

The Criminality of Conscientious Objection in Turkey and Its Consequences

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[A] Introduction

People might decide to become conscientious objectors for a variety of reasons ranging from ethical preferences to religious beliefs and political convictions. The objection can manifest itself in the form of refusing to do military service, refusing to bear arms, or refusing to pay taxes which will eventually be transferred to the armed forces. Still, the common denominator of these diverse individual motivations is a refusal to cooperate on some level with a war machine that is built on dying and killing. In even more general terms, this results in an objection to militarism's claim on individuals.

Individuals arrive at conscientious objection as a result of an ethical questioning aimed at protecting their sense of self. This ethical questioning requires the individual to refrain from any act that would damage the unity of the self. In other words, in order to maintain spiritual unity, an individual who has made a decision of his/her own free will has to face all consequences of his/her conscientious objection.

The Constitution of the Republic of Turkey protects the moral decisions of individuals: Article 24 states that 'everyone has the right to freedom of conscience, religious belief and conviction', and Article 25 states that 'everyone has the right to

freedom of thought and opinion,...,nor shall anyone be condemned or accused on account of his thoughts and opinions.’

However, in Turkey, moral decisions that objectors make of their own free will are a source of controversy, and even a reason for punishment. The problem starts at the point the moral conviction, whose consequences exclusively concern that individual’s private life enters the public sphere as an expression of that person’s free will. This moral conviction does not constitute a crime as long as it remains hidden inside that individual. However, as soon as it starts to interact with the public sphere, the moral conviction becomes a crime that leaves the individual susceptible to prosecution and punishment. In other words, vis-à-vis the ‘common good’ of society, the conscientious objector is forced to change a decision he/she has made about himself/herself, at the expense of the unity of his/her sense of self.

Is it really possible for decisions that are based on free will and freedom of conscience to be regarded as ‘right’, ‘wrong’ or ‘erroneous’ by others? Can we really ask people to abandon such decisions with the threat of punishment? This question points to an ever-present tension between individual convictions and the law, which is an expression of society’s shared opinions. This tension can be overcome through a social generality that adopts the honour and value of human beings as a basic principle and which thus accepts the precedence of the ‘subjective’ value of the individual, that is, the right, vis-à-vis the law. This paper is an attempt to discuss the criminalization of conscientious objection in Turkey and its consequences, in light of the viewpoint summarized above.

**[A] The Source of the Tension between Substantive Law and the Conscientious
Objection to Compulsory Military Service in Turkey**

In order to answer this question, we should firstly examine Article 72 of the Constitution, which creates the false impression that there exists a tension between the Constitution and individuals' decision to object to military service due to their moral convictions. This article, included under the section entitled 'Political Rights and Duties', stipulates that 'national service' is a right and duty of citizens. Contrary to the prevailing view of the political establishment and of courts, the article does not stipulate that 'military service' is such a right and duty.

In fact, the Constitution only contains one provision regarding military service. The only constitutional provision, which includes a direct reference to military service, is Article 76. It stipulates that candidates for Parliament must have completed their military service. However, this article does not stipulate that everyone, or a certain group of citizens, has to perform their military service. It states that someone who has not performed his military service cannot be elected as a Member of Parliament, and does not impose a constitutional obligation on citizens.

According to Article 18 of the Constitution, which is part of Section II on the rights and duties of citizens, physical or intellectual work necessitated by the requirements of the country as a civic obligation shall not be regarded as forced labour. Reading this article together with Article 72, one can see that the Constitution does not contain any provisions that would restrict the right to object to military service on the basis of moral convictions. In this context, there exists no tension whatsoever between personal/moral

convictions and a Constitution that does not require military service. Still, in accordance with the militarization of society, ‘national service’ has in practice been reduced to ‘military service’ and has become synonymous with it.

