CPTI draws the attention of the Country Report Task Force on Turkey to a number of grave concerns regarding the issue of conscientious objection to military service, and the treatment of conscientious objectors:

1) Conscientious objection to military service is not recognised in law or practice;

2) In the past, conscientious objectors who refused to perform military service, were treated as though they had enlisted in the armed forces and were put on trial before military courts under military law. They are still routinely sentenced to detention in military penal facilities;

3) On release from detention, conscientious objectors are subject to repeated call-up to perform military service. Continued refusal frequently results in repeated periods of detention.

4) Conscientious objectors, along with others who have not performed military service or been exempted by the military authorities, suffer severe and continuing civic disabilities. The resulting situation, which has been described by the European Court of Human Rights as "civil death", has been categorised by that Court as "cruel, inhuman or degrading treatment" under Article 3 of the European Convention on Human Rights and Fundamental Freedoms;

5) There have been numerous reports of the physical mistreatment of conscientious objectors within military detention facilities;

6) Reporting on the concept of conscientious objection to military service, on the international standards and national practices in other countries for accommodating it and on anything to do with those who have declared themselves conscientious objectors in Turkey is stifled because of the fear of prosecution under Article 318 of the Criminal Code, “alienating the people from the armed forces”.
Military Service in Turkey: failure to recognise the right of conscientious objection

Turkey maintains a system of obligatory military service, to which all male citizens are liable from the age of 19. The upper age limit is sometimes cited as 41 but there is in practice no limit to the age at which a man in Turkey can be called up to military service, as illustrated by the case Taştan v. Turkey, decided by the European Court of Human Rights on 4th March 2008, which concerned an applicant who, having previously benefited from an occupational exemption as a shepherd, was called up to perform military service on his retirement from that occupation at the age of 71.

Paragraph 129 of the Turkey's Initial Report under the International Covenant on Civil and Political Rights\(^1\) states bluntly “Turkey is not among the countries, referred to in article 8 paragraph 3 (a) (ii), where conscientious objection to military service is recognized.” The subject is not mentioned at all in the section dealing with Article 18 of the Covenant (freedom of thought, conscience and religion). The article quoted deals with forced labour, and the reference to conscientious objection in paragraph 3 has the sole purpose of extending the exception made for military service to include any alternative service required of conscientious objectors. As the Human Rights Committee has observed “article 8 of the Covenant itself neither recognizes nor excludes a right of conscientious objection”\(^2\), a conclusion which was in 2011 followed by the Grand Chamber of the European Court of Human Rights in the case of Bayatyan v Armenia, with regard to the almost identical wording in the European Convention on Human Rights.\(^3\)

Although the language used in the State Report is borrowed directly from the wording in the Covenant, it conveys a nuance which helps to explain why the persecution of conscientious objectors in Turkey is so persistent. It is not just a right of conscientious objection to military service which is not officially recognised in Turkey, but the very concept.

**Imprisonment of conscientious objectors**

No civilian alternative, nor even unarmed duties within the military, are available to conscientious objectors in Turkey. Those who persist in their objection and refuse to perform military service are, as far as is known, always sentenced to imprisonment. In the past, such sentences have followed prosecution in military courts for offences under the Military Penal Code. The precise charges have varied. Sometimes they have been brought under Article 63 for yoklama kaçağı or bakaya (roughly translated as “evading call-up” and “desertion”, respectively). The former applies to those who, without providing a valid excuse, fail to register with the military authorities; the latter to those who, once registered and whether or not assigned a number, fail to respond to the call up to perform military service or go missing before reporting to their unit. Sometimes the charges have been under Articles 87 or 88 - for refusal to take the military oath, to wear a uniform or to obey orders.\(^4\)

By an Act of 6\(^{th}\) October 2006, military courts no longer have jurisdiction to try civilians. A ruling from the Jurisdiction Disputes Court, dated 13\(^{th}\) October 2008, moreover clarified that persons charged under Article 63 of the Military Penal Code remained essentially civilians, as persons do

