



# Conscience and Peace Tax International

Internacional de Conciencia e Impuestos para la Paz

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## UPR SUBMISSION

## TURKEY

MAY 2010

1. This submission was prepared in October 2009 on the basis of the latest information available to CPTI.

### **Executive summary:**

2. This submission focusses on the situation regarding military service and conscientious objection to military service in Turkey. Among the human rights concerns it identifies are:

3. Conscientious objection to military service is not recognised in law or practice – a breach of Article 18 of both the Universal Declaration on Human Rights (UDHR) and of the International Covenant on Civil and Political Rights (ICCPR), to which Turkey is party.

4. Conscientious objectors who refuse to perform military service, although civilians have been treated as though they had been enlisted in the armed forces and are put on trial before military courts under military law. They are routinely sentenced to detention in military penal facilities; this detention is arbitrary, as it results from the exercise of the right to freedom of thought, conscience and religion guaranteed under Article 18 of the UDHR and the ICCPR.

5. On release from detention, conscientious objectors are subject to repeated call-up to perform military service. Continued refusal frequently results in repeated periods of detention. This is tantamount to repeated punishment for the same “offence”, in clear breach of the “*ne bis in idem*” principle, and hence of Article 14 of the ICCPR. Moreover, in so far as the practice has the obvious purpose of persuading the objector to abandon his position of conscience and agree to perform military service, it constitutes a further breach of Article 18.

6. Conscientious objectors, along with others who have not performed military service or been exempted by the military authorities, suffer severe and continuing civic disabilities. The resulting situation, which has been described by the European Court of Human Rights as “civil death”, has been categorised by that Court as “cruel, inhuman or degrading treatment” under Article 3 of the European Convention on Human Rights and Fundamental Freedoms; on the same reasoning, it constitutes a breach of Article 7 of the ICCPR.

**7. There have been numerous reports of the physical mistreatment of conscientious objectors within military detention facilities in breach of Article 7 of the ICCPR.**

**8. Reporting on the concept of conscientious objection to military service, on the international standards and national practices in other countries for accommodating it and on anything to do with those who have declared themselves conscientious objectors in Turkey is stifled because of the fear of prosecution under Article 318 of the Criminal Code, “alienating the people from the armed forces” - a breach of Article 19 of the UDHR and ICCPR.**

**Military Service in Turkey: failure to recognise the right of conscientious objection**

9. Turkey maintains a system of obligatory military service, to which all male citizens are liable from the age of 19. The upper age limit is sometimes cited as 41 but there is in practice no limit to the age at which a man in Turkey can be called up to military service, as illustrated by the case *Taştan v. Turkey*, decided by the European Court of Human Rights on 4th March 2008, which concerned an applicant who, having previously benefited from an occupational exemption as a shepherd, was called up to perform military service on his retirement from that occupation at the age of 71.

10. There is no provision for conscientious objection to military service. Turkey's failure to bring in legislation to provide for this human right has been repeatedly criticised in the annual reports of the Commission of the European Communities<sup>1</sup>, and by the Committee of Ministers of the Council of Europe.

**Prosecution and sentencing of conscientious objectors under military law**

11. Conscientious objectors to military service are liable to prosecution under Article 63 of the Military Penal Code for the offences of *Yoklama kaçağı* and *Bakaya*. The former applies to those who, without providing a valid excuse, fail to register with the military authorities; the latter to those who, once registered and whether or not assigned a number, fail to respond to the call up to perform military service or go missing before reporting to their unit. On other occasions the specific charges laid against conscientious objectors have been under Articles 87 or 88 of the Military Penal Code for refusal to take the military oath, to wear a uniform or to obey orders.

12. In almost all such cases the alleged offence takes place, almost by definition, before the person concerned becomes a member of the armed forces. As he is therefore still a civilian, it is not appropriate that he should be subjected to military justice and detained in military prison – a principle stated in the study on “The issue of the administration of justice through military tribunals”, prepared for the UN Sub-Commission on the Promotion and Protection of Human Rights by Emmanuel Decaux.<sup>2</sup>

13. The European Court of Human Rights, in the case of *Ülke v Turkey*, noted “that there is no specific provision in Turkish law governing penalties for those who refused to wear uniform on conscientious or religious grounds. It seemed that the relevant applicable rules were provisions of the military penal code which classify as

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<sup>1</sup> Most recently in: Commission of the European Communities, Enlargement Strategy and Main Challenges 2009-2010, Turkey Progress Report 2009, para 2.2, Human Rights and the Protection of Minorities, “Observance of international human rights law”, 14<sup>th</sup> October 2009, p14.

