



CONSCIENTIOUS OBJECTORS TO MILITARY SERVICE

Briefing paper regarding the OHCHR of Turkey

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Introduction

The situation of the conscientious objectors hasn't improved since 2019.

Turkey 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 has described as 'civil death' and cruel, inhuman or degrading treatment. "Alienating the public from military service" is criminalized. Turkey continues to take no action in response to a series of European Court of Human Rights judgements finding violations of the right to freedom of thought, conscience and religion; prohibition of cruel, or degrading treatment; and the right to fair trial (in cases where the applicants were tried and convicted by military courts).¹

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 on Conscription² was adopted 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. An application for information was sent to the Ministry of National Defence requesting information on how many persons applied to the Ministry seeking exemption as conscientious objectors between 2016-2020. The Ministry's response stated that "there is no legal possibility to fulfil your request".³ However, Minister of National Defence, Hulusi Akar, stated in 2019 that "Regarding conscientious objection, in our country of 82 million, 28 persons applied in 2017, 23 persons in 2018, and 18 persons so far in

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

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

³ Application for information made by Mine Yildirim on 26 March 2021 request number 2101413343 and response sent on 30 March 2021.

2019.”⁴ The Association for Conscientious Objection⁵ have registered 409 conscientious objectors but believe the number to be much higher.

Priority Issues

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

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

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

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

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

Passports and identity documents contain a bar code linked to the person's entry on the GBTS (General Information Gathering System) which includes the person's military service status. If the person has not done military service, they can be taken directly to the registration office and can be charged if not willing to register. In 2006 the European Court of Human Rights described the impact of non-recognition of the right to conscientious objection to military service as civil death, amounting to a violation of Article 3 of the European Convention on Human Rights, due to the breadth of civil and political rights that are violated.⁶

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

- are unable to register to vote and vote (violation of Article 25)
- are unable to register travel within the country as a result of stop and search and identity checks (violation of Article 12)
- are unable to register access education and employment including through barriers to employment in public service and private sector for those who have not done military service and imprisonment for employers who do not fire employees classed as deserters or evaders (violation of Article 26)
- are unable to register be included in the social security system and they will not be entitled to a pension (violation Article 26)
- have difficulties with holding their own bank accounts due confiscation of money by the government to cover administrative fines, or fear of confiscation of money (violation Article 26).

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

Article 318 of the Penal Code of Turkey criminalizes “alienating the public from military service”; in 2013, this was amended to specifically address statements or conduct that “encourage and inspire people to desert or not to participate in military service”. In November 2016 the European Court of Human Rights found that application of this law violated the right to freedom of expression in a case where a conscientious objector was prosecuted and sentenced to prison for reading a statement of solidarity with conscientious objectors from another county.⁷

⁴ “Akar: Vicdani Retle İlgili Çalışmamız Yok”, Bianet, 21 November 2019.

⁵ Active between 2013 and December 2021

⁶ European Court of Human Rights, Final judgement, Case Ulke v Turkey (Application No. 39437/98), Strasbourg 24th January 2006

⁷ European Court of Human Rights, Final judgement, Savda v. Turkey (No. 2), application No. 2458/12 of 15 November 2016.

National Policy on Conscientious Objection

Turkey's policy on conscientious objection to military service has been dominated by a strong opposition to this notion as a right that is protected under freedom of thought, conscience and religion. Changes over the years have been related to the nature of punishment of conscientious objectors and this change has been triggered by the findings of international human rights mechanisms the ECtHR and the HRC, respectively. The exceptions have been the short-lived momentum gained during 2011- 2012 in the context of the drafting of the new constitution and the two military court decisions that considered the right to conscientious objection to military service in their reasonings. These, however, had significant limitations and did not have any lasting impact.

Lack of legislation

Actions taken by the oppositional parties with the Parliament in the forms of parliamentary questions, introduction of bills received either no response at all, or an answer that did not address the legislative amendments on conscientious objection or the situation of objectors in the previous years.⁸ The policy of the government hasn't changed and no legal amendments have been introduced to improve the situation of the conscientious objectors, however, the Government presented the abolishment of military courts through constitutional amendments made in 2017, including the Supreme Judicial Military Court and the Supreme Administrative Military Court, in the Government's communication to the CoE Committee of Ministers (CM) as fulfilling one of the criteria in the enforcement of the ECtHR judgments on the Ülke group of cases.

