

Submission to the UN Human Rights Committee
Written contribution for Türkiye under review (2nd)

CCPR - International Covenant on Civil and Political Rights
142nd Session (16 - 17 October)

from Conscientious Objection Watch



**Conscientious
Objection
Watch**

CONSCIENTIOUS OBJECTORS TO MILITARY SERVICE

For enquiries please contact Ms.Hülya Üçpınar- hulyaucpınar@gmail.com

Introduction

The situation of conscientious objectors to military service has not improved since 2023.

Türkiye still 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 (ECtHR) has described as ‘civil death’ and cruel, inhuman or degrading treatment. Expressions about the military and conscientious objection are criminalized under “alienating the public from military service”. Türkiye 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

Since 2012 conscientious objection to military service has not been on the agenda of the Government, rather the focus has been on shortening the duration of the military service in general and the introduction of the possibility of shortened military service by payment. In 2019 a new Law

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

on Conscription² was adopted and amended in 2022³ reducing the military service to six months and one month shortened military service by payment.

There is no clear data on the number of conscientious objectors to military service. The requests of providing data have been rejected by the Ministry of National Defence.⁴ On the other hand according to the Action Plan by the authorities of Türkiye submitted to the CoE CM in March 2023, 152 persons indicated that they were conscientious objectors.⁵ **According to the database of Conscientious Objection Watch, at least 480 people in Türkiye declared their conscientious objection between December 1989 and August 2024.**

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 Human Rights Committee (HRC) inheres in Article 18).

In March 2023, an MP submitted a written parliamentary question referring to a situation of a conscientious objector, Diyar Doğan, to the Presidency of the Turkish Parliament. Nevertheless the parliamentary question was not processed on the grounds that "the text of the parliamentary question would not include the personal opinions of the MP or third parties".⁶ The same MP submitted two other parliamentary questions in 2023 and three in 2024 that refer to other conscientious objectors' situations⁷ were responded with the same text as 'Military service in the Republic of Türkiye is carried out in accordance with the provisions of the Law No. 7179 on Military Service', by the Minister of National Defence on different dates, latest on 25.07.2024.

Non bis in Idem (violation of Article 9, 14, 15)

Although Türkiye does not recognize the right to conscientious objection, there is no regulation that criminalizes conscientious objection. The objectors are accepted as recruits and subjected to the relevant regulations; courts apply legislation applicable to evaders and deserters. As a consequence conscientious objectors have repeatedly been subjected to investigations and prosecutions as a result of their disobedience based on their conscientious convictions.

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 restricted⁸, consider whether the person "regrets" the action and whether he will commit the same crime. Moreover, the consistency of the motivation of the objectors is recognized as a motivation to commit a crime and a legal

² Law on Conscription [Askeralma Kanunu] No. 7179, 25 June, 2019 Official Gazette 30813, 26 June 2019.

³ 30/6/2022-7415/17 md.

⁴ Application for information made by Mine Yıldırım on 26 March 2021 request number 2101413343 and response sent on 30 March 2021; "Akar: Vicdani Retle İlgili Çalışmamız Yok", Bianet, 21 November 2019.

⁵ [https://hudoc.exec.coe.int/eng#%7B%22execidentifier%22:%5B%22DH-DD\(2023\)410E%22%5D%7D](https://hudoc.exec.coe.int/eng#%7B%22execidentifier%22:%5B%22DH-DD(2023)410E%22%5D%7D)

⁶ <https://t24.com.tr/haber/meclis-baskani-vicdani-retci-sorusunu-kisisel-gorus-diyerek-isleme-almadi.1098228>

⁷ Gökhan Binici; <https://www.tbmm.gov.tr/Denetim/Yazili-Soru-Onergesi-Detay/9c9edf5c-c4e2-4975-a565-018962eab949>;

Serkan Şimşek; <https://www.tbmm.gov.tr/Denetim/Yazili-Soru-Onergesi-Detay/052111f9-6aa0-4efc-b5cf-018a6a566c65>;

Yakup Yiğit; <https://www.tbmm.gov.tr/Denetim/Yazili-Soru-Onergesi-Detay/ebaa36f9-3fba-4736-9641-018fe8319776>;

Hakan Yılmaz; <https://www.tbmm.gov.tr/Denetim/Yazili-Soru-Onergesi-Detay/2008a1df-4369-4289-b145-01907754465a>

İbrahim Atsız; <https://www.tbmm.gov.tr/Denetim/Yazili-Soru-Onergesi-Detay/e4d1b247-b843-46f7-8b64-018e840270eb>

⁸ Turkish Criminal Code, Article 58 and Article 53.

consequence of imprisonment for a crime committed intentionally.⁹

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 if the judges decide they are persistent.¹⁰ 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.