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1. CCPR/C/TUR/1, 17 March 2011, issued 13 April 2011.
3. European Court of Human Rights, Grand Chamber, Case of Bayatyan v Armenia (Application no. 23459/03), Judgment issued on 7\(^{th}\) July 2011, para 109.
4. General Counsel of Jehovah’s Witnesses. Evidence submitted to the OHCHR in response to the questionnaire on “best practices concerning the right of everyone to have conscientious objections to military service”, 1 February 2005, paragraph 6.
not become members of the military until their incorporation in a regiment (*kitaya katılmak*). All conscientious objectors however continue to be tried under the Military Penal Code and are detained in military penal facilities, some, even when they have declared their objection on first call-up are nevertheless treated as recalcitrant conscripts rather than civilians, and face charges in military courts under Articles 87 and 88 of the Military Penal Code.

The most numerous instances of imprisonment of conscientious objectors to military service in Turkey have concerned Jehovah's Witnesses, dating back at least to 1975. A total number of Jehovah’s Witness conscientious objectors who have been imprisoned has never been published, but at least six have been involved in three applications to the European Court of Human Rights. In a ground-breaking judgment issued on 22nd November 2011 the Court, following the precedent set in *Bayatyan v Armenia*, found for the first time that Turkey's treatment of a conscientious objector, Yunus Ercep, constituted a breach of Article 9 (freedom of thought, conscience and religion) of the European Convention on Human Rights. The other two applications are currently pending. At least one of those concerned, Baris Görmaz, was at the last report still detained in military prison.

Turkish practices with regard to military recruitment were however first brought to international attention in the case of Osman Murat Ülkе, an anti-militarist activist who did not claim any religious grounds for his objection. Ülkе was the subject of an Opinion by the UN Working Group on Arbitrary Detention in 1999 and subsequently of a judgment by the European Court of Human Rights. In 2008, the Working Group on Arbitrary Detention issued a further opinion on the case of another “secular” objector, Halil Savda, who declared himself a conscientious objector in 2004. Meanwhile, considerable attention had been attracted by the case of Mehmet Tarhan, who is openly gay, and who declared his conscientious objection in 2001. Without including any Jehovah’s Witnesses, War Resisters International lists some 80 Turks who have declared themselves conscientious objectors since 1991. This includes a number of women activists, who are not eligible for military service; it also includes five further objectors, Mehmet Bal, Ismael Saygi, Enver Adeyemir, Inan Suver and Muhammed Serdar Delice who have suffered imprisonment within the last four years. Saygi, Suver and Delice had gone absent and declared their conscientious objection after performing part of their military service; Ayedemir and Delice both claimed that their Islamic beliefs precluded serving in the military of a secular state.

Suver was held in various prisons on three charges of desertion from 5th August 2010 until 9th December 2011. He was declared unfit for military service on 26th November 2010. Delice, who went absent and declared his conscientious objection on 2nd March 2010 after five months of military service, was arrested on 27th November 2011. At the time of writing he is being held in pre-trial detention.

RepeateISEDt imprisonment of conscientious objectors.

5 European Court of Human Rights, Deuxième Section, Affaire *Ercep v Turquie* (Requête n° 43965/04), Arrêt, 22 novembre 2011 (full text available in French only) paras 28 and 42, respectively.
7 For full citations see notes 5 and 3 above.
8 Applications 5260/07 and 14017/08.
9 “Turkish court ignored directive from ECHR; conscientious objector sentenced to ninth consecutive prison term”, Jehovah’s Witnesses Official Media Website, 16th February 2011 (http://jw-media.org/tur/20110216.htm).
11 European Court of Human Rights, Chamber Judgement, Second Section, *Ülke v Turkey* (Application no. 39437/98) 24 January 2006
All sentences handed down on conscientious objectors are based, not upon a refusal to accept the individual claim, but on a complete refusal to acknowledge conscientious objections to military service. It is therefore consistent with the charges (although blatantly inconsistent with the Human Rights Committee's General Comment 32\[14\]) that on completion of his sentence a conscientious objector continues to be treated as a recalcitrant conscript. Often, release is accompanied by orders to report to “his” unit. Always, he remains liable to renewed call up, with, as observed above, no absolute age limit. Therefore, most conscientious objectors in Turkey suffer repeated imprisonment for repeated refusal to perform military service.