This reductionist approach, which is a reflection of the idea that ‘all Turks are natural-born soldiers’, finds its legal expression in Article 1 of Military Law no. 1111: ‘All male subjects of the Republic of Turkey must perform military service in accordance with this law.’ Article 45 of Military Penal Code turns this into an absolute obligation by stipulating that individuals may not evade military service, and penalties may not be revoked, for religious or moral reasons. Thus we see that the basic tension is not between personal/moral convictions and the Constitution, but between the Constitution and Military Law, which is a tool for the militarization of society through male citizens.

The Constitution of the Republic of Turkey does not impose a military service obligation and does not contain any provisions that render conscientious objection unacceptable. On the contrary, Article 24 of the Constitution, which regulates freedom of religion and freedom of conscience, actually allows individuals to object to military service on the basis of their moral convictions. Moreover, Article 25 protects those who object to military service on the basis of their moral convictions, by stipulating that no one can be forced to disclose his/her religion, conscience, thoughts or convictions, and even that no one can be blamed in this regard.

The Constitution also specifies how this tension between Military Law and the Constitution is to be resolved. According to Article 11, on the supremacy and binding force of the Constitution, the provisions of the Constitution are basic rules of law that are binding on the executive, legislative and judicial branches, administrative agencies and

other persons and organizations, and laws cannot be unconstitutional. In countries that respect human rights and the rule of law, such unconstitutionality claims are eliminated by the legislator or the Constitutional Court. In Turkey, however, it has not been possible to even have this unconstitutionality claim reviewed by the Constitutional Court.¹ Turkish courts have so far refrained from applying to the Constitutional Court for the review of unconstitutionality claims concerning the rights and restriction criteria defined in the Constitution and the structure of military courts.²

[A]Conscientious Objectors: Victims of a View that Prefers ‘Law’ to ‘Right’

Although they are not a party to the tension between the laws and the Constitution, conscientious objectors clearly are its victims. The Constitution explicitly recognizes freedom of conscience, while the law explicitly criminalizes the exercise of this constitutional freedom, in accordance with a view that prefers ‘law’ to ‘right’ whatever the circumstances are. As a result, although they are refusing to perform military service or meet its requirements for moral reasons, conscientious objectors are being regarded as soldiers and their acts are subject to trial by military courts in accordance with the Military Penal Code.

Looking at the ‘crimes’ investigated in these proceedings³ conscientious objectors face the first threat of punishment when they fail to undergo the ‘drafting examinations’ that all males beyond the age of conscription must undergo annually. Conscientious objectors (and all other persons) who fail to undergo the drafting examination face the threat of imprisonment between one month and three years, depending on the circumstances.⁴ Conscientious objectors who have been detained by security officers for legal proceedings are sent to recruiting offices, just like the other people who have

undergone the drafting examination. At the drafting office, they are given written information about the army unit where they are going to do their military service, and are asked to join that unit within a specified time. Conscientious objectors, including those who become conscientious objectors after the drafting examination, refuse to join the relevant army unit of their own free will, and thus become ‘draft evaders. What they might expect is imprisonment between one month and one year.’⁵

Conscientious objectors who have to join the army upon the intervention of the security forces either leave the army unit without having complied with the law, or commit the crime of ‘desertion’ if they fail to return. The prescribed punishment is one to three years of imprisonment.⁶ This generally occurs when the objector refuses to join his army unit after being acquitted by the court or being required to join the unit without being accompanied by an officer. For instance, Osman Murat Ülke, who was required to ‘join the army unaccompanied’ after being acquitted, refused to go to his unit and later appeared before the court to attend the next hearing. In two subsequent trials, he was sentenced to a total of fifteen months imprisonment because he had ‘deserted’ in the meantime.⁷

When they join the army unit, conscientious objectors are faced with the charge of ‘persistent disobedience’⁸ which is the basis of the frequent trials and punishments they have to endure. Conscientious objectors face imprisonment of between three months and two years. Due to this regulation,⁹ resistance by conscientious objectors results in a vicious cycle of trial and punishment. The case of Çağlar Buldu, who is a Jehovah’s Witness, is a good example demonstrating the implementation of this provision. Buldu refused to obey orders both during the so-called ‘recruit training’ and ‘advanced training’

in accordance with his conscientious objection. Four lawsuits were filed against Buldu for his actions between 29 April 2005 and 13 February 2006. He was convicted for persistent disobedience, and received an additional prison sentence of five months in the most recent lawsuit.¹⁰

