

Executive summary:

This submission focusses on the situation regarding conscientious objection to military service in Turkey.

Conscientious objection to military service is not recognised in law or practice – a violation of Article 18 of the International Covenant on Civil and Political Rights (ICCPR), and Article 9 of the European Convention on Human Rights and Fundamental Freedoms (ECHR), to both of which Turkey is party.

Conscientious objectors are liable to imprisonment for their refusal to perform military service. On release they remain liable for military service, and be called up again, leading to repeated conviction and imprisonment. 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.

Conscientious objectors who have not performed military service suffer severe and continuing civic disabilities, a situation which has been described by the European Court of Human Rights (ECtHR), as “civil death”, and categorised by that Court as “cruel, inhuman or degrading treatment” under Article 3 of the ECHR.

Reporting on conscientious objection to military service, is stifled because of the fear of prosecution under Article 318 of the Criminal Code, a violation of Article 19 of the ICCPR

1 This submission was prepared in June 2014 on the basis of the latest information available.

2 In the first cycle of the Universal Periodic Review, although the question of conscientious objection to military service had featured in stakeholder submissions,¹ no questions were asked nor recommendations made on this subject.

3 Since the review of Turkey on 10th May 2010, the ECtHR has delivered judgements on five cases involving eight Turkish conscientious objectors, and the Human Rights Committee has issued its Views on Communications received under the First Optional Protocol to the ICCPR from two others. The Human Rights Committee has also considered the Initial Report of Turkey under the ICCPR.

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

4 Turkey 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. The duration was recently reduced from 15 to 12 months.

¹ See paragraphs 45 – 48 of the summary of stakeholder information (A/HRC/WG.6/8/TUR/3, 17th February 2010)

5 There is no provision for conscientious objection to military service.

6 Following its consideration of the Initial Report of Turkey under the ICCPR, the Human Rights Committee stated:

“The Committee is concerned that conscientious objection to military service has not been recognized by the State party. The Committee regrets that conscientious objectors or persons supporting conscientious objection are still at risk of being sentenced to imprisonment and that, as they maintain their refusal to undertake military service, they are practically deprived of some of their civil and political rights such as freedom of movement and right to vote.

“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.”²

7 This recommendation was one of three on which the Committee requested that “the State party should provide, within one year, relevant information on its implementation”.³ No “follow-up” report from the State has yet been made public.

8 In fact, Turkey has since moved away from legislating to recognise conscientious objection.

9 In April 2013, the Turkish Parliament adopted the Fourth Judicial Reform package, as part of the programme to align its legislation with the jurisprudence of the European Court of Human Rights. The initial draft had included provisions creating non-military national service options, but these were missing from the final version. European Union enlargement Commissioner Stefan Füle subsequently issued a statement in which while welcoming the package as a whole he regretted the lack of progress on the issue of conscientious objection.⁴

10 Similarly the “Parliamentary Constitution Conciliation Commission”, tasked with drafting a replacement to the 1980 Constitution, discussed the question of conscientious objection to military service at its meeting on 22nd November, 2012, but failed to reach consensus.

Imprisonment and repeated imprisonment of conscientious objectors

11 In the case of conscientious objector Osman Murat Ulke, who had been convicted on eight successive occasions for refusing to perform military service, the Working Group on Arbitrary Detention found all except the very first detention to have been arbitrary “having been ordered in violation of the fundamental principle non bis in idem,”⁵ “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. [...] Systematically to interpret such a refusal as being perhaps provisional (selective) would, in a country where the rule of law prevails, be tantamount to compelling someone to change his mind for fear of being deprived of his liberty if not for life, at least until the date at which citizens cease to be liable to military service.”⁶ Subsequently, in the case of Halil Savda, the Working Group developed the logic further, finding that “the criminal

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

³ Ibid, para 26.

⁴ « Turkey's judicial reform falls short on conscientious objection : EU Commissioner », Hurriyet, 12th April, 2013

⁵ Working Group on Arbitrary Detention, Opinion No. 36/1999, op cit, para 10

⁶ Ibid, para 9.

prosecution, sentencing and deprivation of liberty of Mr. Savda for holding and manifesting his belief and conscience is arbitrary," being in violation of Article 18.1 of the ICCPR, and therefore that each period of detention he had suffered for his refusal of military service had been arbitrary, including the first one.

12 Ulke applied also to the ECtHR alleging violations of numerous Articles of the ECHR. The Court found a clear violation of Article 3 (cruel, inhuman or degrading treatment), and decided that it therefore need not consider whether "the imposition of such sanctions on conscientious objectors to compulsory military service may in itself infringe the right to freedom of thought, conscience and religion guaranteed by Article 9.1"⁷

13 Since the previous Review of Turkey under the UPR, the ECtHR has addressed conscientious objection to military service under Article 9, first in *Bayatyan v Armenia*,⁸ and subsequently in a number of cases involving Turkey itself. In November 2011 it found that Turkey's treatment of conscientious objector, Yunus Ercep, constituted a violation of Article 9.9 It also found that there had been a violation of Article 6 (right to fair trial) in that Ercep, a civilian, had been tried "before a court composed exclusively of military officers, charged with offences relating to military service".