Osman Murat Ülke
Ülke, while in detention on other charges (see below), had been taken to a military unit in November 2006, but had refused orders, including that he should put on a military uniform. He was released from pre-trial detention in December 2006, with orders to “rejoin his regiment”. When he failed to do so, he was arrested on fresh charges. A similar pattern of events took place in May 1997. In January, March, May and November 1998 he was physically escorted to “his regiment”, and each time again refused to put on uniform. In all, he was thus tried and convicted no less than seven times on charges of disobedience or desertion. The UN Working Group on Arbitrary Detention had no hesitation in declaring all except the very first detention to have been arbitrary “having been ordered in violation of the fundamental principle non bis in idem,”\[15\] “since, after the initial conviction, the person exhibits, for reasons of conscience, a constant resolve not to obey the subsequent summons” and thus there is “one and the same action entailing the same consequences and, therefore, the offence is the same and not a new one”.\[16\] By the time of the European Court of Human Rights judgment on his case\[17\] Ülke had served 701 days' imprisonment following the first six convictions and remained liable to arrest and a further seven months and fifteen days imprisonment on the seventh.

The Committee of Ministers of the Council of Europe has expressed its grave concern at Turkey's continued failure to implement the judgment of the ECtHR in this case, and indeed that eighteen months later, in July 2007, Ülke was once more forced to go into hiding, having been summoned to present himself in order to serve the outstanding sentence. At its most recent human rights meeting, on 2\textsuperscript{nd} December 2011, the Committee of Ministers “took note with satisfaction the political will and determination expressed at the highest political level to take the necessary measures” to execute the judgments in Ülke and certain other cases, and “strongly encouraged the Turkish authorities to transfer this political will and determination into concrete action, in particular with regard to the execution of the […] cases.” It “noted, however, with regret that no concrete information has been provided by the Turkish authorities […] in particular […] as to whether there is still an arrest warrant against the applicant in the case of Ülke and, if so, whether the Turkish authorities intend to withdraw it.” They “reiterated their call to the Turkish authorities to take concrete action and provide tangible information” in time for the March 2012 meeting, “with a clear timetable for the necessary measures to be taken in the form of an action plan.”\[18\]

Halil Savda
Halil Savda was similarly convicted on charges of “insistence on disobedience to orders with

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\[14\] CCPR/C/GC/32, adopted in the 90\textsuperscript{th} Session, issued 23 August 2007, para 55: “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.”

\[15\] Working Group on Arbitrary Detention, Opinion No. 36/1999, op cit, para 10

\[16\] Ibid, para 9.

\[17\] Full citation in footnote 11, above.

\[18\] Committee of Ministers of the Council of Europe, 1128(DH) Meeting of the Ministers’ Deputies, 2\textsuperscript{nd} December 2011, Decisions in Cases Nos. 21 and 22 (CM/Del/Dec(2011)1128/21 / 06 December 2011)
intention of avoiding military duty" under Article 87 of the Military Penal Code, and of desertion, under Article 66 of the Code, with regard to three separate incidents between November 2004 and January 2007. Released in July 2007, having served about seven months' detention in three separate periods, towards a total of twenty-one and a half months to which he had been sentenced, he was rearrested in March 2008 charged with desertion in that he had not rejoined his regiment on his previous release. In Opinion No. 16/2008\textsuperscript{19}, the Working Group on Arbitrary Detention not only found that repeated sentences for the refusal to perform military service constituted arbitrary detention as a breach of the principle of \textit{ne bis in idem}, but in the light of the Human Rights Committee's View in the cases of Mr. Yeo-Bum Yoon and Mr. Myung-Jin Choi v Republic of Korea\textsuperscript{20}, they stated "In the view of the Working Group, it has been established that the limitations on Mr. Savda's right to freedom of religion or belief as a genuine conscientious objector is not justified in the present case, and is, thus, in violation of article 18 of the Universal Declaration of Human Rights and of article 18, paragraph 1 of the ICCPR."\textsuperscript{21} Moreover, in this case the Working Group expressed a “wish to develop its jurisprudence on a matter of principle and particular importance. 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. Such scenario is real, taking into account the provisions of the Military Penal Code as it is in force at present, unless the country changes its laws, including possibly its Constitution, in order to provide for an alternative to military service for conscientious objectors or implements any other measure to bring the situation into conformity with the international human rights instruments accepted by the Republic of Turkey, or [ceases] to make it a crime or a disciplinary offence to refuse performing such service. Moreover importance is attached to the matter beyond Mr. Savda’s individual fate.”\textsuperscript{22}

