 9-10, 12-13, 15-19, 21. <https://undocs.org/CCPR/C/ISR/CO/4>

CCPR/C/ISR/CO/5, paras. 6, 14-16, 18-19, 25-26, 30-37, 42-44, 48-49. <https://undocs.org/CCPR/C/ISR/CO/5>

⁹⁸ E.g. Amnesty International, “Turkey: Conscientious objector imprisoned: Murat Kanatlı”,

3 March 2014, Index Number: EUR 44/005/2014. <https://www.amnesty.org/en/documents/eur44/005/2014/en/>

Amnesty International, “Turkey: Further information: Activist released but still facing charges: Murat Kanatlı”, 7 March 2014 Index Number: EUR 44/006/2014. <https://www.amnesty.org/en/documents/eur44/006/2014/en/>

Amnesty International, “Turkey: Conscientious objector imprisoned: Haluk Selam Tufanlı”,

4 December 2014, Index Number: EUR 44/022/2014. <https://www.amnesty.org/en/documents/eur44/022/2014/en/>

Amnesty International, “Turkey: Further information: Conscientious objector released: Haluk Selam Tufanlı”, 12

December 2014, Index Number: EUR 44/024/2014. <https://www.amnesty.org/en/documents/eur44/024/2014/en/>

⁹⁹ UN Human Rights Committee, General Comment No. 22 (CCPR/C/21/Rev.1/Add.4), ‘The right to freedom of thought, conscience and religion (Article 18)’, 27 September 1993, para. 5. <http://undocs.org/CCPR/C/21/Rev.1/Add.4>

requirements of article 18 of the Covenant as pointed out in general comment No. 22” and has asked, in the framework of periodic examination of a State party “to amend its legislation on conscientious objection so that any individual who wishes to claim the status of conscientious objector may do so at any time, either before or after entering the armed forces”.¹⁰⁰ Consequently, if an individual can claim the status at any time, this means also during the period someone is a reservist.

- Since 1987, the **Committee of Minister of the Council of Europe** had mentioned in its recommendations that: “The law may also provide for the possibility of applying for and obtaining conscientious objector status in cases where the requisite conditions for conscientious objection appear during military service or periods of military training after initial service”.¹⁰¹

- In 1993, the **European Parliament**, has asked “to ensure that: [...] conscientious objector status can be applied for at any time”.¹⁰²

- In 2002, the **Parliamentary Assembly of the Council of Europe** recommended the Committee of Ministers to invite those member states that have not yet done so to introduce into their legislation “the right to be registered as a conscientious objector at any time: before, during or after conscription, or performance of military service”.¹⁰³

- In 2013, the **UN Human Rights Council**, has encouraged States to “allow applications for conscientious objection prior to, during and after military service, including reserve duties”.¹⁰⁴

- The **OHCHR** has consistently included in its minimum standards the right to conscientious objection at any time, even after military service, i.e. for reservists. In 2012 it stated that: “Reservists, too, may become conscientious objectors and, therefore, provision needs to be made to enable them to be recognized as such”.¹⁰⁵ And in the part about national legislation and practice, has dedicated a chapter to “Conscientious objection for those serving in the reserves”.¹⁰⁶ In 2017, citing the position of the UN Human Rights Council to “allow applications for conscientious objection prior to, during and after military service, including reserve duties”,¹⁰⁷ the OHCHR included in its conclusions and recommendations that: “Conscripts and volunteers should be able to object before the commencement of military service as well as at any stage during and after military service.”¹⁰⁸ In 2019, citing the relevant positions of the UN Human Rights Council, the Parliamentary Assembly of the Council of Europe, the Committee of Ministers of the Council of Europe and the European Parliament,¹⁰⁹ the OHCHR included in its minimum criteria that: “Conscripts and volunteers should be able to object before the commencement of military service, or at any stage during or after military service.”¹¹⁰ In the same document, the OHCHR explicitly stated that: “Given that the right to change one’s religion or

