



QUAKER COUNCIL FOR EUROPEAN AFFAIRS

The Right to Conscientious Objection in Europe: A Review of the Current Situation

Country Report: TURKEY

Conscription

Conscription is enshrined in Article 72 of the 1982 Constitution. Its further legal basis is the Law on Military Service (1111/1982) and Law for Reserve Officers and Reserve Military Servants (1076).

The length of military service is 15 months. University graduates may perform 8 months' military service, or 12 months if they are trained to become reserve officers. Certain professional groups (doctors, teachers, civil servants) may be permitted to perform special service.

All men between the ages of 19 and 40 are liable for military service. Men who have not fulfilled their military service by the age of 40 and who have not been legally exempt from service, may still be called up after the age of 40.

Students may postpone their military service up to the age of 29, or up to the age of 36 in the case of postgraduate students.

After completion of military service, reservist duties apply up to the age of 40.

Different military service regulations apply for Turkish citizens who are living abroad. They can postpone their service up to the age of 38, for a period of three years at a time. Turkish citizens living abroad may also partially buy themselves out of military service by paying a sum of 5,112 Euros. However, in this case they still need to perform a one-month military service.¹

Turkish citizens who live abroad and who possess dual nationality may get legally exempt from service, on the condition that they lived abroad before the age of 18 and that they performed military service in another country. Exemption on this ground is only possible if the length of military service that has been performed in another country is considered to be comparable to the length of service in Turkey.²

Statistics

The armed forces comprise 514,000 troops including 391,000 conscripts. Every year, approx. 640,000 young men reach conscription age.

In recent years, the share of conscripts in the armed forces has been reduced by 17 per cent, mainly by reducing the length of military service. In 2003, the length of military service was reduced from 18 months. The Turkish government plans to increase the number of professional soldiers in the future, but it has no plans to abolish conscription.³

Conscientious objection

Legal basis

The right to conscientious objection is not legally recognized.

Although Article 24.1 of the 1982 Constitution guarantees the right to freedom of conscience, the Constitution does not widen this to include the right to conscientious objection to military

¹ A temporary regulation has been in place which also allowed young men living in Turkey to buy themselves out of service and do a one-month military service. This regulation applied to men born before 1 January 1973 and applications needed to be made before 4 May 2000. 70,000 Turkish men reportedly applied for this regulation.

² Netherlands Ministry of Foreign Affairs: Algemeen Ambtsbericht Turkije (country report), November 2003.

³ UK Home Office Immigration and Nationality Directorate: Country Report, October 2004.

service. In 1991, the Turkish Constitutional Court explicitly ruled that the freedom of conscience mentioned in Article 24 does not include the right to conscientious objection to military service.⁴

According to Article 72 of the Constitution: "Fatherland service is the right and duty of every Turk. How this service in the armed forces or public sector is carried out or is supposed to be carried out is prescribed by law". Thus the Constitution does, at least in theory, allow fatherland service to be a non-military service. However, Turkish legislation does not provide for a substitute service or for an unarmed military service within the armed forces.

The Turkish government has never considered introducing legislation on conscientious objection. A brochure published by the armed forces in 1999 in fact states: "In our laws there are no provisions on exemption from military service for reasons of conscience. This is because of the pressing need for security, caused by the strategic geographic position of our country and the circumstances we find ourselves in. As long as the factors threatening the internal and external security of Turkey do not change, it is considered to be impossible to introduce the concept of 'conscientious objection' into our legislation".⁵

The Turkish government has disassociated itself from the United Nations Commission on Human Rights Resolution 1998/77, which affirms the right to conscientious objection to military service as a legitimate exercise of the freedom of thought, conscience and religion as laid down in Article 18 of the Universal Declaration of Human Rights and Article 19 of the International Covenant on Civil and Political Rights. The Turkish government does not recognise the right to conscientious objection to military service as stated in these two international instruments.⁶

The Council of Europe and the United Nations have regularly called upon Turkey to legally recognise the right to conscientious objection. In March 2004, the Parliamentary Assembly of the Council of Europe stated that: "Despite Turkey's geostrategic position, the Assembly demands that Turkey recognises the right to conscientious objection and introduce an alternative civilian service".⁷

In another development, the European Court of Human Rights has recently admitted the case of Osman Murat Ülke, a CO who was sentenced to imprisonment in 1996 (see: **Practice**). His complaint to the European Court is mainly based on the claim that his arrest and imprisonment for conscientious objection are a violation of Article 9 of the European Convention, which guarantees the right to freedom of thought and conscience. He made his complaint in 1997, which was finally admitted in 2004. The admission of the case means that the Court will judge if conscientious objection is part of the right to freedom of thought and conscience as mentioned in the Convention.⁸

Practice

Since the 1990s, there are a small number of COs who publicly state that they refuse to perform military service for non-religious, pacifist reasons. The Turkish language actually makes a distinction between conscientious objectors (*vicdani retci*) and draft evaders (*asker kacagi*).