Accordingly, they chose to examine all the periods which Savda had spent in detention as a result of his refusal to perform military service, and found that in all, including the very first one, the detention had been arbitrary under Category II of their terms of reference, i.e. that "the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by [article 18] of the Universal Declaration of Human Rights and […] the International Covenant on Civil and Political Rights."

\textbf{Yunus Ercep}

Ercep, a Jehovah's Witness, declared his conscientious objection when he was first called up to military service in March 1998. Thereafter he received a new summons at the beginning of each of the three call-up rounds to which university graduates are subject each year, and with every refusal faced fresh charges of “desertion” under Article 63 of the Military Penal Code. In all, more than 25 sets of proceedings have been brought against him initially in the military courts but with the outstanding cases being transferred to the ordinary criminal courts after the law change of October 2006. He faces fresh charges with each call-up round. As already noted, the European Court on Human Rights found that “the numerous convictions imposed on Mr Ercep because of his beliefs, in a situation where no form of civilian service offering a fair alternative existed in Turkey, amounted to a violation of Article 9” of the European Convention. They also found that his earlier trials in military courts, although he was a civilian, constituted a breach of Article 6 (right to a fair trial).

\textbf{Barış Görmez}

\textsuperscript{19} Op cit, footnote 12
\textsuperscript{21} Opinion No 16/2008, op cit, para 38.
\textsuperscript{22} Ibid, para 43.
Görmez, also a Jehovah’s Witness, has refused on repeated occasions to wear a uniform or bear arms, while clearly indicating his willingness to undertake an alternative civilian service were one to be offered. As he has been charged with disobedience, his case continues to be heard by the military court in Isparta. Between November 2007 and January 2011 he received consecutive prison sentences relating to nine such instances, the last handed down in defiance of an interim directive issued on 7th July 2010 by the European Court of Human Rights, to which a joint application by Görmez and three other Jehovah’s Witness conscientious is pending, that no sentence against him should be issued pending the Grand Chamber judgment in the case of Bayatyan v Armenia (which was eventually announced in July 2011). At the time of writing, December 2011, there has been no report that the cycle of convictions and imprisonments in this case has ceased.

Enver Ayedemir

Aydemir was imprisoned for refusing military service in July 2007, and again between December 2009 and June 2010 in respect of his failure to report to “his” unit on his initial release in October 2007. It is reported that he again refused to report for military service in 2010; presumably charges relating to this third incident are still pending.

Restrictions on the civil rights of those who have not performed military service

