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CONSCIENCE AND PEACE TAX INTERNATIONAL (CPTI)

Submission to the 142nd Session of the Human Rights Committee

TURKIYE

Military service, conscientious objection and related issues)

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CPTI aims to supply information on all States with armed forces which report under the International Covenant on Civil and Political Rights (ICCPR) with regard to their military recruitment legislation and their recognition of the right of conscientious objection, even when there appear to be no urgent questions arising.

In association with the Child Rights International Network, CPTI also reports to the Committee on the Rights of the Child on States where there appear to be issues under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, and although these issues do not necessarily have implications for the ICCPR, such concerns are also reported in these submissions.

Summary

For detailed information regarding the current situation, CPTI refers the Committee to the submission being prepared by Conscientious Objection Watch in Turkiye.

The current document simply summarises the principal issues and the historic jurisprudence, and suggests recommendations which should now be made to the State Party.

Principal concerns are:

1) Conscientious objection to military service is not recognised in law or practice; this applies equally before and after enlistment into the armed forces and to subsequent reserve service.

2) In the past, conscientious objectors who refused to perform military service were treated as though they had enlisted in the armed forces and were put on trial before military courts under military law. They are still routinely sentenced to detention in military penal facilities;

3) Refusal to perform military service is regarded as a continuing offence. There is no limit to the number of administrative fines or convictions leading to periods of detention which may be imposed on an individual objector.

4) Conscientious objectors, along with others who have neither performed military service or been exempted by the military authorities, suffer severe and continuing civil 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;

5) 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".

Latest statistics[1]

POPULATION (November 2023, estimated)	83,593,000
proportion of males aged 15-19	4.0%
thus annually reaching recruitment age (approx):	668,744
ARMED FORCES: Active strength, November 2023 (no. of conscripts not known)	355,200
compared to the male population reaching recruitment age	53.1%
MILITARY EXPENDITURE: US $ equivalent, estimated 2023	$15,659m
Per capita	$189
As % of GDP	1.5%

1 Sources: For military expenditure, Stockholm International Peace Research Institute – SIPRI, April 2024. Otherwise, The Military Balance 2024 (International Institute of Strategic Studies, London), which bases its estimate on "demographic statistics taken from the US Census Bureau".

Background

Turkey maintains a system of obligatory military service, to which all male citizens are liable from the age of 19, with exemptions solely on the basis of health and some other strictly-defined reasons – for those closely related to persons who lost their lives during military service, sole breadwinners, younger siblings of persons who have already performed military service, shepherds etc 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 exemption as a shepherd, was called up to perform military service on his retirement from that occupation at the age of 71.[2]

Were the provisions enforced consistently and universally, the manpower of the Turkish armed forces would be even larger than it presently is – second largest in NATO only to the much more populous United States of America. However, a large minority of young men, particularly outside the cities, simply fail to report for military service. By so doing, the condemn themselves to membership of an underclass which is unable to exercise citizen's rights, for in any contact with the authorities, they are required to state their military service situation. Not having performed military service they are liable at any time to arrest and forcible recruitment. If they resist, for instance by disobeying an order to don military uniform, they face prosecution and imprisonment, which does not however expunge the military service requirement.

Turkiye did not ratify the ICCPR until 2003, and its Initial Report was examined by the Human Rights Committee only in 2012. With reference to the provision of the ICCPR on forced labour (the wording of which had been in the past used to claim that the recognition of conscientious objection was a matter at the discretion of the individual State), Turkiye stated in its Initial Report: "Turkey is not among the countries, referred to in article 8 paragraph 3 (a) (ii), where conscientious objection to military service is recognized."[3]

The issue of conscientious objection to military service had by that time been raised before the UN Working Group on Arbitrary Detention in the cases of Osman Murat Ulke and Halil Savda, and also in the case of Ulke before the European Court of Human Rights.

Ulke had been one of th earliest persons in Turkiye to declare conscientious objection to military service on grounds other than religious, publicly burning his call-up papers in 1993. In November 1996 he had been forcibly taken to a military unit and ordered to put on a uniform. He refused, and was charged with refusing orders. In December 1996 he was released from pre-trial detention and ordered to "rejoin his unit". When he did not do so, fresh charges were brought, and a similar sequence of events took place in May 1997. In January, March, May and November 1998 he was again physically escorted to "his" regiment and refused on each occasion to put on uniform. In all, he was tried and convicted no less than seven times on charges of disobedience or desertion; the Working Group on Arbitrary Detention had no hesitation in ruling that all detentions except the very first one had been arbitrary "having been ordered in violation of the fundamental principle non bis in idem,"[4] "since, after the initial conviction, the person exhibits, for reasons of conscience, a constant resolve not to obey the subsequent summons" and thus there is "one and the same action entailing the same consequences and, therefore, the offence is the same and not a new one".[5] (Subsequently the Working Group was to use its 2008 Opinion in the case of Halil Savda to rule