In his declaration to the media Minister of National Defence, Hulusi Akar, stated in 2019 that there is no provision on conscientious objection in Turkish legislation and no preparatory work that is being carried out.⁹

The Government's responses to the CoE CM

Following the ECtHR judgment on *Ülke v. Turkey* in 2006, the Government has engaged with the CM in 2010, 2012, 2015, 2018 and 2020 over the supervision of the enforcement of judgments on conscientious objection to military service cases. Since 2006 numerous cases brought by conscientious objectors from Turkey have led to findings of violations of several Convention rights. These are compiled into the *Ülke group of cases* and brought under enhanced supervision. Turkey's focus has centered on individual measures through payment of compensation and arrangement of dismissal or discharge on the basis of medical reports indicating that the applicants were not fit for military service and annulment of arrest warrants.¹⁰ As of 2018 the Government informed the CM

⁸ http://www.tbmm.gov.tr/develop/owa/yazili_sozlu_soru_sd.onerge_bilgileri?kanunlar_sira_no=124500;
http://www.tbmm.gov.tr/develop/owa/yazili_sozlu_soru_sd.onerge_bilgileri?kanunlar_sira_no=145579;
http://www.tbmm.gov.tr/develop/owa/yazili_sozlu_soru_sd.onerge_bilgileri?kanunlar_sira_no=124502;
http://www.tbmm.gov.tr/develop/owa/yazili_sozlu_soru_sd.onerge_bilgileri?kanunlar_sira_no=131474;
http://www.tbmm.gov.tr/develop/owa/yazili_sozlu_soru_sd.onerge_bilgileri?kanunlar_sira_no=126522;
http://www.tbmm.gov.tr/develop/owa/yazili_sozlu_soru_sd.onerge_bilgileri?kanunlar_sira_no=109658;
http://www.tbmm.gov.tr/develop/owa/yazili_sozlu_soru_sd.onerge_bilgileri?kanunlar_sira_no=112838

⁹ "Akar: Vicdani Retle İlgili Çalışmamız Yok", Bianet, 21 November 2019.

¹⁰ Communication from the authorities (01/07/2015) concerning the case of Ülke against Turkey (Application No. [39437/98](https://hudoc.exec.coe.int/eng#{)), DH-DD(2015)735, 09 July 2015, Communication from the authorities (24/09/2018) concerning the case of ULKE GROUP v. Turkey (Application No. [39437/98](https://hudoc.exec.coe.int/eng#{)), DH-DD(2018)938, 28 September 2018, [https://hudoc.exec.coe.int/eng#{"fulltext":\["ülke%20v.%20turkey"\],"EXECIdentifier":\["DH-DD\(2018\)938E"\]}](https://hudoc.exec.coe.int/eng#{)]
[https://hudoc.exec.coe.int/eng#{"fulltext":\["ülke%20v.%20turkey"\],"EXECIdentifier":\["DH-DD\(2015\)735E"\]}](https://hudoc.exec.coe.int/eng#{)]

that “military service by payment” was an alternative whereby an eligible person could by paying a certain sum become exempted from the obligation of military service.¹¹

Non-implementation of ULKE case

In its communications to the CM, the Government responds that Ülke’s situation has been improved and there’s no criminal cases and arrest warrants. Nevertheless, Ülke is still a “military person” and, thus, a “deserter” in accordance with the law. Accordingly, he is subjected to the regime for deserters (cannot participate in the elections) and other human rights limitations that causes the situation of “civil death” as the ECtHR stated in its findings in 2006.¹² His application to the Constitutional Court in 2014 is still pending without any progress.¹³

Lack of mechanisms to apply

Currently, there is no mechanism to which conscientious objectors can make an application. When conscientious objectors send a letter of application stating that they cannot fulfil their military service obligations on account of being conscientious objectors they are sent a letter stating that under current legislation exemption from military service is not an option. A number of conscientious objectors informed the Association for Conscientious Objection that when they applied to the Ministry of National Defence they received letters stating that, under the Law on Military Service exemption from military service is not a possibility.¹⁴

In 2020 the General Directorate of Conscription of the Ministry of National Defence sent a letter in connection to the Yazıcı case. The letter outlines the manner in which applications of conscientious objection will be processed. Applications 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 the legislation. The conscientious objector’s application and the military service branch’s letter will be sent to the military service branch where the “liable” 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.¹⁵ Same document states that the Ministry of Defence should not be informed on repetitive applications by the same conscientious objectors.

Prosecution of the Association for Conscientious Objection

Actions taken against the Association for Conscientious Objection are also indicative of national policy. The Association advocates for the constitutional recognition of the right to conscientious objection to military service in Turkey. Since its establishment, the association has organized workshops and diverse events on conscientious objection to military service to raise awareness about conscientious objection across Turkey. In 2019, based on several posts published on The Association’s website and its social media accounts, one of the founding members was sued on the

¹¹ Communication from the authorities (24/09/2018) concerning the case of ULKE GROUP v. Turkey (Application No. [39437/98](https://hudoc.exec.coe.int/eng#{)), DH-DD(2018)938, 28 September 2018, [https://hudoc.exec.coe.int/eng#{"fulltext":\["ülke%20v.%20turkey"\],"EXECIdentifier":\["DH-DD\(2018\)938E"\]}](https://hudoc.exec.coe.int/eng#{)

¹² Please find further information under the Section “Situation that Leads to Civil Death” below.