Military prosecutors and military courts usually decide that conscientious objectors' decision 'to refuse being involved in militarism' and consequently 'to refuse to comply with the requirements of military service' is motivated by 'persistent disobedience for the purpose of avoiding military service'.¹¹ Another element of the article that regulates 'disobedience for the purpose of avoiding military service' is that acts of disobedience occurring in situations where a group of soldiers are present attract prison sentences of between six months and five years. The first disobedience case against Mehmet Tarhan involved a discussion of the motive of avoiding military service and the presence of a group of soldiers. Stating that Tarhan had intentionally performed this act of disobedience in a place where a group of soldiers was present, the prosecutor claimed that the presence of more than seven soldiers at the place where the act was committed constituted an aggravating circumstance in accordance with the above-mentioned article. Tarhan was sentenced to ten months imprisonment in the resolution of this case.¹² Although they refuse to inquire into the real motives of conscientious objectors, prosecutors and courts feel free to claim that the objectors intended to evade military service and incite other soldiers to revolt. Conscientious objectors face imprisonment between five and ten years for this alleged intention.¹³

[A] Discipline: Another Source of Grievance

Conscientious objectors face criminal and disciplinary proceedings as a result of their actions, which are deemed to involve various aggravating circumstances within the context of the concept of disobedience. These proceedings cover acts of disobedience at army units and prisons alike. Imprisoned conscientious objectors frequently face such disciplinary sanctions as a ban on sending and receiving letters and making phone calls, as well as solitary confinement.

Between 22 December 2006 and 15 May 2007, Halil Savda was confined in cells for forty-two days, for refusing to shave his beard, wear a uniform or comply with other military requirements.¹⁴ Conscientious objectors face the risk of torture and maltreatment both as a result of the vicious cycle of trials and convictions and the way they are personally treated. They are frequently humiliated, physically assaulted and denied the means of leading their daily lives by both the other prisoners and the prison officers. Despite occurring frequently, these acts do not result in any sanctions. Military mechanisms regard such acts as ‘necessary for the establishment of military discipline’, although from a human rights perspective these constitute clear violations of the ban on torture and maltreatment. The treatment of Osman Murat Ülke, Mehmet Bal and Mehmet Tarhan (and Halil Savda who was under arrest at the time this paper was being written) shows that the treatment of conscientious objectors violates not only the ban on torture and maltreatment, but also the ban on discrimination.¹⁵

A very serious violation of the ban on discrimination-based torture and maltreatment occurs as a result of the requests of administrative military units and military courts to ‘medically determine’ whether the sexual preferences of homosexual conscientious objectors would permit their conscription.¹⁶ Although discrimination,

torture and maltreatment are banned by the Constitution and penalized by the Turkish Penal Code,¹⁷ the main problem is how a complaint about an officer is going to be processed and how acts committed inside an army unit are going to be proven.

Although they object to military service and its consequences, when faced with this kind of treatment, conscientious objectors are regarded as individuals doing their military service in accordance with the Military Law. For this reason, any complaint to be filed with a prosecutor in relation to this treatment must reach the relevant authorities through the military hierarchy, that is, after having obtained the permission of the very officer who is being complained about. Considering that the conscientious objector will not be able to leave those premises in a short time and is probably going to have an extended contact with the person he has complained about, the very complaint against torture and maltreatment turns into an invitation to further maltreatment.

Although the physical and psychological traces of maltreatment can be detected using various methods, a doctor's report is generally required in practice. However, consulting a doctor in the army involves the same steps as in a complaint. In other words, it requires the permission of military officers. As a mechanism of organized violence, the army brutally applies naked violence not only to enemies, but also to 'internal others', those it has taken in despite their objection. However, almost no complaints have so far been successfully filed against violence in the army, which can in some cases even violate the right to life.