<sup>2</sup> E/CN.4/Sub.2/2005/9, para 19.

an offence any refusal to obey the orders of a superior officer. That legal framework is evidently not sufficient to provide an appropriate means of dealing with situations arising from the refusal to perform military service on account of one's beliefs.”<sup>3</sup>

14. There have been various reports that Turkey is contemplating legislation to address this and other specific findings of the European Court of Human Rights, but which would still fail to recognise the right of conscientious objection to military service.

#### Imprisonment and repeated imprisonment of conscientious objectors

15. The most numerous instances of imprisonment of conscientious objectors to military service in Turkey have concerned Jehovah's Witnesses, dating back at least to 1975.<sup>4</sup> Three applications by Jehovah's Witnesses<sup>5</sup> regarding the failure to recognise their conscientious objection to military service are currently pending before the European Court of Human Rights.

16. Turkish practices with regard to military recruitment were however first brought to international attention in the case of Osman Murat Ülke who did not claim religious grounds but, when called up in August 1995, publicly declared himself to be a conscientious objector because, to use his own words, he did 'not want to kill people'. For this in January 1997 he was sentenced to six months' imprisonment and a fine. Between March 1997 and November 1998 he was convicted on eight occasions of 'persistent disobedience' on account of his refusal to wear military uniform, and on two separate occasions of desertion, because he had failed to rejoin his regiment. In total, [he] served 701 days of imprisonment.

17. This case was first referred to the Working Group on Arbitrary Detention, which found all except the very first detention to have been arbitrary “having been ordered in violation of the fundamental principle non bis in idem,”<sup>6</sup> “since, after the initial conviction, the person exhibits, for reasons of conscience, a constant resolve not to obey the subsequent summons, [...] there is “one and the same action entailing the same consequences and, therefore, the offence is the same and not a new one”.<sup>7</sup> This interpretation was subsequently endorsed by the Human Rights Committee in General Comment 32.<sup>8</sup>

18. In Opinion No. 16/2008, concerning another Turkish conscientious objector, Halil Savda, and in the light of the Human Rights Committee's View in the cases of *Mr. Yeo-Bum Yoon and Mr. Myung-Jin Choi v Republic of Korea*<sup>9</sup>, the Working Group on Arbitrary Detention not only found that repeated sentences for the refusal to perform military service constituted arbitrary detention, but stated "In the view of the Working Group, it has been established that the limitations on Mr. Savda's right to freedom of religion or belief as a genuine conscientious objector is not justified in the present case, and is, thus, in violation of article 18 of the Universal Declaration of Human Rights and of article 18, paragraph 1 of the ICCPR." Accordingly, they found the criminal prosecution, sentencing and deprivation of liberty of Mr. Savda for

<sup>3</sup> European Court of Human Rights, Chamber Judgement, Second Section, *Ülke v Turkey* (Application no. 39437/98) 24 January 2006, para 61.

<sup>4</sup> Horeman, B. & Stolwijk, M., Refusing to bear arms, (War Resisters International, London), 1998.

<sup>5</sup> Applications 43965/04, 5260/07 and 14017/08.

<sup>6</sup> Working Group on Arbitrary Detention, Opinion No. 36/1999, op cit, para 10

<sup>7</sup> Ibid, para 9.

<sup>8</sup> CCPR/C/GC.32, 23 August 2007, Section IX “NE BIS IN IDEM”, paras. 54, 55.

<sup>9</sup> CCPR/C/88/D71321-1322/2004, 23<sup>rd</sup> January 2007.

holding and manifesting his belief and conscience to be arbitrary under Category II of their terms of reference, ie. that "the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by [article 18] of the Universal Declaration of Human Rights and [...] the International Covenant on Civil and Political Rights."

19. Meanwhile, the Ülke case had been referred to the European Court of Human Rights, which found that "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 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."<sup>10</sup> The Court accordingly found for the applicant under Article 3 of the European Convention (cruel, inhuman or degrading treatment) without proceeding to consider whether the facts constituted breaches of further articles of the Convention.

20. Turkey has failed to implement the judgement of the European Court of Human Rights; indeed in July 2007 Ülke was summonsed to report to serve the sentence for one of the convictions concerned. This summons has not been revoked.