¹³ Constitutional Court, Second Section, 2014/10474 E.

¹⁴ M.Ç. Made an application to the Ministry of National Defence on 22 June 2017. In a document dated 5 July 2017 he was informed that under Article 1 of the Law on Military Service No. 111, he was not exempt from military service. 41427893-1130-2626-17/ASAL İŞl.D.STS İŞl.Ş. 23463; R.B. Letter from general Directorate of Conscription, Document no 46987865-1040-2/16/ASAL Gn.Md.Er.İŞl.Özl.İŞl.Ks.36571, 29 November 2016; Ö.K.. Ankara 12th Administrative Court, 2017/1101E.

¹⁵ Memorandum of the Ministry of National Defence General Directorate of Conscription on Applications on Conscientious Objection, 17 June 2020.

charge of "alienating the public from military service" under Article 318 of the Turkish Criminal Code. He was acquitted at the first hearing held on February 6, 2020.¹⁶

In 2020, an investigation was initiated by the Istanbul Anatolian Chief Public Prosecutor's Office, again based on some posts published on the Association's website and social media accounts. A member of the Association, who shared news on the website was called to give a statement based on the accusation of "insulting the military organization of the state" under Article 301 of the Turkish Criminal Code.¹⁷ The investigation is pending.

As briefly described above, Turkey's policy toward the recognition of the right to conscientious objection to military service remained firmly opposed to its protection under the right to freedom of thought, conscience and religion. Continued punitive measures against conscientious objectors have been an integral part of national policy.

Consequences of lack of legislation and alternatives to the compulsory system

No legislative measures have been taken to address violations of human rights stemming from the non-recognition of the right to conscientious objection to military service. Furthermore, there is no indication that a law is being prepared. Practice shows the contrary, unfortunately.

"Shortened military service by payment" does not constitute an alternative

Since 2019, with the adoption of the Law on Conscription, shortened military service through payment of a sum of money has become possible under the Turkish military service system. Under Article 9 of the Law on Conscription those who pay a certain sum that is determined by the Ministry of Defence and complete one month of basic military training will be considered to have completed their military service. In case the number of those who opt for this option exceeds the number determined for the shortened military service through payment those who can opt for this option will be determined by draw.¹⁸

Those who are eligible for the shortened military service through payment option and yet forfeit this right will not be given the option again.¹⁹ Those who have started their military service, those who have been assigned evader status and those who are draft evaders and in hiding cannot benefit from this option.²⁰

Those who opted for the shortened military service by payment, are called and have not joined the military, are considered evaders and can no longer benefit from this option. The payment they made is not automatically refunded. Refund is made upon request.²¹

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

It is important to underline that shortened military service through payment is not a suitable option for conscientious objectors and it is not available for all conscientious objectors. Unfortunately, in the consideration of an asylum case in the Netherlands, shortened military service by payment was

¹⁶ Istanbul 16th Criminal Court of First Instance, 2020/160 K

¹⁷ Investigation number 2020/34522.

¹⁸ Law on Conscription Article 9/2

¹⁹ Law on Conscription Article 9/2.

²⁰ Article 9/6.

²¹ Article 9/5.

considered as “a right” to justify rejection of asylum claims.²² Similarly, in the case of B.Ş. a Turkish court also considered the shortened military service by payment as an option for conscientious or other objectors to military service.²³

In their correspondence with the CoE CM, the Turkish authorities have referred to the possibility of fulfilling the obligation to perform military service by payment. However, clearly, this cannot be considered a solution to human rights violations that conscientious objectors are subject to.

Firstly, the payment option does not constitute an alternative service therefore the finding of the ECtHR that the interference Article 9 originates from the lack of alternative service is not addressed.

Secondly, for the first half of 2022 approx. 3.550 € must be paid to benefit from this option and this is an amount about 13 times the net minimum wage (in Jan 2022 4.253 TL, approx. 273 €), therefore prohibitively expensive. As it is explained in the further paragraphs, people who do not fulfil the military service cannot be hired neither in the private sector nor in the state institutions, therefore, it is almost impossible for the objectors to earn such money to pay for the military service even if they are willing to do so.

Thirdly, 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.

Finally, under Article 9(6);

- a. those who have already started to perform military service, and,
- b. those who have the status of draft evader, evader or those in hiding cannot benefit from this option.

