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IFOR INTERNATIONAL FELLOWSHIP OF RECONCILIATION

SUBMISSION

TO THE 132nd SESSION OF THE HUMAN RIGHTS COMMITTEE

TURKEY

Contribution for the adoption of the List of Issues Prior to Reporting

Conscientious objection to military service and related issues

Updated May 2021

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IFOR International Secretariat
Postbus 1528 ✻ 3500 BM Utrecht ✻ The Netherlands
+31.30.303.9930
www.ifor.org

1. BASIC INFORMATION ABOUT TURKEY

Population (July 2021, est.)[1] 82,482,383

Military service: compulsory for Turkish man from 20 to 41 years old.
Duration: 6 months, since 2019 (before it was 12 months, this duration remains for reserve officers chosen among university or college graduates).
Since 2019, paying a sum (decided yearly in January and July) a conscript can serve for 1 month (basic training) and obtain an exemption for the other 5 months.
Recruitment age: 20 years old, but 17 years old for the registration to the 'National Defence University' (voluntary recruitment). [2]

Right to conscientious objection

There is no provision for conscientious objection to military service. Therefore, conscientious objectors are repeatedly prosecuted (and imprisoned) and there is a limitation on the rights which the European Court of Human Rights has described as 'civil death' and as a cruel, inhuman or degrading treatment.

Prohibiting criticism of the military

"Alienating the public from military service" is criminalized under article 318 of the Penal Code.

Armed forces

Active strength in 2020: approximately 400,000 (300,000 Army; 45,000 Navy; 50,000 Air Force); approximately 150,000 Gendarmerie.[3]

Military expenditure

In millions of US$ at current prices and exchange rates: 17,724.6 m. [4]
Per capita US$: 210.2[5]
As percentage of gross domestic product in 2020 (est.): from 1.9%[6] to 2.8%[7] of GDP.

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[1] Central Intelligence Agency (CIA), The World Factbook (2020), available at www.cia.gov/the-world-factbook .
[2] European Bureau for Conscientious Objection (EBCO-BEOC), Annual report on conscientious objection to military service in Europe 2020, Published the 15th of February 2021, available at https://www.ebco-beoc.org/reports.
[3] Central Intelligence Agency (CIA), *op. cit.*
[4] Stockholm International Peace Research Institute (SIPRI), database on military spending, available at www.sipri.org/databases/milex
[5] *Ibidem.*
[6] Central Intelligence Agency (CIA), *op. cit.*
[7] Stockholm International Peace Research Institute (SIPRI), *op. cit.*

2. SUGGESTED QUESTIONS FOR THE LIST OF ISSUES PRIOR TO REPORTING

Freedom of thought, conscience and religion, equality and non-discrimination (artt. 18 and 26)

In relation to the previous Concluding Observations of the Committee,[8] please provide information on the measures being undertaken to:
- Adopt legislation recognising and regulating conscientious objection to military service and provide an alternative service not discriminatory and genuinely civilian; and meantime
- Suspend all proceedings against conscientious objectors and all sentences already imposed.

Moreover, 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) the names of any individuals convicted more than once for refusal to undertake military service; (f) treatment of individuals while serving their sentences; and,
(g) recognition in law and practice of individuals' civil rights once sentences have been served.

Finally, please report on steps to remove barriers to the exercise of civil and political rights for conscientious objectors (ending "civil death").

Freedom of expression and prohibition to criticise military (artt. 9 -19)

In relation to the previous Concluding Observations of the Committee,[9] please provide information on the measures being undertaken to ensure that human rights defenders can pursue their activities without fear of being subjected to prosecution under art. 318 of the Penal Code (prohibiting criticism of the military).

More in details, please provide information on measures taken to:
- provide redress to human rights activists subjected to criminal prosecution and imprisonment in contravention of articles 9 and 19 of the Covenant;
- Remove article 318 of the Penal Code which criminalizes free expression on conscientious objection to military service; bring other relevant provisions of the Penal Code in line with article 19 of the Covenant and apply any restrictions within the strict terms of this provision.

Finally, please provide information on the names and cases of individuals convicted under article 318 of the Penal Code for "Alienating the public from military service" -criminalized under such article-.

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[8] Human Rights Committee, *Concluding observations* on the initial report of Turkey, adopted at its 106th session (15 October – 2 November 2012), CCPR/C/TUR/CO/1, para. 23.
[9] Ibidem, para. 24.

Indicate:
(a) the sentences handed down;

(b) the courts in which the convictions were made;

(c) the names of individuals currently undergoing sentences;

(d) treatment of individuals while serving their sentences.

Freedom of association (art. 22)

In relation to the previous Concluding Observations of the Committee,[10] please provide information on the measures being undertaken to strictly limit the notion of "illegal organisations" to ensure its full compliance with article 22 of the Covenant.