The courts are not convinced that the objectors do violate the law again and therefore decided not to convert the prison sentence, into a judicial fine¹¹ or the sentence is not suspended¹². In the case of D.U., he was also sentenced to 5 years of probation.¹³

Recommendations:

Turkiye should recognise the right of conscientious objection to military service.

The Ministry of Defense and the Ministry of Justice should keep and publicize statistics on conscientious objection applications, including the number of conscientious objectors, administrative proceedings, administrative fines, and criminal investigations and convictions of conscientious objectors.

Repeated Prosecution of Conscientious Objectors to Military Service (violation of Articles 9 and 18)

Conscientious objectors to military service face administrative and judicial fines and imprisonment. The Conscientious Objection Watch has documented 140 cases of COs who have been subject to repeated arrests, repeated fines and repeated prosecutions and punishments until August 2024. It is a vicious circle that never ends until an objector gives up his motivation to object. e.g. **Kamil Murat Demir**, who is a journalist and frequently travels for work, has been apprehended approximately **76 times** over the course of 2016-2024.¹⁴ Furthermore he was apprehended **6 times in three months**; on 8 June, 14 July, 30 July, 3 August, 26 August, 9 September 2023.¹⁵ An objector reported that he has been issued **45 official records** so far¹⁶; another was apprehended **8 times** in five years according to his court files.

In the case of Osman Murat Ülke, whose decision has been under the enhanced supervision of the CoM Committee of Ministers, was subjected to a police search on 17.01.2023 and was accused of not completing his military service. An official record was issued. Pursuant to this record, a notification was sent to Ülke stating that he has to apply to the nearest military branch

⁹ Bursa 3rd Criminal Court of First Instance, 2024/553 E., 2024/843 K., 17/07/2024

¹⁰ e.g; U.G.- Malkara 1st Degree Criminal Court 2020/364 E, 2021/143 K.; Akın Kasapoğlu-Silivri 3rd Criminal Court of First Instance 2018/549 E.,2019/583 K.

¹¹ Sarıkamış Criminal Court of First Instance. 2017/990 E., 2019/98 K. One month and 20 days imprisonment.

¹² Eruh Criminal Court of First Instance, 2021/69 E., 15.09.2021

¹³ Bursa 3rd Criminal Court of First Instance, 2024/553 E., 2024/843 K., 17/07/2024

¹⁴ The Conscientious Objection Watch has documents of 37 out of 77.

¹⁵ Information taken from the database of the Conscientious Objection Watch

¹⁶ Lawyer Hülya Üçpınar's interview with İnan Mayıs Aru on 12 September 2024

within 2 months in order to complete his incomplete military service, otherwise he will be subject to administrative fines and criminal prosecution. Consequently, Mr. Ülke received an sms from the authorities on 2 April 2024 stating that ‘Mr. Osman Murat Ülke, It has been detected that you have military service to complete. You need to apply to the nearest military branch. ‘Upon his appeal to this message to the Ministry of National Defence, the Recruitment Department responded that *‘Legislative provisions on exemption from or deemed to have fulfilled military service on the grounds of conscientious objection are set out above. It is not possible to exempt obliged persons from military service or to deem them to have fulfilled their military service on the grounds that they are conscientious objectors.’*

He also received a similar sms from the same authorities on 7 August 2024.

Recommendations:

The Committee should ask the Government about the legal amendments in order all criminal proceedings against conscientious objectors are ended, compensation is provided, all convictions regarding conscientious objection in the criminal records for disobedience, draft evasion, desertion, public statements, are expunged.