Security checks, issue of official records and administrative fines

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

Draft evaders and evaders are tracked in accordance with the rules laid down in Article 26(1) of the Law on Conscription. Accordingly, draft evaders and evaders 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. (Please see the administrative and legal proceedings flow in the Chart attached to the submission)

Administrative 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 fine are faced with a risk of being apprehended repeatedly after every 15 days and to have an official report issued.

Repetitive apprehensions and, accordingly, official records

²² Article 9/7.

²³ Case of B.Ş., Ereğli 4.Asliye CM 2018/657 E, 2019/135 K 20/03/2019

Objectors inform the Association²⁴ that they come across stop and check very frequently that affects their daily lives seriously. Apprehensions may happen anywhere, anytime and under different situations- on the way to school or to a hospital or while traveling or while going to your wedding. An objector reported that he has been issued **30 official records** so far²⁵; another objector, who is a journalist and frequently travels for work, has been apprehended approximately **50 times** over the course of 2016-2021²⁶. Another was apprehended **14 times** in two years.²⁷

Lack of database regarding official records

Official records constitute the basis of fines and penalties in accordance with Article 24 of the Law on Conscription and Article 63 of the Military Criminal Law. Despite their importance, they are not uniform, often sketchy and are not handled in a consistent manner.

In many cases conscientious objectors are not provided with a copy of the official record and not all are registered in the national database. Consequently, conscientious objectors can access these official records only in the case there is an administrative/criminal measure taken against them.

Excessive administrative fines that follow official records

In addition to the repetitive character of stop & checks and official reports, administrative fines can be excessive. **Uğur Yorulmaz** who has a pending application before the ECtHR related to several violations stemming from non-recognition of the right to conscientious objection, was issued a 59.150 TL administrative fine in August 2021 (approx. 5,960 €, minimum wage at that time was approx. 360 €). **Abuzer Yurtsever** was given an administrative fine of 18,666 TL in September 2016 (approx. 5,615 €, minimum wage at that time was approx. 495 €). The fine was put into legal action in April 2021, but it was annulled due to irregular process. Accordingly, the administration started the proceeding over from the beginning. Now the procedure is pending.

According to the report of the Association for Conscientious Objection, published in May 2021, conscientious objectors were fined a total of 575,517 Turkish Liras (approx. 37.000 € as of March 2022) in 85 case files until April 2021.²⁸

While some persons contest the monetary administrative fines, most individuals are not able to appeal because they are not familiar with the legal process. Between November 2020-April 2021, out of 31 conscientious objectors that contacted the Association for Conscientious Objection, 13 said they did not know how to contest the monetary administrative fines, 15 said they did not contest and only three said they contested.

Prosecution of conscientious objection

The Military Criminal Law enshrines important provisions on criminal measures applicable to conscientious objectors. Under Article 63 of the Military Criminal Code No 1632, those who do not surrender to perform their military service “after the administrative fine under Article 89 of the Law

²⁴ The objectors keep informing the Conscientious Objection Watch since January 2022, after the closure of the Association.

²⁵ Lawyer Hülya Üçpınar’s face to face interview with İnan Mayıs Aru on 7 January 2020. He was issued a total of approximately 12,000 TL administrative fine based on two official records issued on 1 April 2015 and 28 August 2018 respectively.

²⁶ The Association for Conscientious Objection has documents of 19 out of 50.

²⁷ Email sent by Seyda Can Yılmaz to lawyer Hülya Üçpınar on 12 April 2021.

²⁸ Yildirim, M. and Üçpınar, H., [Conscientious Objection to Military Service in Turkey](#), Association for Conscientious Objection, 2021.

on Military Service is final” will be sentenced to imprisonment for up to 3 years depending on the duration of desertion. (Pls see the administrative and legal proceedings flow in the Chart attached).

For example, **Kamil Murat Demir**, a conscientious objector since 2018, is a journalist who frequently travels for work. There have been 11 criminal cases against him following more than 50 official reports and administrative monetary fines. He was acquitted on one of them in 2019, however, the prosecutor appealed against this verdict.²⁹ The case is still pending. In another case he was given 4-month imprisonment in 2018 but this was converted to 1,200 TL of judicial fine.³⁰ The rest of the files, nine out of 11, and an individual application to the Constitutional Court are pending.

Other conscientious objectors have been under the obligation to perform military service for decades. They are seen as draft/evaders or deserters and thus an individual who violates the law. They are issued administrative fines again and again as a result of continuous stop & checks by security forces. Then prosecutions and imprisonment follow. Almost all criminal cases result in convictions. In few of the cases in the first-degree courts, where violations of the Law on Notifications, or procedural issues were raised, conscientious objectors to military service were acquitted.