Moreover, please provide detailed information on the Law on Preventing Financing of Proliferation of Weapons of Mass Destruction, especially on the parts that tackle the activities of associations and charities.

Priority issues

3. FAILURE TO RECOGNISE THE RIGHT TO CONSCIENTIOUS OBJECTION TO MILITARY SERVICE

Since 2012 (last Concluding Observations), conscientious objection to military service has not be addressed by legislation, rather the focus has been reducing the duration of the military service in general and introducing the possibility of a shortened military service by payment.
In 2019, it was adopted a new Law on Conscription (Askeralma Kanunu, AK, hereafter)[11] which reduced the compulsory military service to six months for every man between the age of 20-41 years old (cadets) and twelve months for reserve officers and officers.[12]

Moreover, shortened military service through payment has become possible under the Turkish military service system. Under article 9 of the Law on Conscription, those who pay an amount of fee established every 6 months (from January to June 2021 it is 39,788 Turkish Lira, approximately 3,900 Eur - 4,700 US$)[13] and complete one month of basic military training obtain an exemption from the remaining months of military service.
The performance of a month of basic military training is not fitting for individuals who declare conscientious objection to military service.
Additionally, those who have been assigned evader status and those who are draft evaders cannot benefit from this option,[14] and it is not available in times of war and mobilisation.[15]

[10] Ibidem, para. 19.
[11] Law No 7179 on Conscription (Askeralma Kanunu), 26.06.2019, Official Gazette No. 30813, 25.06.2019.
[12] Articles 3 and 5 of Law No 7179 on Conscription.
[13] Turkish Ministry of National Defence website, FAQ on military service and payment, available (in Turkish) at: https://asal.msb.gov.tr/Askeralma/icerik/sikca-sorulan-sorular
[14] Article 9.6 Law No 7179 on Conscription.
[15] Article 9.7 Law No 7179 on Conscription.

Moreover, the amount of the payment is far from being accessible to all: it is much more than the Turkish net minimum wage (2,825 Turkish Lira, approximately 250 Eur – 302 US$).

Draft evaders and deserters

Draft evaders and deserters are tracked and subject to a continuous cycle of administrative fines and criminal proceedings.
Draft evaders and deserters are tracked in accordance with Article 26.1 of the Law on Conscription and reported to the Ministry of Interior in order to ensure their apprehension to perform their military service obligation. Those who are apprehended are brought to the nearest recruitment branch during working hours. Where there is no recruitment branch nearby or outside of working hours, evaders and deserters are issued an official record and released immediately.

Article 24.1 of the Law on Conscription lays out the administrative monetary fines given to draft evaders and deserter by the recruitment branch. Those who voluntary surrender to the authorities have to pay 5 TL per day (0.49 Eur – 0.59 US$), starting from the day they became draft evaders or deserters. Those who are apprehended are due to pay 10 TL per day (0.98 Eur – 1.18 US$). Administrative monetary fines must be paid within a month from the date the official record is issued.
Conscientious objectors who fail to fulfil this obligation risk to be repeatedly apprehended after each 15 days and to have an official report issued.

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 on Military Service is final" will be sentenced to imprisonment for up to 3 years depending on the duration of desertion.

No measures to address the Judgments of the European Court of Human Rights (Ülke Group of cases)

On 4th June 2020, the Council of Europe Committee of Ministers' Deputies urged Turkey to stop prosecuting conscientious objectors and take the necessary measures to address the judgements of the European Court of Human Rights under the Ülke Group of cases (total of seven cases).[16] Reminding Turkey of the lack of any progress in law, in its recent decision, the Committee of Ministers asked Turkey to submit an action plan with concrete steps addressing the ECtHR findings before 21st June 2021.

The Ülke group of cases are a total of seven cases under the enhanced supervision of the Committee of Ministers. They pertain to violations of Article 3, the prohibition of torture, inhuman and degrading treatment, Article 9, the right to freedom of thought, conscience and

[16] European Court of Human Rights, Case Ulke v Turkey (Application No. 39437/98), Judgement of 24th January 2006; European Court of Human Rights, Case Ercep v Turkey (Application No. 43965/04), Judgement of 22nd November 2011; European Court of Human Rights, Case of Feti Demirtas v Turkey (Application No. 5260/07), Judgment of 17th January 2012; European Court of Human Rights, Case of Savda v Turkey (Application No. 42730/05), Judgment of 12nd June, 2012; European Court of Human Rights, Case of Tarhan v Turkey (Application No. 9078/06). Judgment of 17th July 2012; European Court of Human Rights, Case Buldu and others v Turkey (Application No.14017/08), Judgement of 3rd June 2014; European Court of Human Rights, Case Enver Aydemir v Turkey ((Application No. 26012/11), Judgement of 7th June 2016.

religion and Article 6, the right to fair trial, of the European Convention on Human Rights. They stem from the applicants' repetitive convictions and prosecutions for having refused to carry out compulsory military service due to their religious beliefs or convictions as pacifists and conscientious objectors.[17]

UPR (Third cycle – January 2020)

In January 2020, Turkey was examined by the United Nations Human Rights Council under the Universal Periodic Review process. Two recommendations concerning conscientious objection were made by Croatia:

- "Consider revising the current law according to which the right to conscientious objection to military service is a criminal act";
- "Consider the introduction of civil service for conscientious objectors to military service".[18]

Turkey "noted" both recommendations.