Male Turkish citizens who have not performed military service are unable to undertake any activities which require documentation from the state. This includes obtaining a passport, travelling abroad, opening a bank account or owning property. Any interaction with the authorities, eg. routine traffic checks, and of course any attempt to travel abroad may result in their being detained and delivered to the military authorities. In the case of Ülke, the European Court of Human Rights noted “He is wanted by the security forces for the execution of his sentence and is currently in hiding. He is no longer active in the association or in any other political activity. He has no official address and has broken off all contact with the authorities. He has been accommodated by his fiancée’s family. He has been unable to marry her legally or to recognise the son born to them”23 and it concluded “The clandestine life, amounting almost to “civil death”, which the applicant has been compelled to adopt is incompatible with the punishment regime of a democratic society.” The Court found that “the numerous criminal proceedings brought against the applicant, the cumulative effects of the ensuing criminal convictions and the constant alternation between prosecution and imprisonment, together with the possibility that he would face prosecution for the rest of his life, are disproportionate to the aim of ensuring that he performs his military service. They are aimed more at 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.”24 The Court accordingly found for the applicant under Article 3 of the European Convention (cruel, inhuman or degrading treatment) without proceeding to consider whether the facts constituted breaches of further articles of the Convention.

Restrictions on reporting conscientious objection

A further aspect of Turkey’s official denial of conscientious objection is that reporting on the subject is criminalised. In response to representations from the European Union, Article 155 of the Turkish Criminal Code, entitled “alienating the people from the armed forces” was with effect from 1st July 2005 replaced by a new Article 318. The substantive wording and the interpretation have not
however changed.

The European Commission noted in 2009 that under Article 318 “Public statements on the right to conscientious objection have led to convictions.” 25

Those affected have included those publicly declaring their own conscientious objection, and those declaring support for other conscientious objectors, in Turkey and elsewhere. Ülke's first arrest and conviction was under the then Article 155, relating to an incident at a press conference in 1995 when he publicly burned his call-up papers, while announcing his conscientious objection with the words “I do not want to kill people.” Following his own imprisonment for refusing military service, Halil Savda has been twice convicted of offences under Article 318. In June 2008 he was sentenced to five months imprisonment for a press statement in support of two Israeli conscientious objectors, a sentence which was upheld on appeal in March 2011. In June 2010, Savda and three others were sentenced to six months imprisonment for a statement in support of Enver Ayedemir. An appeal against this sentence is pending. On 6th December 2011, when attempting to travel to a meeting in Paris organised by Amnesty International, Savda was, because this conviction appeared on his record, prevented from leaving the country, arrested and held in detention for 25 hours.

Prosecutions brought under Article 318 have however especially targeted journalists. In particular, the penalties of imprisonment of between six months and two years stipulated under the article are to be increased by half if the offence is committed through the media, giving a strong incentive to self-censorship of any reporting bearing on this aspect of the freedom of religion or belief. In June 2007 Article 318 was brought within the compass of the Turkish Anti-Terror-Code, with a further 50% increase in the possible penalties. Journalists who have been prosecuted under this Article include Perihan Magden, who was eventually acquitted in a case concerning an article entitled "conscientious objection is a human right", published in Yenı Aktuel on 27 December 2005, and Birgul Ozbaris, who, faced with seven separate charges regarding reports in the newspaper Ozgur Gundem between May 2005 and April 2006, was forced to flee the country. Conscientious objector Halil Savda was threatened with prosecution under Article 318 for reading out a solidarity statement in front of the Israeli consulate in Istanbul.

The most recent case under Article 318 was brought on 21st November 2011 against Suleyman Tatar regarding remarks he made to the press during a protest at Bogazici University. The trial was adjourned to a date which has not yet been announced.

Maltreatment of conscientious objectors

Most conscientious objectors who have been detained in Turkey have reported physical mistreatment.

There is reason to suspect that in at least one instance the mistreatment was instrumental in forcing the recantation of a belief based on conscience. Ismael Saygi, first declared his conscientious objection in November 2006 while on leave after having served seven months of military service. He was detained on 16 March 2008 and held for ten days in Maltepe Military Prison, Istanbul, before being transferred to Sarikamis Military Prison, near Kars. While in Maltepe he had suffered constant abuse and in particular had been so severely beaten by other inmates that he subsequently had to be taken from Sarikaris to Erzurum Military Hospital to be treated for the damage to his nose. Only at that point was he able to meet with his lawyer, and he told him that he was

withdrawing his declaration of conscientious objection and that after serving his sentence for desertion he intended to complete his military service. While respecting his decision, Saygi’s solidarity group expressed deep disquiet regarding the circumstances under which it had been made.