[A]Conscientious Objection Declarations and Supporting Statements

The explanatory note to Article 1 of the new Turkish Penal Code of 2004 reads as follows: 'Both in history and today, totalitarian governments have tried to impose their

ideology and ensure their continuation by severely restricting or abolishing personal rights and freedoms through criminal laws'. The note also states that the new law has a libertarian nature that emphasizes 'the protection of the legal values, rights and freedoms of individuals.'

Although the new law is an improvement in terms of regulations on human rights, it is still deemed outrageous to publicly discuss militarism and the right to conscientious objection, among many other similar issues. In addition to the prosecution, punishment and maltreatment they face for being objectors, conscientious objectors are also prosecuted, and sometimes convicted, for declaring their conscientious objection to others. It is claimed that, with these declarations in which they state their personal motivations, conscientious objectors are alienating the public from military service. Other declarations that support conscientious objection face the same claim. Both conscientious objectors and other people making such declarations are prosecuted and convicted pursuant to Article 318 of the Turkish Penal Code. The sanction they might expect is imprisonment for up to three years. A longer sentence is imposed if these declarations are published or broadcast.¹⁸

Criticism of the army was added to the scope of the Anti-Terror Law in 2006, in addition to the amended Penal Code.¹⁹ The reclassification of the crime as a crime of terror has two important consequences: Sentences will be increased by 50 per cent and, unlike in regular cases, three quarters of the sentence will be served, and the sentence will be served in a high-security prison (such as a type – F prison).²⁰

Some conscientious objectors have been tried and some have been convicted on account of their declarations of objection under Article 318 of the Turkish Penal Code.

However, it is an interesting fact that this article is more frequently used against those who publish or broadcast the declarations of conscientious objectors or write articles that support them, rather than the conscientious objectors themselves, who are ready to take the consequences of their actions. This is quite understandable: The aim is to prevent the spread of conscientious objection and public discussion about it.

For instance, columnist-author Perihan Mağden was prosecuted in 2005 in response to a complaint filed by the Legal Department of the General Staff. The complaint was based on an article published in the magazine *Yeni Aktüel* [The New Actual] and entitled ‘Conscientious objection is a human right!’ [*Vicdani red bir insan hakkıdır!*], in which Mağden voiced her opinion about civilian service and stated that, if she had raised a son who objected to bearing arms for conscientious reasons, she would have supported him (and his cause) to the end.²¹ Although she was not sentenced for this declaration, the reason specified by the prosecution for filing this indictment is that ‘compulsory military service is crucial for Turkey, considering its geographical region.’ The prosecution concluded that Mağden was intending to alienate the public from military service, rather than exercise her freedom of expression. This lawsuit turned Mağden into a target for nationalist groups, and she was in fact attacked by a group of nationalists during the hearings.²²

Journalist Birgül Özbarış faced various lawsuits involving a total sentence of twenty-one years for allegedly having violated Article 318 seven times, by publishing in the daily *Ülkede Özgür Gündem* [Free Agenda in the Country] a series of articles on the right to conscientious objection.²³ One of these lawsuits relates to an interview with conscientious objector Halil Savda. It is noteworthy that the lawsuit is being filed against

the interviewing journalist and the owner and the editor of the newspaper, rather than against the real source of the opinion.

Apart from the crime of ‘alienating the public from military service’, lawsuits filed in Turkey in relation to criticism of the armed forces are sometimes based on Article 216 of the Turkish Penal Code, which includes the charge of ‘inciting hatred and enmity among the people’ or Article 301 of the Turkish Penal Code which punishes ‘denigrating Turkishness, the Republic and the organs of the state.’ The common denominator of these articles that restrict freedom of expression is that they are about crimes that involve a threat. A crime involving a threat can occur even if the action has not produced the outcome specified in the relevant article. The existence of the act is sufficient for the coming into being of the crime.

