Conscientious Objection to Military Service in Turkey

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About the authors

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Hülya Üçpınar is a human rights lawyer and a researcher focusing on conscientious objection to military service. She is the legal coordinator for the Association for Conscientious Objection (VR-Der) and one of the co-founders of the Nonviolent Education and Research Centre based in Istanbul. She has been a member of the War Resisters International (WRI) Council and WRI Executive Committee since 2014. She is the author of numerous reports and has published articles on conscientious objection to military service in Turkey. She has also campaigned and published on the prevention of torture and monitoring detention places in Turkey.

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List of Abbreviations

VR-DER ..... Association for Conscientious Objection

AYM..... Anayasa Mahkemesi, Constitutional Court

CoE ..... Council of Europe

CM ..... Committee of Ministers

ECHR ..... European Convention on Human Rights

ECtHR ..... European Court of Human Rights

HRC..... Human Rights Committee

ICCPR..... International Covenant on Civil and Political Rights

UN..... United Nations

WGAD ..... Working Group on Arbitrary Detention

UPR ..... Universal Periodic Review

JW ..... Jehovah's Witnesses

UDHR..... Universal Declaration on Human Rights

AK..... The Law on Conscription

ACK..... The Military Criminal Law

Executive Summary

The right to conscientious objection to military service is founded on the right to freedom of thought, conscience and religion which is protected in universal and regional human rights treaties, and has gained progressive recognition within the United Nations and Council of Europe human rights systems.

This Report aims to provide a thorough analysis of the state of conscientious objection to military service in Turkey from a normative perspective.

In Turkey, military service is compulsory for every man between the ages of 20-41 and the duration is six months for cadets and twelve months for reserve officers and officers. The right to conscientious objection to military service is not recognized, there is no mechanism to which conscientious objectors can apply, nor is there alternative civilian service.

Nearly a decade and a half after the 2007 *Ülke v. Turkey* judgment of the European Court of Human Right, conscientious objectors continue to be subjected to repetitive punitive measures on account of being considered draft evaders and desertes instead of conscientious objectors. They are being fined and have been tried - in the past until 2017 by military courts instead of civilian courts and in most of the cases repeatedly for the same "crime" of refusing to serve in the military – and sentenced to imprisonment. Punitive measures to conscientious objectors, in addition, continue to include interferences in a wide range of human rights including the right to education, freedom of movement, opportunity to earn one's living and to take part in public affairs, and the right to vote.

The number of people who have announced their intention to refuse military service is not known. Between 1989-2021, 409 individuals have informed the Association for Conscientious Objection that they have announced their conscientious objection to military service, however it is estimated that the total number of conscientious objectors is much higher than this. **The number of men who seek to refrain from being compelled to act contrary to their conscience yet do not announce their declaration, and those who feel compelled to submit themselves to the shortened military service by payment for reasons of conscientious objection are unknown, too.**

Turkey has ratified core international human rights treaties both within the United Nations and Council of Europe human rights protection schemes. As a party to the United Nations Inter-

national Covenant on Civil and Political Rights and Council of Europe's European Convention of Human Rights, Turkey has significant human rights obligations impacting the protection of conscientious objection to military service.

Conscientious objection to military service in Turkey has been the subject of consideration under a number of international human rights compliance control mechanisms. The report lists and quotes numerous submissions and decisions of various bodies of the United Nations and the Council of Europe as well as recommendations made by some member states regarding the right to conscientious objection and individual cases of which were brought to the ECtHR since 1998. These cases brought by conscientious objectors from Turkey have led to findings of violations of several Convention rights. Turkey's response to the findings has centred on individual measures through payment of compensation and arrangement of dismissal or discharge on the basis of medical reports indicating that the applicants were not fit for military service, and annulment of arrest warrants. As of 2018 the Government informed the Committee of Ministers that "shortened military service by payment" was an alternative whereby an eligible person could, by paying a certain sum, become exempted from the obligation of military service.

Looking at the national legal framework in Turkey, the report finds that the Constitution does not prescribe military service but only speaks of a "national service" – which may be also a civilian one. The duty to perform military service is laid down in the laws on and the Law on Conscription and the Military Criminal Law. Evaders and deserters are tracked in accordance with the rules laid down in Article 26(1) of the Law on Conscription.

While military courts were abolished through constitutional amendments made in 2017, Turkey has made to date no move to legalize the right to conscientious objection. Rather the focus has been on shortening the duration of the military service in general and the introduction of the possibility of shortened military service by payment. In 2019 a new Law on Conscription was adopted reducing the military service to six months and one month shortened military service by payment.

There is a lack of domestic remedies and approaches of the judiciary for persons claiming the right to conscientious objection because the Courts for the most time do not look at the Turkish constitution but at the quoted laws on military service. Numerous individual applications to the Constitutional Court (AYM) have been made by conscientious objectors, but so far the AYM has postponed deliberation on the applications. Therefore, the only option left to objectors is to turn to international human rights protection mechanisms.

Recommendations

The Report provides concrete recommendations to the Turkish authorities and international human rights mechanisms:

- conscientious objection to military service be recognized as a constitutional right, without delay, to ensure that legislation on conscientious objection does not come into conflict with other legal regulations and that such regulation is not made open to, possibly restrictive, interpretations of the executive and judicial bodies;

- legislation on conscientious objection to military service should be drafted in compliance with international human rights law as enshrined in the United Nations, the Council of Europe and the European Union human rights instruments;

- an independent and impartial decision-making body to examine conscientious objection claims is established - in compliance with international human right law standards, in particular taking into account the requirement not to discriminate between conscientious objectors on the basis of the nature of their religions or beliefs;

- measures, that are compatible with international human rights law, are taken to provide a mechanism for the conscientious objectors who declare themselves as "total objectors";

- measures are taken to provide alternative service for those conscientious objectors who request it, in line with international human rights standards;

- all criminal proceedings against conscientious objectors are ended, compensation is provided, all convictions regarding conscientious objection in the criminal records for disobedience, draft evasion, desertion, public statements, are expunged;

- official records are duly prepared and maintained in the national database;

- statistics are kept on conscientious objection applications including the number of conscientious objectors, on monetary fines and criminal investigations, and convictions delivered in connection to conscientious objectors and shared with the public;

- measures are taken to ensure that the applicants are free from the risk of further prosecution and obligation of compulsory military service and can fully enjoy their political, civil, economic, social and cultural rights. To this end, domestic laws, are reviewed with a view to remove all restrictions imposed on conscientious objectors in the exercise of the rights to be elected and to elect, right to education, opportunities to earn a living and freedom of movement.

- that the Constitutional Court
  - follows ECtHR jurisprudence which recognizes the right to conscientious objection to military service as a human right, complies with ECtHR judgments and decides on the numerous individual applications pending, without delay;
  - examines *interim* measures in detail and treats the issue in a manner that would prevent further harm to conscientious objectors.
- regular training is provided for judges and prosecutors on international human rights obligations pertaining to the right to conscientious objection to military service and for relevant public authorities in the Ministry of Interior, in particular officers involved in GBT, General Information Collection and stop & checks.

To international human rights compliance control mechanisms:

- keep compliance control of the right to conscientious objection to military service on relevant agenda including the Council of Europe Committee of Ministers, UN Human Rights Committee, UN Special Procedures and the Universal Periodic Review;
- follow up the implementation of UN Human Rights Committee Opinion on Atasoy and *Sarkut v. Turkey and Universal Periodic Review recommendations;*
- that Council of Europe Committee of Ministers
  - continue to keep the *Ülke* group of cases on enhanced supervision track;
  - ask the Turkish authorities to report on the effectiveness of the Constitutional Court individual application mechanism to protect conscientious objectors to military service;
  - ask the Turkish authorities to provide information on how and to what extent the rights of conscientious objectors to education, right to vote and opportunities to earn a living are impacted due to evader/deserter status in the law;
  - ask Turkish authorities statistical information on conscientious objectors to military service.

1. Introduction

Nearly a decade and a half after the 2007 *Ülke v. Turkey* judgment of the European Court of Human Right (ECtHR) Turkey has yet to recognize the right to conscientious objection to military service. The gradual but firm recognition of this right under international human rights law within the scope of the right to freedom of thought, conscience and religion, has provided the basis for the legal struggle to put an end to the violations of human rights that conscientious objectors have experienced. Individuals who object to compulsory military service hold objections based on diverse reasons, including anti-militarist and pacifist views, Jehovah's Witnesses (JW) and Islamic religious convictions. Turkey does not have a database of conscientious objectors that is open to the public. According to the data collected by the Association for Conscientious Objection (Vicdani Ret Derneği, VR-Der, hereafter)[1] the total number of individuals who announced their conscientious objection to military service is 409 between 1989 - 2021. According to the same data almost all objectors have antimilitarist and pacifist motivations who totally reject to serve the army. This data does not include JWs.

Despite Turkey's substantial human rights commitments under the United Nations (UN) and Council of Europe (CoE) human rights protection schemes, the national legal framework and practice lag far behind applicable international standards. Conscientious objectors continue to be subjected to repetitive punitive measures on account of being considered evaders and deserters instead of conscientious objectors. Punitive measures extend beyond the interference in the right to freedom of thought, conscience and religion to include interferences in a wide range of human rights including the right to education, freedom of movement, opportunity to earn one's living and the right to take part in public life.

This Report aims to provide a thorough analysis of the state of conscientious objection to military service in Turkey from a normative perspective. The methodology for this report relied on mixed methods including desk based research on literature and legal data including judgments, decisions and views of international human rights bodies and interviews with 18 conscientious objectors and lawyers. Limited access to data concerning conscientious objectors in Turkey has been a limitation of the Report. Official data or statistical information on conscientious objection to military service is not made public. Official records which are required to contain essential information on measures taken against conscientious objectors and thus

1 For more information on the Association for Conscientious Objection see www.vicdaniret.org

would contribute to fuller analysis are not accessible and/or are often sketchy. Finally, an important limitation has been not having access to data related to JW conscientious objectors. While this does not influence the important findings of the Report, it may not reflect the scope and impact of the non-recognition of this right on this on JW conscientious objectors.

This Report briefly presents international human rights standards applicable to the right to conscientious objection to military service. Turkey's national policy and international obligations in the area of conscientious objection are examined under Chapter 3 and 4 respectively. Chapter 5 provides a thorough analysis of the national legal framework and the practice. Two personal stories of conscientious objectors are presented under Chapter 6 in order to provide the readers an insight into the complex and diverse impact of the non-recognition of this right in the lives of conscientious objectors. Chapter 7 provides a succinct overview of the findings of the Report. Finally, under Chapter 8 concrete recommendations are made to public authorities and international human rights compliance control mechanisms on the measures that need to be taken to ensure Turkey's compliance with relevant international standards for the protection of the right to conscientious objection to military service.

2. The Right to Conscientious Objection to Military Service under IHRL

Conscientious objection to military service is based on the right to freedom of thought, conscience and religion,[2] which is protected in universal and regional human rights treaties.[3]

Universal Declaration of Human Rights Article 18:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

International Covenant on Civil and Political Rights Article 18:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

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2 Yildirim, M., Conscientious Objection to Military Service: International Human Rights Law and the Case of Turkey, *Religion & Human Rights*, Volume 5 (2010): Issue 1 (Jan 2010), p. 65-91; Çınar, Ö., *Conscientious Objection to Military Service in International Human Rights Law*, Springer, 2013.

3 **American Convention on Human Rights, article 12 (Freedom of conscience and religion):**

1. Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private.

2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.

3. Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.

[...]

African [banjul] Charter on Human and Peoples' Rights, Article 8: Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.

European Convention on Human Rights, Article 9:

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Charter of Fundamental Rights of the European Union, Article 10:

1. Everyone has the right to freedom of thought, conscience and religion. The right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.

2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

United Nations

Protection of the right to conscientious objection to military service has gained progressive recognition within the UN human rights system. The Human Rights Committee (HRC) has addressed it in its General Comment 22[4] on Article 18 - right to freedom of thought, conscience and religion - and General Comment 32[5] on Article 14 - the right to equality before courts and tribunals and to fair trial - of the International Covenant on Civil and Political Rights (ICCPR) as well as when considering individual communications and state reports. Conscientious objection to military service has also been the subject of resolutions by the UN Human Rights Council and the UN Commission on Human Rights. The Special Procedures, most notably the UN Special Rapporteur on Freedom of Religion or Belief, have addressed it. The right to conscien-

4 UN Human Rights Committee (HRC), *CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)*, 30 July 1993, CCPR/C/21/Rev.1/Add.4

5 UN Human Rights Committee (HRC), *General comment no. 32, Article 14, Right to equality before courts and tribunals and to fair trial*, 23 August 2007, CCPR/C/GC/32

tious objection has also been raised at proceedings within the context of the Universal Periodic Review (UPR). The UN High Commissioner for Human Rights issued a report on human rights compliant application procedures for conscientious objector status in 2019. Furthermore, the UNHCR issued Guidelines on Claims to Refugee Status related to Military Service.[6]

The right to conscientious objection to military service is protected within the scope of the right to freedom of thought, conscience and religion enshrined in Article 18 of the Universal Declaration of Human Rights and the ICCPR. In General Comment 22 the Committee commented on conscientious objection:

> The Covenant does not explicitly refer to a right to conscientious objection, but the Committee believes that such a right can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief.[7]

The HRC has found that "the right to conscientious objection to military service is inherent to the right to freedom of thought, conscience and religion. It entitles any individual to exemption from compulsory military service if the latter cannot be reconciled with the individual's religion or beliefs. The right must not be impaired by coercion."[8] Accordingly, failure to provide for conscientious objection to military service violates Article 18 of the ICCPR.

Article 18(1) protects, both, the right to freedom of thought, conscience and religion and the right to manifest one's religion or belief. Manifestation of religion or belief may be restricted under certain circumstances. Restrictions must cumulatively fulfil strict criteria: They must be "prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others" and any "such restriction must not impair the very essence of the right in question".[9] Whereas the right to freedom of thought, conscience and religion cannot be restricted. The HRC holds that the right to conscientious objection to military service is protected within this right and not the right's manifestation and therefore cannot be subject to restrictions. Thus these possible limitations cannot be used to justify making no provision for conscientious objection.[10]

In *Yoon et al. v. Republic of Korea*, the Committee was asked to decide whether conscientious

6 United Nations High Commissioner for Refugees: Guidelines on International Protection No. 10: Claims to Refugee Status related to Military Service within the context of Article 1A (2) of the 1951 Convention
7 *Supra* 4 (General Comment 22), para. 11.
8 *Jong-nam Kim et al. v. The Republic of Korea* (CCPR/C/106/D/1786/2008 Communication No. 1786/2008 of 1 February 2013), para. 7.4 See also, *Danatar Durdyyev v Turkmenistan* (CCPR/C/124/D/2268/2013 Communication No. 2268/2013 of 6 December 2018)
9 *Yoon and Choi v Republic of Korea* (CCPR/C/88/D/1321-1322/2004 of 23 January 2007).
10 Townhead, L., International Standards on Conscientious Objection to Military Service, February 2021.

objection was a right under Article 18 of the Covenant or whether such a claim could be made only in those States which had chosen to recognize such a right[11], taking into account Article 8(3):

> (a) No one shall be required to perform forced or compulsory labour; [...]
>
> (c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include: [...]
>
> (ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors [...]