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

Article 318 of the Turkish Penal Code 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.¹⁷

Lack of effective remedies and ineffectiveness of the individual complaints to the Constitutional Court (violation of Article 14)

It is important to state at the outset that an effective domestic remedy for conscientious objectors is non-existent since Türkiye 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 of 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

¹⁷ European Court of Human Rights, Final judgement, Savda v. Turkey (No. 2), application No. 2458/12 of 15 November 2016.

evident that since the right to conscientious objection is not recognized their claims will not be successful.¹⁸

In these processes, applications to the Constitutional Court based on the Constitution's definition of the right have not yielded any results. There's no clear data by the authorities presenting the numbers of individual complaints, regarding conscientious objection, to the Constitutional Court **Between 2012 and August 2024, at least 64 individual applications have been made by both from Jehovah's Witnesses and anti-militarist conscientious objectors to the Constitutional Court** according to the database of the Conscientious Objection Watch.¹⁹ Some of the applicants have more than one application.²⁰

Although in 2016, it was reported in the media that the Constitutional Court referred an individual application involving conscientious objection to the Plenary, the Constitutional Court is yet to deliver a judgement dealing directly with the right to conscientious objection at the time of writing of this submission.

The earliest application known to the authors is **Osman Murat Ülke's** application from 2014.²¹ 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 Constitutional Court is requested.

Freedom of Expression Association (Ifade Ozgurlugu Dernegi-İFÖD) submitted a report, focusing on elaboration of cases regarding conscientious objection that are before the Constitutional Court, to the CoE CM. In its communication, İFÖD concluded that '... İFÖD seeks to underline the fact that at least 45 applications that have languished in the Constitutional Court for years without resolution. This stance by the Constitutional Court towards conscientious objectors effectively subjects applicants to a "civil death," forcing them to endure the repercussions of their convictions without any effective legal remedy.'²²

Furthermore, the statistic that the Constitutional Court released for the period of Sep. 2012-June 2024 also reveals its ineffectiveness as a domestic remedy; the number of judgements finding a violation regarding freedom of thought, conscience and religion is only 12 out of 75,728 in 12 years.²³

It is clear that the existence of 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.

Although the authorities of Türkiye claims '**shortened military service by payment**' as an alternative to the compulsory military service, the payment option does not constitute an

¹⁸ 19.CD 20218/6825E., 2018/11133 K; Silifke Criminal Court of Peace 2021/291 D.İş, 21.02.2023

¹⁹ Vedat Zencir, 2015/4422, 02 March 2015; Davut Erkan, 2014/6922, 02 May 2015; M.S.C, 2016/10697, 03 June 2016; Utku Korkmaz, 2016/70638, 26.12.2016.

²⁰ Cemal Karakuş, 2018/35650, 07.12.2018; 2019/42721, 30.12.2019; 2019/42699, 30.12.2019; 2021/34642, 22.10.2021; İnan Mayıs Aru; 2018/23832, 01.08.2018 ; 2023/32167, 11/05/2023

²¹ Constitutional Court, Second Section, 2014/10474 E.

²² Communication from Ifade Ozgurlugu Dernegi (IFOD – Freedom of Expression Association) (26/10/2023) in the case of ULKE v. Turkey (Application No. 39437/98), DH-DD(2023)1460, 28/11/2023

²³ <https://www.anayasa.gov.tr/en/statistics/>

alternative service, as CoE CM concluded in 2023.²⁴ Furthermore, everyone who opts for military service by payment must still 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.

Recommendations:

The Committee should ask the Turkish authorities to provide detailed data (application date, total number, outcome, etc) on the individual applications regarding conscientious objection before the Constitutional Court.

Discrimination Amounting to Civil Death Situation 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.²⁵

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)
The number of people that **cannot exercise their rights during the elections is 56 (out of 168)** in accordance with the data recorded by Conscientious Objection Watch between January 2021 and August 2024. The real number is unknown.
- are unable to register travel within the country as a result of stop and search and identity checks (violation of Article 12)
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.
Many conscientious objectors have reported to the Association for Conscientious Objection that they feel compelled to change their lifestyle in order to avoid stop and search practices.²⁶
The number of people (either draft evader or evader or deserter) who have experienced similar restrictions and **reported that their freedom of movement has been restricted is 129 out of 168**, between January 2021 and August 2024. The real number is unknown.
- 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

²⁴ CM/Del/Dec(2023)1468/H46-36

²⁵ European Court of Human Rights, Final judgement, Case Ulke v Turkey (Application No. 39437/98), Strasbourg 24th January 2006

²⁶ <https://vicdaniret.org/the-multiplier-effect-of-the-violation-of-the-right-to-conscientious-objection-report-released/>

- 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).

Recommendations:

The Government should remove all restrictions on conscientious objectors to military service on the exercise of their political, civil, economic, social and cultural rights, which amount to discrimination on the grounds of their religion or belief, in addition to taking measures to ensure that the applicants are free from the risk of further prosecution and obligation of compulsory military service.