ASSOCIATION FOR CONSCIENTIOUS OBJECTION

Briefing paper regarding the OHCHR of Turkey 20th February 2017

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Turkey is the last country in the Council of Europe to recognise conscientious objection to military service. Conscientious objectors face the possibility of a life-long cycle of prosecutions and imprisonment, and a situation of "civil death", which excludes them from the normal social, cultural and economic life.

Failure to legislate for conscientious objection

In October 2012, the United Nations Human Rights Committee stated in paragraph 23 of its Concluding Observations regarding Turkey that it "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)", and recommended, **"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."**[1] It also selected paragraph 23 as one of the three on which the Committee stipulated, "the State Party should provide, within one year, relevant information on its implementation of the Committee's recommendations" [2]

Turkey submitted a follow-up report in July 2014, following a reminder from the Committee. Regarding paragraph 23, however, the response was very brief. "The State party quoted the law regarding compulsory military service and indicated that there are no plans to introduce a civilian alternative to compulsory military service."[3] The Committee's evaluation of this response was in their lowest category: "E: The response indicates that the measures taken are contrary to the Committee's recommendations."[4] The Committee observed: "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."

Turkey has been also under the enhanced supervision of the Committee of Ministers of the Council of Europe concerning five judgements of the European Court of Human Rights (ECtHR) regarding conscientious objection.[5] On 23rd October 2012, the Turkish Government

1 CCPR/C/TUR/CO/1, 2nd November 2012, Para 23

2 ibid, Para 26

3 Draft report on follow-up to the concluding observations of the Human Rights Committee (document ref. CCPR/C/112/2/22), October 2014, p18.

4 Ibid, p. 2

5 Osman Murat Ülke v. Turkey, 39437/98, 24/01/2006; Yunus Erçep v. Turkey, 43965/04, 22/11/2011; Feti

informed the Committee of Ministers of "ongoing discussions of legal amendments" to allow for conscientious objection to military service.[6]

Nevertheless, no legislative steps have followed. The Bill introduced in 2011 by opposition Peace and Democracy Party MP Sebahat Tuncel has disappeared without trace[7]; the official responses by the Ministries of Defence and Justice to a further proposal by Tuncel on 21 May 2012 linked the recognition of conscientious objection to the establishment of a professional army, and stated that this was not on the agenda.[8] Parliamentary questions by MPs Adil Kurt (2013)[9], Husamettin Zenderlioğlu (two in 2013)[10], Mülkiye Birtane (one in 2012 and two in 2013)[11] and Umut Oran (2012)[12] received either no response at all, or an answer that did not address the legislative amendments on conscientious objection or the situation of objectors.

On 5th August 2014, the Ministry of Justice replied to a request from lawyer Davut Erkan submitted through the Turkey Human Rights Institute that no work was in hand to prepare a law on the right of conscientious objection.[13] On 2nd October, the Ministry of Defence replied that nobody is immune from patriotic service within the framework of the Constitution of and the Law on Military Service.[14]

Conscientious objection in Turkey

It is not known how many persons in Turkey have a conscientious objection to military service. A majority of the individual cases that have been taken to the ECtHR under the European Convention on Human Rights, or to the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights, have concerned Jehovah's Witnesses. This may indicate around 30 to 40 Jehovah's Witnesses undergoing prosecution for their refusal of military service at any one time. Jehovah's Witnesses in Turkey have not however in the past published lists and statistics as detailed as for some other countries.

Jehovah's Witnesses have characteristically responded to military call-up by reporting to the military unit as required, but then requesting that they be provided with a civilian alternative service, even though they know there are no provisions in Turkey for this. For most conscientious objectors, however, the lack of provision means that there is no incentive to report, and indeed many fear the consequences of identifying themselves publicly. Public declarations of conscientious objection to military service have been

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Demirtaş v. Turkey, 5260/07, 17/01/2012; Halil Savda v. Turkey, 42730/05, 12/06/2012; Mehmet Tarhan v. Turkey, 9078/06, 17/07/2012, http://hudoc.exec.coe.int/ENG#{"fulltext":["Ülke"],"EXECDocumentTypeCollection":["CEC"],"EXECIdentifier":["004-37268"]}

6 Ucpinar, H. Execution of the Judgment *Ulke v Turkey*: Monitoring report «The right to conscientious objection », IHOP (*Insan Haklari Ortak Platformu* – Human Rights Joint Platform, Istanbul, April 2013.