The Committee found that the right to conscientious objection was a right based on Article 18 and applicable to all state parties to the ICCPR:

> [...] article 8 of the Covenant itself neither recognizes nor excludes a right of conscientious objection. Thus, the present claim is to be assessed solely in the light of article 18 of the Covenant, the understanding of which evolves as that of any other guarantee of the Covenant over time in view of its text and purpose.[12]

It considered that:

> … the State party has failed to show what special disadvantage would be involved for it if the rights of the authors under article 18 would be fully respected. As to the issue of social cohesion and equitability, the Committee considers that respect on the part of the State for conscientious beliefs and manifestations thereof is itself an important factor in ensuring cohesive and stable pluralism in society. It likewise observes that it is in principle possible, and in practice common, to conceive of alternatives to compulsory military service that do not erode the basis of the principle of universal conscription but render equivalent social good and make equivalent demands on the individual, eliminating unfair disparities between those engaged in compulsory military service and those in alternative service.[13]

11 *Supra 9, Yoon et al. v. Republic of Korea.*

12 *Ibid.*

13 *Ibid.*

Prohibition of punishment

International standards on the punishment of conscientious objectors have also evolved over time. Repeated punishment for continued refusal to perform military service is contrary to the *non bis in idem* principle protected under the right to fair trial (Article 14 of the ICCPR) . The HRC held in its General Comment No. 32 on the right to equality before courts and tribunals and to a fair trial:

> Repeated punishment of conscientious objectors for not having obeyed a renewed order to serve in the military may amount to punishment for the same crime if such subsequent refusal is based on the same constant resolve grounded in reasons of conscience.[14]

In 2012, however, in Young-Kwan and Others v. South Korea, the HRC considered the claim that imprisoning the applicants who were conscientious objectors, for refusing military service amounts to arbitrary detention under Article 9 of the ICCPR, the right to liberty and security of persons.[15] The Committee underlined that under Article 9(1) no one may be subject to arbitrary arrest or detention and that arbitrariness "is not to be equated with 'against the law'", but interpreted in a way to include elements of "inappropriateness, injustice, lack of predictability and due process of law". And concluded that "detention as punishment for legitimate exercise of freedom of religion and conscience constituted violation of Article 9(1).[16]

Consequently, not only the *ne bis in idem* or "double jeopardy" principle that aims to ensure that no one is tried more than once for the same offence but even one criminal conviction constitutes a violation of the right to liberty and security of person, Article 9 of the ICCPR. This also means that criminal records must be expunged. [17]

The UN Human Rights Council also recognized that the right to conscientious objection to military service can be derived from the right to freedom of thought, conscience and religion in a number of resolutions including in 2013 and 2017.[18] Similarly the UN Working Group on Arbitrary Detention stated that "the right to conscientious objection to military service is part of the absolutely protected right to hold a belief under article 18 (1) of the Covenant, which cannot be restricted by States".[19]

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14 Supra 5, General Comment 32 (para. 55).
15 *Young-Kwan and Others v. South Korea*, Communication No. 2179/2012, 14 January 2015.
16 *Ibid.*
17 *Zafar Abdullayev v Turkmenistan*, CCPR/C/113/D/2218/2012
18 24/17 in 2013 and 2017 in resolution 36/18. These re-stated and developed the provisions of the former UN Commission on Human Rights resolutions going back to 1989. Human Rights Council resolution 24/17 (A/HRC/24/17) of 27 September 2013.[9] Human Rights Council resolution 36/18 (A/HRC/RES/36/18) of 3 October 2017.
19 Report of the Working Group on Arbitrary Detention (A/HRC/42/39, 16 July 2019) para. 60(b)

The basis for objection

The objection to military service can be based on grounds of religion, belief or conscience. In General Comment 22 the UN HRC stated that Article 18 protects "theistic, non-theistic and atheistic beliefs, … Article 18 is not limited in its applications to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions".[20] The HRC made clear that no discrimination is permitted between the religion or belief on which the objection is based.[21]

In *Eu-min Jung et al v Republic of Korea*, the Committee identified that "the authors' subsequent conviction and sentence amounted to an infringement of their freedom of conscience" in addition to being a violation of their freedom of religion or belief.[22]

It is important to note that in order to become eligible as a conscientious objector, it is not a requirement that the person declare their objection before joining the military. A person may become a conscientious objector to military service after they join the military. This may be due to a change of religion or belief or a gradual conscientious objection to specific aspects of military service. Article 18 (1) protects the right to change one's religion or belief. Conscientious objection can occur at any time, even when a person's military service has begun already.[23] UN Human Rights Council resolution 24/17 states "persons performing military service may develop conscientious objections".[24] Therefore, arrangements for conscientious objectors must accommodate applications "after joining the armed forces, or even after completion of military service, for example by those listed as reservists or subject to further call-up or training".[25]

Requirement of the payment of a sum in the place of military service was also not considered a suitable substitute for the recognition of the right to conscientious objection.[26]

20 *Supra* note 4, General Comment 22 para. 2
21 *Supra* note 4, General Comment 22, para 11.
22 *Eu-min Jung et al v Republic of Korea* (CCPR/C/98/D/1593-1603/2007 of 14 April 2010), para. 7.4.
23 Human Rights Committee, Concluding Observations on Chile (CCPR/C/CHL/CO/5 of 18 April 2007), para. 13.
24 Human Rights Council resolution 24/17 (A/HRC/24/17) of 27 September 2013, preambular paragraph 8, reaffirmed in Human Rights Council resolution 36/18 (A/HRC/RES/36/18) of 3 October 2017.
25 *Ibid.*
26 Human Rights Committee, Concluding Observations on Syria (CCPR/CO/84/SYR of 9 August 2005), para. 11.

Council of Europe - European Court of Human Rights

While there is no explicit reference to the right to conscientious objection to military service in Article 9 of the ECHR, this right has gained progressive protection within the CoE human rights protection system.[27] The Court held that opposition to military service:

> where it is motivated by a serious and insurmountable conflict between the obligation to serve in the army and a person's conscience or his deeply and genuinely held religious or other beliefs, constitutes a conviction or belief of sufficient cogency, seriousness, cohesion and importance to attract the guarantees of Article 9.[28]

In the case of *Bayatyan v. Armenia*, the ECtHR held that a conscientious objector's failure to report for military service may be a manifestation of his religious beliefs and his ensuing conviction for draft evasion amounted to an interference with his freedom to manifest his religion as guaranteed by Article 9(1).[29]

ECtHR recognizes that "any system of compulsory military service imposes a heavy burden on citizens". Therefore, it would be acceptable if it is shared in an "equitable manner and if exemptions from this duty are based on solid and convincing grounds".[30] Consequently, the examination of a conscientious objection claim by national authorities is considered permissible. The ECtHR held that states have a certain margin of appreciation in defining the circumstances under which they recognize the right to conscientious objection and establishing mechanisms for considering the individual requests.[31] Furthermore, where an individual requests a special exemption bestowed upon him due to his religious beliefs or convictions, it is not oppressive or in fundamental conflict with freedom of conscience to require some level of substantiation of genuine belief and, if that substantiation is not forthcoming, to reach a negative conclusion.[32]

As regards the process of establishing whether a person is entitled to conscientious objector status the Court has found that there is a positive obligation on the part of states to provide an effective and accessible procedure to determine their status.[33]

Under Article 9 the process of determining conscientious objector status could include an interview to assess the seriousness of the applicant's beliefs and to ensure that the exemption

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27 For the case law of the Strasbourg organs see Guide on Article 9 of the European Convention on Human Rights, 31 December 2020.
28 ECtHR, *Bayatyan v. Armenia* [GC], App. No. 23459/03, 2011, para. 92-111.
29 *Ibid.*, (Bayatyan v. Armenia) para. 112.
30 *Ibid.*, (Bayatyan v. Armenia) para 125.
31 ECtHR, *Enver Aydemir v. Turkey*, App No. 26012/11, 7 June 2016 , para. 81.
32 ECtHR, *Dyagilev v. Russia*, App. No. 49972/16, 10 March 2020, para. 62.
33 ECtHR, *Papavasilakis v. Greece*, App. No. 66899/14, 15 September 2016, para. 51-52.

possibility is not abused by persons who are in a position to perform their military service.[34] The Court, however, held that the process must be accessible and effective therefore requiring that the persons involved in the process are independent.[35]

The ECtHR has limited conscientious objection to religious or other convictions comprising, in particular, a firm, permanent and sincere objection to any involvement in war or the bearing of arms.[36]

Conscientious objection claims may be based on religious grounds but also non-religious beliefs, such as pacifism. The Court found violations of Article 9 in the cases of pacifist applicants Savda and Tarhan.[37] The Court concentrated on the State's positive obligations, finding a violation as a result of the lack of an effective and accessible procedure under the Turkish legal system whereby the applicants might have ascertained whether they could claim conscientious objector status.[38]

However, Article 9 was not applicable in a case where the applicant refused to carry out his compulsory military service on the grounds that although he could not conduct military service for the secular Republic of Turkey, he might possibly have done so in a system based on the Koran and Sharia law.[39] The applicant had not claimed conscientious objection to military service based on a religious or pacifist or anti-militarist philosophy conviction that military service should be opposed on principle, nor on a pacifistic and anti-militaristic philosophy.

In their Recommendation on "human rights of members of the armed forces", the CoE's Committee of Ministers recognised that professional members of the armed forces as well as conscripts should be able to leave the armed forces for reasons of conscience.[40]

Alternative civilian service has been considered by the ECtHR in a number of cases. The lack of an alternative system requires justification on the part of states where they would enjoy little margin of appreciation. The Court held that in states where there is alternative civilian service this cannot be limited to members of clergy or students in religious schools.[41] A violation of Article 14 (prohibition of discrimination) in conjunction with Article 9 was found in cases in which ministers of the Jehovah's Witnesses in Austria complained that they had been denied complete exemption from military service and alternative civilian service, as such an exemption was reserved for ministers of "recognised religious associations", and was unavailable for

34 *Ibid.*, (Papavasilakis v. Greece), para. 54.
35 *Ibid.*, (Papavasilakis v. Greece), para.60.
36 Supra 31, (Enver Aydemir v. Turkey), para 81.
37 ECtHR, Savda v. Turkey App. No. 42730/05, 12 June 2012; Tarhan v. Turkey, App. No. 9078/06, 17 July 2012.
38 *Ibid.*, (Savda v. Turkey; Tarhan v. Turkey).
39 *Supra* 31, (Enver Aydemir v. Turkey, para. 79-84.
40 CoE, Committee of Ministers passed Recommendation CM/ Rec(2010)4.
41 ECtHR, *Mushfig Mammadov and Others v. Azerbaijan*, App. Nos. 14604/08 and 3 others, 17 October 2019, para. 96-97.

such "registered" religious organisations as the Jehovah's Witnesses at the time – despite the similarity of the functions exercised by all religious ministers.[42]

Also, "necessity of defending the territorial integrity of the State" did not constitute justifiable grounds for not making alternative service available.[43]

It is important to note that demobilising conscientious objectors based on a medical report stating that they are not fit for military service (adjustment disorder) following their multiple imprisonments could not change their "victim status".[44]

Alternative service must also suit the requirements of the individual's conscience and beliefs even though states have a certain margin of appreciation in alternative service arrangements. Such service must be genuinely civilian in nature, neither deterrent nor punitive. When considering whether alternative service is of a genuinely civilian nature, the ECtHR examined compatibility with several factors, including the nature of the work performed, authority, control, applicable rules and appearances.[45] A violation of Article 9 was found in the case of four Armenian Jehovah's Witnesses convicted of having refused to perform either military or alternative civilian service because of their religious beliefs. While recruits could opt for the alternative service in civilian institutions such as orphanages, retirement homes and hospitals, the service had not been sufficiently separated from the military system. The military was involved in the supervision of the civilian institutions; carrying out regular spot checks, taking measures in the event of unauthorised absence, ordering transfers and determining assignments and the application of military regulations. Furthermore, those doing alternative service were required to wear a uniform. In addition, alternative service was substantially longer than the period of military service (42 months as against 24), which had necessarily had a deterrent, or even punitive, effect.[46]

42 ECtHR, *Löffelmann v. Austria*, App. No. 42967/98, 12 March 2009; *Gütl v. Austria*, no. 49686/99, 12 March 2009; *Lang v. Austria*, App. No. 28648/03, 19 March 2009.
43 *Supra* 41, *(Mushfig Mammadov and Others v. Azerbaijan)*, para. 97
44 ECtHR, *Bukharatyan v. Armenia*, App. No. 37819/03, 10 January 2012; *Tsaturyan v. Armenia* App. No. 37821/03, 10 January 2012, *Erçep v. Turkey,* App. No. 43965/04, 22 November 2011; *Feti Demirtaş v. Turkey*, App. No. 5260/07, 17 January 2012, *Buldu and Others v. Turkey*, App. No. 14017/08, 3 June 2014 .
45 ECtHR; *Adyan and Others v. Armenia*, App. Nos. 75604/11 and 21759/15, 12 October 2017, para. 67-68.
46 *Ibid.*, para. 69-72.

3. Turkey's International Human Rights Obligations

Turkey has ratified core international human rights treaties both within the United Nations (UN) and Council of Europe human rights protection schemes. As a party to the UN ICCPR[47] and CoE European Convention of Human Rights (ECHR)[48] Turkey has significant human rights obligations impacting the protection of conscientious objection to military service. Turkey has also ratified the First Optional Protocol to the ICCPR[49]. Accordingly, Turkey recognizes the competence of the HRC to determine whether there has been a violation of the Covenant or not and all individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration.[50] The state party to the First Optional Protocol undertakes to provide an effective and enforceable remedy in case a violation has been established and the Committee requests from the State party, within 180 days, information about the measures taken to give effect to the Committee's views.[51] The State party is also requested to publish these Views and to have them translated in the official language of the State party and widely distributed.

Conscientious objection to military service in Turkey has been the subject of consideration under a number of international human rights compliance control mechanisms.

UN Human Rights Committee

In 2012 the Human Rights Committee in its list of issues to be taken up in connection with the consideration of the initial report of Turkey asked the Government to provide information on the reasons for failure to recognize conscientious objection to military service and any information on steps being undertaken to bring legislation and practice relating to conscientious objection to military service in line with the Covenant. [52]

47 Turkey has ratified the ICCPR in 2003.
48 Turkey has ratified the ECHR in 1953.
49 Turkey has ratified the First Optional Protocol to ICCPR in 2006.
50 Article 2 of the First Optional Protocol Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 9.
51 Article 2 of the First Optional Protocol of the ICCPR.
52 104th session New York, 12-30 March 2012, CCPR/C/TUR/1)CCPR/C/TUR/Q/1

Furthermore, the HRC asked the authorities to 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.

In 2012 the HRC issued its view on the communication of *Atasoy and Sarkut v. Turkey* where the applicants claimed that the absence of an alternative to compulsory service, subject to criminal prosecution and imprisonment, violated their rights under Article 18(1) of the ICCPR.[53]

Turkish authorities argued that the applicants had failed to exhaust all domestic remedies and therefore that their communication should be considered inadmissible. However, the Committee held that the applicants' views that their cases could not be appealed past their current level in the Turkish court system was enough to rule that the communication was admissible.

The applicants did not seek exemption from compulsory national service, they objected to the fact that a civilian alternative service was absent. The HRC considered that the applicants' objection to being drafted for compulsory military service derived from their religious belief, genuinely held, and which had not been contested.[54] Furthermore, the prosecution and sentences ensuing the objection to military service constituted infringement of their freedom of conscience which violated Article 18(1).[55] The HRC held that "repression of the refusal to be drafted for compulsory military service, exercised against persons whose conscience or religion prohibits the use of arms, is incompatible with article 18, paragraph 1" and that Turkey violated Article 18(1) of the ICCPR.[56]

Consequently, Turkey is under an obligation to provide the applicants with an effective remedy, including expunging their criminal record and providing them with compensation.[57] Importantly, Turkey is under the obligation to avoid similar violation of the Covenant in the future.

53 *Atasoy and Sarkut v Turkey*, UN Doc CCPR/C/104/D/1853-1854/2008, 19 June 2012.
54 Ibid., (*Atasoy and Sarkut v. Turkey*), 10.5.
55 Ibid., (*Atasoy and Sarkut v. Turkey*), 10.5.
56 Ibid., (*Atasoy and Sarkut v. Turkey*), 10.5 and 11.
57 Ibid., (*Atasoy and Sarkut v. Turkey*), 12.

UN Working Group on Arbitrary Detention

In 2003 the UN Working Group on Arbitrary Detention has declared arbitrary the detention of conscientious objectors following a second conviction on the grounds that this would be tantamount to compelling a person to change his or her convictions and beliefs for fear of not being subjected to criminal prosecution for the rest of one's life, being incompatible with the principle of double jeopardy or *ne bis in idem*, thus violating Article 14(7) of the ICCPR.[58]

The UN WGAD has issued two opinions on the case of two conscientious objectors in Turkey: Osman Murat Ülke and Halil Savda.

Regarding Ülke's application the Working Group considered Ülke's repetitive detentions arbitrary, it having been ordered in violation of the fundamental principle *non bis in idem*, a principle generally recognized in countries where the rule of law prevails as being one of the most essential guarantees of the right to a fair trial.[59]

The second opinion was related to Halil Savda, a conscientious objector who did not return to his unit after basic training as a result of which he was convicted. The WGAD found that Savda's second conviction to a prison term of six months by the Military Court on 12 April 2007 for insubordination since 25 November 2007, as upheld by the Military Court of Cassation, violated his right to fair trial. However, it does not transpire, from the information before the Working Group, whether Mr. Savda has already served this sentence, or parts thereof; if he had to it would be tantamount to arbitrary deprivation of liberty.