14 In January 2012, in the case of Feti Demirtas¹⁰, like Ercep a Jehovah's Witness and conscientious objector, the ECtHR ruled, following *Bayatan v Armenia*, there had been a violation of Article 9 and, following *Ulke v Turkey*, a violation of Article 3 (cruel, inhuman and degrading treatment). It also followed the precedent set in *Ercep v Turkey* in finding a violation of Article 6 in that a conscientious objector had been tried and convicted before a military tribunal, this notwithstanding the fact that, unlike Ercep, Demirtas had been actually incorporated into the army, although against his will.

15 Violations of Articles 3, 6, and 9 of the ECHR were subsequently found by the ECtHR also in the case of Halil Savda,¹¹ and violations of Articles 3 and 9 in the case of Mehmet Tarhan.¹² In finding a violation of Article 9, in these cases, the Court was not dissuaded by the fact that neither Savda nor Tarhan cited religious grounds for his conscientious objections.

16 On 3rd June 2014, the ECtHR issued a further judgement in the linked cases of four Jehovah's Witness conscientious objectors.¹³ In all four, it found a violation of Articles 3 and 9 of the ECHR, and in the case of Baris Görmaz, who had been convicted by a military court, also a violation of Article 6.

17 Meanwhile, two Jehovah's Witness conscientious objectors had brought a Communication to the Human Rights Committee under the Optional Protocol to the ICCPR.¹⁴ The Committee was

⁷ European Court of Human Rights, Final judgement, Case *Ulke v Turkey* (Application No. 39437/98), Strasbourg 24th January 2006, para. 53.

⁸ European Court of Human Rights, Grand Chamber, Case of *Bayatyan v Armenia* (Application no. 23459/03), Judgment issued on 7th July 2011

⁹ European Court of Human Rights, Deuxième Section, *Affaire Ercep v Turquie* (Requête n° 43965/04), Arrêt, 22 novembre 2011 (full text available in French only)

¹⁰ European Court of Human Rights, Case of *Feti Demirtas v Turkey*, Application No. 5260/07, Chamber Judgment of 17 January, 2012

¹¹ European Court of Human Rights, Case of *Savda v Turkey* (application no. 42730/05), Chamber Judgment of 12th June, 2012

¹² European Court of Human Rights, Case of *Tarhan v Turkey* (application No. 9078/06). Chamber judgment of 17th July 2012.

¹³ European Court of Human Rights, Deuxième Section, *Affaire Buldu et autres v Turquie* (Requête n° 14017/08), Arrêt, 3 juin 2014 (text available in French only)

¹⁴ Human Rights Committee, Views adopted on Communications 1853/2008 and 1853/2008, *Atasoy & Sarkut v*

unanimous in finding a violation of Article 18 of the CCPR (freedom of thought, conscience, and religion). The majority, and two of the concurring individual opinions appended to the decision, followed the precedent set the previous year in *Jeong et al v Republic of Korea*,¹⁵ in finding that the right of conscientious objection was inherent to the right to freedom of thought, conscience and religion; a further concurring opinion signed by four members of the Committee held that it should be seen as a manifestation of that right, following the reasoning in the earlier decision on *Yoon & Choi v Republic of Korea*, but that, nevertheless, “the State party has not identified any empirical reasons why its refusal to accommodate conscientious objection to military service would be necessary for one of the legitimate purposes listed in the Covenant.”¹⁶

18 One of the authors of the Communication was informed in December 2012, in a reply from the Ministry of Justice to his petition asking for implementation of the Committee's Views, that “By the change of the related regulation on 31.03.2011, the crime of evasion of enlistment (*bakaya*) was converted to administrative pecuniary penal fine from penalty limiting freedom.” However, the letter continues, “In addition, based on the article 89 of the Military Service Law numbered 1111, after the decision concerning the administrative pecuniary penal fine becomes certain without any acceptable excuse about those committing the crime of evasion of enlistment, they will be penalized by imprisonment sentence.”

19 Various sources confirm that most cases of refusing the call-up to military service are now heard in the civilian courts which in the first instance generally impose fines rather than sentences of imprisonment. Conscientious objectors are however still not spared repeated call-ups and prosecutions, with the ultimate threat of imprisonment, some instances of which still occur.

20 In February 2013, the European Association of Jehovah's Christian Witnesses reported to the Committee of Ministers of the Council of Europe that one of their members, Ilker Sarialp, was continuing to receive a fresh call-up to military service three times each year, and each time was indicted when he refused on the grounds of conscientious objection.¹⁷ Proceedings against at least two of its members, Canar Palandokenler and Sami Pekar, had not yet been closed.

21 Also in February 2013 Ali Fikri Isik was sentenced to 15 months' imprisonment on a charge of “desertion” relating to his refusal on grounds of conscience of his call-up to military service in 1993.