2 *Tastan v Turkiye,* Application no. 41824/05, partial admissibility decision of 6th October 2009.
3 CCPR/C/TUR/1, 12th April, 1211, para 129.
4 Working Group on Arbitrary Detention, Opinion No. 36/1999, op cit, para 10
5 Ibid, para 9.

that in such situations even the first detention was arbitrary.)[6] By the time of the European Court of Human Rights (ECtHR) judgement on his case[7] Ülke had served 701 days' imprisonment following the first six convictions and remained liable to arrest and a further seven months and fifteen days imprisonment on the seventh.

In the case of Ulke, the ECtHR found a violation of Article 3 of the European Convention ("cruel, inhuman, or degrading treatment") noting "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. 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."

On the basis that the facts at issue were the same, they did not consider the various allegations brought under other Articles, including Article 9 (freedom of thought, conscience and belief). At this stage, the Court had yet to recognise a right of conscientious objection to military service - it did not do so until *Bayatyan v Armenia* over six years later (see below) – and indeed the Ulke judgement came some months before the Human Rights Committee confirmed the existence of such a right in *Yoon and Choi v Republic of Korea.*

In the List of Issues the Committee asked:
"Please provide information on the reasons for failure to recognize conscientious objection to military service. Please provide any information on steps being undertaken to bring legislation and practice relating to conscientious objection to military service in line with the Covenant.
"Please provide information on the names and situation of individuals convicted for refusal to undertake military service. Indicate: (a) the charges against the individuals; (b) the courts in which the convictions were made; (c) the sentences handed down; (d) the names of individuals currently undergoing sentences; (e) whether an individual can be convicted more than once for refusal to perform military service; if so, (f) the names of any individuals convicted more than once for refusal to undertake military service; (g) treatment of individuals while serving their sentences; and, (h) recognition in law and practice of individuals" civil rights once sentences have been served. Please respond to the allegation that Halil Savda faces ongoing risk of imprisonment under article 318 of the Turkish Penal Code for freely expressing his support for conscientious objectors to military service." [8]

Turkiye's replies simply repeated its outdated interpretation of the Covenant, and did not address the substance of the second paragraph at all. The words "There is an ongoing debate in a variety of circles with regard to the possibility of providing a compulsory civil service as an alternative to military service. The result of this vibrant debate will determine the Government's decision on this issue."[9] offered hope that changes might be at last under way, but nothing came of the reported debate.

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6 Working Group on Arbitrary Detention,

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

8 CCPR/C/TUR/Q1, 4th May 2012, paras 21,22.

9 CCPR/C/TUR/Q1/Add.1, 11th August 2012 para 21, p31.

By the time it considered the Report, the Committee had issued its Views on the cases of Atasoy and Sarkut,[10] two Jehovah's Witnesses who during 2007 and 2008 had received repeated call-up notices in response to each of which they had indicated to the recruitment authorities their inability on grounds of conscience to perform military service and their willingness to perform a civilian alternative service. One had been, and the other was at risk of, dismissal from his employment; both faced probably repeated terms of imprisonment. The Committee was unanimous in finding a violation of Article 18; a minority wished to adhere to its earlier jurisprudence under *Yoon and Choi* by referring to Article 18.3, rather than 18.1 as in the subsequent case of *Jeong et al v Republic of Korea,11*

In the Concluding Observations the Committee expressed its concern
" that conscientious objection to military service has not been recognized by the State party. [It also] 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.", and recommended that
"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."12

This paragraph was among those on which Turkiye was asked to provide a follow-up report. Submitted late, that report merely contained wording amounting to an admission that no progress had been made. VR-DER (the Turkish Association of Conscientious Objectors), through the International Fellowship of Reconciliation, gave rather more detail, some reproduced in the present submission, in a "shadow report".[13]

Following its ground-breaking decision in the case of *Bayatyan v Armenia,* the European Court of Human Rights issued a number of judgments concerning Turkish conscientious objectors[14], in all of which except that of Enver Ayedemir (who justified his objection by reference to the principle of *laicité* and to sharia law) it found a violation of Article 9, in most a violation also of Article 3 and in the cases of Halil Savda, Feti Demirtas and Baris Gormaz, one of the applicants in the Buldu group, also of Article 6 (fair trial) in that as civilians they had been tried and convicted in a military court.