The WGAD rendered an opinion in the case of Savda even though he was released at the time and under the working methods paragraph 17(a) if a person has been released following the case to the Working Group, the case is filed; the Group however reserves the right to render an opinion on a case-by-case basis. The Group chose to render an opinion considering that "It is very likely that Mr. Savda will be arrested, detained and imprisoned time and again and may spend years after years in prison for failing to serve in the Army at least until he has reached the age limit, if any, after which Turkish citizens are not more obliged to perform their military service."[60] Furthermore the case was viewed as having importance beyond Savda's individual fate.

The WGAD found that Savda's deprivation of liberty was in contravention of Article 9 and 18 of the Universal Declaration of Human Rights (UDHR) and ICCPR. Furthermore, requested the

58 WGAD, Opinion No. United Nations, Working Group on Arbitrary Detention. Opinion No 36/1999 (Turkey). See also Opinion 16/2008 (Turkey).
59 *Ibid.*, Opinion 36/1999.
60 *Supra* 58, Opinion 16/2008 .

Government to take the necessary steps to remedy the situation of Savda and to bring it into conformity with the standards and principles set forth in the UDHR and ICCPR.[61]

UN Universal Periodic Review

A number of states made recommendations to Turkey in the context of the Universal Periodic Review of Turkey. Most recently, within the third cycle, Croatia recommended that Turkey consider the introduction of civil service for conscientious objectors to military service and revising the current law according to which the right to conscientious objection to military service is a criminal act.[62] Under the second cycle Slovenia recommended that Turkey recognize the right to conscientious objection and to offer a civilian alternative to military service and Germany recommended that Turkey adopt laws that recognize and guarantee the right to conscientious objection to military service, ensuring that any genuinely civilian alternative is not punitive in length.[63] Finally, Croatia recommended that Turkey adopt laws recognizing and regulating the right to conscientious objections and ensure that the civilian alternative to military service has no punitive or discriminatory effects.[64]

Turkey's response to these recommendations has been consistent. Each recommendation was noted, never supported. This is indicative of the resistance Turkey has demonstrated against the recognition of the right to conscientious objection.

The Council of Europe - ECtHR judgments and procedures before the Committee of Ministers

The ECtHR found violations of several rights in applications on conscientious objection to military service in a number of cases. These include Ülke v Turkey (2006), *Buldu and Others v. Turkey* (2014), *Enver Aydemir v. Turkey* (2016), *Erçep v. Turkey* (2012), *Feti Demirtaş v Turkey* (2012), *Savda v Turkey* (2012), *Tarhan v. Turkey* (2012).[65]

61 *Ibid.*
62 https://upr-info-database.uwazi.io/en/ Turkey's UPR Cycle 3 (2017-2021).
63 Turkey's UPR Cycle 2 (2011 - 2016).
64 Turkey's UPR Cycle 1 (2006 - 2010).
65 *Ercep v. Turkey*, 22 February 2012, European Court of Human Rights, No. 5260/07, *Feti Demirtas v. Turkey*, 17 January 2012, European Court of Human Rights, No. 5260/07, *Mehmet Tarhan v. Turkey*, 12 July 2012, European Court of Human Rights, No. 9078/06, *Halil Savda v. Turkey*, 12 June 2012, European Court of Human Rights, *Osman Murat Ülke v. Turkey*, App. No. 39437/98, 24 April 2006, European Court of Human Rights, 43965/04.

Member states have undertaken to comply with final judgments of the ECtHR finding violations of the ECHR. The Committee of Ministers supervises the execution of the ECtHR judgments and decisions.[66] Once these become final, states indicate to the CM as soon as possible the measures planned and/ or taken in an "action plan". Once all the measures have been taken, an "action report" is submitted. Under the Rules of Procedures of the Committee of Ministers, during the supervision process, applicants, NGOs and National Institutions for the promotion and protection of Human Rights can submit communications, in writing.[67] The supervision of the adoption and implementation of action plans follows a twin-track procedure. Standard supervision procedure is used for most cases. The CM follows an enhanced procedure for cases requiring urgent individual measures or revealing important structural problems and for inter-state cases.

Cases remain under supervision until the required measures have been taken. Once judgments are effectively enforced supervision is closed by a final resolution.

The CM classified the Ülke group of cases as requiring enhanced supervision. The enhanced supervision is utilized for cases requiring urgent individual measures, pilot judgments and judgments indicating structural and complex problems. This process allows the CM to closely follow the process of the execution of judgments.

The Ülke group of cases pertain to violations of Article 3, the prohibition of torture, inhuman and degrading treatment, Article 9, the right to freedom of thought, conscience and religion and Article 6 the right to fair trial enshrined in the ECHR.[68] There are a total of seven cases in the Ülke group under the enhanced supervision of the CM.[69] The judgment on the first case, Ülke v. Turkey, became final on 24 April 2006.

The ECtHR has four key findings in the Ülke group of cases:

1. The lack of a sufficient legal framework for those who refuse to wear uniform and/or perform military service on grounds of conscience or religion and the ensuing interminable series of prosecutions and convictions are disproportionate to the aim of ensuring the performance of military service. The series of prosecutions and convictions aimed at repression of intellectual personality, breaking of the resistance and will and the compulsion to lead a clandestine life, amount

66 Article 46 of the ECHR.
67 Committee of Ministers, Rules of Procedures of the Committee of Ministers, adopted by the Committee of Ministers on 10 May 2006 at the 964th meeting of the Ministers' Deputies and amended on 18 January 2017 at the 1275th meeting of the Ministers' Deputies.
68 Supra 65, *Ülke v. Turkey.*
69 ECtHR, Ülke v Turkey (2006), *Buldu and Others v. Turkey* (2014), *Enver Aydemir v. Turkey* (2016), *Erçep v. Turkey* (2012), *Feti Demirtaş v Turkey* (2012), *Savda v Turkey* (2012), *Tarhan v. Turkey* (2012).

almost to "civil death" is incompatible with the punishment regime of a democratic society. (Ülke) In the aggregate, the acts concerned constitute inhuman or degrading treatment within the meaning of Article 3. (Ülke, Savda, Feti Demirtaş, Buldu and others, Enver Aydemir, and Tarhan)

2. Lack of an effective and accessible procedure in Turkey which would have enabled conscientious objectors to have established whether they were entitled to conscientious objector status was a violation of Article 9 of the Convention. (Erçep, Savda, Feti Demirtaş, Buldu and others, and Tarhan)

3. The system of compulsory military service in Turkey imposes on the citizens an obligation which may have serious consequences for conscientious objectors: it does not allow any exemption on grounds of conscience and gives rise to the imposition of heavy criminal penalties. Thus, the interference in question originates not only from the multiple convictions of the applicant, but also from the absence of an alternative service. (Ercep, Feti Demirtaş, Tarhan)

4. The trial and conviction of civilian conscientious objectors by military courts constitutes a violation of Article 6 § 1 of the Convention. (Erçep, Savda, Buldu and Others, and Feti Demirtaş)

4. National Policy on Conscientious Objection

Turkey's policy on conscientious objection to military service has been dominated by a strong opposition to this notion as a right that is protected under freedom of thought, conscience and religion. Changes over the years have been related to the nature of punishment of conscientious objectors and this change has been triggered by the findings of international human rights mechanisms the ECtHR and the HRC, respectively. The exceptions have been the short-lived momentum gained during 2011- 2012 in the context of the drafting of the new constitution and the two military court decisions that considered the right to conscientious objection to military service in their reasonings. These, however, had significant limitations and did not have any lasting impact as will be shown below.

The movement on conscientious objection to military service in Turkey has become visible in the 1990s.[70] The issue has not become part of nationwide public debate and the exchanges have been to a large extent limited to domestic and international court cases, public statements by conscientious objectors and the Association for Conscientious Objection (VR-DER) as well as parliamentary questions and legislative proposals by few parliamentarians.[71]

In 2011 the then Minister of Justice stated that the Ministry of Defence was preparing for an arrangement on conscientious objection and that the issue would be discussed at the Cabinet meeting shortly.[72] However this has not resulted in any legislative change.

During the new Constitution preparation process campaigners for conscientious objection have advocated a provision guaranteeing the right to conscientious objection in the new Constitution. The Conscientious Objectors Platform, a Turkish advocacy group, made a presentation to the parliamentary Constitutional Reconciliation Commission on 9 April 2012. They called for the right to conscientious objection to compulsory military service to be protected in the new Constitution. They explicitly drew on the ECtHR cases in arguing for the recognition of the right to object to military service based on an individual's religious, political and philosophical beliefs. The Platform also called for alternative forms of service to be introduced, under which an individual could either refuse to bear arms in carrying out military service or carry out a completely civilian alternative service.

70 Üsterci, C. and Yorulmaz, U., "Türkiye'de Vicdani Red" in Çınar Ö.H. and Üsterci, C. (eds), Çarklardaki Kum: Vicdani Red, İletişim, 2008.
71 For an account see Öğünç, P. *Asker Doğmayanlar*, Hrant Dink Vakfı, 2013.
72 "Vicdani Ret Geliyor", *Haber Türk*, 14 November 2011.

Following the meeting, two opposition political parties, the Republican People's Party (CHP) and the Peace and Democracy Party (BDP), made statements noting that the right to conscientious objection to military service must be recognised to comply with Turkey's international human rights commitments.[73]

At the same time, the Presidency of Religious Affairs argued that the right to conscientious objection does not exist in Islam, that in addition to worship rituals, everyone is responsible toward their family and state - including in the area of tax and military service.[74]

In 2015, two members of parliament from the HDP (People's Democratic Party) proposed legislative changes to the Law on Military Service, Military Criminal Law and the Criminal Code to comply with international human rights standards on conscientious objection to military service.[75] This was not successful.

Military courts were abolished through constitutional amendments made in 2017, including the Supreme Judicial Military Court and the Supreme Administrative Military Court.[76] This has been presented in the Government's communication to the CM as fulfilling one of the criteria in the enforcement of the ECtHR judgments on the Ülke group of cases.

Turkey's policy toward CO based on the Government's responses to UN & CoE CM

Turkey's responses to international human rights compliance control mechanisms also shed some light to the evolving yet firmly opposed position to conscientious objection to military service as expressed in legal terms. The Government argued that Article 18, did not apply to conscientious objectors to military service for a number of reasons.

In Ülke v. Turkey, the Government argued that the right to freedom of religion or belief as protected under Article 9 of the ECHR and Article 18 of the ICCPR was not applicable since they did not afford a right to conscientious objection *per se*.[77] In *Atasoy and Sarkut*, the Government argued that under Article 31 of the Vienna Convention on the Law of Treaties a treaty should be interpreted in good faith in accordance with the ordinary meaning and the ordinary meaning

73 Karabağlı, H., "Vicdani retçiler yeni anayasada hak istedi", T24, 9 April 2012.
74 Mumcu, Ö., "Diyanet'in Vicdani Ret Fetvası", T24, 19 April 2012.
75 Haber Türk, HDP'den Vicdani Ret için Yasa Teklifi, 8 August 2015.
76 "Kaldırılan Askeri Mahkemelerin Dosyalarına Bakacak Mahkemeler Belirlendi". www.istanbulbarosu.org.tr (5 June 2017).
77 *Supra* 65, Ülke v. Turkey, para. 50. Supra 53, *Atasoy and Sarkut.*

of Article 18 cannot be construed as affording a right to conscientious objection to military service. Furthermore, the authorities argued that "a recourse to the preparatory papers (*travaux préparatoires*) of the Covenant would confirm the fact that it had never been the intention of the drafters to create a separate and absolute right to a conscientious objection".[78] Turkey argued that Article 18 and Article 9, read in conjunction with Article 8, paragraph 3 (c) (ii), of the ICCPR, and Article 4 of the ECHR respectively, left no room for ambiguity as the latter provision explicitly refers to —those countries where conscientious objection is recognized. Turkey challenged the interpretation, particularly in Atasoy and Sarkut, saying, if it were to be assumed that the intention of the drafters was to declare compulsory military service a violation of the right to conscientious objection, then one would legitimately challenge the rationale behind providing in another article for recognition of this violation in some States as an exception to forced or compulsory labour. According to Turkey, Articles 8 and 18 are consistent with each other, since the latter does not recognize a right to conscientious objection.

Furthermore, in the same communication Turkey argued that conscientious objection to military service is a form of manifestation and that even if one assumed in this case that the manifestation of the authors' beliefs has been restricted, it should be noted that the authors were sentenced only because of their insistent disobedience of the military service rules. Therefore, Turkey relied on Article 18(3), of the ICCPR, saying some restrictions may be necessary in a democratic society for the protection of public safety and public order and the right of conscientious objection could be limited in such a way that exemption from military service does not perturb public safety and order.

Turkey also asserted that since under Article 72 of the Constitution military service is compulsory and under Article 10 all persons are equal before the law "the state shall have the obligation to ensure that this equality exists in practice". The authorities also relied on domestic law, arguing that "the obligation to perform military service applied to all men of Turkish nationality and did not permit any exception on grounds of conscience".[79]

Following the ECtHR judgment on Ülke v. Turkey in 2006, the Government has engaged with the CM in 2010, 2012, 2015, 2018 and 2020 over the supervision of the enforcement of judgments on conscientious objection to military service cases. Since 2006 numerous cases brought by conscientious objectors from Turkey have led to findings of violations of several Convention rights. These are compiled into the Ülke group of cases and brought under enhanced supervision. Turkey's focus has centered on individual measures through payment of compensation and arrangement of dismissal or discharge on the basis of medical reports indicating that the

78 *Supra* 53, *Atasoy Sarkut v. Turkey*.

79 *Supra* 65, *Ülke v. Turkey*, para. 51.

applicants were not fit for military service and annulment of arrest warrants.[80] As of 2018 the Government informed the CM that "military service by payment" was an alternative whereby an eligible person could by paying a certain sum become exempted from the obligation of military service.[81]

Since 2012 conscientious objection to military service has not been on the agenda of the Government, rather the focus has been on shortening the duration of the military service in general and the introduction of the possibility of shortened military service by payment . In 2019 a new Law on Conscription[82] was adopted reducing the military service to six months and one month shortened military service by payment.

Currently, there is no mechanism to which conscientious objectors can make an application. When conscientious objectors send a letter of application stating that they cannot fulfil their military service obligations on account of being conscientious objectors they are sent a letter stating that under current legislation exemption from military service is not an option.

An application for information was sent to the Ministry of National Defence requesting information on how many persons applied to the Ministry seeking exemption as conscientious objectors between 2016-2020. The Ministry's response stated that "there is no legal possibility to fulfil your request".[83] However, Minister of National Defence, Hulusi Akar, stated in 2019 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."[84] He also added that there is no provision on conscientious objection in Turkish legislation and no preparatory work that is being carried out.

A number of conscientious objectors informed the Association for Conscientious Objection that when they applied to the Ministry of National Defence they received letters stating that, under the Law on Military Service exemption from military service is not a possibility, among others, M.Ç. in 2017[85] and R.B. in 2016.[86] Another conscientious objector, Ö.K. informed the

80 Communication from the authorities (01/07/2015) concerning the case of Ülke against Turkey (Application No. 39437/98), DH-DD(2015)735, 09 July 2015, Communication from the authorities (24/09/2018) concerning the case of ULKE GROUP v. Turkey (Application No. 39437/98), DH-DD(2018)938, 28 September 2018, https://hudoc.exec.coe.int/eng#{"fulltext":["ülke%20v.%20turkey"],"EXECIdentifier":["DH-DD(2018)938E"]} https://hudoc.exec.coe.int/eng#{"fulltext":["ülke%20v.%20turkey"],"EXECIdentifier":["DH-DD(2015)735E"]}

81 Communication from the authorities (24/09/2018) concerning the case of ULKE GROUP v. Turkey (Application No. 39437/98), DH-DD(2018)938, 28 September 2018, https://hudoc.exec.coe.int/eng#{"fulltext":["ülke%20v.%20turkey"],"EXECIdentifier":["DH-DD(2018)938E"]}

82 Law on Conscription [Askeralma Kanunu] No. 7179, 25 June, 2019 Official Gazette 30813, 26 June 2019.

83 Application for information made by the author Mine Yildirim on 26 March 2021 request number 2101413343 and response sent on 30 March 2021.

84 "Akar: Vicdani Retle İlgili Çalışmamız Yok", Bianet, 21 November 2019.