Denial of public rights and execution of sentences made heavier by criminal courts

Criminal Courts, when ruling on the application of Criminal Law provisions in favor of the accused and on whether public rights (such as guardianship) should be restricted³¹, 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 favor of conscientious objectors. In addition to being constantly exposed to stop & 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.³² 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.

Because 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 fine³³ or the sentence is not suspended³⁴.

Lack of effective domestic remedies

It is important to state at the outset that an effective domestic remedy for conscientious objectors is non-existent since Turkey does not recognize the right to conscientious objection and courts, consistently, have not utilized Article 90 of the Constitution which provides the possibility to directly apply relevant provisions of international human rights treaties where national legislation is incompatible with the former. Instead, courts apply legislation applicable to evaders and deserters. As long as the legal status of conscientious objectors remain as evader or draft evader, they will

²⁹ Pertek AsCM 2017/57, 2018/11.

³⁰ Pertek As CM 2017/119, 2018/44.

³¹ Turkish Criminal Code, Article 58 and Article 53.

³² 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.

³³ Sarıkamış Criminal Court of First Instance. 2017/990 E., 2019/98 K. One month and 20 days imprisonment.

³⁴ Eruh Criminal Court of First Instance, 2021/69 E.; 15.09.2021

continue to be subject to administrative and judicial fines. This is not compatible with the *ne bis in idem* principle. Nevertheless, conscientious objectors feel that their direct applications to international human rights mechanisms that require the exhaustion of domestic remedies, may consider their applications inadmissible if they do not first exhaust domestic remedies - even if it is evident that since the right to conscientious objection is not recognized their claims will not be successful.

Ersan Uğur Gör was given an administrative fine of 25.315 TL in September 2018 (approx. 3.308, € and minimum wage at that time was approx. 265.25 Euro). He applied to the Administrative Court claiming that a) he is a conscientious objector, and his right is protected under the Constitution as well as the ECHR; b) he was already over the age (41) that is determined in the law the age limit of compulsory service; c) because of these two arguments he demanded annulment of the fine. The Court however rejected his case because he needs to open different cases for each of the claims, although all the claims are interrelated, in December 2021 (Sakarya 1st Administrative Court, File n. 2021/1001 E., 1111 K.) He is preparing further lawsuits to raise the issue however he believes that the court would find another reason to reject his case.

Individual complaint to the Constitutional Court does not constitute an effective remedy

With the introduction of the individual application mechanism, conscientious objectors, too, have had this possibility since 23 September 2012. This possibility, however, cannot be considered a general measure to prevent similar violations for two reasons.

First, there is a need for legislative changes that recognize the right to conscientious objection and establish an independent mechanism to receive and process applications.

Secondly, between 2012 and April 2021, at least 45 individual applications have been made by conscientious objectors to the Constitutional Court according to the report of the Association for Conscientious Objection.³⁵ 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 2014.³⁶ 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.

Furthermore, there are more than 47 applications both from Jehovah's Witnesses and anti-militarist conscientious objectors.³⁷ A number of applications from 2015-6, made by conscientious objectors.

³⁸ Some of the applicants have more than one application.³⁹

³⁵ *Supra* 28

³⁶ Constitutional Court, Second Section, 2014/10474 E.

³⁷ Figure taken from the database of the Association for Conscientious Objection.

³⁸ 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.

³⁹ Cemal Karakuş, 2018/35650, 07.12.2018; 2019/42721, 30.12.2019; 2019/42699, 30.12.2019; 2021/34642, 22.10.2021

Arif Hikmet İyidoğan, 2019/20177, 14.06.2019 and 2019/35442, 30.10.2019

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

Although **Davut Erkan**,⁴⁰ who worked as a lawyer, in his application of 2015 and after official records issued against him requested *interim* measures on 23.01.2018 and 02.04.2019, he did not receive any response from the Constitutional Court. Similarly, no response was received in the case of Vedat Zencir, who made an individual application to the court in 2015, requests for interim measures in 2016 following measures taken against him.⁴¹

In the individual application of **Kamil Murat Demir**,⁴² who was apprehended more than 50 times, and in the individual application of **U.G.**,⁴³ who has a deserter status and has been sentenced to imprisonment, the Constitutional Court decided that "there is no serious danger to the life or security or moral integrity of the applicant" without thoroughly examining the applications.

The Constitutional Court is expected to deliver a judgment in line with the ECtHR jurisprudence in order to be considered an effective domestic remedy. In light of its decision on the case of Y.⁴⁴ and its postponement of the applications so far, however, it has not yet functioned as an effective domestic remedy.