22 Protestant Pastor Kerem Koc, who was called up to military service in November 2012, declared his conscientious objection in a letter to the Turkish military authorities, who replied that all Turks were equal before the law and that military service was obligatory. There could be no conscientious objection.¹⁸

23 Onur Erdem, whose request for asylum had been rejected by the authorities in Cyprus was immediately arrested and imprisoned on his return to Turkey.

24 In recent passports and identity documents, the bar code is electronically linked to the person's entry on the GBTS (*Genel Bilgi Toplama Sistemi* – General Information Gathering System) which - among such other details as convictions, arrest warrants, and tax arrears - indicates the

Turkey, 29th March, 2012 (CCPR/C/104/D/1853-1854/2008, issued 19th June 2012

¹⁵ Views adopted on Communications 1642/2007 to 1741/2007, *Min-Kyu Jeong et al v Republic of Korea*, 24th March, 2011 (CCPR/C/101/D/1642-1741/2007, issued 5th April 2011)

¹⁶ *Atasoy & Sarkut*, Annex 1, at p13.

¹⁷ Committee of Ministers of the Council of Europe, document reference DH-DD(2013)185, distributed 22nd February 2013.

¹⁸ E-mail from Kerem Koc to the European Bureau for Conscientious Objection.

person's military service status. A policeman or border official may read this information with a hand-held device, and if the person is in default can detain him on the spot.¹⁹

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

25 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.”²⁰ 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.”

26 Mersin University, the employer of Sarkut, one of the authors of the Human Rights Committee case, had dismissed him at the request of the military recruitment office and had upheld that decision on appeal. He had been unemployed since 2007 and claimed that “the Ministry of National Defence has prevented him from being employed at a place that ‘pays social security’.”²¹

27 In June 2012, Turkey reported to the meeting of the Committee of Ministers of the Council of Europe supervising the implementation of the ECtHR's verdict that Ülke's name had been “removed from the list of persons searched for by the police and the arrest warrant against him was lifted.” (Ülke himself had not been informed of this, and learned it only when the proceedings were published.) Turkey also assured the Committee of Ministers “that the applicant can exercise his civic rights without hindrance, obtain a passport and travel abroad.” Nevertheless, it reported (and reiterated in its subsequent communication to the Committee of Ministers, on 23rd October 2012, that “as a result of the legislation in force, an investigation against the applicant on desertion charges is still pending and there is a theoretical possibility that he could be subjected to further prosecution and conviction.”

28 To its consideration of the execution of judgement in the case of Ülke, the Committee of Ministers has joined those concerning Ercep, Demirtas and Savda. At its latest consideration of this group of cases²², the Ministers' Deputies

“1. noted that there are no arrest warrants issued against the applicants in the Ülke group of cases for any crimes related to failure to carry out military service;

2. noted, however, with concern that the applicant in the case of Ercep is still under the obligation to pay an administrative fine [for] draft evading and the applicant in the case of Feti Demirtaş was convicted and sentenced to imprisonment for disobedience to a military order, although his conviction is not final yet;

3. urged the Turkish authorities to take the necessary measures to ensure that the consequences of the violations found by the Court in these cases are completely erased for the applicants;

4. urged the Turkish authorities to take the necessary legislative measures with a view to preventing the repetitive prosecution and conviction of conscientious objectors and to ensuring that an effective and accessible procedure is made available to them in order to establish whether they are entitled to

¹⁹ UK Border Agency, Operational Guidance Note : Turkey , May 2013, paras 3.12.12, 3.12.13 and 3.13.2

²⁰ Para 41

²¹ Views adopted 29th March 2012: CCPR/C/104/D/1853-1854/2008, para 2.7.

²² 1157th Meeting, 4th - 6th December 2013

conscientious objector status;

29 In its communications on all of these cases, Turkey emphasises that until there is a change in the law the obligation to perform military service remains unaffected, even if no action is taken to enforce it. The official expectation is that Ulke and Ercep should now voluntarily present themselves for military service. Savda and Demirtas have been released from the obligation, not as conscientious objectors, but having been found unfit for military service through “anti-social behaviour”. Given that the definition of “anti-social behaviour” would appear to be conscientious objection to military service, this finding is itself almost certainly a human rights violation, representing as it does a stigmatisation of the individual conscientious objector which could well have material consequences. Likewise, in September 2012, the Military Court of Appeals confirmed the annulment of Tarhan's outstanding sentences, stating that “Tarhan's continued desertion is a consequence of his inability to adjust to military service”.

Restrictions on reporting conscientious objection

30 Article 318 of the Turkish Criminal Code, which in 2005 replaced the former Article 155 “alienating the people from the armed forces” was amended in 2013. It still however criminalises any reporting which might have the effect of discouraging people from performing military service. In two respects, it continues to exceed the permissible limitations on Freedom of Expression, as set out by the Human Rights Committee in 2011: “States parties should not prohibit criticism of institutions, such as the army or the administration,”²³ and that Article 19 Paragraph 3 of the ICCPR “may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights.”²⁴

²³ UN Document No. CCPR/C/GC/34, published on 12th September 2011, para 38.

²⁴ Ibid, para 23