85 M.Ç. Made an application to the Ministry of National Defense on 22 June 2017. In a document dated 5 July 2017 he was informed that under Article 1 of the Law on Military Service No. 111, he was not exempt from military service. 41427893-1130-2626-17/ASAL İşl.D.STS İşl.Ş. 23463.

86 R.B. Letter from general Directorate of Conscription, Document no 46987865-1040-2/16/ASAL Gn.Md.Er.İşl.Özl.İşl. Ks.36571, 29 November 2016.

Military Service Branch on his conscientious objection on 15 December 2013.[87] Having received no response he applied to the Ministry of National Defense in 2016 which was rejected the same year. Ö.K. objected to the rejection decision at an administrative court that dismissed the case.

In 2020 the General Directorate of Conscription of the Ministry of National Defence sent a letter in connection to the Yazıcı case. The letter outlines the manner in which applications of conscientious objection will be processed. Application made to the military service branch will not be sent to the General Directorate on Conscription, instead the military service branches will draft a negative letter in accordance with the legislation. The conscientious objector's application and the military service branch's letter will be sent to the military service branch where the "liable" is registered. Military Service Branches are asked to send information on conscientious objection applications in March, June, September and December to the Ministry of National Defence.[88] Same document states that the Ministry of Defence should not be informed on repetitive applications by the same conscientious objectors.

Actions taken against the VR-DER are also indicative of national policy. VR-DER, established in 2013, advocates for the constitutional recognition of the right to conscientious objection to military service in Turkey. Since its establishment, the association has organized workshops and diverse events on conscientious objection to military service to raise awareness about conscientious objection across Turkey.

While convictions would be rare, since its establishment, VR-DER has been subjected to investigations and criminal lawsuits have been initiated against the board members and members of the association, both due to the news published on the official website of the association and the press release issued by VR-DER and demonstrations they organized. Such actions create pressure on members of the VR-DER and a chilling effect on conscientious objectors.

In 2016, following a press statement by VR-DER in connection to the World Conscientious Objectors Day May 15, in Diyarbakır, an investigation was initiated by the Diyarbakır Chief Public Prosecutor's Office against 4 people, including association co-chair Merve Arkun and association lawyer Davut Erkan.[89] The investigation resulted in a "no reason for prosecution" decision.[90] 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

87 Ankara 12th Administrative Court, 2017/1101E.
88 Memorandum of the Ministry of National Defence General Directorate of Conscription on Applications on Conscientious Objection, 17 June 2020.
89 Investigation no: 2017/6291.
90 Decision no 2018/1720.

charge of "alienating the public from military service" under Article 318 of the Turkish Criminal Code.[91] Çelik was acquitted at the first hearing held on February 6, 2020.[92]

In 2020, an investigation was initiated by the Istanbul Anatolian Chief Public Prosecutor's Office, again based on some posts published on the VR-DER's website and social media accounts. Abdülmelik Yalçın, member of the Association, who shared news on the website was called to give a statement based on the accusation of "insulting the military organization of the state" under Article 301 of the Turkish Criminal Code.[93] The investigation is ongoing.

As briefly described above, Turkey's policy toward the recognition of the right to conscientious objection to military service remained firmly opposed to its protection under the right to freedom of thought, conscience and religion. Continued punitive measures against conscientious objectors have been an integral part of national policy. The substantial changes that have occurred relate to procedural issues and the punishment regime which evolved from repetitive imprisonments to repetitive administrative and prison sentences. While the latter are often converted to judicial fines the consequence for conscientious objectors continue to be burdensome.

91 Case no 2019/935.
92 At the Istanbul 16th Criminal Court of First Instance, Decision number 2020/160.
93 Investigation number: 2020/34522.

5. National Legal Framework and Practice

5.1. Legal Framework

The Constitution of the Turkish Republic[94] protects everyone's right to freedom of religion and conscience, however, does not refer to conscientious objection.

> **Article 24**
>
> Everyone has the freedom of conscience, religious belief and conviction.
> …
> No one shall be compelled … to reveal religious beliefs and convictions, or be blamed or accused because of his religious beliefs and convictions..

Freedom of conscience protected under Article 24(1) is not subject to limitations.

Furthermore Article 25 stipulates that "everyone has freedom of thought and opinion" and that "no one shall be compelled to reveal his/her thoughts or opinions" and "nor be blamed or accused of his/her thoughts and opinions".

Article 72 of the Constitution regulates national service:

> **Article 72**
>
> National service is the right and duty of every Turk. The manner in which this service shall be performed, or considered as performed, either in the armed forces or in public service, shall be regulated by law.

Military service is not compulsory under the Constitution, on the contrary Article 72 only refers to national service and does not indicate it as military service. Instead, it refers to service in armed forces, public service or there might be the situation of being considered as performed. This clearly shows that military service is not the only way to perform national service and that recognition of the right to conscientious objection would not require a constitutional amendment. Furthermore, it demonstrates that not offering an alternative service is not compatible with the text.[95]

94 Constitution of the Republic of Turkey, adopted by the Constituent Assembly on 18 October 1982,
95 Can, O. "Vicdani Red ve Anayasa" in Çınar, Ö.H. and Üsterci, C. (eds), Çarklardaki Kum: Vicdani Red, İletişim, 2008.

Article 10 sets forth the principle of equality before the law for everyone:

> **Article 10**
>
> Everyone is equal before the law without distinction as to language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such grounds.
>
> ...
>
> No privilege shall be granted to any individual, family, group or class. State organs and administrative authorities are obliged to act in compliance with the principle of equality before the law in all their proceedings.2

Under Article 90 of the Constitution international human rights treaties prevail over national legislation:

> International agreements duly put into effect have the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional. In the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail.

The Law on Conscription (Askeralma Kanunu, AK, hereafter)[96] and the Military Criminal Law (Askeri Ceza Kanunu, ACK, hereafter),[97] are particularly pertinent and constitute the basis of the compulsory nature of military service, evader and deserter status and the ensuing administrative and criminal punitive measures applied to conscientious objectors. These laws do not include any provision on or reference to conscientious objection to military service or alternative civilian service. There is also no mechanism to which conscientious objectors could apply for an assessment of their request to be exempted from military service or request to serve in an alternative civilian service.

96 Law No 7179 on Conscription (Askeralma Kanunu), 26.06.2019, Official Gazette No. 30813, 25.06.2019.
97 Law No. 1632 on Military Criminal Code (Askeri Ceza Kanunu), 22.05.1930, Official Gazette No. 1520, 15.06.1930.

Glossary

Draft evader: Those who have not enrolled even though they were called.

Evader : Those who have not responded to the call or have not reported to the unit they have been referred to.

Deserter: Those who have left their unit or place where they were sent for duty without permission for more than six days.

Article 4 of the 2019 Law on Conscription stipulates that military service is compulsory:

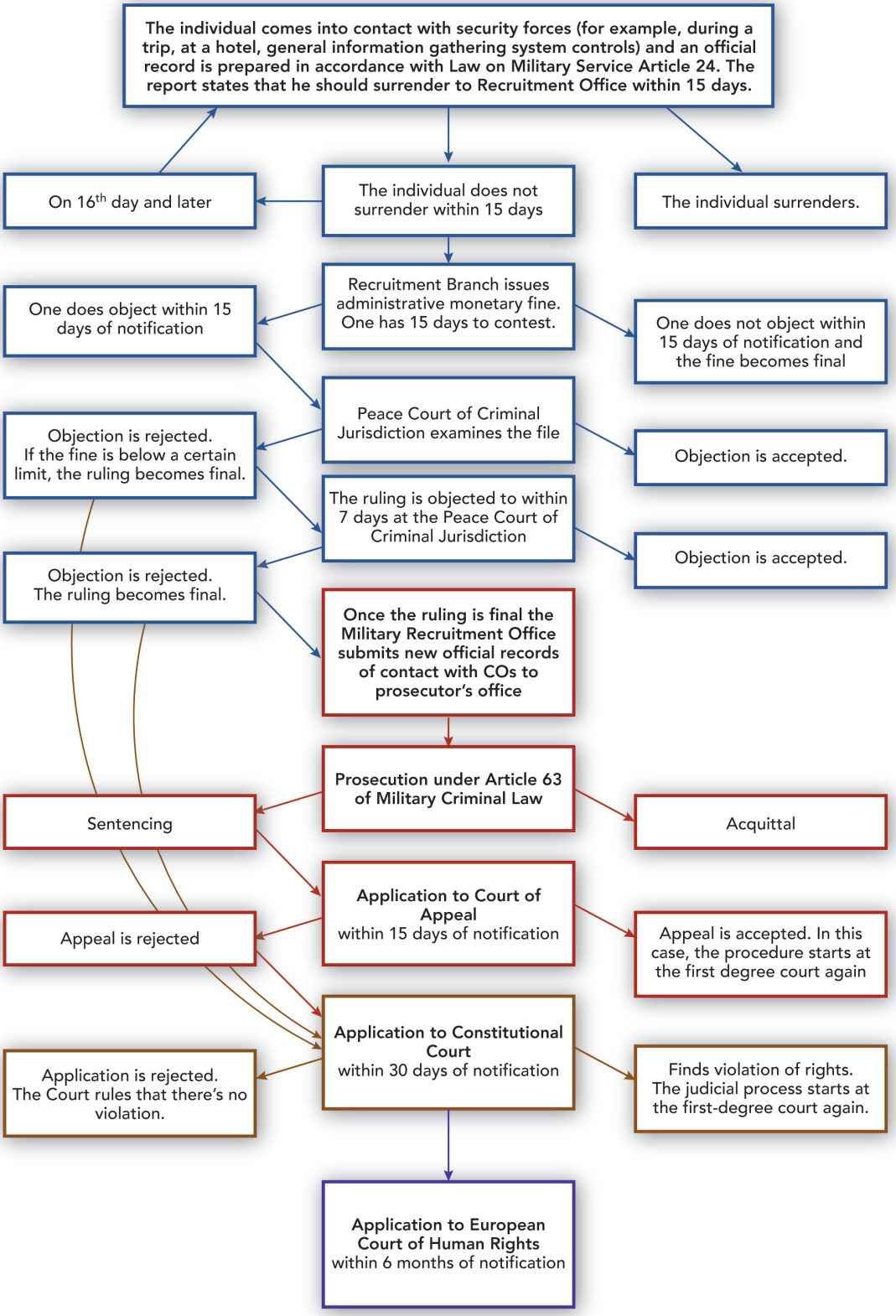
> **Article 4**
>
> Every man who is Turkish citizen must perform military service.

Military service is compulsory for every man between the ages of 20-41 and the duration is six months for cadets and twelve months for reserve officers and officers.[98]

Under Article 45 of the ACK, "the fact that a person regards his action as necessary according to his conscience or religion does not prevent it from causing a punishment ensuing from doing or not doing it".[99] This is clearly incompatible with Article 24 of the Constitution.

The Law on Conscription sets forth the manner in which evaders and deserters will be tracked and the administrative fines applicable to them. Once the administrative monetary fine is final, criminal proceedings are initiated under the Military Criminal Law. After the finalization of the first fine, every official record becomes a criminal case, however conscientious objectors can be fined several times due to the long period of finalization of the fines. This process will be outlined below.

98 Articles 3 and 5.
99 Translation of the author.


The individual comes into contact with security forces (for example, during a trip, at a hotel, general information gathering system controls) and an official record is prepared in accordance with Law on Military Service Article 24. The report states that he should surrender to Recruitment Office within 15 days.
On 16th day and later
The individual does not surrender within 15 days
The individual surrenders.
Recruitment Branch issues administrative monetary fine. One has 15 days to contest.
One does object within 15 days of notification
One does not object within 15 days of notification and the fine becomes final
Peace Court of Criminal Jurisdiction examines the file
Objection is rejected. If the fine is below a certain limit, the ruling becomes final.
Objection is accepted.
The ruling is objected to within 7 days at the Peace Court of Criminal Jurisdiction
Objection is rejected. The ruling becomes final.
Objection is accepted.
Once the ruling is final the Military Recruitment Office submits new official records of contact with COs to prosecutor's office
Prosecution under Article 63 of Military Criminal Law
Sentencing
Acquittal
Application to Court of Appeal within 15 days of notification
Appeal is rejected
Appeal is accepted. In this case, the procedure starts at the first degree court again
Application to Constitutional Court within 30 days of notification
Application is rejected. The Court rules that there's no violation.
Finds violation of rights. The judicial process starts at the first-degree court again.
Application to European Court of Human Rights within 6 months of notification

Evaders and deserters are tracked in accordance with the rules laid down in Article 26(1) of the Law on Conscription. Accordingly, evaders and deserters are 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 military service branch during working hours. Where there is no military service 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 fines (administrative monetary fines) given to draft evaders and evaders (see Glossary). Those who surrender are to pay 5 TL per day, starting from the day they became draft evaders or evaders. Those who are apprehended are due to pay 10 TL *per* day. Administrative monetary fines must be paid within a month of the date the official record is issued. If this fine is not contested, it becomes final within 15 days. Conscientious objectors who fail to fulfil this obligation are faced with a risk of being apprehended repeatedly after every 15 days and to have an official report issued. In case applicants contest the monetary fine, it becomes final following a ruling of the Peace Court of Criminal Jurisdiction. Official records issued after the finalization of administrative monetary fines, criminal trial process begins under the Military Criminal Law as described in the Chart.[100] While some persons contest the monetary administrative fines, most individuals are not able to appeal because they are not familiar with the legal process. Between November 2020- April 2021 of 31 conscientious objectors that contacted the Association for Conscientious Objection 13 said they did not know how to contest the monetary administrative fines, 15 said they did not contest and only three said they contested.[101] Of the three, two were rejected and one is still pending.

Military service branch authorities are authorized to issue the administrative fine and they notify the military service branch directorate located in the place where the draft evader or evader is registered in the population registry.[102]

Official records and administrative monetary fines and ensuing prosecution are closely related. As stated in Article 100(3) of the Regulation on the Law on Conscription, a copy of the official record that is issued against the draft evader or evader is given to him.[103] However, this is not consistently applied. Many conscientious objectors who provided information on their cases to the Association for Conscientious Objection have reported inconsistencies. İnan Mayıs Aru reported that he was issued approximately 30 official records, however he has only seven of these, some he was not given some he did not keep. He was issued a total of approximately 12,000 TL administrative monetary fine based on two official records issued on 1 April 2015

100 Article 24(4) Law on Conscription.
101 Database of the Association for Conscientious Objection, 26 April 2021.
102 Article 24 (3) Law on Conscription.
103 Article 100 (3) Regulation on the Law on Conscription, Official Gazette No 31193, 22 July 2020..

and 28 August 2018 respectively.[104] Abuzer Yurtsever, has seven official records issued between 2016-2017 and he has been issued 18,666 TL administrative monetary fine on the basis of the official record of 7 December 2016.[105] Seyda Can Yılmaz was apprehended 14 times between 2018- 2020 and thus 14 official records were issued against him. However, only one of the official records led to an administrative fine of 4,218 TL.[106]