¹⁰⁰ UN Human Rights Committee, Concluding observations on the fourth periodic report of Spain, (CCPR/C/79/Add.61), 3 April 1996, paras. 15 and 20. <http://undocs.org/CCPR/C/79/Add.61>

¹⁰¹ Council of Europe, Committee of Ministers, Recommendation No. R(87)8, 9 April 1987, para. 8. <https://www.refworld.org/legal/resolution/coeministers/1987/en/88968>

¹⁰² European Parliament, Resolution on respect for human rights in the European Community (annual report of the European Parliament), (A3-0025/93) [known as the De Gucht Resolution], **11 March 1993**, as it has been published in the Official Journal of the European Communities C 115, on 26 of April 1993, para. 49 (p. 183).

¹⁰³ Council of Europe, Parliamentary Assembly, Recommendation 1518 (2001), para. 5.1. <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=16909&lang=en>

¹⁰⁴ UN Human Rights Council, Resolution 24/17 (A/HRC/RES/24/17), 8 October 2013, para. 5. <http://undocs.org/A/HRC/RES/24/17>

¹⁰⁵ UN Office of the High Commissioner for Human Rights, Conscientious Objection to Military Service, New York and Geneva, 2012, p. 26. https://www.ohchr.org/sites/default/files/Documents/Publications/ConscientiousObjection_en.pdf

¹⁰⁶ Ibid. p. 57.

¹⁰⁷ UN General Assembly, Human Rights Council, Conscientious objection to military service, Analytical report of the Office of the United Nations High Commissioner for Human Rights, (A/HRC/35/4), 1 May 2017, para. 12. <https://www.undocs.org/A/HRC/35/4>

¹⁰⁸ Ibid. para. 63.

¹⁰⁹ UN General Assembly, Human Rights Council, Approaches and challenges with regard to application procedures for obtaining the status of conscientious objector to military service in accordance with human rights standards, Report of the Office of the United Nations High Commissioner for Human Rights, (A/HRC/41/23), 24 May 2019, paras. 31-32. <https://undocs.org/A/HRC/41/23>

¹¹⁰ Ibid. para. 60(f).

belief is fundamental to freedom of religion or belief,¹¹¹ serving conscripts, but also professional members of the armed forces and reservists, can develop a conscientious objection. Application processes must therefore be open to all persons affected by military service.”¹¹² And in its minimum criteria reiterated that “The right to conscientious objection should be recognized for conscripts, for professional members of the armed forces and for reservists.”¹¹³ In 2022, after citing again the position of the UN Human Rights Council,¹¹⁴ the OHCHR included in its conclusions and recommendations that “The application procedure should be available to all persons affected by military service, including conscripts, professional members of the armed forces and reservists” and that “Conscripts and volunteers should be able to object before the commencement of military service, or at any stage during or after military service”.¹¹⁵ More recently, in 2024, the OHCHR noted that “Some States have excluded categories of individuals from the protection of the right to conscientious objection in domestic law. Such exclusion could be tantamount to a failure to take the measures necessary to give effect to the right to conscientious objection to military service and, depending on the circumstances, could also constitute discriminatory treatment on the basis of persons’ thought, conscience and religion or other grounds of discrimination, including status.”¹¹⁶ Such groups include, for example, active service members, volunteers or reservists.^{117,118} The OHCHR reiterated that “individuals should be able to object before the commencement of military service, or at any stage during or after military service.”^{119,120} In its “Conclusions and recommendations on legal and policy frameworks”, the OHCHR stated that: “In accordance with international human rights law, the domestic legal basis should be: [...] (b) Applicable to all forms of military service, including voluntary service and service in military reserve forces, as thought, conscience and religion may change over time”.¹²¹

- **Failure to recognise, respect and protect the right to conscientious objection to military service**

In the Turkish-occupied northern part of Cyprus there is no provision for conscientious objection to military service. Consequently, there is a failure to recognise, to protect and respect the right to conscientious objection to military service. This results in the violation of the right to freedom of thought, conscience and religion (**art. 18**), and in discrimination (**arts. 2 and 26**).