The main problem here is that these articles rely on concepts that are extremely vague, thus allowing excessive discretion to the judge. However, starting with the Handyside ruling, the European Court of Human Rights (ECtHR) has on various occasions declared that ‘freedom of expression extends to the right to express ideas that may disturb or even shock certain sections of society’, emphasizing the criterion of a ‘democratic society.’²⁴ One of these decisions relates to journalist Ahmet Ergin, who was convicted by the Military Court of the Chief of Staff under Article 159 of the Turkish Penal Code (Article 301 in the new Penal Code), and applied to the ECtHR. Hearing the case, the ECtHR decided that the national judge had exceeded the limits of his discretionary power and that freedom of expression had been more severely limited than was called for in a democratic society.²⁵ Thus, the discretionary right of the judge and its limits are of crucial importance. Legislative amendments, however appropriate they may

be, unfortunately fail to cause a corresponding shift in the attitudes of judges, and rights and freedoms continue to be interpreted in a narrow and prohibitive manner.

[A] Moreover...

Although this paper has focused on the existing situation and problems up to this point, both the national legislation and international treaties that have become part of national legislation offer certain means for overcoming these problems.

[B] *Conscientious objection should be recognized as a right*

As mentioned above, the most promising fact is that the Constitution does not contain any restrictions on conscientious objection. Courts and political authorities in Turkey customarily think about rights in terms of how they can be restricted. For this reason, in dealing with conscientious objection, they have so far focused solely on Article 4 of the European Convention on Human Rights, which leaves it up to the individual countries to organize their military service. However, Article 4 is mainly about slavery and forced labour and deals with conscientious objection only in that context. The European Council has taken decisions that go beyond the provisions of this article, and is asking member states to comply with these decisions. Moreover, Article 18 of the UN Convention on Civil and Political Rights, which was ratified by Turkey on 23 September 2003, recognizes individuals' right to object to military service due to their moral convictions.²⁶

It is indisputable that conscientious objection should be recognized as a fundamental right, both in view of international treaties and Articles 11, 13, 24, 25 and 72 of the Constitution. The real issue to be discussed is the unconstitutionality of Article 1 of the Military Law and Article 45 of the Military Penal Code, since these articles undermine the right expressed elsewhere.

[B] *A Law on Conscientious Objection should be introduced*

Introducing legislation that provides for conscientious objection would clearly bring an end to the unlawful prosecution of expressions of opinion on conscientious objection. The law to be introduced in this regard should meet the minimum requirements negotiated and decided upon by the relevant organs of the United Nations and the Council of Europe.

In the most general terms, this law should allow the following: individuals' right to object on religious or conscientious grounds; individuals' right to declare their objection at any stage without restriction, before, during and after military service; accessibility of all information on conscientious objection and individuals' right to information in relation to the exercise of this right. In addition, the law should not cause conscientious objectors to face any kind of economic, social, cultural or political discrimination due to their refusal to perform military service, and should prevent them from facing imprisonment, repeated imprisonment or the death penalty as a result of their conscientious objection.²⁷

[B] *Judicial prosecution of conscientious objectors should come to an end*

The unfortunate consequence of the denial of conscientious objection as a right and the absence of laws that correspond to conscientious objectors' activities is that conscientious objectors have to face repeated trials. The legislator says that at different stages of the drafting process, individuals might commit several crimes with different motives. While committing different crimes through different actions is a possibility for people who do not possess an objection perspective, an objector has but a single motive at all stages that

follow his conscientious decision: To refuse to perform military service and its requirements as a whole.

Indeed, the above-mentioned legal provisions in accordance with which conscientious objectors are being prosecuted are not compatible with their actions. Notwithstanding the decisions taken against them, the actions of conscientious objectors do not involve various intentions such as ‘desertion’ and ‘disobedience.’ On the contrary, as is clearly declared by conscientious objectors at all stages of the process, they possess a single and uninterrupted intention to ‘refuse to do military service’ for conscientious and political reasons.