7 Ibid

8 Ibid

9 http://www.tbmm.gov.tr/develop/owa/yazili_sozlu_soru_sd.onerge_bilgileri?kanunlar_sira_no=124500

10 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

11 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

12 http://www.tbmm.gov.tr/develop/owa/yazili_sozlu_soru_sd.onerge_bilgileri?kanunlar_sira_no=112838

13 Ministry of Justice, General Directorate of Laws, email message ref.no. 94580662/2013-622.01-556/773/6935

14 Response of the Ministry of Defence, ref.no. 46987865-5010-1463-14/ASAL D.Er İşl.Ş.Özl.İşl.Ks.

posted on the website of the Association for Conscientious Objection by 261 men who are liable for military service,[15] but countless others whose objection to military service is based on religious, ethical, moral or humanitarian grounds have simply joined the vast numbers of "evaders" who have never reported for military service – 590,000 according to the Ministry of Defence; 800,000 according to the Turkish Institution of Statistics.[16]

Reluctance to implement the ECtHR judgements

First Degree Courts[17]

The Turkish Government took another step to justify its attitude neither to protect the rights of the conscientious objectors nor to implement the judgements given by the ECtHR.

According to the information provided by the Government to the CoE Committee of Ministers regarding the judgments under enhanced supervision under the name of Ulke vs. Turkey case on 16 June 2015;

The criminal case brought against Feti DEMiRTAŞ on 1 November 2006 for the offence of persistent disobedience of orders was still pending before the Izmir Air Force Command Tribunal.

The applicant Ersin OLGUN is still a candidate for appointment as a reserve officer. He was summoned to military service in February 2015 and there is no investigation or prosecution currently being conducted against him before the military jurisdiction. As a result of the investigations conducted in respect of the applicant by the Izmir Chief Public Prosecutor's Office for the offence of draft evasion - namely failure to attend roll-call in seven days - sixteen proceedings were brought against him. In thirteen of these proceedings, a judicial fine of 7,850 Turkish liras (TRY) in total was imposed on him.

Nevzat UMDU The judicial fine (TR Y 2,22) which was imposed on him for his other acts was upheld by the Court of Cassation.

There are two pending case files in respect of Barış Gormez before the Isparta Military Court of Commando Headquarters for two offences. One is persistent disobedience of orders and the other one is persistent disobedience of orders with a view to being relieved from a duty. The decision of acquittal rendered within the scope of these files was quashed by the Military Court of Cassation. Upon the decision of insistence of the first-instance court, the files were transferred to the Military Court of Cassation for an appellate review. As a result of the proceedings conducted by the Military Court upon the quashing decision of the Military Court of Cassation, a decision on the applicant's acquittal was issued at the hearing dated 20 April 2015. The reasons for the decision in question have not been drawn up yet and the decision has not become final. Within the context of civil and criminal jurisdiction, the applicant was tried by the closed 31st Chamber of the Istanbul (Anadolu) Magistrates' Court for the offence of draft evasion, namely failure to attend roll-call in seven days, and a decision on suspension of the pronouncement of the judgment was rendered

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15 This is the number of the objectors declared their objection in conjunction with the Association for Conscientious Objection; http://vicdaniret.org/category/retaciklama/

16 http://www.cumhuriyet.com.tr/haber/egitim/64407/Binlerce_ogrenciye_kotu_haber.html
http://haber.stargazete.com/politika/asker-kacaklari-icin-polis-tum-yollari-kapadi/haber-809100

17 https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804aa7d4

The criminal case brought against Mehmet TARHAN on 15 June 2005 with the allegation that he committed the offence of "persistent disobedience of orders in front of other soldiers with a view to being entirely relieved from a duty". On 10 February 2015, the Sivas Military Court sentenced the applicant to one year and three months' imprisonment. The prison sentence imposed on the applicant was commuted to a judicial fine of TRY 9,000.

Upon the annulment of the Court of Appeal the case is still pending before the first-degree court.

Constitutional Court

Given the lack of any steps to improve the legal status of conscientious objectors, a number of objectors have applied to the Constitutional Court.

Among others, Osman Murat Ülke applied to the Constitutional Court on 2 June 2014[18] for the implementation of the decision given by the ECtHR on 24 January 2006. Despite the 2.5 years that had passed since the submission, the only proceeding is the response from the Government rejecting Ulke's victim situation and replying that '… in the judgment finding violation, the process relating to general measures to be taken beyond the applicant's personal situation has not been finalized yet.'[19]

Recep Bulan had submitted to the Ministry of National Defence to inform them that he is an objector and would never join the army on 21st November 2016. Upon the response from the Ministry saying that there is no exemption from military service he applied to the Constitutional Court for the annulment of arrest warrant against him and requested a legal status as being conscientious objector on 11st January 2017.[20]

Davut Erkan[21], Vedat Zencir[22], Muhammed Cihad Saatcıoğlu[23], Utku Korkmaz[24] and Recep Bulan made individual applications directly to the Constitutional Court against the fines issued against them regarding not being enlisted and requested a legal status as being conscientious objectors.[25]

Nevertheless the Constitutional Court hasn't reached any conclusion even though the first applications were submitted in 2014.