The first known Turkish CO was Osman Murat Ülke, a Turkish citizen who grew up in Germany and returned to Turkey. In 1995 he publicly declared that he was a conscientious objector and refused to perform military service. Since then, dozens of others have followed. Between 1995 and 2004 approx. 40 men have openly declared themselves as conscientious objectors, mostly

⁴ Turkish Constitutional Court 467/1991 and 422,343/1993 (Netherlands Ministry of Foreign Affairs 2003).

⁵ Netherlands Ministry of Foreign Affairs (2003).

⁶ United Nations Commission on Human Rights, Civil and Political Rights, including the question of conscientious objection to military service, Report of the Secretary-General submitted pursuant to Commission resolution 1998/77, 56th session (E/CN.4/2000/55), 17 December 1999.

⁷ Parliamentary Assembly of the Council of Europe, Honouring of obligations and commitments by Turkey, Doc. 10111, 17 March 2004.

⁸ Council of Europe, European Court of Human Rights, Second Section: Judgment as to the admissibility of the application 39437/98 by Osman Murat Ülke against Turkey, 1 June 2004. War Resisters' International: Conscientious Objection Update, No.3/November 2004.

by making a public statement or giving media interviews about their reasons for refusing military service.

COs may be punished under Article 63 of the Turkish Military Penal Code for avoiding military service. COs who attract media attention or publish articles about their refusal to perform military service may also be punished to between six months' and two years' imprisonment under Article 318 of the Turkish Criminal Code for "alienating the people from the armed forces". In 2004, a new Criminal Code was introduced (Law No 5237). Under the previous Criminal Code, "alienating people from the armed forces" was punishable under Article 155 with a similar term of imprisonment.⁹

In the past, there have been several cases of COs who have been sentenced under these two articles. The most well known case was Osman Murat Ülke, who was arrested in October 1996 and during the following years spent a total of 30 months in prison on several charges of disobeying orders. In some other cases, COs have been acquitted of the charges by military court.

In recent years, it appears that the Turkish authorities have refrained from harsh punishment of COs. This may have been caused by the fact that previous trials of COs attracted considerable (international) attention and the Turkish authorities may wish to avoid further attention for the issue of conscientious objection.

However, as long as there are no legal provisions for their right to conscientious objection, the legal position of COs remains vulnerable and they may still be subject to criminal prosecution.

In 2004 there were five known cases of COs. In May 2004, one CO was briefly arrested after he publicly declared that he refused to perform military service. The police arrested him briefly, but subsequently released him again. So far, the police have not attempted to arrest him again.

In October 2004, four COs publicly declared their conscientious objection.¹⁰ In December 2004, one of them was arrested and held in military prison.¹¹ His case is believed to be still pending.

Previously, in 2003 one CO openly stated his conscientious objection. He was arrested in January 2003, but was released after some days pending trial. The military doctors gave him a three months' holiday to recover from what they diagnosed as "a social disturbance of his personality". His case is believed to be still pending.¹²

Apart from the secular COs mentioned above, some members of religious denominations who forbid their members to bear arms, in particular Jehovah's Witnesses, have also refused to perform military service. Members of Jehovah's Witnesses have regularly been sentenced to imprisonment under Article 63 of the Penal Code for avoiding military service. In recent years, Jehovah's Witnesses are reportedly regularly allowed to perform unarmed military service within the armed forces. They have complied with this.¹³

However, in some cases, members of Jehovah's Witnesses have still been sentenced to imprisonment. In 2003 and 2004, several Jehovah's Witnesses were imprisoned for not taking the military oath and/or refusing to carry weapons. They are usually sentenced to one month's imprisonment, after which they are released pending trial.¹⁴

Draft evasion

Draft evasion and desertion are widespread. The exact number of draft evaders is not known, but the number is estimated to be approx. 350,000.

Draft evasion is prompted by the risk of being sent to serve in South Turkey and poor conditions and human rights violations within the armed forces. There have been regular reports of

⁹ Hülya Ücünar: Was erwartet Kriegsdienstverweiger mit dem neuen Strafgesetzbuch, in: Connection e.V., Rundbrief KDV im Krieg, January 2005.

¹⁰ War Resisters' International: Conscientious Objection Update, No.3/November 2004.

¹¹ War Resisters' International: Conscientious objector Halil Savda arrested / fears of torture, 16 December 2004.

¹² War Resisters' International: Conscientious objector Mehmet Bal released, 4 February 2003.

