

Executive Summary

1 This submission was prepared in July 2019 on the basis of the latest information available.

2 In the first cycle of the UPR, the question of conscientious objection to military service featured in stakeholder submissions,¹ but no questions were asked nor recommendations made on this.

3 Between the first and the second cycles, however, the ECtHR delivered judgements in five cases involving eight Turkish conscientious objectors,² and the Human Rights Committee issued its Views on Communications received under the First Optional Protocol to the ICCPR from two others.³ The Human Rights Committee had also considered the Initial Report of Turkey under the ICCPR.

4 In the second cycle, Turkey received recommendations from Croatia that it should „adopt laws recognising and regulating the right of conscientious objection and ensure that the civilian alternative to military service has no punitive or discriminatory effect“⁴ from Germany that it should „adopt laws that recognise and guarantee the right to conscientious objection to military service, ensuring that any genuine civilian alternative is not punitive in length“⁵ and from Slovenia that it should „recognise the right of conscientious objection and offer a civilian alternative to military service.“⁶ Regrettably none enjoyed the support of Turkey.

5 In Turkey, all male citizens become liable for 12 months service from the beginning of the calendar year of their 20th birthday.

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

7 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

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

² Ercep (Application No 43965/04, Chamber judgement of 22nd November, 2011), Feti Demirtas (Application no. 5620/07, Chamber judgement of 17th January, 2012), Savda (Application No.42730/05, Chamber judgement of 12th June, 2012), Tarhan (Application no. 9078/06, Chamber judgement of 17th July, 2012), Buldu et al (Application no 14017/08, Chamber judgement of 3rd June, 2014)..

³ Views adopted on Communications 1853/2008 and 1854/2008, *Atasoy & Sarkut v Turkey*, 29th March, 2012 (CCPR/C/104/D/1853-4/2008, issued 19th June, 2012).

⁴ A/HRC/29.15, para 151.12

⁵ Ibid, para 151.13

⁶ Ibid, para 151.14.

entailing punitive or discriminatory effects. and, in the meantime, suspend all proceedings against conscientious objectors and suspend all sentences already imposed.”⁷

8 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”.⁸ The “follow-up” report from the State⁹ revealed no concrete progress..

9 In 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.¹⁰

10 Regarding 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,”¹¹ “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.”¹² Subsequently, in the case of Halil Savda, the Working Group developed the logic further, finding that “the criminal 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.

11 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”¹³

12 Subsequently, the ECtHR has addressed conscientious objection to military service under Article 9, first in *Bayatyan v Armenia*,¹⁴ and then in a number of cases involving Turkey itself.

13 In the case of Yunus Erçep, it found violations of Article 9.¹⁵ and Article 6 (right to fair

⁷ CCPR/C/TUR/CO/1, 2nd November 2012, para 23.

⁸ Ibid, para 26.

⁹ INT/CCPR/AFR/TUR/18277, 22nd July 2014.

¹⁰ «Turkey's judicial reform falls short on conscientious objection: EU Commissioner», *Hurriyet*, 12th April.

¹¹ Working Group on Arbitrary Detention, Opinion No. 36/1999, op cit, para 10.

¹² Ibid, para 9.

¹³ European Court of Human Rights, Final judgement, Case *Ulke v Turkey* (Application No. 39437/98), Strasbourg 24th January 2006, para. 53.

¹⁴ European Court of Human Rights, Grand Chamber, Case of *Bayatyan v Armenia* (Application no. 23459/03), Judgment issued on 7th July 2011

¹⁵ European Court of Human Rights, Deuxième Section, Affaire *Ercep v Turquie* (Requête n° 43965/04), Arrêt,

trial) in that Erçep, a civilian, had been tried “before a court composed exclusively of military officers, charged with offences relating to military service”.

14 In the case of *Feti Demirtas*¹⁶, like Erçep a Jehovah's Witness 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 *Ercep* 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 actually, against his will, been incorporated into the army.