The Constitutional Court however delivered some decisions of inadmissibility, *inter alia*, in the application of **Uğur Yorulmaz** whose case is now pending before ECtHR.⁴⁵ Mr. Yorulmaz was dismissed from the job as a consequence of a letter, stating that he a status of "evader", written by the Ministry of Defense. The letter also stated that the employer would be subject to investigation for unlawfully employing an evader. Thus, the employer ended the applicant's contract. In its inadmissibility decision, the Constitutional Court did not address the right to conscientious objection and referred solely to the right to fair trial and found the application manifestly ill founded.

The same objector, **Yorulmaz**, was issued a 59.150 TL administrative fine in August 2021. He objected to the fine claiming that he is an objector before the court however his argument was rejected. Then he made an individual complaint to the Constitutional Court and asked for an interim measure to prevent his bank account from being confiscated. The case is pending however his demand on interim measure was rejected.⁴⁶

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.

⁴⁰ *Supra* 38, 2014/6922

⁴¹ *Supra* 38, 2015/4422

⁴² Constitutional Court, 25 March 2021 and No. 2021/10902 judgment, Section 2, Commission 2.

⁴³ Constitutional Court, 14 April 2020 and No. 2019/42044 judgment, Section 2 Commission 1.

⁴⁴ Constitutional Court, 2018/12409

⁴⁵ Inadmissibility decision on the Individual Application of Uğur Yorulmaz 2018/12409, 30 November Communication of *Yorulmaz v. Turkey*, Application No 32823/2019 14 June 2019.

⁴⁶ Constitutional Court, 2021/64499 E.

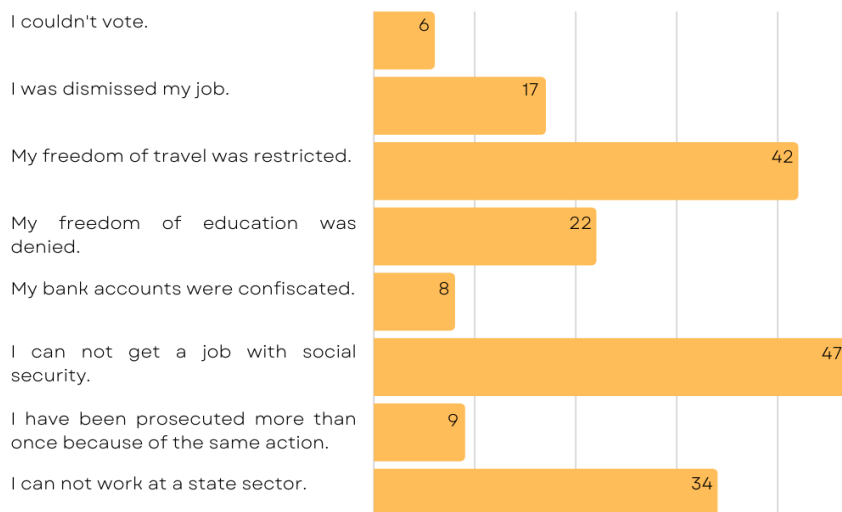
Situation that leads to "civil death"

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

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

The Association for Conscientious Objection and Conscientious Objection Watch⁴⁷ received 61 responses to the survey on the restrictions experienced by men, liable to military service, between March 2021 and March 2022. See below:

Between March 2021-March 2022: 61 responses on the types of restrictions experienced by applicants.



Cycle of prosecutions and penalties

The cycle of prosecutions and penalties is leading to a "civil death" as the ECtHR described it in their *Ulke v. Turkey* 2006 ruling: "the numerous criminal proceedings brought against the applicant, the cumulative effects of the ensuing criminal convictions and the constant alternation between prosecution and imprisonment, together with the possibility that he would face prosecution for the rest of his life, are disproportionate to the aim of ensuring that he performs his military service. They

⁴⁷ Experts from the Association for Conscientious Objection decided to continue the work on monitoring the situation of conscientious objections, after the closure of the Association, as Conscientious Objection Watch from January 2022.

are aimed more at repressing the applicant's intellectual personality, inspiring in him feelings of fear, anguish and vulnerability capable of humiliating and debasing him and breaking his resistance and will. 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."

The ECtHR found this to be a violation of the prohibition on torture and cruel, inhuman or degrading treatment or punishment. This remains a reality for conscientious objectors given the continuing restrictions on a wide range of human rights in addition to the unending cycle of prosecution, trials and fines.

Therefore, conscientious objectors can't exercise some basic human rights as a result of the violation of their right to conscientious objection to military service inherent in their right to freedom of thought, conscience and belief.

Restriction of other human rights

The state of "almost civil death" that the ECtHR has referred to in *Ülke v. Turkey* in 2006 remains a reality for conscientious objectors given the continued restrictions on a wide range of human rights in addition to the unending cycle of prosecution, trials and fines. The Government remains silent to address these issues.