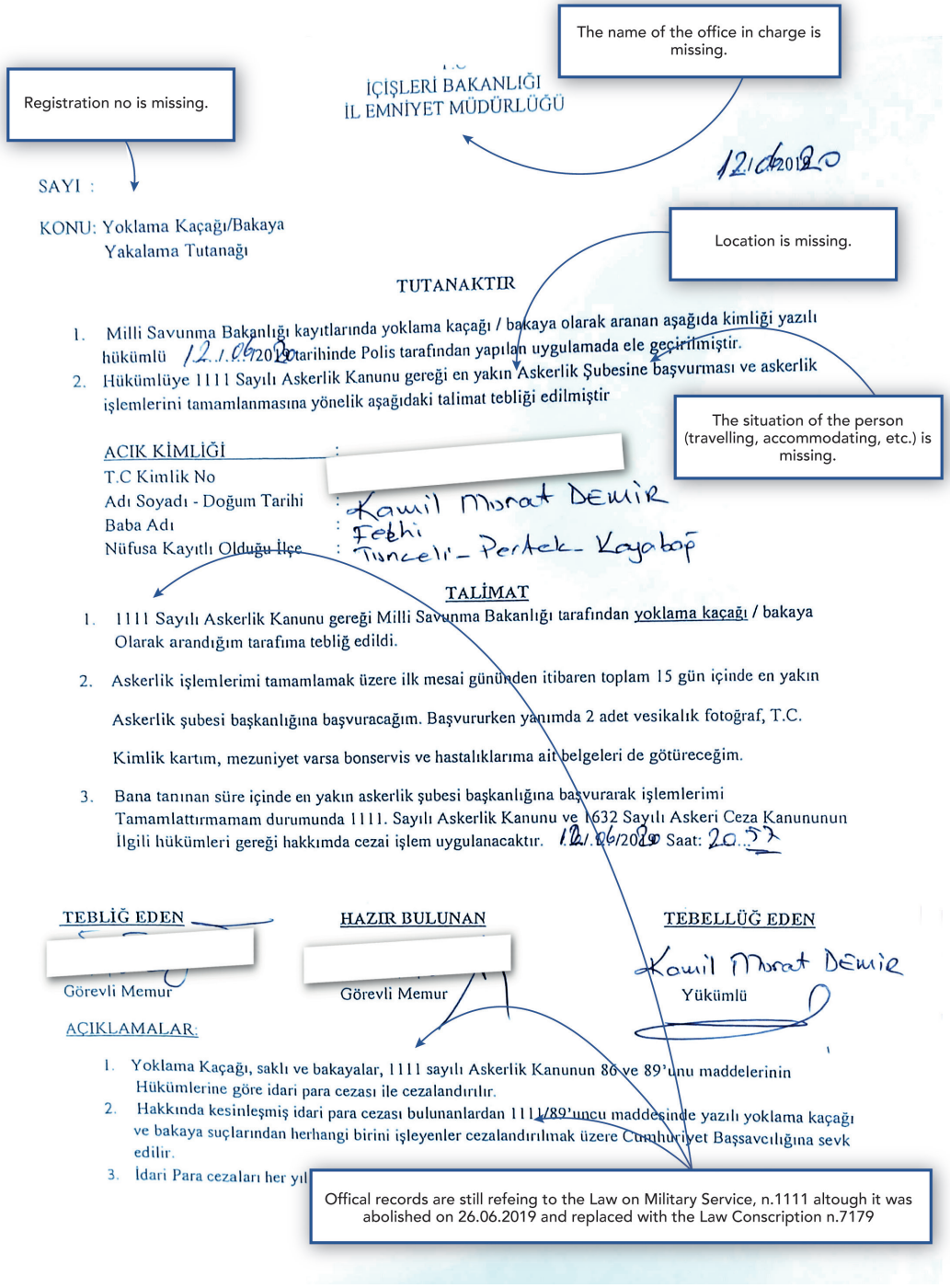
The administrative monetary fines can amount to a substantial sum. Arif Hikmet İyidoğan, a computer programmer who is one of the first conscientious objectors in Turkey and announced his conscientious objection to military service in 1994. While he was imprisoned for alienating the public from military service for some time, for many years, he did not experience any other problems. He has been subject to stop & search since 2016. Since then, he has been imposed a total of 17,251 TL as administrative fines in relation to three different official records. His appeals were rejected in two cases.[107] However one of the fines was cancelled by the Çankaya Conscription Office on the basis that they made a procedural mistake, before the appeal was considered, on 31 December 2020. He made two individual applications to the Constitutional Court that are pending since 14 June 2019[108] and 30 October 2019.[109]

The Military Criminal Law enshrines important provisions on criminal measures applicable to conscientious objectors.[110] 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.

104 Administrative monetary fines were issued against Aru, based on the official record of 1 April 2015, 9,514 TL and of 28 August 2015 2,718 TL. Lawyer Hülya Üçpınar's face to face interview with İnan Mayıs Aru on 7 January 2020.
105 Information received from his lawyer Gökhan Soysal on 27 December 2020.
106 Email sent by Seyda Can Yılmaz to lawyer Hülya Üçpınar on 12 April 2021.
107 Ankara 5.SC 20/5090, Ankara 1.SC 20/9111.
108 2019/35442
109 2019/20177
110 For more information see https://asal.msb.gov.tr/Askeralma/icerik/yoklama-kacagi-sakli-ve-bakayalarin-takip-ve-cezalandirma-islemleri

5.1.1. The Official Record

A sample record, indicating what is missing



Official records constitute the basis of fines and penalties in accordance with Article 24 of the Law on Conscription and Article 63 of the Military Criminal Law. Despite their importance, they are not uniform, often sketchy and are not handled in a consistent manner. This negligence weakens foreseeability and right to fair trial as will be shown below.

Lacking vital information - Often, there is no indication of the place, time and the circumstances (check and apprehension at a hotel or on the road) in which the official record was registered, the duration of detention of the conscientious objector or even the name of the police station or gendarmerie unit. Sometimes it is not clear by which department the official record has been issued or there is a signature but the name of the person who signed it is missing. As a result, vital information is not registered anywhere in the official record. Consequently, these official records, which have negative implications for conscientious objectors, lack substantial information that conscientious objectors who want to support their allegations of rights violations could rely on to support their cases.

Lack of copies and registration in database - Furthermore, in many cases conscientious objectors are not provided with a copy of the official record and not all are registered in the national database. Consequently, conscientious objectors can access these official records only in the case there is an administrative/criminal measure taken against them. The case of Cemal Karakuş illustrates this problem well. Karakuş, a diver in the national team, reports that he frequently travels and that he has come across stop & checks where he was issued official records more times than he could remember.[111] However, he has only five official record copies in his possession. One of the official records is dated 31.01.2018. This apprehension took place in Alanya at the hotel where the national team were staying and he was taken to the police station just for being a draft evader, his statement was taken, and he was released after two and a half hours. He was issued an official record at each phase, including apprehension, medical examination, giving a statement. He was issued 2,978 TL administrative monetary fine and a criminal case was initiated as a result of this apprehension. It is possible to identify the details of these apprehensions and ensuing measures that are taken because the official record provides this information in an adequate manner. As described above such fundamental and important information is missing from most official records.

111 Of his four individual complaints to the Constitutional Court dated 07.04.2021. The Constitutional Court is yet to provide a case number for the applications.

Kamil Murat Demir, a conscientious objector since 2018, is a journalist who frequently travels for work. Over the course of 2016-2021 he has been apprehended on account of being a draft evader approximately 50 times during travel for work or at work.[112] On two occasions he was apprehended whilst staying at hotels. Consequently, he refrains from staying at hotels and tries to arrange accommodation where there is no requirement for official registration. He has been issued an administrative fine of 4,305 TL following an apprehension for being a draft evader in 2016. Later on, 11 criminal cases were initiated against him after administrative monetary fines became final.[113] He was acquitted on one of them in 2019, however, the prosecutor appealed against this verdict.[114] The case is still pending. In another case he was given 4-month imprisonment in 2018 but this was converted to 1,200 TL of judicial fine.[115] The rest of the files, nine out of 11, and an individual application to the Constitutional Court are pending.

5.1.2. Shortened military service through payment

Since 2019, with the adoption of the Law on Conscription, shortened military service through payment of a sum of money has become permanently possible under the Turkish military service system. Under Article 9 of the Law on Conscription those who pay a certain sum that is determined by the Ministry of Defense and complete one month of basic military training will be considered to have completed their military service. In case the number of those who opt for this option exceeds the number determined for the shortened military service through payment those who can opt for this option will be determined by draw.[116]

Those who are eligible for the shortened military service through payment option and yet forfeit this right will not be given the option again.[117] Those who have started their military service, those who have been assigned evader status and those who are draft evaders and in hiding cannot benefit from this option.[118]

112 The Association for Conscientious Objection has documents of 19 out of 50.
113 An administrative monetary fine becomes final when it is not contested within 15 days or when the objection is rejected. During this process new administrative fines may be issued through new stop & checks are encountered.
114 Pertek AsCM 2017/57, 2018/11.
115 Pertek As CM 2017/119, 2018/44.
116 Law on Conscription Article 9/2
117 Law on Conscription Article 9/2.
118 Article 9/6.

Those who opted for the shortened military service by payment, are called and have not joined the military, are considered evaders and can no longer benefit from this option. The payment they made is not automatically refunded.[119] Refund is made upon request.

Shortened military service through payment is not an option in times of war and mobilization.[120]

It is important to underline that shortened military service through payment is not a suitable option for conscientious objectors and it is not available for all conscientious objectors. Unfortunately, in the consideration of an asylum case in the Netherlands, shortened military service by payment was considered as "a right" to justify rejection of asylum claims.[121] Similarly, in the case of B.Ş. a Turkish court also considered the shortened military service by payment as an option for conscientious or other objectors to military service.[122]

In their correspondence with the CoE CM, the Turkish authorities have referred to the possibility of fulfilling the obligation to perform military service by payment. However, clearly, this cannot be considered a solution to human rights violations that conscientious objectors are subject to. Firstly, the payment option does not constitute an alternative service therefore the finding of the ECtHR that the interference Article 9 originates from the lack of alternative service is not addressed. Secondly, approximately 4,400 EUR must be paid to benefit from this option and this is an amount about 17 times the net minimum wage (2.825 TL, approximately 250 Eur) therefore not easily accessible. It is common that individuals feel compelled to take bank credit in order to afford the necessary sum.[123] Thirdly, everyone who opts for military service by payment must perform basic military training for one month. This requires wearing of the uniform, obedience to orders, and all routine aspects of ordinary military service. This is not acceptable for individuals who object to military service and wearing of the uniform categorically. Finally, under Article 9(6) of the Law on Conscription those who have already started their military service and those who have the status of enrolment or enlistment evaders or deserters or those in hiding cannot benefit from this option.

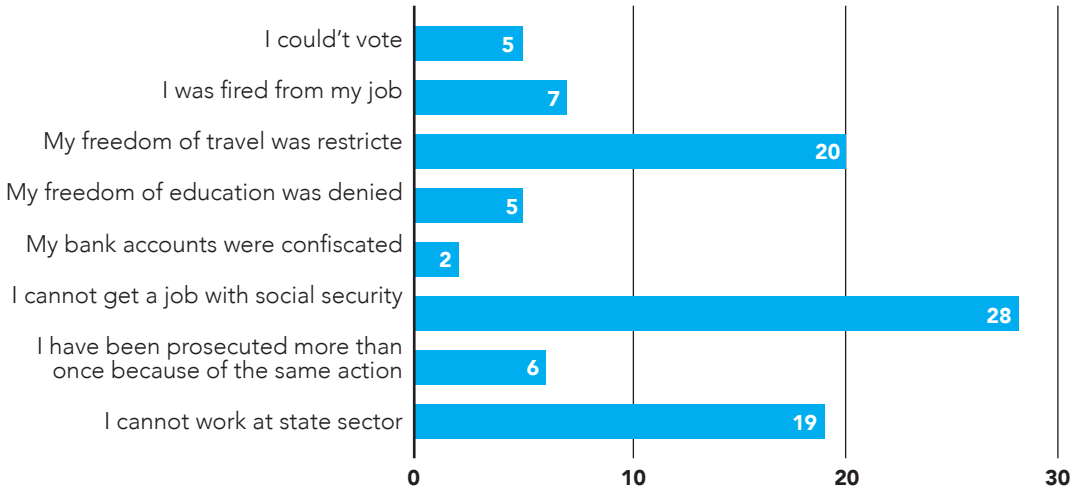
119 Article 9/5.
120 Article 9/7.
121 The case of Murat Kızılay, Immigratie- en Naturalisatiedienst Ministerie van Justitie en Veiligheid V-nummer 2868039503, Zaaknummer ZI-119466712718, 23 January 2020.
122 Case of B.Ş., Ereğli 4.Asliye CM 2018/657 E, 2019/135 K 20/03/2019
123 Banks provide credits for shortened military service through payment which is also indicative of the difficulty to pay the required amount. Bedelli Askerlik Kredisi Veren 7 Banka 2021, www.uygunkrediler.com.tr ; Bedelli Askerlik Kredisi Veren Bankalar, www.devletdestekli.com .

5.2. Restrictions on key human rights

In addition to interference in their right to freedom of thought, conscience and religion, conscientious objectors experience restrictions on a number of human rights. Once a conscientious objector to military service evades the draft or deserts the military public authorities identify them as evader or deserter. This status becomes part of the information linked to their national identity number and information. Furthermore, it has implications for the exercise of a number of human rights. In Ülke v. Turkey, the ECtHR had stated that "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".[124] This situation remains a reality for conscientious objectors as a result of the unending cycle of stop & checks, fines, criminal prosecutions and restrictions on a wide range of human rights.

The Turkish authorities' limited response to conscientious objection does not address these issues. The implications of the non-recognition of the right to conscientious objection on other human rights are also not considered by the international human rights compliance control mechanisms. These rights include, *inter alia*, participation in public affairs and the right to vote, freedom of movement, right to education, opportunity to earn one's living.

As shown below, between Jan-April 2021 the VR-DER has received 36 responses on the types of restrictions experienced by conscientious objectors.



124 *Supra* 65, *Ülke v. Turkey*, para. 62.

Participation in public affairs and the right to vote

Under Article 67(1) of the Constitution, citizens have the right to vote, to be elected, to engage in political activities independently or in a political party, and to take part in a referendum. However, 67(5) stipulates that "privates and corporals at arms, cadets, ... shall not vote".

It is interesting that even Osman Murat Ülke, who applied to the ECtHR in order to seek remedy to the human rights violations he experienced as a consequence of being a conscientious objector in Turkey, after having won his case in 2006 continues to be subject to restrictions, including on the right to vote. 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 31 March 2019 general elections, he received his voter card.[125] However, on the day of the election when he went to vote, he was told that there is a note indicating that he could not vote, and the electoral officers did not allow him to vote.[126]

Similarly, another conscientious objector, Murat Demiroğlu, who has declared his objection since 2013, has evader status. In February he came across a stop & check and was taken to the Zeytinburnu Military Service Branch.[127] Even though he informed the authorities that he is a conscientious objector, the authorities transferred him to the military unit without informing him and recorded as a "soldier" in the database. Demiroğlu learnt this six days before the elections through a telephone message he received from the provincial election council. Since he had not received the document indicating he is a cadet (***sülüs***) and thus did not yet have "military person" (***asker kişi***) status he could not vote nor could he carry out his role as a electoral observer he had taken on as a member of the political party with which he is affiliated. [128]

As stated above every citizen has the right to be elected under Article 67 of the Constitution, however in order to be eligible to be elected as a member of parliament, under Article 76 of the Constitution, one must be exempt or deferred from military service or must have fulfilled their military service. Since conscientious objectors' status remains as persons who have not fulfilled their military service, they are not eligible to stand for elections.

125 Interviews conducted by his lawyer Hülya Üçpınar in January 2021.
126 *Ibid.*
127 Written communication with Murat Demiroğlu on 14 April 2021 via WhatsApp.
128 Karaca, E., Vicdani Retçi Asker Diye Kaydedildi Oy Kullanamadı, 3 April 2019, Bianet.

Freedom of movement

Article 23 of the Constitution protects everyone's freedom of movement.

There is no explicit restriction on the freedom of movement of persons who are performing their military service. However, as demonstrated below, a direct consequence of the combination of widespread practice of stop & search and identity checks and Article 26 of the Law on Conscription on the tracking of draft evaders and evaders, is that conscientious objectors are subject to stop & search, apprehension and official record is issued against them. In order to avoid this process conscientious objectors are not free to move freely.

Under Article 26(1) of the Law on Conscription, draft evaders, evaders and deserters are reported to the Ministry of Interior to ensure their apprehension to perform their military service. Once they are apprehended, they are either brought to the nearest Conscription Branch and/or released, given an official record, and asked to submit to the nearest Conscription Branch within 15 days[129] under Article 36(2).

The freedom of movement of conscientious objectors is highly restricted due to a number of possible checks that would lead to their being identified as draft evaders, evaders or deserters. This, then, starts a process that leads to prosecution.

The General Information Gathering (Genel Bilgi Toplama, GBT) is an identity checking technology that police officers use to access up to date information on persons, including their status related to military service, criminal or suspect records. This is used during identity or passport controls. Furthermore, identity checks at hotels and general searches in bus rides lead to restrictions for conscientious objectors. In residential areas the police force and outside of residential areas the gendarmerie is authorized to stop cars and carry out checks. Such checks are also carried out as a result of information that is mandatory to be provided by hotels and similar accommodations on the guests who check in. As soon as they are identified as evaders or deserters, either on the road or at the hotel, they are apprehended, and they are either brought to a police station and/or to military branches or an official record is issued. At times, because a police officer or a gendarme does not have the official record slip with them this process may take hours. This process could potentially happen in the life of a conscientious objector as many times as he may encounter the police or gendarmerie.