The lack of recognition of the right to conscientious objection has been highlighted by the **Special Rapporteur on freedom of religion or belief**, the **OHCHR**, and recently by the **ECtHR** in a crucial judgement.

¹¹¹ See Universal Declaration of Human Rights, art. 18, International Covenant on Civil and Political Rights, art. 18 and Human Rights Committee general comment No. 22 (1993) on the right to freedom of thought, conscience and religion, para. 5.

¹¹² UN General Assembly, Human Rights Council, Approaches and challenges with regard to application procedures for obtaining the status of conscientious objector to military service in accordance with human rights standards, Report of the Office of the United Nations High Commissioner for Human Rights, (A/HRC/41/23), 24 May 2019, para. 22. <https://undocs.org/A/HRC/41/23>

¹¹³ Ibid. para. 60(c).

¹¹⁴ United Nations, General Assembly, Conscientious objection to military service, Analytical report of the Office of the United Nations High Commissioner for Human Rights, (A/HRC/50/43), 11 May 2022, para. 14. <http://undocs.org/A/HRC/50/43>

¹¹⁵ Ibid. para. 57(d) and (g).

¹¹⁶ International Covenant on Civil and Political Rights, arts. 2 (2) and 26.

¹¹⁷ A/HRC/41/23, paras. 22–25.

¹¹⁸ United Nations, General Assembly, Conscientious objection to military service, Report of the Office of the United Nations High Commissioner for Human Rights, (A/HRC/56/30), 23 April 2024, para. 16. <https://undocs.org/A/HRC/56/30>

¹¹⁹ A/HRC/41/23, para. 60 (b) and (f).

¹²⁰ United Nations, General Assembly, Conscientious objection to military service, Report of the Office of the United Nations High Commissioner for Human Rights, (A/HRC/56/30), 23 April 2024, para. 27. <https://undocs.org/A/HRC/56/30>

¹²¹ Ibid. para. 54(b).

Special Rapporteur on freedom of religion or belief and OHCHR:

The Special Rapporteur on freedom of religion or belief, in the context of his mission to Cyprus in 2012, “noted that the absence of provisions concerning conscientious objection meant in practice that objectors faced the risk of punitive measures, and he referred to information received about six individuals who had submitted written refusals to take part in military training. He recommended that the de facto authorities recognize the right to conscientious objection to military service and ensure that conscientious objectors have the option of performing alternative civilian service that is compatible with their reasons for conscientious objection and does not have punitive effects¹²²”.¹²³

The OHCHR continued to monitor the situation, including attempts to explore the possibility to introduce legislation, in 2019.¹²⁴ In 2022, the OHCHR reported the end of such attempts, following a change of the de facto authorities. It also cited the three pending cases at ECtHR against Türkiye.¹²⁵

European Court of Human Rights:

In March 2024, in the case of *Kanathlı v. Türkiye*,¹²⁶ the ECtHR held, unanimously, that there had been a violation of Article 9 (freedom of thought, conscience and religion) of the ECHR.

The case concerned the applicant Murat Kanathlı who complained that he had been convicted for refusing to perform his one day of military service as a reservist – for which he had been called up in 2009 in accordance with the Military Service Act – on grounds of conscientious objection.

Following an unsuccessful challenge of the constitutionality of the relevant legislation, rejected in 2013, in 2014 the Security Forces Court sentenced Mr Kanathlı to the payment of a fine (of roughly 167 euros), which could be converted to ten days’ imprisonment in the event of non-payment. In its judgment, the court pointed out that the law made no provision for conscientious objectors to perform community service and went on to find that the applicant could not be characterised as a conscientious objector.