This debate is also the subject matter of Section 5 (‘Concurrence of Crimes’) of the Turkish Penal Code. Article 43/1 under that section concerns ‘the repetition of a crime at various times, as part of the same decision to commit that crime.’ According to this article, which constitutes the legal basis of the unity and continuity of conscientious objectors’ intention, a single penalty shall be imposed if the same crime is committed more than once.²⁸ Discussing the repeated prosecution and conviction of conscientious objectors for the same act (in the specific case of Osman Murat Ülke), the UN Working Group on Arbitrary Detention concluded that the sentences that followed the initial conviction and arrest were a violation of the ‘*ne bis in idem*’ (no double prosecution) principle, and thus constituted arbitrary arrest.²⁹

Examining the issue upon the application of Osman Murat Ülke, the European Court of Human Rights decided that the numerous criminal prosecutions against the applicant, the cumulative effects of the criminal convictions which resulted from them and the constant alternation between prosecutions and terms of imprisonment had been

disproportionate to the aim of ensuring that he did his military service. Noting that these proceedings ‘were more calculated to repressing the applicant’s intellectual personality, inspiring in him feelings of fear, anguish and vulnerability capable of humiliating and debasing him and breaking his resistance and will’, the court decided that the treatment inflicted on the applicant had caused him severe pain and suffering considering its repetitive nature, and thus violated Article 3 of the Convention.³⁰

The decisions of both the UN Working Group on Arbitrary Detention and the European Court of Human Rights have an important consequence. People who undergo constant criminal prosecution and convictions are facing a violation of their right, including: the right to avoid double prosecution, the right to avoid torture, and the right to conscientious objection.

Article 26/1 of the Turkish Penal Code stipulates that ‘a person exercising his/her rights may not be penalized.’ Thus, even if an act of a person violates a criminal norm, that act is deemed to be justified if it occurs during that person’s exercise of his/her rights. Justification prevents the relevant person from being convicted for his/her acts. In fact, the Criminal Procedural Law³¹ stipulates that the relevant person must be *acquitted* if the case involves a justification. It therefore appears that the dilemma conscientious objectors are faced with is a violation of the law. The grievance they face as a result of their attempt to exercise their rights should be remedied as soon as possible.

The signatories to the European Convention on Human Rights have undertaken, in accordance with Articles 41 and 46³² of that convention, to repair negative effects of a person, or in cases where the negative effects arises from a legal provision, the source of that effect, in accordance with the decisions of the ECtHR. In its 5 December 2006

session where it for the first time discussed the implementation of the decision taken in the Ülke case, the Committee of Ministers of the European Union asked the Turkish government:

- what kind of *individual measures* would be taken to remedy the negative effects of the violations concerning the applicant; and
- what kind of *general measures* were or would be taken to ensure compliance with the ECtHR decision in relation to individuals who refuse to do military service for conscientious or religious reasons.³³

At the 997th session (6 June 2007) of the Committee of Ministers, of which the Turkish Minister of Foreign Affairs is a member, the Turkish government informed the Committee that a law was being drafted in this regard and that it had already been sent to the Prime Minister's Office. However, officials at the Ministry of Foreign Affairs refused to provide information about progress in this regard, claiming that the relevant information is confidential.³⁴

Moreover, military courts are completely ignoring the absence of a legal provision that is compatible with the situation of conscientious objectors, a fact that has also been emphasized by the European Court of Human Rights in its decision in the Ülke case. The basic argument of the military courts is that the existing law must be enforced until a new law that is compatible with the situation is introduced.³⁵

However, the Republic of Turkey has been a party to the European Convention on Human Rights since 1954, and has been subject to the jurisdiction of the European Court of Human Rights since 1989. International treaties have the force of law according to Article 90 of the Constitution. According to a 2004 amendment to the last paragraph of

this article, the provisions of the treaty shall prevail in the event of a conflict between a law and an international treaty concerning fundamental rights and freedoms. International treaties cannot be claimed to be unconstitutional. In fact, in response to various ECtHR decisions concerning Turkey, amendments have been made to the criminal and civil procedure laws, among several other laws, and ECtHR decisions have been regarded as a reason for revision, with a direct impact on trials subject to national legislation.³⁶