Many conscientious objectors have reported to the Association for Conscientious Objection that they feel compelled to change their lifestyle in order to avoid stop & search practices. Aru and Korkmaz' cases illustrate this well. İnan Mayıs Aru has lived in different parts of Turkey over

129 The reference to 15 days is found in the official record slip and not in legislation or regulation.

the years and was given approximately 30 official records during his travels. He now travels less and lives in a village in the Western Turkey.[130] Still, he says that he is always careful to choose his route in a way so as not to encounter the gendarmerie. Utku Korkmaz**,** who announced his conscientious objection in 2014 was apprehended from different hotels on 14 July 2014, 18 March 2016 and 26 March 2016 and he no longer prefers accommodation in hotels that require official check in / registration. [131]

The right to education

Under Article 41(1) of the Law on Conscription the high-school or university registration of students who have not fulfilled their military service - taking into account their right to postponement for a certain period of time - will be frozen. Those whose registration has been frozen this way cannot benefit from any public-funded bursary or student accommodation.

Zana Aksu's case illustrates this situation. Aksu has been a conscientious objector since 2012.[132] After successfully passing the 2019 university entrance exam he was offered a place at the Applied English and Translation Department at Siirt University School of Social Sciences. However, he was not allowed to register because he could not provide a document attesting that he did not have a certificate demonstrating that he no longer has military service obligation.[133]

Opportunity to earn one's living

Article 48 and 49 of the Constitution protect everyone's right to work.

Under Article 41 (2) of the Law on Conscription, evaders and draft evaders cannot be employed in civil service or private service and those who employ them will be prosecuted. In addition, Article 48 (6) of the Law Civil Servants stipulates that in order to qualify as a civil servant one must not be under the obligation to fulfill military service.[134] Article 75(1) of the Military Criminal Code stipulates that those who do not terminate the employment of a person who is considered evader or draft evader upon the receipt of an official notification from the Government will be sentenced to imprisonment from three months to one year. Where this is repeated from one to three years.[135] This is applicable to any employment situation including, private sector and public sector, including municipalities, banks and associations and professional organizations working for public benefit. For example, in 2016 the employer of T.K., a conscientious

130 Lawyer Hülya Üçpınar's face to face interview with İnan Mayıs Aru on 7 January 2020.
131 From his individual complaint to the Constitutional Court, 2016/70638
132 See Zana Aksu's declaration on VR-DER's website https://vicdaniret.org/zana-aksu/, 16 December 2012.
133 Document No. E-3885 dated 26.08.2019.
134 Law on Civil Servants [Devlet Memurları Kanunu] No. 657 14 July 1965, Official Gazette No 12056, 23 July 1965.
135 Military Criminal Code 75/1 stipulates the person shall be sentenced to imprisonment from six months to two years in mobilization or state of emergency, and a heavy imprisonment of up to seven years in case of repetition of this action during mobilization or during a state of emergency.

objector and software developer received a notification from the Ministry of National Defence which stipulated that based on the, then in force, Article 93 Law on Military Service and Article 75 of the Military Criminal Law criminal prosecution will be initiated if T.K. failed to report to the military service branch.[136] As a result of T.K.'s failure to comply with the requirements of the notification, his employment contract was terminated within a month.[137] The action was challenged at administrative court however with no result. Consequently, an individual application was made to the Constitutional Court in 2019.[138]

The Case of U.Y.[139]

U.Y. has been a conscientious objector since 2000. Since then he was subjected to restrictions of several of his human rights. Yet, his dismissal from his job in 2016 because of his conscientious objector status led him to feel compelled to leave the country. He had been working as a senior database developer at an insurance company when in November 2016, the Ministry of National Defence sent a notification to the employer informing him that U.Y. is being sought as a draft evader / deserter nationwide. The notification asked the employer to ensure that U.Y. submits to the nearest military service branch "to be taken under arms" as soon as possible and that the document attesting to this be submitted to the workplace within 15 days. Furthermore, the employer was warned that if these requirements are not fulfilled, as the head of the institution / business owner, that a criminal complaint will be made to the public prosecutor's office requesting the opening of an investigation for the crime of employing a deserter under Article 93 of the Military Service Law and Article 75 of the Military Criminal Code.

U.Y. signed the notification by stating that he "refused to do military service, rights such as work and peace are the most fundamental social rights".

136 The notification was dated 24.11.2016. Details of the case reference are stored in VR-DER's database but are concealed here in line with the request of T.K.
137 On 31.12.2016. The details of the case reference are concealed in line with the request of T.K.
138 07.11.2019. The details of the case reference are concealed in line with the request of T.K.
139 Individual complaint to the ECtHR, 14.06.2019, 32823.

As a result, the employer immediately terminated the employment contract with a just cause as of 14 December 2O16, although U.Y. had been working as a Senior Database Developer since 16.06.2015.

Following the termination decision, an administrative lawsuit was filed, but the relevant court rejected the lawsuit on the grounds that the notification sent to the workplace by the Military Service Branch would not have any relevant consequences on its own and did not examine the claims of unconstitutionality in any way.[140] The appeal application against this decision was also rejected.[141] Furthermore, the application made to the Constitutional Court in 2018 against this decision was rejected in 2018.[142] Consequently, an application to the ECtHR was made on 13.06.2019.

As a direct result of these developments, because there is no opportunity to work and live in Turkey, U.Y. has settled in Montenegro in 2017. However, due to compelling reasons he had to return to Turkey again in 2020.

Denial of public rights and execution of sentence made heavier

U.G. is a businessman who decided to become a conscientious objector when he was serving in the army. He did not go back to the military unit when he was on leave and announced his objection on 1 October 2014, after which his legal status became a deserter. Since then, three criminal cases have been initiated against him. In 2018 he was sentenced to 5 months imprisonment which was converted to 3,000 TL judicial fine on account of not returning to the military unit from leave. Then in 2020 he was sentenced to 10 months of imprisonment which was converted to 6,000 TL judicial fine on account of being a deserter. On 23.01.2021 he was sentenced to 10 months' imprisonment and deprivation of some of the rights, for being a deserter.[143] The decision has been appealed and a decision is pending.

140 Tekirdağ Administrative Court 2017/1696 E., 2017/1964 K.
141 Istanbul Regional Administrative Court Tenth Administrative Case Division, 2018/242 E., 735 K.
142 Application made on 10.05.2018, decided infc 31.11.2018.
143 Malkara 1st Degree Criminal Court 2020/364. 2021/143.

Despite the court cases U.G., his conscientious objection remains. His determination is considered within the concept of "committing the same crime over and over again" and the penalties are given taking into account "recurrence" principle. For this reason, in the last court decision the prison sentence was not converted to a judicial fine. Furthermore, under Article 53(1c) of the Turkish Criminal Law a decision was made to deny him public rights (*kamu haklarından yasaklanma*), i.e. until his sentence was enforced, he could not be a legal guardian. In addition, under Article 58(6,7), the penalty is made heavier in accordance with "recurrence". Potentially other ongoing court cases will also be subject to these provisions once they come to this stage.

Similarly, in the criminal case of Akın Kasapoğlu the sentence has not been reduced because "the accused has committed this crime intentionally".[144] The six months prison sentence was postponed however Article 53 of the Criminal Law was applied and Kasapoğlu was denied public rights. As a result, he cannot be a legal guardian or take a role in the management of a foundation or association, even not be able to carry out a profession that is subject to registration in a professional organization, such as a lawyer.

5.3. Lack of Domestic Remedies and Approaches of the Judiciary

It is important to state at the outset that an effective domestic remedy for conscientious objectors is non-existent since Turkey does not recognize the right to conscientious objection and courts, consistently, have not utilized Article 90 of the Constitution which provides the possibility to directly apply relevant provisions of international human rights treaties where national legislation is incompatible with the former. Instead, courts apply legislation applicable to evaders and deserters. As long as the legal status conscientious objectors remain as evader or draft evader, they will continue to be subject to administrative and judicial fines. This is not compatible with the *ne bis in idem* principle. Nevertheless, conscientious objectors feel that their direct applications to international human rights mechanisms that require the exhaustion of domestic remedies, may consider their applications inadmissible if they do not first exhaust domestic remedies - even if it is evident that since the right to conscientious objection is not recognized their claims will not be successful.

144 Silivri 3rd Criminal Court of First Instance 2018/549 E.,2019/583 K.

Constitutional Court

Individual application to the Constitutional Court system was introduced into the Turkish legal order by the constitutional amendments approved as a result of a public referendum held on 12 September 2010.[145] The system enables any person in Turkey to lodge a complaint with the Constitutional Court if he or she considers that his or her rights and freedoms have been violated. Together with the introduction of the individual application mechanism, an important domestic remedy mechanism has become available for conscientious objectors, since 2012.[146]

Numerous individual applications have been made by conscientious objectors to the Constitutional Court (see Annex). However, so far, the AYM has postponed deliberation on the application. In 2016, it was reported in the media that the Constitutional Court referred an individual application involving conscientious objection to the Plenary.[147] However at the time of writing of this Report the Constitutional Court is yet to deliver a judgment dealing directly with the right to conscientious objection.

The Constitutional Court however delivered a decision of inadmissibility regarding the application of U.Y., a conscientious objector, and the case is now pending with the ECtHR. The Ministry of Defence informed Mr. Y's employers on 30 November 2016 on the status as an evader. The notification stated that unless it was ensured that he submitted to a Recruitment Branch and that a document to this end is submitted to the Recruitment Branch within 15 days the employer would be subject to investigation for unlawfully employing an evader. Thus the employer ended the applicant's contract. In its inadmissibility decision the Constitutional Court, did not address the right to conscientious objection and referred solely to the right to fair trial and found the application manifestly ill founded.[148]

This remedy in itself does not constitute a general measure to prevent similar violations. The need for legislative changes that recognize the right to conscientious objection, establish an independent mechanism to receive and process applications as well as the institution of civilian alternative service remain.

The earliest application known to the authors is Osman Murat Ülke's application from 2014.[149] The basis for the non-implementation of the ECtHR judgment is a structural problem, that of non-recognition of the right to conscientious objection. For this reason, the implementation

145 Article 18 of Law Nr. 5982, Article 148 of the Constitution.
146 For more on the individual application process see https://www.anayasa.gov.tr/en/individual-application/who-may-apply/
147 Hürriyet, "Vicdani ret AYM Genel Kurulu›nda", 22 February 2016.
148 Inadmissibility decision on the Individual Application of U.Y. 2018/12409, 30.11.2018; ECHtR, Application No 32823/2019, 14 June 2019.
149 Constitutional Court, Second Section, 2014/10474

of the pilot decision procedure in accordance with Article 75 of the Rules of Procedure of the AYM is requested.

Furthermore, there are more than 47 applications both from Jehovah's Witnesses and anti-militarist conscientious objectors.[150] A number of applications from 2015-6, made by conscientious objectors Vedat Zencir,[151] Davut Erkan,[152] M.C.S.,[153] and Utku Korkmaz[154]. Some of the applicants have more than one application. Cemal Karakuş' four applications since 2018 and Arif Hikmet İyidoğan's two applications from 2019.

In applications made to the Constitutional Court, decisions for stay of execution are also requested in order to prevent further violations of the applicants' rights. However, the AYM either does not examine these requests at all and does not even provide a response or rejects them on the grounds that "there is no serious danger to the life or security or moral integrity of the applicant".

Although Davut Erkan, who worked as a lawyer, in his application of 2015 and after official records issued against him requested *interim* measures on 23.01.2018 and 02.04.2019, he did not receive any response from the Constitutional Court.[155] Similarly, no response was received in the case of Vedat Zencir, who made an individual application to the court in 2015, requests for interim measures in 2016 following measures taken against him.[156]

In the application of Kamil Murat Demir[157], who was apprehended more than 50 times, and in the application of U.G.[158], who has a deserter status and has been sentenced to imprisonment, the Constitutional Court decided that "there is no serious danger to the life or security or moral integrity of the applicant" without thoroughly examining the applications.

The Constitutional Court is expected to deliver a judgment in line with the ECtHR jurisprudence in order to be considered an effective domestic remedy. In light of its decision on the case of Y.[159] and its postponement of the applications so far, however, it has not yet functioned as an effective domestic remedy.

150 Figure taken from the database of the Association for Conscientious Objection.
151 AYM, Individual Application No. 2015/4422, 02 March 2015.
152 AYM, Individual Application No. 2014/6922, 02 May 2015.
153 AYM, Individual Application No. 2016/10697, 03 June 2016.
154 AYM, Individual Application No. 2016/70638, 26.12.2016.
155 *Supra* 152, 2014/6922.
156 *Supra* 151, 2015/4422.
157 AYM, 25 March 2021 and No. 2021/10902 judgment, Section 2, Commission 2.
158 AYM, 14 April 2020 and No. 2019/42044 judgment, Section 2 Commission 1.
159 AYM, 2018/12409

First degree courts

Almost all criminal cases result in convictions. Neither the claims of unconstitutionality nor the arguments on conscientious objection nor other procedural objections are taken into account in these decisions. In a rare case where conscientious objection claims were discussed the judge made reference to the ECtHR's *Bayatyan v. Armenia* judgment and held that the conscientious objector B.Ş. was not a religious objector and his motivation was to avoid compulsory military service. The ruling also referred to shortened military service by payments as a solution to B.Ş.'s conundrum.[160] In few of the cases in the first-degree courts, where violations of the Law on Notifications,[161] or procedural issues were raised,[162] conscientious objectors to military service were acquitted.

With the exception of a few cases, prison sentences are converted to monetary fine. In the cases of conscientious objector İnan Mayıs Aru, six months prison sentence was converted to 3,000 TL judicial fine in 2017, Zana Aksu, two months prison sentence was converted to 1,200 TL judicial fine in 2018, and Kamil Murat Demir four months prison sentence was converted to 2,400 TL judicial fine.[163]

In the case of B.K., the court ruled that considering the statements of the accused the court was not convinced that he would not violate the law again and therefore decided not to convert the prison sentence, of one month and 20 days, to a judicial fine.[164] Similar to the other cases listed above, the procedural irregularities related to the notifications, unconstitutionality and the right to conscientious objection were not discussed.

In stark contrast to the above, in 2012 two Turkish military court decisions concerning conscientious objection claims have partially recognized the right to conscientious objection to military service as a human right.[165] The military court decisions came despite no specific Turkish legislation either recognising this right or regulating its implementation. While since 2012 no similar court decisions were reached these decisions will be addressed in detail as they may shed some light into how the judiciary would assess claims for conscientious objectors if the right were recognized.

160 Case of B.Ş., Ereğli 4th Criminal Court of First Instance, 2018/657 E, 2019/135 K 20/03/2019.
161 Tebligat Kanunu [Law on Notifications], No 7201, 11 February 1959, Official Gazette 10139, 19 February 1959.
162 A.Y.- Adıyaman 3. Asliye Ceza Mahkemesi 2017/548 E., 2018/31 K. nolu kararı; S.G.- İst Anadolu 3. AS C 2018/797 E., 2019/1740 K.
163 Zana Aksu, Siirt 2nd Criminal Court of First Instance , 2017/396 E., 2018/549 K. İnan Mayıs Aru- Tavşanlı 2nd Criminal Court of First Instance 2017/28 E.,775 K. Kamil Murat Demir; Pertek As CM 2017/119 E., 2018/44 K..
164 Sarıkamış Criminal Court of First Instance. 2017/990 E., 2019/98 K. One month and 20 days imprisonment.
165 Malatya Military Court, 24.02.2012, E. 2012/ 98, K. 2012/40, Isparta Military Court, 18 February 2012, E. 2012/133, K. 2012/037.

Yet these court decisions demonstrate the limits of the right to conscientious objection as recognized by these military courts. Two requirements stood out: first, the courts required that the religion held by the conscientious objector is known to reject military service; and secondly, that the conscientious objector's "sole and undivided" motivation for rejecting military service is his conscientious objection declared at the start of compulsory military service. One case concerned a Jehovah's Witness conscientious objector, Baris Görmez, the other a Muslim conscientious objector, Muhammed Serdar Delice.[166] In both cases military courts to some degree relied on the changed jurisprudence of the ECtHR on conscientious objection following the *Bayatyan v. Armenia* case. However, in both cases a key factor was the declared religions of the conscientious objectors. Both courts applied Article 90 of the Turkish Constitution states that in cases of conflict between international agreements in the area of fundamental rights and domestic laws, the provisions of international agreements will prevail. This provision was applied in both military court judgments.