In the same year the Court of Appeal upheld Mr Kanathlı’s conviction, finding however that the lower court had been mistaken to rule on the question whether the applicant was or was not a conscientious objector despite noting that there was no legislation in that regard.

Having refused to pay the fine, Mr Kanathlı subsequently served a ten-day prison sentence.

The ECtHR noted that the relevant national legislation – which provided for compulsory military service in the armed forces, including as a reservist – made no provision for conscientious objectors to perform an alternative service.

The present case did not concern compulsory military service but rather service as a reservist, which only lasted a single day, although it was liable to reach up to 30 days a year. As the national courts noted, service as a reservist is an extension of military service, performed in military barracks under the authority and supervision of army officers. Moreover, the Government had not submitted that such service was hierarchically and institutionally distinct from the army.

The ECtHR pointed out that it had previously held that a system which provided for no alternative service or any effective and accessible procedure for the examination of a claim of conscientious objection could not be seen as having struck a fair balance between the general interest of society and

¹²² See A/HRC/22/51/Add.1, paras. 68 and 87.

¹²³ UN General Assembly, Human Rights Council, Conscientious objection to military service, Analytical report of the Office of the United Nations High Commissioner for Human Rights, (A/HRC/35/4), 1 May 2017, para. 57. <https://www.undocs.org/A/HRC/35/4>

¹²⁴ UN General Assembly, Human Rights Council, Approaches and challenges with regard to application procedures for obtaining the status of conscientious objector to military service in accordance with human rights standards, Report of the Office of the United Nations High Commissioner for Human Rights, (A/HRC/41/23), 24 May 2019, para. 9. <https://undocs.org/A/HRC/41/23>

¹²⁵ Office of the United Nations High Commissioner for Human Rights, (A/HRC/50/43), 11 May 2022, para. 52. <http://undocs.org/A/HRC/50/43>

¹²⁶ ECtHR, case of *Kanathlı v. Türkiye* (application no. 18382/15), 12 March 2024.

Available in French at: <https://hudoc.echr.coe.int/fre?i=001-231540>

that of conscientious objectors.¹²⁷

There are two more pending cases:

1. Haluk Selam Tufanlı v. Türkiye.¹²⁸ The application concerns the refusal of the applicant, a conscientious objector, to attend reservist service for military mobilisation training in 2011. On 2 June 2015 Haluk Selam Tufanlı submitted an application to the ECtHR against Türkiye for violations of articles 5(1, 4 and 5), 9 and 13 of the ECHR: (Art. 5) Right to liberty and security, (Art. 9) Freedom of thought, conscience and religion, (Art. 13) Right to an effective remedy.

2. Halil Karapasaoglu v. Türkiye,¹²⁹ a case concerning refusal of military mobilisation in 2018¹³⁰. On 5 July 2019 Halil Karapasaoglu submitted an application to the ECtHR against Türkiye for violations of articles 5, 6 and 9 of the ECHR: (Art. 5) Right to liberty and security, (Art. 6) Right to a fair trial, (Art. 9) Freedom of thought, conscience and religion.

- **Criminalisation and punishment of conscientious objectors (art. 9)**

As it is reported by EBCO, in 2023 trials and arrests of conscientious objectors resumed.

On 16 November 2023, Mustafa Hürben was summoned to the Security Forces Court regarding his refusal to undertake reserve service. He made a press statement in front of the Court and read out his declaration of conscientious objection and confirmed his refusal to participate in the reserve call.

At a further hearing on 14 December the judge, recalling that when the issue of conscientious objection last came before the courts a proposed law was under discussion, asked about legislative progress, and was informed that there had been no developments.

In early 2024, the opposition Republican Turkish Party (CTP) resubmitted a 2019 draft law proposal for the recognition of conscientious objection, however the governing parties voted the bill down on 8 January.

Mustafa Hürben's definitive trial took place on 18 January.