The cases which have not subsequently been resolved by other means (normally by the person concerned having been found unfit for military service) have been linked for follow-up by the Committee of Ministers of the Council of Europe, which has repeatedly noted Turkiye's failure to implement the verdicts, most recently in its report from June 2024,[15] in which it;
"EXPRESSED ITS DEEP CONCERN that the first judgment in this group became final in 2006 and that despite its two interim resolutions of 2007 and 2009, and its repeated calls on the

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10 Views adopted on Communications 1853/2008 and 1853/2008, *Atasoy & Sarkut v Turkey,* 29th March, 2012 (CCPR/C/104/D/1853-1854/2008, issued 19th June 2012.

11 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)

12 CCPR/C/TUR/CO/1, 13th November, 2012, para 23.

13 Available on the Human Rights Committee's website at INT_CCPR_NGS_TUR_16366_EN

14 European Court of Human Rights, Deuxième Section, Affaire *Ercep v Turquie (Requête nº 43965/04),* Arrêt, 22 novembre 2011 (full text available in French only) ; *Feti Demirtas v Turkey*, Application No. 5260/07, Chamber Judgment of 17 January, 2012, *Savda v Turkey,* Application No. 42730/09, Chamber Judgment of 12th September, 2012; *Tarhan v Turkey*, Application No.9078/06, Chamber Judgment of 17th October, 2012; *Buldu et al v Turkey,* Application no 1417/08, Chamber Judgment of 3rd. Septgember 2014, *Enver Ayedemir v Turkey,* Application No. 22012/11, Chamber Judgment of 7th September, 2016

15 CM/ResDH(2024)136, 14th June 2024

authorities, no concrete steps have been taken to introduce the legislative reforms necessary to protect the applicants and others in their situation from similar violations of their Convention rights.
"DEEPLY REGRETTED in this context that three of the applicants in these cases (Osman Murat Ulke, Yunus Ercep and Ersin Olgum) are still considered draft evaders and continue to face the threat of criminal and admiistrative proceedings as well as numerous restrictions on their daily lives that amounts to a situation of 'civil death', that criminal proceedings have been pending against Mehmet Tarhan since 2005, that the proceedings initiated ^"by Baris Gormaz before the Constitutional Court are still pending and that Ersin Olgun was once again fined in December 2023 for not reporting for military service.
"INVITED the authority to provide information of the annulment or repayment of thefine if it has been paid by the applicant.
"STRONGLY URGED the authorities to take without further delay all necessary measures to put an end to the violation of the applicants' rights under the Convention and to adopt rapidly the necessary legislative or other reforms necessary to prevent similar violations of the Convention.
"ENCOURAGED them to draw inspiration from the experience of other member States which have put in place or are putting in place systems and procedures to comply with judgments finding violations of Article 9 on account of the absence of alternative service for those who refuse to perform military service on grounds of conscience and to address the Court's findings in the present group of cases within the framework of the new Human Rights Action Plan and the new Judicial Reform Strategy Paper.
"INVITED the authorities to provide information on the above issues by the end of March 2025 at the latest"

Meanwhile, it may be noted that in the absence of legislative reforms, more conscientious objectors in Turkiye each year are added to those who find themselves in similar situations. For numbers in recent years, and a detailed account of the discrimination and official harassment they face, see the submission by Conscientious Objection Watch.

In 2019, legislation was brought in enabling conscripts to purchase a shorter period of military service – one month, as opposed to the subsequently reduced normal duration of six months - on payment of a fee set by the Minister of Defence. This fee is however currently equivalent to €5,900 (approximately thirteen times the national minimum monthly wage), plus over €50 for each month of evasion; in other words well beyond the reach of most potential applicants.

The State attempted to pass this innovation off to the Committee of Ministers of the Council of Europe as addressing the question of conscientious objection,but the Committee was not impressed, noting that "'paid military service' and reduction of the length of compulsory military service do not constitute an alternative to mandatory military service which would remedy the fundamental problems identified by the Court in these cases."[16]

CPTI would strongly endorse this finding. Even were some military service not included in the "buy-out" option, and even were the fee charged not such as to introduce an effective discrimination based on wealth in the liability to perform military service, we would argue that a payment in lieu of military service simply constitutes such service transmuted into a less direct form.