Figures about Conscientious objectors

In its List of issues prior to the initial report of Turkey,[19] the Human Rights Committee required detailed information and figures about conscientious objectors and their criminal cases. The State did not address the issue in its initial report nor after.

The Turkish association for conscientious objection (VR-Der)[20] submitted an application to the Ministry of National Defence requesting information on how many persons applied for exemption as conscientious objectors between 2016-2020. The Ministry's response stated that "there is no legal possibility to fulfil your request".[21]

In 2019, the Turkish Minister of National Defence, Hulusi Akar, answering the questions of the deputies after the presentation of the 2020 budget of his Ministry, stated 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 2019."[22]

These figures are related only to conscientious objectors who have decided to inform the authorities about their objection, even knowing they will face detention and fines. It is unknown how many Turkish young men are hiding themselves, in order to avoiding the military service and the persecution.

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[17] European Bureau for Conscientious Objection (EBCO-BEOC), Annual report on conscientious objection to military service in Europe 2020, Published the 15th of February 2021, available at https://www.ebco-beoc.org/reports.
[18] Report of the Working Group on the Universal Periodic Review Turkey, 24th of March 2020 (A/HRC/44/14), Recc. 45.184 and 45.185.
[19] Human Rights Committee, List of issues to be taken up in connection with the consideration of the initial report of Turkey, published the 4th of May 2012 (CCPR/C/TUR/Q/1) paras 21-22.
[20] Vicdani Ret Dernegi (Vr-Der) https://vicdaniret.org/
[21] Application for information by the author on 26 March 2021 request number 2101413343 and response sent on 30 March 2021.
[22] Bianet (Bağımsız İletişim Ağı, lit. "Independent Communication Network", Turkish, press agency based in Beyoğlu, Istanbul), "Akar: Vicdani Retle İlgili Çalışmamız Yok" ("Akar: We Have No Study on Conscientious Objection"), 21 November 2019, available (in Turkish) at: https://m.bianet.org/bianet/vicdani-ret/216162-akar-vicdani-retle-ilgili-calismamiz-yok

4. VIOLATIONS OF OTHER HUMAN RIGHTS OF CONSCIENTIOUS OBJECTORS (arts. 12,18, 25 and so on)

Keeping their refusal to undertake military service, conscientious objectors are practically deprived of some of their human rights such as freedom of movement and right to vote (arts. 12, 18 and 25).

Indeed, once a conscientious objector to military service evades the draft or deserts the military, public authorities identify the person as draft evader or deserter. This status becomes part of the information linked to their national identity number and information.
Therefore, Turkish male citizens who have not performed military service are unable to undertake any activities which require documentation from the state; this is a consequence of their status and of the fact that any interaction with the authorities may result in a new charge.

This situation has been defined as "civil death" by the European Court of Human Rights.[23] More in details, there are mainly three types of restrictions to their human rights:

1. Denial of the opportunity to earn one's living: according to the law objectors cannot work in either public or private sectors as it is a crime to employ a draft evader. Objectors are forced to live unemployed or work illegally in uninsured jobs;

2. Ne bis in idem violations: objectors face everlasting administrative fines and criminal cases for the same offence, in violation of the *ne bis in idem* principle;

3. Deprivation while avoiding new charges: as every check and report to military authorities means getting another administrative fine and/or criminal, objectors avoid any possibility to be intercept by authorities. As a consequence, in their everyday life, conscientious objectors are deprived to:
   - Applying for passport, driving licence, marriage and so on.
   - Having a legal entity such as opening a bank account or acquiring a tax number for private or commercial activity.
   - Reporting a crime to law enforcing authorities.
   - Participating in public affairs and the right to vote.
   - Staying in a hotel or other kind of accommodation facility.
   - Driving or walking in public space.
   - Using public transport and traveling (inside the country and abroad).

In relation to the right to vote, it is concerning that even Osman Murat Ülke[24] continues to be subject to restrictions. 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 March 31st 2019 general elections, he received his voter card. However, on the day of the election, when he went to the polling station, he was told that there was a note indicating that he could not vote, and the electoral officers did not allow him to do so.