¹³ Spokesman of the Jehovah's Witnesses, quoted in: Netherlands Ministry of Foreign Affairs (2003).

¹⁴ US State Department Bureau of Democracy, Human Rights and Labor: Country report on human rights practices 2004, International Religious Freedom Report 2004, International Religious Freedom Report 2003.

Kurdish conscripts in particular being subjected to discriminatory treatment, especially when they are suspected of having separatist sympathies.¹⁵

For years, the Turkish armed forces have been involved in heavy fighting with the PKK in South Eastern Turkey. In 1999 a ceasefire was agreed between the Turkish government and the PKK, but the situation has remained tense ever since. All conscripts may be sent to serve in South Eastern Turkey as postings of conscripts are usually decided at random by computer. There is a sizeable group of conscripts of Kurdish origin who refuse to perform military service because they do not want to fight against their own people. Many Kurdish draft evaders have, in fact, left Turkey and applied for asylum abroad.

Draft evasion and desertion are punishable under the Law on Military Service and the Turkish Military Penal Code. Turkish law actually makes a distinction between evasion of military registration, evasion of medical examination, evasion of enlistment and desertion.

According to Article 63 of the Penal Code, draft evasion is punishable (in peacetime) by imprisonment of:

- One month for those who report themselves within seven days;
- Three months for those who are arrested within seven days;
- Between three months and one year for those who report themselves within three months;
- Between four months and 18 months for those who are arrested within three months;
- Between four months and two years for those who report themselves after three months;
- Between six months and three years for those who are arrested after three months;
- Up to ten years' imprisonment in the case of aggravating circumstances, such as self-inflicted injuries, using false documents (Articles 79-81 of the Penal Code).

Desertion is punishable under Articles 66-68 of the Penal Code with up to three years' imprisonment. Deserters who have fled abroad may be sentenced to up to five years' imprisonment, and up to ten years in case of aggravating circumstances (Article 67).

Monitoring of draft evasion and desertion is strict.¹⁶ The registration of conscripts is, in fact, one of the most effective government registrations in Turkey. Draft evaders and deserters may be arrested after routine checks such as traffic control. They are not able to leave Turkey, as the military registration number is included on identity documents. In addition, police and gendarma authorities are responsible for finding draft evaders and deserters and may conduct house searches and arrest them.

There are no detailed figures available on the scale of prosecution of draft evaders and deserters, but military courts are believed to deal with approx. 60,000 cases per year that are connected to draft evasion. About half of these cases reportedly deal with cases of conscripts going absent for less than a week, mostly conscripts who do not report themselves back in time after a period of leave.

Prison sentences of less than one year's imprisonment for evasion of registration/examination for enlistment or for desertion are generally commuted into fines, which must be paid after the end of military service. Sentences for draft evasion for periods longer than three months, when the draft evader has not reported himself voluntarily, may not be commuted into a fine. Suspended sentences may not be imposed for evasion of registration/examination or enlistment or for desertion.

Those who are convicted for draft evasion must still complete their term of military service. Repeated offenders may thus be sentenced again. Prison sentences for repeated offenders may not be commuted into fines.

Those convicted to less than six months' imprisonment usually serve their prison sentence in military prisons; those convicted to over six months' imprisonment are imprisoned in regular prisons. After serving their prison sentence, they still need to perform the remaining term of their military service.

¹⁵ Different sources make different assessments of the extent to which Kurdish conscripts face discriminatory treatment within the armed forces. This has, in fact, been the subject of debate in many asylum cases of Turkish/Kurdish draft evaders and deserters in Western European countries.

¹⁶ Netherlands Ministry of Foreign Affairs (2003).

In addition to the sentences outlined above, Turkish citizens can also have their citizenship withdrawn if they live abroad and do not return to perform military service within a certain time limit (Article 25(c) of the Turkish Nationality Law No. 403). The names of individuals who have forfeited their citizenship are published in the official Government Gazette. Over the years, thousands of Turks have, in fact, forfeited their citizenship. Those who have lost their citizenship in this way may apply to get their citizenship restored, but their applications may only be accepted if they complete their military service.¹⁷

In December 2000, the Turkish government adopted an amnesty law. The amnesty law applied to various crimes, including draft evasion. The amnesty law applied to draft evaders and deserters who reported themselves to the authorities before 23 April 1999. Although they were freed from criminal prosecution under Articles 63-68 and 70-75 of the Penal Code, they still remained liable for military service. Those who had not reported themselves to the authorities by April 1999 were not granted amnesty.¹⁸

¹⁷ UK Home Office (2004).

¹⁸ Netherlands Ministry of Foreign Affairs (2003). Schweizerische Flüchtlingshilfe: Türkei, Zur Aktuellen Situation, SFH, Bern, June 2003.