15 Violations of Articles 3, 6, and 9 of the ECHR were subsequently found by the ECtHR also in the case of Halil Savda,¹⁷ and violations of Articles 3 and 9 in the case of Mehmet Tarhan.¹⁸ In these cases, the Court was not dissuaded by the fact that neither Savda nor Tarhan cited religious grounds for his conscientious objections.

16 In 2014, the ECtHR issued a further judgement in the linked cases of four Jehovah's Witness conscientious objectors.¹⁹ 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.²⁰ The Committee was unanimous in finding a violation of Article 18 of the CCPR (freedom of thought, conscience, and religion).

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

22 novembre 2011 (full text available in French only)

¹⁶ European Court of Human Rights, Case of *Feti Demirtas v Turkey*, Application No. 5260/07, Chamber Judgment of 17 January, 2012

¹⁷ European Court of Human Rights, Case of *Savda v Turkey* (application No 42730/05, Chamber judgement of 12th June, 2012.

¹⁸ European Court of Human Rights, Case of *Tarhan v Turkey* (application No. 9078/06). Chamber judgment of 17th July 2012.

¹⁹ 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)

²⁰ Human Rights Committee, 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.

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.²¹

21 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.²²

22 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 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.²³

23 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.”²⁴ 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.”

24 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 claimed that “the Ministry of National Defence prevented him from being employed at any place that 'pays social security', condemning him to unemployment

25 Osman Murat Ulke, whose 1993 refusal to enlist sparked the entire non-religious conscientious objection movement in Turkey, and in favour of whom the ECtHR had found in 2006, was in November 2016 summoned to testify at his local police station. Despite assurances given to the Committee of Ministers of the Council of Europe, his case was being treated as still open.

26 To its consideration of the execution of judgement in the case of Ulke, the Committee of Ministers has joined those concerning Ercep, Demirtas and Savda. At its latest consideration of this group of cases²⁵, 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

²¹ Committee of Ministers of the Council of Europe, document reference DH-DD (2013)185, distributed 22nd February 2013.

²² E-mail from Kerem Koc to the European Bureau for Conscientious Objection.

²³ UK Border Agency, Operational Guidance Note: Turkey, May 2013, paras 3.12.12, 3.12.13 and 3.13.2.

²⁴ European Court of Human Rights, Final judgement, Case Ulke v Turkey (Application No. 39437/98), Strasbourg 24th January 2006, Para 41.

²⁵ 1157th Meeting, 4th - 6th December 2013

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 conscientious objector status;²⁶

27 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”.

28 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 defined by the Human Rights Committee: “States parties should not prohibit criticism of institutions, such as the army or the administration,”²⁷ 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.”²⁸

29. In 2006, Halil Savda, who had already suffered imprisonment for his conscientious objection, was one of five persons who in front of the Israeli consulate in Istanbul read out a statement of solidarity with Israeli conscientious objectors. For this, he was in August 2018 sentenced under Article 318 to five months' imprisonment. He took his case to the ECHR, which found a clear violation of Article 10 (freedom of expression) of the ECHR_ (Savda, a journalist by profession, subsequently had to flee Turkey for his own safety, and in 2017 was granted asylum in Cyprus).

²⁶ 1157th Meeting, 4th - 6th December 2013

²⁷ CCPR/C/GC/34, published on 12th September 2011, para 38.

²⁸ General Comment No. 34, 12th September 2011, para 23.

30 IFOR suggests the following recommendations:

that Turkey should recognise the right of conscientious objection to military service, making available, if it sees fit, to conscientious objectors a civilian alternative service under civilian control.

that all charges and penalties against persons for their past refusal to perform military service should be unconditionally cancelled, and appropriate compensation granted to the victims.

that Article 318 of the Criminal Code should be repealed, or failing that redrafted in a format which is consistent with Turkey's international treaty obligations to uphold the freedom of expression.