Participation in public affairs and the right to vote

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

It is interesting that even ***Osman Murat Ülke***, who applied to the ECtHR in order to seek remedy to the human rights violations he experienced as a consequence of being a conscientious objector in Turkey, after having won his case in 2006 continues to be subject to restrictions, including on the right to vote. Even though the Turkish authorities are under an obligation to eliminate any consequences of the violation on Ülke, his status in Turkey remains "soldier" and "deserter". Therefore, in accordance with Article 67 of the Constitution, he cannot vote. Before the 31 March 2019 general elections, he received his voter card. However, on the day of the election when he went to vote, he was told that there was a note indicating that he could not vote, and the electoral officers did not allow him to vote.⁴⁸

Another objector came across a stop & check and was taken to the local Military Service Branch in February 2019. Even though he informed the authorities that he is a conscientious objector, the authorities transferred him to the military unit without informing him and recorded him as a "soldier" in the database. He learnt this six days before the elections through a telephone message he received from the provincial election council. Since he had not received the document (*sülüs*) indicating he is a cadet and thus did not yet know he was given a "military person" (*asker kişi*) status, he could not vote, nor could he carry out his role as an electoral observer he had taken on as a member of the political party with which he is affiliated.⁴⁹

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 military

⁴⁸ Interviews conducted by his lawyer Hülya Üçpınar in January 2021.

⁴⁹ Karaca, E., [Vicdani Retçi Asker Diye Kaydedildi Oy Kullanamadı](#), 3 April 2019, Bianet.

service. Since conscientious objectors' status remains as persons who have not fulfilled their military service, they are not eligible to stand for elections.

Freedom of right to movement

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 demonstrated below, a direct consequence of the combination of widespread practice of stop & search and identity checks (GBT) and Article 26 of the Law on Conscription on the tracking of draft evaders and evaders, is that conscientious objectors are subject to stop & search, apprehension and official record is issued against them. To avoid these proceedings conscientious objectors restrict themselves from travelling.

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

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

The General Information Gathering (Genel Bilgi Toplama, GBT) is an identity checking technology that police officers use to access up to date information on persons, including their status related to military service, criminal or suspect records. This is used during identity or passport controls. Furthermore, identity checks at hotels and general searches in intercity bus rides lead to restrictions for conscientious objectors. In residential areas, the police force, and outside of residential areas, the gendarmerie is authorised to stop cars and carry out checks. Such checks are also carried out as a result of information that is mandatory to be provided to the police or the gendarmerie 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 the place of apprehension. At times, because a police officer or a gendarme does not have the official record slip with them this process may take hours. This process could potentially happen in the life of a conscientious objector as many times as he may encounter the police or gendarmerie.

Many conscientious objectors have reported to the Association for Conscientious Objection that they feel compelled to change their lifestyle in order to avoid stop & search practices. Aru and Korkmaz' cases illustrate this well. ***İnan Mayıs Aru*** has lived in different parts of Turkey over the years and was given approximately 30 official records during his travels. He now travels less and lives in a village in the Western Turkey. Still, he says that he is always careful to choose his route in a way so as not to encounter the gendarmerie.⁵⁰ ***Utku Korkmaz*** apprehended from different hotels on different times and he no longer prefers accommodation in hotels that require official check in/registration.⁵¹ Similarly, ***Osman Murat Ülke*** states in the video dated 15 May 2021 that he prefers to make his intercity travels by bike because of stop & checks when travelling by bus or by car.⁵²

⁵⁰ Lawyer Hülya Üçpınar's interview with İnan Mayıs Aru, 7 January 2020.

⁵¹ From his individual complaint to the Constitutional Court, 2016/70638.

⁵² <https://www.youtube.com/watch?v=b9HSmtSmMjc>

As it is shown in the graphic above, **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 42 in a year.** The real number is unknown.

Right to education

Under Article 35 of the Law on Conscription the high-school or university registration of students who have not fulfilled their military service will be postponed until the end of the age of 29. Under specific conditions the age limitation might be prolonged until the end of 38.

Zana Aksu's case illustrates this situation. Aksu has been a conscientious objector since 2012. After successfully passing the 2019 university entrance exam he was offered a place at the Applied English and Translation Department at Siirt University School of Social Sciences. However, he was not allowed to register because he could not provide a document attesting that he did not have a certificate demonstrating that he no longer has military service obligation.⁵³

As a consequence of the "legality" of the regulation, many people do not challenge the administrative decisions of the universities and furthermore they give up trying to register when they reach the age that is stated in the article. Nevertheless, compulsory character of conscription and the lack of legal arrangements for conscientious objection continues to breach the right to education.