Malatya Military Court's 2012 Delice decision sets out the Turkish military judiciary's interpretation of the right to conscientious objection to military service. Delice declared his conscientious objection approximately five months after he had been conscripted. He declared that his conscientious objection was based on his Islamic and nationalist beliefs. The Military Court interpreted the ECtHR's approach to the right to conscientious objection as one based on the theological position of a religious group and excluded the beliefs of the individual. It ruled out an individual rejecting military service according to his own views. Instead, the Military Court relied on the rejection of military service by an intellectual, religious or political group, as such. It referred to the example of Jehovah's Witnesses, stating: "persons who are members of the Jehovah's Witnesses reject military service, because they are part of this group or institution which fundamentally rejects military service".

Based on this understanding, a young man claiming conscientious objection to military service would have to be a member of a religious group considered by a court to be categorically opposed to military service. In the Malatya Military Court's view, Delice belonged to "Islam which is not a belief or ideological movement that rejects the performance of military service".

This view of Islam was a theological statement by the court. But when Delice wanted to bring in the mufti of Malatya as an expert witness, the court rejected his request. In excluding the mufti, the court cited Law on Criminal Procedure.[167] Article 62 of this Law states that experts must take an oath saying that they will perform their tasks based on science. The Court stated that "the religious sphere is intrinsically related to beliefs and is dogmatic, hence any view expressed from this field cannot be based on science and includes subjective elements".

166 Karaca, E., "Yehova Şahidi'ne Vicdani Ret Hakkı", 7 March 2012, Bianet,
Karaca, E., "Mahkeme, Delice'yi Değil Ama Vicdani Reddi Tanıdı", 9 March 2012, Bianet.

167 Law No 5271 on Ceza Muhakemesi Kanunu [Law on Criminal Procedure], 4 December 2004, Official Gazette No. 25673, 17 December 2004.

This explanation seems to contradict the Court's view that Islam does not reject the performance of military service. On the one hand, the Court maintains that religious views cannot be presented in proceedings by experts, as they are not scientific and include subjective elements. Yet on the other, it bases its decision on its own theological assessment.

According to the Military Court, Delice had Islamic and nationalist views when he was conscripted. According to the Court, he only declared his conscientious objection to military service after he "saw wrongs and deficient aspects of military service for himself and thus declared his conscientious objection". The Court also argued that Delice did not from the beginning of his military service have a "one and undivided purpose" of conscientious objection. The Court thus ignored in relation to conscientious objection a key part of international law's understanding of freedom of religion or belief, which is also found in the ECHR's Article 9 – the right to change beliefs.

Under this ruling, a conscientious objector must demonstrate that his objection exists before conscription, and that it is his "one and undivided purpose" - i.e. that he has no other reasons for wanting to leave military service. According to the Court, in Delice's statement to the Prosecutor he said that he wanted to leave military service for a number of reasons. According to his statement, these included financial difficulties and the hostile reactions of some of his fellow-soldiers and commanders towards him because he was performing namaz (Muslim prayers) in the military.

The Delice decision also touches on the question of whether a conscientious objector is tried by a military or a civil court. Since Delice was already performing his military service when he declared his conscientious objection, the Court noted that according to Article 9 of Law No 353 ("On the Establishment of Military Courts and Tribunal Procedure") he was under the jurisdiction of the military courts. This reasoning seems to imply that if a person objects to being conscripted before he joins the military he may be tried by a civil court. Delice has appealed against the ruling, and the High Court of Appeals decision and its reasoning is still pending.

Isparta Military Court recognised the right to conscientious objection to military service when it acquitted Jehovah's Witness Baris Görmez on 13 March 2012.[168] He had spent a total of four years in prison from November 2007 and had been charged with "rejecting wearing of the uniform" and "rejecting orders". As in the Delice case, the Court relied on the changed jurisprudence of the ECtHR.

The decisions concerning Görmez and Delice were received both as milestone decisions that recognise the right to conscientious objection and as disappointing – especially in the case

168 *Supra* 166.

of Delice. The Istanbul branch of Mazlumder (Association of Human Rights and Solidarity for Oppressed People) organised a press conference, at which Delice's lawyer Mahir Orak complained that Malatya Military Court "developed a new stalling method by saying that there is no conscientious objection in Islam".[169] Orak also considered that the Delice and Görmez decisions were contradictory.

Consequently, despite Turkey's international human rights commitments and the constitutional protection of the right to freedom of thought, conscience and religion the right to conscientious objection is not recognized in law or through judicial decisions. Conscientious objectors' right to freedom of thought, conscience and religion, freedom of movement, right to education, the right to elect and to be elected and opportunities to make a living are highly and constantly restricted. Therefore, a punitive system that is not compatible with international human rights standards remains in force.

169 "Mahkeme Fetva Verdi: İslam'da Vicdani Ret Yok", Demokrat Haber, 17 March 2012.

6. Personel Account

The Case of A.E.

I am 37 years old, and I have been a professional tourist guide for about seven years.

I declared my conscientious objection in May 2013. I am a conscientious objector because military service, organized violence, taking orders and giving orders, marching marches, singing anthems, that others answer the question of whether it is right to kill a person or not, which is not compatible with natural flow of life bothered me. It still does. I think I got my first administrative fine just 1 week later I had declared my objection I deserted the army. It continued like this after that. Official records have become a part of my life; at the exits of subway stations, streets, cafes, hotels, and demonstration venues, I would often have an official report in hand. As most of us know, there is no penalty for being a conscientious objector in Turkey, but there are sanctions. They apply that sanction as follows. Each official report corresponds to a certain monetary fine, then a lawsuit is filed against you for not paying those fines.

At some point I felt compelled to complete the obligation for military service by payment. Until 2015, I was able to sustain my own life with different alternative economic models. However, when another person - our daughter - joined our lives, it became increasingly difficult to survive in metropolitan conditions. I was trained as a tourist guide after I graduated from university, but I had put my license aside. So, I started working as a guide, again. I loved my job, and I still do. I was opening my eyes on one side of the country and closing it on the other. By the way, I was still a conscientious objector, ie "deserter" or "fugitive" as the authorities would

call it... While many conscientious objectors could not leave the house, I was wandering from city to city. I had to go through at least one "stop and check" by the police every day and speak to my hotelier friends so that they would not register me in the hotel. For the most part it worked. When it did not work, I would sign my name. But this became a problem because the mealtime for the tourists that I guided almost always coincided with the arrival of the police at the hotel. Naturally, whatever their "crime" was, people were a little tired of having a "criminal" accompanying them as a guide. But I was somehow overcoming this, both through the personal relationships I built and by talking about myself. Until the court proceedings began. From that moment on, I could no longer get rid of it by signing on the road, at the hotel, or anywhere else. Now, whatever the place and time, I was first taken to the police station, waiting in custody and then taken to court. Although this did not create a problem for me, it was impossible for my endeavour. As soon as the tourist guides disappear for 10 minutes, let alone a day while working, that tour becomes impossible to run. Especially if this disappearance occurs in front of the eyes of the people you accompany with at least two policemen accompanied by a police car, you will be virtually unable to do this anymore. After a while, I realized that this was becoming unsustainable and decided to take a break from my profession. I worked informally in cafes and hotels. On the other hand, I started to work in a travel agency with social security due to my health problems and so that my daughter and wife could benefit from health services. Two months later, my friend, who owns the agency, left two sheets of paper on the table. In these papers, it was written that the person my friend employs - that is, I - is a deserter and I cannot work as insured somewhere, and if I am employed, the agency will be fined first and then different sanctions may be imposed. Also, the first one of these two documents had been received two months ago. My friend, who had hidden the first one so as not to disturb me, was a little nervous when he received the second one and wanted to share it with me. I quit that job too, in order not to leave him in a difficult situation.

The next process continued with getting hired and then losing my job repeatedly. I was struggling but somehow, I was managing. In fact, it was far from an option for me until military service by payment was announced. However, when the possibility of payment of a sum in lieu of military service obligation, it was my parents and some of my friends who got together and offered the necessary money and tried to persuade me. Although I tried to resist at first, I had to accept it because of the circumstances I was in. There are also those who do not prefer this, I respect them, but I could not and I decided to make the payment and complete the 21 days of military service required under the scheme.

I reluctantly went but it was hard to stay in the barracks for 21 days. I thought about jailbreak the first day, but I didn't do it. It was extremely humiliating for me to wake up at six o'clock in the morning, stand in line, run and to fulfil the "requirements of the military service" together with doctors, academics, lawyers, judges, actors, footballers, the elites. But the efforts of these people to go to the infirmary with different excuses every day with their big titles made me feel that I was not alone. Of course, these men who had paid in lieu of military service obligation, were not treated like ordinary soldiers, they could not be treated. But this did not prevent both the humiliation stemming from the nature of military service and our crushing under the whims of the rank. Those who refused to march, who could not march properly, who did not want to take up arms were either persuaded by the unique methods of militarism, or their 21-day period was made really difficult.

After 21 days and leaving the barracks, the first thing I feel is not the same person entering and leaving the barracks. Who knows what those who did this to us in 21 days, who have been exposed to it for weeks and months, do what they do?

I can do my job right now, but if I had a second chance, would I still pay for it, would I still make the same decision? I am not sure.

The Case of İnan Mayıs Aru

"My name is Mayıs. İnan Mayıs Aru. I'm a translator, a writer, and a poet. I announced my conscientious objection in November 2008 in Istanbul. I had already been part of the antimilitarist movement for a long time. I had already been thinking for many years to announce it at some point. I was in the anarchist movement. In no way did I intend to be part of the force apparatus of war and state. In every stop and search, be it the gendarmerie or the police, they wanted me to sign a record which said that I should surrender to the conscription office on the grounds that I was an evader.

Since I was a conscientious objector, I did not want to sign these records. I stated that I would not surrender to the office saying that I was a conscientious objector. As a result I needed to explain each time to each police or gendarmerie team at great length the process, my reasons, what conscientious objection is, why I did not go to the military. Probably around 20-30 records were issued so far.

These records were issued almost everywhere, under all circumstances, traveling in my own private car or during intercity travel. There were times when I was asked to get off the bus or I was stopped walking on the street. At the entrance and exit of the subway or at the ferry pier. At the passport office when I went to get a passport. A record was issued while traveling by bus from Izmir to Çanakkale in 2017 but at the time, they did not have any official record copies with them. I told them how the process should work, they did not have any clue about it. They said they needed to take me to the conscription branch. And at the office, the others told them that they followed the incorrect procedure, and a record should be issued. But after all, I missed my bus because of their lack of information.

At some point, the administrative monetary fine exponentially increased for each call-up that I did not surrender. Now the total fine imposed is approximately 12,000 TRL. It is converted into tax debt. Accordingly, my bank account was blocked out in 2016. Since 2016, I have not been able to use a bank account on my behalf. If I deposit money into my bank account it will be automatically taken to pay the administrative monetary fines.

This indeed has such a concrete consequence for me: I have traveled abroad so far. I travelled to many places, to India, the Philippines, Georgia; but I resist my urge for traveling to Europe. I do not even attempt it. Because they request documentation of bank transactions. The main thing they want in the visa application is to see bank transactions. But unfortunately, I cannot have any activity in my bank account since if I deposit any money into my bank account it will be seized to cover the monetary fine.

I appealed against these fines. When the fine was issued, I appealed within the time limit -15 days- after I received the notification. In the appeals, I stated that I am a conscientious objector, and this is a right protected by the international law. But I did not receive a positive reply to my appeals. These fines remained valid.

As a result, criminal proceedings were initiated against me, asking for imprisonment. A total of seven cases, some of which were merged. At the end of my first case, I was sentenced to six months in prison which was converted to a fine of 3,000 TL. This was upheld by the court of appeals. I made an individual application to the Constitutional Court, but it is pending for three years now. Of course, I had to pay that fine since it was approved by the court of appeals. Otherwise, I would have had to go to prison for six months.

The second case was also decided in 2020. I was given two months and two days imprisonment. It was postponed. It is currently in the court of appeal, still pending. We think that the decision will be upheld. Of course, it is not something that makes life easier, rather, it is difficult to live with such anxiety and unease. In the simplest term, in every move I have to take into account where I might encounter the gendarmerie on the street all the time. Even when I am walking, when I see the police or the gendarmerie lights, I change direction so that I don't have to deal with more apprehension and so, my day will be more comfortable.

The state has so far opted for ignoring conscientious objection and stalling conscientious objectors. I think it will continue like this. They do not use direct punishment as in the past in the late 90s, early 2000s, but punish us in other ways, making life hard for us. And as I said, the state opts for making the entire life a punishment, ranging from the impossibility of using bank accounts to the difficulties we face while traveling in daily life.

7. Concluding Remarks

Turkey's policy toward the recognition of the right to conscientious objection to military service remains opposed to its protection under the right to freedom of thought, conscience and religion. Continued punitive measures against conscientious objectors remain an integral part of national policy. The substantial changes that have occurred so far, are related to procedural issues and the punishment regime which evolved from repetitive imprisonments to repetitive administrative and judicial fines.

The right to conscientious objection to military service is firmly protected within the scope of the right to freedom of thought, conscience and religion. On account of Turkey's substantial human rights commitments under core international and regional human rights treaties, Turkey has undertaken an obligation to protect the right to conscientious objection to military service. Furthermore, both the constitutional protection of the right to freedom of religion and conscience under Article 24 and the primacy given to provisions of international human rights treaties in the Constitution under Article 90 create obligations for this right. Despite significant international and national obligations Turkey is yet to recognize the right to conscientious objection to military service. Military service continues to be compulsory for men between the ages of 20- 41.

In addition to interference in their right to freedom of thought, conscience and religion, conscientious objectors experience restrictions on a number of human rights. When a conscientious objector to military service does not report to the unit they are assigned, public authorities identify them as draft evaders or evaders. As described in detail above, this status becomes part of the information linked to their national identity number and information. The legal status they are assigned brings about restrictions on the right to freedom of thought, conscience and religion and other key human rights such as participation in public life, including the right to elect and be elected, right to education and freedom of movement. Punitive measures foreseen for draft evaders and evaders in several legislation, including the Law on Conscription, the Criminal Code and Military Criminal Code impact the lives of conscientious objectors throughout their lives repeatedly resulting in a violation of the *ne bis in idem* principle.

Both the UN HRC and the CoE ECtHR have found that Turkey violated the right to freedom of thought, conscience and religion by not recognizing the right to conscientious objection to military service. Turkish authorities, however, have not taken effective measures to prevent similar violations from happening. Domestic remedies are not effective, either. The non-recognition of this right together with the domestic courts' non-implementation of applicable international human rights law in cases concerning conscientious objectors amount to lack of domestic remedies.

8. Recommendations

The following section provides practical recommendations to bring Turkey's legislation and practice in line with international human rights standards based on the findings of this Report. It is recommended that

- conscientious objection to military service be recognized as a constitutional right, without delay, to ensure that legislation on conscientious objection does not come into conflict with other legal regulations and that such regulation is not made open to, possibly restrictive, interpretations of the executive and judicial bodies;

- legislation on conscientious objection to military service should be drafted in compliance with international human rights law as enshrined in the United Nations, the Council of Europe and the European Union human rights instruments;

- an independent and impartial decision-making body to examine conscientious objection claims is established - in compliance with international human right law standards, in particular taking into account the requirement not to discriminate between conscientious objectors on the basis of the nature of their religions or belief;

- measures, that are compatible with international human rights law, are taken to provide a mechanism for the conscientious objectors who declare themselves as "total objectors";

- measures are taken to provide alternative service for those conscientious objectors who request it - various forms of alternative service compatible with international human rights standards;

- key features of the legislation should include the mechanism for determining the status of conscientious objection should be structured accordingly, and

that any service that can be provided as an alternative to conscientious objection genuinely civilian in nature, neither deterrent nor punitive and non-discriminatory in effect;

- all criminal proceedings against conscientious objectors are ended, compensation is provided, all convictions regarding conscientious objection in the criminal records for disobedience, draft evasion, desertion, public statements, are expunged.

- official records are prepared in a detailed manner without missing information, in line with national procedures.

- official records are entered and maintained on the national database and are accessible in e-devlet (e-state) system.

- statistics are kept on conscientious objection applications including the number of conscientious objectors, on monetary fines and criminal investigations, and convictions delivered in connection to conscientious objectors and shared with the public.

- measures are taken to ensure that the applicants are free from the risk of further prosecution and obligation of compulsory military service and can fully enjoy their political, civil, economic, social and cultural rights. To this end, domestic laws, in particular the Law on Conscription, the Military Criminal Law, the Law on Civil Servants, Criminal Code, are reviewed with a view to remove all restrictions imposed on conscientious objectors in the exercise of the rights to be elected and to elect, right to education, opportunities to earn a living and freedom of movement.