The situation of conscientious objectors in general, and Osman Murat Ülke in particular, clearly constitutes a violation of the law. This problem must be solved and a law that recognizes conscientious objection as a right must be introduced as soon as possible, in accordance with the international treaties and undertakings to which Turkey is a party. However, conscientious objectors should not face additional hardships during the indefinite time it will take Parliament to discuss and pass such a law. At this point, the best solution for preventing conscientious objectors from facing further grievance would be to ensure that courts take into consideration the decisions of the UN Working Group on Arbitrary Detention and the European Court of Human Rights acquittal, and take acquittal decisions in pending cases due to justifying reasons³⁷ and stay of execution decisions³⁸ in cases that have already been decided. This would help tilt the balance of the public good in favour of rights and freedoms.

Translated by Orhan Bilgin

Notes

¹ In Turkey, only the President, the parliamentary group of the main opposition party and courts of law are authorized to bring suit concerning unconstitutionality. Individuals may only claim unconstitutionality during litigation, and the court hearing the claim decides whether or not to refer it to the Constitutional Court. Unfortunately, judges are not accustomed to inquiring into the constitutionality of legal provisions. For this reason, the amendment of unconstitutional legal provisions generally requires a legislative decision.

² In one of the lawsuits involving *Osman Murat Ülke* (File no. 1997/365 of the Eskisehir Military Court), it was claimed that the legal provisions on which the lawsuit was based did not comply with the essence of the constitutional principle of freedom of conscience, and that the trial court was not ‘independent’ and ‘objectively unbiased’ as defined in the decisions of the European Court of Human Rights. It was thus claimed that a series of legislative provisions concerning military courts were violating Articles 9, 138 and 140 of the Constitution, in view of the ‘right to a fair trial’ as defined in Article 6 of the Convention. All unconstitutionality claims made between 29 May 1997, the date of the initial complaint, and 9 March 1999, the date of the last hearing when Osman Murat Ülke was acquitted, have been consistently denied by the court, despite the contrary opinion of the military prosecutor.

³ Legal provisions that concern conscientious objectors contain separate definitions and penalties in cases of ‘mobilization.’ In case of a mobilization, all crimes are subject to increased punishment at varying levels.

⁴ Military Penal Code, Article 63/1–A.

⁵ Military Penal Code, Article 63/1–B.

⁶ Military Penal Code, Article 66.

⁷ Eskisehir Military Court, 1997/365–500 and 1998/395–171.

⁸ Military Penal Code, Article 87/1. Article 86 on ‘disobedience’, which precedes this article on ‘persistent disobedience’, was annulled on 22 March 2000 through Article 38 of Law no. 4551.

⁹ Law no. 4616 (also known as *Rahşan Affi* [Rahşan’s Amnesty]), which went into effect on 21 December 2000, regulates release on probation and the suspension of lawsuits and penalties in certain crimes. It is quite interesting that this law grants release on probation and suspension rights for more serious crimes

defined in the Turkish Penal Code and the Military Penal Code (e.g. desertion), while excluding ‘persistent disobedience.’

¹⁰ Military Court of Appeals, 2007/1286–1280, 29 May 2007.

¹¹ Military Penal Code, Article 88.

¹² Military Court for the Sivas 5th Infantry Training Unit, 2005/1029.

¹³ Military Penal Code, Article 94.

¹⁴ <http://www.savaskarsitlari.org/arsiv.asp?ArsivTipID=8&ArsivAnaID=39283&ArsivSayfaNo=1> (10 July 2007).

¹⁵ [Editors’ note: See the article by Coşkun Üsterci and Uğur Yorulmaz in this publication: ‘Türkiye’de Vicdani Ret’ (Conscientious Objection in Turkey). It provides a detailed account of the discrimination and torture faced by conscientious objectors in Turkey.].

¹⁶ <http://www.bianet.org/2004/05/19/34889.htm>; <http://www.bianet.org/2005/12/20/71887.htm> (10 July 2007).

¹⁷ For discrimination see Article 10 of the Constitution and Article 3 of the Turkish Penal Code; for torture and maltreatment see Article 17 of the Constitution and Articles 94 and 96 of the Turkish Penal Code.