21. At the September 2009 meeting of the Committee of Ministers of the Council of Europe "The Deputies, 1. observed with grave concern that, despite the Committee's repeated calls on Turkey and two interim resolutions already adopted, tangible information has still not been provided by the Turkish authorities on the urgent measures required in this case; 2. invited the Chair of the Committee of Ministers to convey the preoccupation of the Committee through a letter to be addressed to his Turkish counterpart; and 3. decided to resume consideration of this item at their 1072nd meeting (December 2009) (DH), in light of the reply by the Turkish Minister of Foreign Affairs to the letter of the Chair of the Committee."

#### Restrictions on the civil rights of those who have not performed military service

22. Male Turkish citizens who have not performed military service are unable to undertake any activities which require documentation from the state. This includes obtaining a passport, travelling abroad, opening a bank account or owning property. Any interaction with the authorities, eg. routine traffic checks, and of course any attempt to travel abroad may result in their being detained and delivered to the military authorities. In the case of Ülke, the European Court of Human Rights noted "He is wanted by the security forces for the execution of his sentence and is currently in hiding. He is no longer active in the association or in any other political activity. He has no official address and has broken off all contact with the authorities. He has been accommodated by his fiancée's family. He has been unable to marry her legally or to recognise the son born to them."<sup>11</sup> and it concluded "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."

#### Maltreatment of conscientious objectors

23. Most conscientious objectors who have been detained in Turkey have reported physical mistreatment.

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<sup>10</sup> European Court of Human Rights, *Ülke v Turkey*, op.cit., para 62.

<sup>11</sup> Para 41

24. There is reason to suspect that in at least one instance the mistreatment was instrumental in forcing the recantation of a belief based on conscience. Ismael Saygi, first declared his conscientious objection in November 2006 while on leave after having served seven months of military service, was detained in June 2008 and met with his lawyer while on his way to military hospital as a result of injuries suffered at the hands of fellow-inmates with the connivance of the prison authorities, and told him that he was withdrawing his declaration of conscientious objection and that after serving his sentence for desertion he intended to complete his military service.

25. The European Union noted in its 2009 report that “Counter-cases are frequently initiated by law enforcement bodies against persons who allege torture or ill-treatment. Such legal proceedings might result in deterring complaints.”<sup>12</sup> This was the experience of Mehmet Bal. Following the dismissal of his complaint that he had been beaten while in custody, proceedings were launched against him under Article 301 of the Criminal Code for allegedly insulting the military.

26. The case of Mehmet Tarhan, a gay conscientious objector who was repeatedly imprisoned in 2005 and 2006 and is now in hiding subject to a 25-month sentence for desertion, not only involved repeated physical abuse at the hands of fellow inmates, unchecked when not actively encouraged by the prison authorities, including forcible hair-cuts, being stripped and put in uniform, but also by the threat of singularly humiliating systemic abuse. Ignoring his declared conscientious objection, the military authorities insisted that he should be found unfit for military service on the grounds of his homosexuality, a dishonourable discharge with a pejorative title usually translated into English as the “rotten report”. For this purpose either filmed evidence of the person engaging in homosexual activity or an intrusive physical examination is required.

#### Restrictions on reporting conscientious objection

27. In response to representations from the European Union, Article 155 of the Turkish Criminal Code entitled “alienating the people from the armed forces” was with effect from 1<sup>st</sup> July 2005 replaced by a new Article 318. The substantive wording and the interpretation have not however changed. In particular, the penalties of imprisonment of between six months and two years stipulated under the article are to be increased by half if the offence is committed through the media, giving a strong incentive to self-censorship of any reporting bearing on this aspect of the freedom of religion or belief. In June 2007 Article 318 was brought within the compass of the Turkish Anti-Terror-Code, with a further 50% increase in the possible penalties.

28. The European Commission's 2009 progress report noted that “Public statements on the right to conscientious objection have led to convictions.” Prosecutions brought under Article 318 have particularly targeted journalists, including Perihan Magden, who was eventually acquitted in a case concerning an article entitled “conscientious objection is a human right”, published in *Yeni Aktuel* on 27 December 2005, and Birgul Ozbaris, who, faced with seven separate charges regarding reports in the newspaper *Ozgur Gundem* between May 2005 and April 2006, was forced to flee the country. Conscientious objector Halil Savda was threatened with prosecution under Article 318 for reading out a solidarity statement with Israeli conscientious objectors in front of the Israeli consulate in Istanbul.

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<sup>12</sup> Commission of the European Communities, Turkey Progress Report 2009, op cit, “civil and political rights” p.17