- that the Constitutional Court
  - follows ECtHR jurisprudence which recognizes the right to conscientious objection to military service as a fundamental human right, takes into account ECtHR judgments on this issue and decides on the numerous individual applications pending at the AYM, without delay;

  - examines interim measures in detail and treats the issue in a manner that would prevent further harm to conscientious objectors.

- regular training is provided for judges and prosecutors on international human rights obligations pertaining to the right to conscientious objection to military service to help ensure the compatibility of the domestic judicial proceedings with applicable international human rights standards.

- regular training is provided for relevant public authorities in the Ministry of Interior, in particular officers involved in GBT, General Information Collection and stop & checks.

To international human rights compliance control mechanisms:

- Keep compliance control of the right to conscientious objection to military service on relevant agenda including the CoE Committee of Ministers, UN Human Rights Committee, UN Special Procedures and the UPR.

- Follow up the implementation of UN HRC Opinion on Atasoy and Sarkut v. Turkey and UPR recommendations.

- CoE Committee of Ministers
  - continue to keep the Ülke group of cases on enhanced supervision track

  - ask the Turkish authorities to report on the effectiveness of the Constitutional Court individual application mechanism to protect conscientious objectors to military service;

  - ask the Turkish authorities to provide information on how and to what extent the rights of conscientious objectors to education, security of persons, protection of property, right to vote and opportunities to earn a living are impacted due to evader/deserter status in law;

  - ask Turkish authorities statistical information on conscientious objectors to military service.

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Administrative and Legal Proceedings Against Conscientious Objectors in Turkey

The information presented here is not complete however represents the diverse issues as well as applications to the Constitutional Court. The information presented here is based on communications with representatives of conscientious objectors.

The list of the claimed human rights are basically excerped from the individual applications. The applications are not delivered by the VR-DER are only listed under ECHR art.9 however this doesn't mean that the violations are limited with art.9.

CO	Motivation: JW- Jehovah's Witness IB- Islamic Belief AM- Antimilitarist	Date of declaration of CO	App. To the Ministry of Defense	Declaration of CO while at the military service	Adnimistrative fine	Criminal Case	Accusation	Judgement	Appeal	App. to Constitutional Court	Status	App. to ECtHR	Prohibition of Torture inhuman and degrading treatment (Article 3)	Right to liberty & security of person (Article 5)	Right to Freedom of thought, conscience and religion (Article 9)	Right to property (Article 1 of Protocol I)	Right to freedom of movement	Opportunity to earn one's living European Social Charter 1	Right to vote (ICCPR art 25)	effective remedy (Article 13)
S.C.K.	JW				19.03.2020 TRY 422.00															
N.B.G.	JW				13.03.2019 TRY 1,701.00 17.03.2020 TRY 2,104.00 02.10.2020 TRY 4,216.00															
F.Ş.	JW				03.12.2020 TRY 151.00															
C.A.	JW				26.02.2020 TRY 186.00															
					29.02.2020 TRY 830.00															
Ş.A.	JW				27.02.2020 TRY 6,768.00															
S.G.T	JW				11.02.2020 TRY 18,976.00															
E.M.	JW				17.01.2020 TRY 80.00															
S.Ç.	JW				17.10.2020 TRY 7,447.00															
Z.G.	JW				TRY 849.00	As of 2019; 2 lawsuits against him				2019/29837					x					
E.Ö.	JW				Received 17 fines in total 19.03.2019 TRY 3,408.00	As of 2019; 5 lawsuits against him						*Buldu and Others v. Turkey* 3 June 2014 1401/08								
M.C.E.	JW				Received three penalties	As of 2019; 3 lawsuits against him														
Ö.R.P.	JW				TRY 137.00															
A.S.	JW				TRY 6,173.00	As of 2019; 2 lawsuits against him														
T.M.T.	JW				TRY 2,000.00	As of 2019; 2 lawsuits against him														
						Court unknown. 20.06.2019		100 days of imprisonment, converted to TRY 2,000												
B.K.	JW				Lawsuit related to 6 fines continues.	As of 2109; 1 legal proceedings against him	draft evader													
Ö.H.B.	JW				TRY 14,960.00 (Cancelled) TRY 422.00 TRY 1,701.00 TRY 849.00															
A.D:	JW				Received two penalties															
C.D:	JW				TRY 5,369.00															
D.G.	JW				TRY 13,587.00															
Y.İ.	JW				Received two penalties															

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Y.K.	JW				TRY 8,229.00															
E.O.	JW				Several lawsuit related fines continues.															
C.P.	JW				Received 5 penalties	As of 2019; 3 lawsuits against him				2016/20170					x					
A.S.	JW				TRY 13,406.00															
E.F.T.	JW				TRY 4,078.00		draft evader	5 months imprisonment	as of 2019- pending											
A.Z.T.	JW				TRY 849,00 and received 5 penalties	unknown	draft evader													
K.Y.	JW				Received 1 penalties															
C.Ö.	JW				TRY 356.00															
M.T.	JW				TRY 5,115.00															
Y.B.	JW				TRY 28,971.00															
Ş.Ö.	JW				TRY 500.00					2013/5564					x					
V.A.	JW				TRY 7,046.00					2016/14174					x					
A.Ü.	JW				TRY 4,306.00					2017/24734					x					
İ.V.	JW				TRY 7,147.00					2017/35626					x					
B.Ç.	JW				TRY 22,337.00	As of 2019; 3 lawsuits, merged		prison sentence converted to a fine TRY 5,000		2017/39393					x					
Y.E.B.	JW				TRY 21.,519.00	As of 2019; 1 lawsuits against him				2018/19904					x					
A.E.O.	JW				TRY 7,447.00	As of 2019; 2 lawsuits against him				2018/25273					x					
S.Ş.P.	JW				Received 1 penalties					2018/36419					x					
M.T.	JW				TRY 28,971.00					2019/9217					x					
A.Ö.	JW				TRY 6,460.00					2019/11268					x					
N.E.	JW				TRY 2,976					2019/13550					x					
Ö.Y.	JW				TRY 3,408.00					2019/13456					x					
B.G.	JW				TRY 7,895.00					2019/26374		*Büldu and Others v. Turkey* 3 June 2014 1401/08			x					
İ.S.	JW				TRY 250.00 TRY 10,043.00	As of 2019; 2 lawsuits against him				2019/30683					x					
Muhammed Cihad Saatçioğlu	IB	11/11/2012			TRY 9,514.00					03.06.2016 2016/10697			x	x	x					x
Mustafa Çankal	AM	6/22/2017	6/30/2017		TRY 9,514.00					26.07.2017 2017/30069			x	x	x					x
Oğuz Topal	AM				TRY 17,668.00					21.06.2017 2017/28428			x	x	x					x
Ozan Bayram	AM				TRY 12,912.00					11.01.2017 2017/28938			x	x	x					x
Vahap Güler	AM	5/24/2014			TRY 715.00					02.06.2017 2017/26552	Two application has merged		x	x	x					x
										03.01.2018 2018/857										x
Atakan Polat	AM				TRY 132.00					06.06.2018 2018/15742			x	x	x					x
B.K.	AM				TRY 7,447.00					11.12.2018 2018/35937			x	x	x					x
Cemal Karakuş	AM	5/15/2004			TRY 25,315.00 TRY 2,978.00	Alanya 3rd Criminal Court of First Criminal Court of First Instance 2018/489,375		acquital	approved	07.12.2018 2018/35650			x	x	x		x			x
										30.12.2019 2019/42699										
						Alaca Criminal Court of First Instance 2019/39,128		3 months 10 days imprisonment converted to TRY 2,000 of fine.	approved	30.12.2019 2019/42721										
										07.04.2021 2021/16270										
Onur Erden	AM	6/12/2018				Gelibolu Military Court 2009/1470, 308	desertion	10 months imprisonment	approved	12.06.2018 2018/16274			x	x	x					x
						Gelibolu Military Court 2013/2346	desertion	10 months imprisonment	approved											
						Hayrabolu Criminal Court of First Instance 2015/430, 2017/229 desertion (The file and the desicion are not accesible at the national judicial network)	desertion	not known	approved											

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Özgür Küçüktükü	AM	10/19/2017			TRY 4,936.00	Court of First Instance 2017/1004	evading													
						Adana 3.Criminal Court of First Instance 2018/566, 524		pending												
						Avanos.Criminal Court of First Instance 2019/577	evading	pending												
Vedat Zencir	AM	2/6/1990			TRY 13,586.00	Alaşehir 1. Criminal Court of First Instance 2015/88	Evading	pending		02.03.2015 2015/4422			x	x	x	x		x		x
						Alaşehir 1. Criminal Court of First Instance 2020/532	Evading	pending												
Abuzer Yurtsever	AM	2/13/2013			TRY 18,666.00	Adiyaman 3. Criminal Court of First Instance2017/850, 205	Evading	Acquital because of irregular notification												
						Adiyaman 3. Criminal Court of First Instance2017/548, 31	Evading													
						Adiyaman 3. Criminal Court of First Instance2017/701, 677		Acquital because of irregular notification												
Arif Hikmet İyidoğan	AM	19/05/1994			TRY 10,435.00 TRY 5,115.00 (cancelled) TRY 1701.00					14.06.2019 2019/20177			x	x	x					x
										30.10.2019 2019/35442			x	x	x					x
Akın Kasapoğlu	AM				TRY 128.00 TRY 2,978.00 TRY 1,486.00	Silivri 3. Criminal Court of First Instance 2018/549, 2019/583		6 months imprisonment-deferment of the announcement of the verdict	final											
Barış Kaygın	AM	9/22/2016			TRY 128.00 TRY 1,486.00	Sarıkamış Criminal Court of First Instance 2017/990 E., 2019/98 K. 0	Evading	1 month 20 days imprisonment	pending											
Bora Şahinkara	AM	27/01/2013			TRY 7,174.00	Ereğli 4. Criminal Court of First Instance 2018/657,135	Evading	1 month 20 days imprisonment-deferment of the announcement of the verdict	final											
Cengiz Ayerdem	AM				TRY 17,671.00 TRY 1,432.00	Palu Criminal Court of First Instance 2016/251	Bakaya	pending												
Davut Erkan	AM				TRY 16,381.00					02.05.2014 2014/6922			x	x	x					x
Deniz Doku	AM				TRY 2,240.00	Bayındır Criminal Court of First Instance 2016/146, 2017/187	draft evading	3 month 10 days imprisonment-deferment of the announcement of the verdict												
İnan Mayıs Aru	AM	9/27/2008			TRY 9,514.00 TRY 2,718.00	Tavşanlı 2. Criminal Court of First Instance 2017/28,775	evading	6 months imprisonment converted to TRY 3,000 of fine.	final	01.08.2018 2018/23832										
						Tavşanlı 1.Criminal Court of First Instance 2017/400,105	evading	- 4 months, 5 days imprisonment. Suspended. 1 year probation - 2 months 2 days imprisonment. Suspended. 1 year probation	pending											
						Tavşanlı 1. Criminal Court of First Instance 2018/443,510							x	x	x					x
						Tavşanlı 1.Criminal Court of First Instance 2018/308														
						Tavşanlı 1.Criminal Court of First Instance 2018/357														
						Tavşanlı 1.Criminal Court of First Instance 2018/365														
İsmet Sepli	AM	9/22/2016			TRY 1,990.00					19.04.2021 2021/17530			x	x	x					x
Kamil Murat Demir	AM	5/15/2018			TRY 4,305.00	Pertek Criminal Court of First Instance 2017/119, 2018/44	draft evading	4 months imprisonment. Converted to TRY 2400 of fine	final	04.03.2021 2021/10902										
						Pertek Criminal Court of First Instance 2017/57, 2018/11	draft evading	Acquital	The prosecutor objected the verdict.											
						Pertek Criminal Court of First Instance 2019/40	draft evading	pending												
						Pertek Criminal Court of First Instance 2019/44	draft evading	pending												
						Pertek Criminal Court of First Instance 2019/51	draft evading	pending					x	x	x		x			x
						Pertek Criminal Court of First Instance 2020/75	draft evading	pending												
						Pertek Criminal Court of First Instance 2019/173	draft evading	pending												
						Pertek Criminal Court of First Instance 2019/33	draft evading	pending												
						Pertek Criminal Court of First Instance 2020/51	draft evading	pending												

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Kamuran Onay	AM				TRY 2,540.00 TRY 390.00 TRY 895.00					06.07.2020 2020/23826			x	x	x					x
Mahmut Elkuş	AM	5/15/2004			TRY 365.00	Mersin 3.Criminal Court of First Instance 2018/688, 2020/193		Acquital because of irregular notification												
						Mersin 3.Criminal Court of First Instance 2019/11, 2020/306		Acquital because of irregular notification												
Murat Demiroğlu	AM	12/1/2013			TRY 308.00					11.07.2019 2019/23631			x	x	x				x	x
Osman Murat Ülke	AM	9/1/1994								30.05.2014 2014/10474		*Ülke v. Turkey* 24.01.2006 39437/1998	x	x	x	x	x	x		x
Ömer Gülmez	AM				TRY 18,650.00					04.04.2017 2017/20305										
Recep Bulan	AM	11/21/2016	21.11.2016 to the Ministry of Defence							11.01.2017 2017/17733			x	x	x					x
Serkan Bayrak	AM	6/11/2008			TRY 17,460.00					17.01.2019 2019/1898			x	x	x					x
Sertaç Girgin	AM	1/24/2003			TRY 13,580.00 TRY 1,233.00	İst And 3. Criminal Court of First Instance 2018/797, 2019/1740		Acquital because of irregular notification												
Seyda Can Yilmaz	AM	12/24/2009			TRY 4,218.00					24.10.2019 2019/35129			x	x	x					x
Sidar Akdemir	AM	9/6/2015			TRY 4,078.00	Bulanik Criminal Court of First Isntance 2021/18		1 year 8 months imprisonment and deferment of the announcement of the verdict	pending											
Tlmuçin Kizilay	AM	5/15/2000					His contract canceled by the private company in accordance with the ar. 75 of the Military Criminal Law			07.11.2019 2014/10474			x	x	x			x		x
Uğur Gültekin	AM	10/1/2014				Malkara 1. Criminal Court of First Isntance 2017/469 E., 2018/469 K	desertion	5 months imprisonment, converted to TRY 3000 fine	approved	25.12.2019 2019/42044										
						D.Beyazit Criminal Court of First Isntance 2018/5, 2020/316	desertion	10 months of imprisonment, converted to TRY 6000 fine	pending				x	x	x					x
						Malkara Criminal Court of First Isntance 2020/364	desertion	10 months imprisonment	pending											
Uğur Yorulmaz	AM	5/15/2000					His contract canceled by the private company in accordance with the ar. 75 of the Military Criminal Law			30.11.2018 2018/12409	Decision of no violation	14.06.2019 32823/2019	x	x	x			x		x
Utku Korkmaz	AM	7/14/2014			TRY 128.00 TRY 128.00 TRY 128.00					26.12.2016 2016/70638										
Zana Aksu	AM	12/16/2012			TRY 1,482.00	Siirt Criminal Court of First Instance 2017/396, 2018/549		2 months imprisonment converted to TRY 1200 fine	approved											
						Eruh Criminal Court of First Instance 2019/105		judgement of dismissial												
						Eruh Criminal Court of First Instance 2021/69		pending												
Arda Özkızılcık	AM	6/8/2017				Turgutlu 1. Criminal Court of First Instance 2015/179 E. - 2016/230 K.		3 months 10 days converted to fine TRY 2000	pending											
						Turgutlu 3. Criminal Court of First Instance 2018/468		pending												
						Turgutlu 4. Criminal Court of First Instance 2016/438 E. 2018/501	5 months of imprisonment, converted to TRY 3000 and 1 month 20 days of imprisonment, converted to TRY 1000		acquital											
Ercan Aktaş	AM	14/05/2005			TRY 7,174.00	Küçükçekmece 6. Criminal Court of First Instance 2016/333	Insulting the president	pending		10.01.2018 2018/3459			x	x	x					x
						Küçükçekmece 15. Criminal Court of First Instance 2016/458	Insulting the president	pending												
Barış Bilen Atal	AM	03/07/2015			TRY 7,454.00					17.01.2018 2018/1458			x	x	x					x
Ersan Uğur Gör	AM	14/05/2004			TRY 25,315.00															

Vicdani Ret Derneği
Association for Conscientious Objection