The case of Mehmet Tarhan, a gay conscientious objector who was repeatedly imprisoned in 2005 and 2006 involved repeated physical abuse and extortion at the hands of both prison staff and fellow inmates. Following his initial arrest in April 2005, he was taken to Sivas Military Hospital, where he was forcibly undressed and put in a military uniform, and attacked by fellow-inmates who had been told that a “terrorist” was being sent to the hospital (Tarhan, like Savda, is of Kurdish ethnicity, and this formed another incentive to their persecution.) On his transfer the following month to the military prison at Sivas he was attacked and threatened with death by a group of fellow-inmates who subsequently claimed to have acted on a hint from a member of prison staff; the attack was facilitated by an unexplained failure of the lighting system. He then suffered multiple extortions for money by fellow-inmates, including being forced to phone a family member to buy clothes; the prison authorities supervised the handing over of these to the extortioner. In September 2005 he was forcibly restrained by guards while his hair and beard were cut. Ignoring his declared conscientious objection, the military authorities insisted that he should be found unfit for military service on the grounds of his homosexuality, a dishonourable discharge with a pejorative title usually translated into English as the “rotten report”. Tarhan refused this option, refused to provide filmed evidence of his engagement in homosexual activity, and lived under constant threat of a forced intrusive physical examination to “confirm” his homosexuality. It is believed that he is currently at liberty, but living under the threat of arrest on outstanding charge.

The European Union noted in its 2009 report that “Counter-cases are frequently initiated by law enforcement bodies against persons who allege torture or ill-treatment. Such legal proceedings might result in deterring complaints.”26 This was the experience of Mehmet Bal in 2008. Following the dismissal of his complaint that he had been beaten while in custody, proceedings were launched against him under Article 301 of the Criminal Code for allegedly insulting the military by the accusations he had made.

The most recent conscientious objector to have been imprisoned, Muhammed Serdar Delice is at the time of writing on hunger strike in protest against having been tortured, beaten by fellow inmates and subjected to what he claims are systematic demands for protection money. His lawyer has lodged a complaint with the Human Rights Commission of the National Assembly.27

Legislative moves

Turkey's failure to bring in legislation to provide for conscientious objection to military service has been repeatedly criticised in the annual expansion reports of the Commission of the European Communities, and by the Committee of Ministers of the Council of Europe.

In July 2008, a circular published by the Turkish Ministry of Justice in July 2008, which makes reference to the European Convention on Human Rights, indicated that recruiting offices would no longer have the authority to take those evading military service into custody; in order to take an evader into custody, a judge’s decision would be required. Moreover, the circular states that evaders who complete their sentences will not be escorted from detention taken to the recruiting office, but will be expected to report themselves.

26 Commission of the European Communities, Turkey Progress Report 2009, op cit, “civil and political rights” p.17
The circular furthermore states that if the Prosecutor’s Office decides that there is no need for further prosecution, evaders will not be arrested or taken into custody, and that the recruiting offices will have no authority to oppose to the Prosecutor’s judgement. The judgement will be sent to the presidency of the relevant recruiting Office for information only. This anticipates the ruling later that year that objectors who declare their objection before enlistment come under the authority of the civilian courts as long as they. It is not clear, however, whether it would assist an objector who answers the summons to report to the military and at that point declares his objection; nor of course does it in any way affect the legal provisions which still allow repeated prosecution of conscientious objectors.  

A series of news items in November 2011 sent mixed messages as to whether Turkey was at last contemplating legislation to provide for conscientious objection for military service. On 15th November, Minister of Justice Sadullah Ergin told journalists “The Defense Ministry will assess the issue of conscientious objectors. “It will be discussed and, if it is seen as appropriate, it will be brought to Parliament's agenda” and Minister of Defence İsmet Yılmaz confirmed that the Government was studying relevant legislation in other countries.  