¹⁸ Article 318: 1) Those who engage in activities or propaganda that would alienate the public from military service shall receive a prison sentence between six months and two years. 2) If the crime is committed through publication or broadcasting, the sentence shall increase by 50 per cent.

¹⁹ Article 4 (Amended article: 29 June 2006 – Article 3 of Law no. 5532): The following crimes shall be regarded as crimes of terror if they were committed as part of the activities of a terrorist organization that was established for the purposes specified in Article 1:

a) The crimes specified in Articles 79, ..., 318, 319 and 310(2) of the Turkish Penal Code.

²⁰ For the 50 per cent increase see Article 5 of the Anti-Terror Law; for the execution of $\frac{3}{4}$ of the sentence see Article 107 of the Law on the Execution of Sentences and Security Measures; for the prison where the sentence is to be executed see Article 9 of the same law.

²¹ <http://www.bianet.org/2006/04/07/77324.htm> (10 July 2007).

²² <http://www.bianet.org/2006/07/27/82842.htm> (10 July 2007).

²³ www.bianet.org (13 June 2006).

²⁴ *Handyside v. United Kingdom*, Application no. 5493/72, 7 December 1976. Also see *Sürek v. Turkey*, no. 24762/94; *Ceylan v. Turkey*, no. 23556/94; *Öztürk v. Turkey*, no. 22479/93; *İbrahim Aksoy v. Turkey*, no. 28635/95, 30171/96 and 34535/97; *Karkın v. Turkey*, no. 43928/98; *Kızılyaprak v. Turkey*, no. 27528/95, *Düzgören v. Turkey*, no. 56827/00.

²⁵ *Ergin v. Turkey*, Application no. 47533/99, 4 May 2006.

²⁶ General Comment no. 22 of the Human Rights Committee discusses and clarifies the scope of Article 18. This paper will not go into further detail since this issue is discussed in Rachel Brett's paper entitled 'The Conscientious Objection of Military Service and International Standards of Alternative Service.'

²⁷ For more detailed and comprehensive information, see Rachel Brett's paper referred to in Footnote 32.

²⁸ Article 43/1 of Military Penal Code reads as follows: 'In the event of the concurrence of the crimes and sentences specified in this law, the provisions of the Turkish Penal Code ... shall apply.'

²⁹ Report of the UN Working Group on Arbitrary Detention, E/CN.4/2001/14.

³⁰ *Ülke v. Turkey*, Application no. 39437/98, 26 January 2006.

³¹ Article 223/2d.

³² European Convention on Human Rights (ECHR), Article 41 – *Just satisfaction*: If the Court finds that there has been a violation of the Convention or the protocols thereto, and if the domestic law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.'

ECHR, Article 46 – *Binding force and execution of judgements*: 1) The High Contracting Parties undertake to abide by the final judgement of the Court in any case to which they are parties, 2) The final judgement of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.'

³³ Committee of Ministers, 982nd meeting (DH), 5–6 December 2006.

³⁴ Reply numbered B.06.0.AKGY.0.0–156.50–2007/55635/03 to the information request dated 14 February 2007 filed by Osman Murat Ülke's lawyer with the European Council and Human Rights Department of the Ministry of Foreign Affairs, which is responsible for the enforcement of the ECtHR's decision as a member of the Committee of Ministers of the European Union.

³⁵ Eskisehir Military Court, 2007/234, and see footnote 11.

³⁶ Code of Criminal Trial Procedure, Article 311/1–f and Code of Civil Procedure, Article 445/11.

³⁷ As per Article 26/1 of the Turkish Penal Code and Article 223/2d of the Code of Civil Procedure.

³⁸ Law on the Organization and Procedures of Military Courts, Article 254: A decision by the military court that had issued the sentence shall be required if, during the execution of the sentence, ..., separate sentences need to be combined or a decision must be taken concerning the interpretation or calculation of the sentence. Such decisions shall be taken without a hearing.