Another development subsequent to the examination of Turkiye's Initial Report was that the conviction of Halil Savda under Article 318 of the Criminal Code had eventually led to a five-month sentence of imprisonment and to a judgement by the European Court of Human Rights finding a violation of Article 10 (freedom of expression) of the European Convention.[17]

16 CM/Del/Dec(2023)1468/H46-36
17 *Savda v Turkey No.2*

Article 318 states "(1) Any person who encourages, or uses repetition which would cause the persons to desert or have the effect of discouraging people from performing military service, shall be sentenced to a penalty of imprisonment for a term of six months to two years. (2) Where the act is committed through the press or broadcasting, the penalty shall be increased by one half." This Article applies to written statements of all kinds and to oral public statements, and is now being applied likewise to social media. In the Savda case, it was applied to a demonstration in front of the Israeli consulate in Istanbul accompanied by the release of a public declaration of solidarity with Israeli conscientious objectors.

Such broad interpretations of this Article have severely hampered the activities of those within Turkiye who campaign for the recognition of a right to conscientious objection as recommended by international bodies, or even to give information on the subject. Harassment and threats of prosecution under this Article and Article 301 ("insulting the military organisation of the State") led the legally registered Turkish Conscientious Objectors' Organisation (VR-DER) to dissolve itself in 2021. Its former role in giving advice to actual and potential conscientious objectors is now performed, inevitably with a lower profile, by the organisation Conscientious Objection Watch, which has no legal status.

Finally, it might be noted that in March 2024, Turkiye was, as the State exercising effective jurisdiction, found by to be in violation of Article 9 also in the case involving the reserve service of Murat Kanatli in the self-styled "Turkish Republic of Northern Cyprus"[18], which like Turkiye itself has no provisions for conscientious objectors. Two further cases with similar facts[19] are currently pending before the Court.

18 *Murat Kanatli v. Türkiye* (case number 18382/15), judgement of 12th March 2024

19 *Haluk Selam Tufanli v. Türkiye* (case number 29367/15) and *Halil Karapasaoglu v. Türkiye* (case number 40627/19)

The current Report

The List of issues in advance of Turkiye's Second Periodic Report asked: +21. "Recalling the previous recommendation of the Committee (para. 23) and the report on follow-up to the concluding observations of the Committee, please describe any steps taken within the reporting period, to recognize and regulate conscientious objection to compulsory military service. Please elaborate on the compatibility of article 318 of the Criminal Code, which criminalizes "alienating the public from military service", with the Covenant, and discuss whether the State party intends to repeal such provisions."[20]

The reply was terse: "There is no regulation on conscientious objection within the scope of military service, nor any work underway to abolish Article 318 of TPC."[21]

Meanwhile, all the violations and abuses detailed above, with the solitary exception of the trial of civilians in military courts, continue. State practice is now that conscientious objectors, once identified as "deserters" or "draft evaders" face arrest at any time, followed by the imposition of an administrative fine, followed by a criminal prosecution leading to a sentence of imprisonment; because of the delay in processing cases, several arrests and fines, each potentially sparking a separate prosecution, can take place in an individual case before it comes to court.

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20 CCPR/C/TUR/QPR/2, 25th August, 2021, para 21.
21 CCPR/C/TUR/2, 28th April, 2023, para 228.

Suggested questions and recommendations

Turkiye's flat refusal to contemplate the recognition of conscientious objection makes it hard to envisage any dialogue on this issue. Marginally more scope might be offered by the question of how to avoid *ne bis in idem,* and, with reference to the recommendations of the Council of Europe Committee of Ministers, on eliminating the phenomenon of "civil death". The Committee's invitation to discuss amendments to those articles of the Criminal Code which are most blatantly contrary to the exercise of free expression might also be renewed.

Regarding recommendations which might feature in the Concluding Observations, we suggest the following:

- that the State Party should without further delay recognise the right of conscientious objection to military service enshrined in the international treaties to which it is party and put into place legislation and procedures enabling the exercise of that right at any time before, during or (with regard to reserve service) after military service, and specifically exempting conscientious objectors from such service, making available if it so wishes an alternative service of a civilian nature and under civilian control, which must be neither punitive nor discriminatory in terms of duration, remuneration, or other conditions as compared with military service.

- independently of the above, that the State Party legislate that any punishment for the refusal to perform military service should discharge that obligation, so that those who have been duly penalised are not subject to further call-ups or prosecutions and should enjoy the full exercise of all civil rights on a par with those who have performed military service.

- that the text of Articles 301 and 318 of the Criminal Code should be amended so as to bring those articles fully into conformity with the guarantee of freedom of expression in Article 19 of the Covenant, and that pending such a change care should be taken to ensure that these Articles are on no account to be used to hamper the advocacy of Covenant rights, especially
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