Later that week, Deputy Prime Minister Bülent Arınç indicated that following the example of other European countries “conscientious objectors would be offered the option of a public service equivalent to or longer than the term of military service”. This was however contradicted by the Minister of Defence, who claimed that the only change under consideration would respond to the Ülke decision of the European Court of Human Rights, which had criticised the repeated imprisonment of conscientious objectors. The bill the Government was planning would “reduce the penalty to one”. Although this statement was made just days before the European Court of Human Rights' Ercep judgment, which went further and found that the lack of provision for conscientious objectors constituted a breach of the freedom of thought, conscience, and religion, there was no immediate indication of further reconsideration. Indeed, on the day of the Ercep judgement, Prime Minister Recep Tayyip Erdoğan, announcing details of a proposed law to enable those over 30 to purchase exemption from military service on payment of TL30,000 (between €10,000 and €15,000), stated firmly that the recognition of conscientious objection to military service was still not on the agenda. 

The new proposal is an expansion of a longstanding scheme under which Turkish citizens returning from abroad might on payment of a fee discharge their military service obligation by undertaking just one month of training. CPTI has long denounced this and other arrangements whereby military service may be commuted into a financial payment as wholly inappropriate as an alternative for conscientious objectors, and moreover unjust in that it provides an option only for those with the ability to pay, and institutionalises what has been dubbed a “poverty draft”.

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29 “Turkey weighs legalizing conscientious objection to military service”, Today's Zaman. 15th November 2011.


31 “Some happy, some still disappointed / no right to conscientious objection” Today's Zaman, 22nd November 2011.
Suggestions for the List of Issues

CPTI suggests that the Committee draws the attention of the State Party to the judgements of the European Court of Human Rights in the cases of Ülke (2006) and Ercep (2011) and to the Opinions of the Working Group on Arbitrary Detention with regard to Ülke and to Halil Savda.

Although it may welcomed that subsequent legislation and clarifications should preclude a precise repetition of the circumstances in which the trial of Ercep before a military court was found to be a breach of Article 6 (right to fair trial) of the European Convention on Human Rights, it should be noted that conscientious objectors continue to be tried under the Military Penal Code, and to be detained in military prisons, and that some conscientious objectors who have never agreed to embark on military service are still charged before military courts on military disciplinary charges.

The State Party should be asked what action it is taking to prevent further instances of the other human rights violations illustrated by these cases, namely:

- the breach of Article 9 of the European Convention on Human Rights found by the ECtHR in the case of Ercep (which is also a breach of Article 18 of the International Covenant) by the imprisonment of conscientious objectors for their refusal to perform military service, because of the lack of any alternative arrangements. The State Party might also be reminded that in the case of Savda the Working Group on Arbitrary Detention made it clear that any such imprisonment was arbitrary as it infringed upon the rights guaranteed by Article 18. (Satisfactory action to address this concern would of course preclude further instances of maltreatment in detention facilities specifically directed against conscientious objectors.)

- the further breach of the principle of *ne bis in idem*, as outlined in the Committee’s General Comment No. 32 by the “repeated punishment of conscientious objectors for not having obeyed a renewed order to serve in the military [when] such subsequent refusal is based on the same constant resolve grounded in reasons of conscience.”

- the continuing deprivation of the civil rights of those who have not performed military service, which the ECtHR in the case of Ülke characterised as “civil death” and found, together with the continued threat of prosecution and imprisonment, to constitute inhuman or degrading treatment.

CPTI suggests furthermore that the attention of the State Party should be drawn to the Committee’s General Comment No. 34. Article 318 of the Criminal Code, which prohibits criticism of the military, is (together with Article 303 “insulting Turkishness”) a limitation of the freedom of expression which paragraph 38 of the General Comment would define as unacceptable. Moreover, to the extent that it has been used to stifle discussion of the right of conscientious objection to military service it is incompatible with the statement in Paragraph 23 of the General Comment that “Paragraph 3 of ICCPR Article 19 may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights.” The State Party should be asked whether it envisages the early repeal of these two articles of the Criminal Code.