The recent legal situation

Legal provisions regarding conscription

As there are no provisions for conscientious objection, objectors remain subject to the Law on Military Service, Article 3 of which divides military service into a draft period, active service and the reserve. The draft period starts from the beginning of military [eligibility] age and continues until the time of entry into a unit; the normal duration of active military service is twelve months, and is followed by reserve service until the age of 41. However,

18 Osman Murat Ulke, Constitutional Court Second Section, File no: 2014/10474

19 https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804a740c

20 File number hasn't delivered yet

21 2014/6922

22 2015/4422

23 2016/10697

24 Applied on 26.12.2016 , the file number hasn't delivered yet.

25 Applied on 11.01.2017, the file number hasn't delivered yet.

there is no definition of the age of eligibility for active military service, and in practice no upper age limit on when one may begin or complete the requirement.

As soon as a person arrives at a military unit, whether by consent or forcibly, he acquires the status of a soldier, and becomes subject to military law, military charges and punishments. If he leaves the unit without permission he is defined as a deserter and subject to imprisonment between for one to three years in accordance with the art.66 of the Military Penal Code. The same applies to those who do not return to their units after a short period of legal leave, or after a release from the prison.

A conscientious objector who has been forcibly recruited, or who developed an objection after recruitment, may refuse to co-operate with the military authorities and will then face imprisonment of between three months and a year, on charges of disobeying orders. Under certain conditions this imprisonment could be increased to five years.

In either case, the cycle of prosecution and imprisonment may potentially continue for life unless the person finishes his military service. It should be noted that any period spent in prison is not included in the period of military service.

Vedat Zencir, who in 1989 had been one the first two declared conscientious objectors in Turkey, was on 22 October 2014 at the age of 51 apprehended by the police and brought to the local Conscription Office.

Likewise, Ali Fikri ISIK, who declared himself a conscientious objector when arrested in 2012 on desertion charges at the age of 54, served six months in prison in 2012 and 2013 following four separate convictions for desertion, as each time on release he was ordered to report to his military unit, but each time did not.

Three of the five objectors concerned in the judgements by the European Court of Human Rights have subsequently been found by the military authorities to suffer from "a psycho-social disorder rendering them permanently unfit for military service". Two others, Osman Murat Ülke - who was described by the ECtHR in 2006 as living under a state of "civil death" which constituted cruel, inhuman and degrading treatment in violation of Article 3 of the European Convention on Human Rights[26] - and Mehmet Tarhan, in whose case the ECtHR in 2012 found a similar violation (along with violations of Article 6 – Fair Trial and Article 9 – Freedom of Religion or Belief) remain subject to the requirement to perform their military service, are formally classified as deserters, and thus the situation of "civil death" continues; they must avoid any dealings with the police or public authorities, which might automatically trigger fresh prosecutions.

Criminalisation of the COs

Objectors are criminalised as "evaders", or as "deserters" if they have ever been nominally incorporated in the army.

According to Article 47 of the Law on Military Service, evaders identified by the Ministry of Defence and recruiting offices and the Ministry of Interior and the highest civilian authority of the district are respectively notified. When an evader is apprehended by the police or the gendarmerie he must be sent to the nearest recruiting office within 24 hours.

There is no domestic remedy to challenge this procedure.

[26] Osman Murat Ülke v. Turkey, 39437/98, 24/01/2006; Yunus Erçep v. Turkey, 43965/04, 22/11/2011

Administrative fines

Evaders are penalized by administrative fines in accordance with art.89 of the Law on Military Service; the amount varies in relation with the duration of the evasion.[27] If an evader still does not report for military service, he is prosecuted in accordance with art.89 and tried by Peace Courts in accordance with art.63 of the Military Penal Code. A delay of more than four months in reporting for military service results in a sentence of between four and twelve months imprisonment; if the delay is more than a year the sentence can range from six months to 36 months. Unless the person decides or is forced to serve arrest warrants continue to be issued and he will be prosecuted each time he is arrested.

Many simple "evaders" proceed to perform military service once apprehended, but conscientious objectors persist in their refusal, and thus face the risk of vicious circles of arrests, prosecutions, criminal cases and imprisonment.

Muslum Kılıc was fined 10.696 TL on 23 September 2013, Gunce Ozberk 12.325 TL on 4 September 2014 and Devrim Yucel 13.542 TL on 24.04.2014. Muhammed Cihad Saatcıoğlu Utku Korkmaz was fined 128 TL twice on 29 June 2016 and again on 31 August 2016.