The number of people (either draft evader or evader) whose right to education was restricted and who **reported the violation is 8 in a year.** The real number is unknown.

Opportunity to earn one's living

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

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

"Fulfilment of military service" for men is the number one condition in every job advertisement either by the state or the private sector. Compulsory character of military service is one of the basic elements that prevents conscientious objectors from exercising their right to work and earn their living.

For example, in 2016, the employer of **T.K.**, a conscientious objector and software developer, received a notification from the Ministry of National Defence which stipulated that based on the, then in force, Article 93 Law on Military Service and Article 75 of the Military Criminal Law criminal prosecution will be initiated if T.K. failed to report to the military service branch. As a result of T.K.'s failure to comply with the requirements of the notification, his employment contract was terminated within a month. The action was challenged at administrative court however with no result. Consequently, an individual application was made to the Constitutional Court in 2019 which is still pending.

⁵³ Document No. E-3885 dated 26.08.2019.

Uğur Yorulmaz also faced the same proceedings. Since his attempts at domestic level were unsuccessful, he finally applied to the ECtHR in 2019.

The most striking figure in the graphic above is related to the right to earn one's living. The questions regarding "getting a job with social security", "being able to work in the state sector" and "dismissal from the job" address the same right. According to the information provided by the objectors **17 out of 61 are dismissed from the job, 34 out of 61 cannot work in the state sector and 47 out of 61 works without having a social security as a result of compulsory character of military service and the lack of legal arrangements for conscientious objection.** The real numbers are not known.

Right to property

The right to property is protected by the Constitution, article 35 and as all the fundamental rights it can only be restricted by a court decision.

Nevertheless, the administrative fines given to the conscientious objectors, if not paid, result in confiscation of bank accounts by administrative decisions. This is a real threat for the objectors not to receive their salary or have a deposit in the banks. They need to seek remedies, such as using a friend's bank account, or having to pay the fines to continue their lives.

Osman Murat Ülke experienced the same threat and used a friend's bank account for many years. Recently **Zana Aksu's** bank account was confiscated in December 2021 however the confiscation was lifted upon his objection.⁵⁴

Similarly, **bank accounts of 8 out of 61 have been confiscated** as it is shown in the graphic above.

Prohibition of torture, inhuman and degrading treatment and right to respect for private life

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 prohibition of torture, inhuman and degrading treatment as well as right to respect for private life, in particular the protection of the physical and mental integrity of the person. The latter is evident in the interferences in the various human rights highlighted in this submission.

Recommendations

The following section provides practical recommendations to bring Turkey's legislation and practice in line with international human rights standards based on the findings of this submission. It is recommended that;

- conscientious objection to military service be recognized as a constitutional right, without delay, to ensure that legislation on conscientious objection does not come into conflict with other legal regulations and that such regulation is not made open to, possibly restrictive, interpretations of the executive and judicial bodies;
- legislation on conscientious objection to military service should be drafted in compliance with international human rights law as enshrined in the United Nations, the Council of Europe and the European Union human rights instruments;
- an independent and impartial decision-making body to examine conscientious objection claims is established - in compliance with international human right law standards, in

⁵⁴ Communication by lawyer Hülya Üçpınar, 22 January 2022

particular taking into account the requirement not to discriminate between conscientious objectors on the basis of the nature of their religions or belief;

- measures, that are compatible with international human rights law, are taken to provide a mechanism for the conscientious objectors who declare themselves as “total objectors”;
- measures are taken to provide alternative service for those conscientious objectors who request it - various forms of alternative service compatible with international human rights standards;
- key features of the legislation should include the mechanism for determining the status of conscientious objection should be structured accordingly, and that any service that can be provided as an alternative to conscientious objection genuinely civilian in nature, neither deterrent nor punitive and non-discriminatory in effect;
- 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.
- statistics are kept on conscientious objection applications including the number of conscientious objectors, on monetary fines and criminal investigations, and convictions delivered in connection to conscientious objectors and shared with the public.
- measures are taken to ensure that the applicants are free from the risk of further prosecution and obligation of compulsory military service and can fully enjoy their political, civil, economic, social and cultural rights.
- regular training is provided for judges and prosecutors on international human rights obligations pertaining to the right to conscientious objection to military service to help ensure the compatibility of the domestic judicial proceedings with applicable international human rights standards.

To international human rights compliance control mechanisms:

- Keep compliance control of the right to conscientious objection to military service on relevant agenda including the CoE Committee of Ministers, UN Human Rights Committee, UN Special Procedures and the UPR.
- Follow up the implementation of UN HRC Opinion on *Atasoy and Sarkut v. Turkey* and UPR recommendations.

ADMINISTRATIVE AND LEGAL PROCEEDINGS CHART