Even the prosecution did not challenge Hürben's right to conscientious objection, but as there is no legislative provision the Judge explained that the option of acquittal was not available. However, in view of the existing international jurisprudence outlined by Hürben's counsel, the Court was reluctant to impose any more than the most nominal penalty, namely a fine of 800 TL (approximately € 25). By law, if this was not paid within five days he would be imprisoned for three days. Hürben announced in Court that he had no intention of paying the fine, and asked if he could go directly to prison, but the due process had to be followed, and he was accordingly arrested on 23 January.¹³¹

Arrests and imprisonments of conscientious objectors constitute a violation of **article 9 of ICCPR**.

- **Repeated punishment in violation of *ne bis in idem* (arts. 14(7), 18(2))**

Conscientious objectors in the northern part of Cyprus are also repeatedly punished.

A recent case concerns the Turkish-Cypriot reservist conscientious objector Halil Karapasaoglu. On 30 May 2024, Halil Karapasaoglu was sentenced by the Security Forces Court of Nicosia (Military Court of Nicosia in the northern part of Cyprus) to a fine of 1000 TL for refusing to serve his reservist military service on grounds of conscientious objection. Halil Karapasaoglu refused to pay the fine, thus it was converted to 3 days' imprisonment and he was immediately arrested and transferred to the prison,

¹²⁷ ECtHR, Press Release issued by the Registrar of the Court, ECHR 059 (2024), 12 March 2024.

<https://hudoc.echr.coe.int/fre?i=003-7896908-10986473>

¹²⁸ Case number 29367/15. <https://hudoc.echr.coe.int/eng?i=001-208228>

¹²⁹ Case number 40627/19.

¹³⁰ EBCO Annual Report 2023/2024, p. 11.

https://ebco-beoc.org/sites/ebco-beoc.org/files/2024-05-15-EBCO_Annual_Report_2023-24.pdf.

¹³¹ EBCO Annual Report 2023/2024, p. 67.

https://ebco-beoc.org/sites/ebco-beoc.org/files/2024-05-15-EBCO_Annual_Report_2023-24.pdf.

even in handcuffs. This was his third imprisonment. Halil Karapaşaoğlu was released the next morning.¹³²

As explained in detail in the relevant part about the Republic of Türkiye, such a repeated punishment of conscientious objectors is in violation of the *ne bis in idem* principle (Article **14.7** of ICCPR), and it contravenes also Article **18(2)** of the ICCPR, which prohibits “coercion which would impair his freedom to have or to adopt a religion or belief of his choice”.

▪ SUGGESTED RECOMMENDATIONS

Connection e.V. kindly invites the Committee to include the following recommendations, concerning arts. 2, 7, 9, 12, 18, 14, 19, 25, 26, in its concluding observations:

- The State party, both in its territory as well in any other areas under its effective control, should promptly
 - adopt legislation recognizing the right to conscientious objection to military service, in line with international human rights standards, including the exemption of conscientious objectors from the compulsory military service and reserve duties;
 - if a compulsory alternative service is established, it should be compatible with the reasons for conscientious objection, be of a non-combatant or civilian character, be in the public interest and not of a punitive character.
- The State party, both in its territory as well in any other areas under its effective control, should immediately
 - cease punishment of conscientious objectors, including the repetitive punishment in violation of the *ne bis in idem* principle,
 - annul all sentences already imposed and provide effective remedy, including by restoring civil and political rights and providing adequate compensation to those who have already been sentenced and punished.
- In accordance with rule 75 of the Committee’s rules of procedure, the State party is requested to provide, within one year of the adoption of the present concluding observations, information on its implementation of the recommendations made by the Committee in the paragraph about “Conscientious objection to compulsory military service”.

¹³² EBCO, WRI, IFOR, Connection e.V., “JOINT PRESS RELEASE: Third (!) imprisonment of Turkish-Cypriot reservist conscientious objector Halil Karapaşaoğlu totally unacceptable”, 5 June 2024. <https://en.connection-ev.org/article-4152>