De facto punishments for the COs

Concerning freedom to work

Since December 2016, following the directives from the Ministry of Defence, the military recruiting offices have been sending letters to employers with the aim of ensuring that evaders working in the private sector will have to register for conscription.

The letters are issued based on the Art. 93 of the Military Law[28] and the Article 75 of the Military Penal Code[29].

The current examples[30] show that the employers take these notifications seriously and demand their employees to register for conscription in 15 days. If the employees do not register, they are dismissed either immediately or following a second letter from their military recruitment offices.

Also, because these dismissals are based on Art. 93 of the Military Law and Article 75 of the Military Penal Code, i.e. they have a legal basis, employers operate on the basis of "rightful termination", and they do not pay any compensation.

The Law on Civil Servants, Art. 48/5 also prohibits the men who haven't performed their military service to work at public sector.

Uğur Yorulmaz *was notified by the company he had been working for that he had to go to the conscription office for his official procedures regarding military service on 12th December 2016. He refused to sing the written notification saying that he is an objector. Two days later, on 14th December 2016, the company issued a notification that he was fired from the job on the basis of rightful termination referring the Art.75 of the Military Penal Code.*

He applied to the Military Administrative High Court on 9th February 2017 for the annulment of the administrative action and also claimed the related legal provisions are in contradiction with the Constitution and international human rights instruments.

Timuçin Kızılay, *a CO, also experienced a similar situation and applied to Military Administrative High Court on 25th January 2017.*

[27] http://www.resmigazete.gov.tr/eskiler/2011/04/20110414-1.htm

[28] Art. 93 of the Military Law dictates that "who intentionally employs draft evaders and deserters in the public or private sector is to be punished according to Military Penal Code".

[29] According to the article, it is a criminal offence to employ an "evader" in public or private sector, and that if this is the case, the employer can be imprisoned from 3 months to 7 years.

[30] Pls see the box.

As a result of these regulations the COs do not have any possibility to work in the legal system, instead, have to work illegally and under degrading conditions.

Another result is the impossibility of joining the social security system. The COs have no possibility to resume their registration in the social security system and they are not covered against possible health situations and can't even imagine to retire one day. Therefore they do not have access to public service on an equal basis with other citizens.

Current practices of Art. 93 of the Military Law and the Article 75 of the Military Penal Code create a situation in which COs cannot enjoy their civil rights as the other citizens, which the ECtHR described as 'civil death' in Ulke/Turkey judgement[31], amounting to a punishment.

Conscientious objectors are forced or intimidated into withdrawal from social, political and economical lives. COs do not have the possibility to enjoy their economic freedoms on an equal basis with other citizens.

Concerning other freedoms

The dangers of apprehension of the COs and evaders have significantly increased in recent years as a result of the general information gathering system. This system also enables evaders, including conscientious objectors, to be immediately identified while carrying out transactions at banks, airports, health institutions, etc.

Ercan Aktaş, one of the founders of the Association for Conscientious Objection, was first apprehended in a hotel in Urfa on 20 August 2014 and released after signing an arrest warrant. Later he was also apprehended in a hotel in Ankara, and same procedure was repeated. Last time while he was in the Passport Department of Besiktas Police Quarters he was subjected to the same procedure.

Other conscientious objectors were also apprehended as a result of their record within the General Database Collection system: Dogan Özkan when he was at the Besiktas Police/Passaport Department on 14th April 2014; M. Lutfu Ozdemir from the hotel he was staying in Bursa on 16th March 2014; Murat Demiroglu from the hotel he was staying in Adana first time on 12th May 2014 and second time on 30 June 2014, Hüseyin Civan at the Beyoğlu Police/Passaport Department on 13 February 2015, İnan Mayıs Aru at the Fethiye Police/Passaport Department 28th August 2015, Hüseyin Civan at the Buca F Type Prison while visiting a prisoner on 9th December 2015.

Utku Korkmaz, one of the members of the Association for Conscientious Objection was apprehended on 15th March, 18th March and 26th March 2016, each time at 6 am in hotels in different cities. He was released after signing arrest warrants.

Suggested questions and recommendations

What action is the State under Review taking in order to implement the concluding observations and views of the Human Rights Committee and the verdicts of the European Court of Human Rights with regard to conscientious objection to military service?

We recommend that:

That the State under Review adopt without delay legislation making provision for conscientious objectors to military service.

[31] 39437/98

That the State under Review cease forthwith the practice of repeated prosecution and punishment of persons who have refused on grounds of conscience to perform military service.

That the State under Review progressively repeal all the legislative provisions which discriminate in civilian life against those who have not completed military service.

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