[23] European Court of Human Rights, Case Ulke v Turkey (Application No. 39437/98), Judgement of 24th January 2006, para. 62.
[24] European Court of Human Rights, Case Ulke v Turkey (Application No. 39437/98), Judgement of 24th January 2006.

5. RESTRICTIONS ON THE FREEDOM OF EXPRESSION OF OBJECTORS AND THOSE WHO SUPPORT THEM (ART.19 OF THE COVENANT)

In Turkey, the criticism of military is prohibited under article 318 of the Penal Code. The article establishes as follows:
(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.

As documented by VR-Der,[25] this is mostly used against objectors and those who support them and applied to declarations of objectors or statements – even on social media - by anti-militarist or anti-war organisations.

In 2013, this article of the Penal Code was amended to specifically address statements or conducts that "encourage and inspire people to desert or not to participate in military service".

It continues to exceed the admissible limitations on Freedom of Expression, as set out by the Human Rights Committee in 2011, in two ways: "States parties should not prohibit criticism of institutions, such as the army or the administration,"[26] and that Article 19.3 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."[27]

Conscientious objector Savda Ali's case

In November 2016, the European Court of Human Rights found that Turkey violated the right to freedom of expression (article 10 of the European Convention) in the case of Savda Ali (No. 2).[28] The applicant, a conscientious objector, was prosecuted and sentenced to imprisonment (under art. 318 of the Criminal code) because of the reading of a public statement of solidarity with conscientious objectors from another country.

The Court considered that inciting to evade the military service cannot in itself justify the interference with the right to freedom of expression of Mr. Savda. Moreover, the Court observed that although the speech delivered by Mr. Savda gave a hostile connotation to military service, it does not exhort the use of violence, armed resistance or uprising, and (it) cannot be seen as a hate speech or a speech with an ability to harm.[29]

Domestic cases against VR-DER (Turkish association for conscientious objection)

In 2016, following a press statement by VR-DER in connection to the International Consci-

[25] Turkish association for conscientious objection, Vicdani Ret Dernegi (Vr-Der) https://vicdaniret.org/
[26] Human Rights Committee, General comment No. 34, Article 19: Freedoms of opinion and expression, CCPR/C/GC/34, published on 12th September 2011, para 38.
[27] Ivi, para 23.
[28] European Court of Human Rights, Savda v. Turkey (No. 2), (application No. 2458/12), Judgment of 15th November 2016.
[29] Ivi, para 26.

entious Objectors Day (15th May), in Diyarbakır, an investigation was initiated by the Diyarbakır Chief Public Prosecutor's Office against four people, including the association co-chair Merve Arkun and the association lawyer Davut Erkan. The investigation resulted in a "no reason for prosecution" decision.

In 2019, based on several posts published on VR-DER's website and its social media accounts, Furkan Çelik, one of the founding members of the association, was sued on the charge of "alienating the public from military service" under Article 318 of the Turkish Penal Code. On 6th February 2020, he was acquitted at the first hearing.

On 13rd November 2020, a new prosecution has started against VR-DER, due to a news story posted on VR-DER's official website and social media. This prosecution is still ongoing.

6. LIMITATIONS ON THE FREEDOM OF ASSOCIATION (ART. 22 OF THE COVENANT)

On December 2020, Turkish Parliament passed a new law to ostensibly prevent the financing of the proliferation of weapons of mass destruction[30] and introduce a comply with the United Nations Security Council counterterrorism resolution (UN SC Res. No. 1373 of 2001). Actually, this new law has severe consequences for civil society organizations, because it grants to the Ministry of Interior and to the President extensive power to restrict the activities of independent groups, grassroot associations and NGOs.
Indeed, it includes several provisions amending, inter alia, the Law on the Collection of Charitable Aid (Law No. 2860) and the Law on Associations (Law No. 5253).[31]
More in details, the Ministry of Interior would have the authority to suspend a group member from their position if they are under criminal investigation for an action in the course of their civil society activities that is punishable under Turkey's counterterrorism laws. The Ministry of Interior could suspend the organization's entire board or suspend its activities until further notice until a final court ruling is issued in the case.[32]

[30] Law on Preventing Financing of Proliferation of Weapons of Mass Destruction, No. 7262 of 27th December 2021, available (in Turkish) at https://perma.cc/R9F2-S3CA .
[31] For further details on the law: Library of Congress (US), Turkey: Parliament Passes Law to Suppress Financing of Weapons of Mass Destruction Proliferation, published the 27th January 2021, available at https://www.loc.gov/law/foreign-news/article/turkey-parliament-passes-law-to-suppress-financing-of-weapons-of-mass-destruction-proliferation/
[32] Human Rights Watch, "Turkey: Draft Law Threatens Civil Society", published the 24th of December 2020 and updated the 7th of January 2021. Available at www.hrw.org/node/377519/printable/print .