

Turkey

Issues

- Turkey maintains conscription.
- The right to conscientious objection is not recognised.
- In several cases, conscientious objectors faced repeated imprisonment.



Military recruitment

Conscription

According to art. 72 of the 1982 constitution - which was passed after the 1980 military coup - all Turkish citizens must perform a so called 'national service': "*National service is the right and duty of every Turk. The manner in which this service shall be performed, or considered as performed, either in the Armed Forces or in public service shall be regulated by law.*"¹

This means the Turkish Constitution leaves it up to the legislator how 'national service' is carried out. In theory, it can be non-military service.

In Turkish law 'national service' is prescribed by the Law on Military Service (Law No. 1111)² and the Law for Reserve Officers and Reserve Military Servants (Law No. 1076). Art. 1 of the Law on Military Service specifies that all males who are citizens of the Turkish Republic, must receive armed military training, irrespective of their age. Law No. 1111 was enacted in 1927 and states that 'fatherland service' is compulsory military service, so refusal to perform 'fatherland service' is a crime punishable by the military penal code.

Law 1111 was changed in 1992 when Law 3802 came into force on 1 June 1992. Amendments to the law on 19 February 1994 created further changes.

The length of military service is 15 months. University graduates may perform 6 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. However, this special services is a service within the Armed Forces, and with uniform. Usually, those serving in special service are not sent on combat operations.

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 40³.

Police officers are exempted from military service. Under certain condition, a person whose brother died during his military service might be exempted from military service.

Students may postpone their military service up to the age of 29, or up to the age of 35 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 Euro. However, in this case they still need to perform one month of military service⁴.

1 The Constitution of the Republic of Turkey, 1982, last amended on 10 May 2007, <http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>, accessed 28 August 2008

2 Law No. 1111, Military Law [Turkey]. 20 March 1927, extracts in English at <http://www.unhcr.org/refworld/docid/3ae6b4d020.html>, accessed 28 August 2008

3 The Turkish way of counting age differs from that in Western Europe, and this accounts for the fact that the Military Act refers to the 20th and 41st years, Military Service ("Country Report - October 2005"), <http://www.ecoi.net/190288::turkey/328808.327551.9791...mr.327552/military-service.htm>, accessed 30 September 2008

4 Law No. 1111, Military Law [Turkey]. 20 March 1927, extracts in English at <http://www.unhcr.org/refworld/docid/3ae6b4d020.html>, accessed 28 August 2008

Professional soldiers

Although the Turkish Embassy wrote to WRI as late as December 2007 that “*professional soldiers is not in the military practice of Turkey*”⁵, two Turkish Armed Forces contributors to a NATO study wrote in October 2007 that service of professional soldiers in Turkey is governed by the Turkish Armed Forces Personnel Law No. 926⁶.

Currently, women can serve as officers in the Turkish Armed Forces, but not as non-commissioned officers or enlisted personnel. After graduating from a military college or having a 4-year degree from a civilian university as a military student, officers have 15 years of obligatory service. Similar to officers, once on the job, non-commissioned officers have a 15-year obligatory service in the Turkish Armed Forces.

The specialists are professional enlisted leaders. They are employed at certain positions requiring continuity such as Squad Leader, Tank Driver, Tank Gunner, Repairer, Artillery Sergeant, etc. These specialists are selected from among qualified conscripts who have finished their military service. Their first contract is for 2 years, and later contracts may be between 1 to 5 years depending on the qualification of the person, his willingness, and the requirements of the service. They can serve until the age of 45 when they retire with pension pay and benefits⁷.

DefenseNews reported in May 2008 that the Turkish army has stopped assigning formerly conscripted reserve officers to special commando units, and that “*professional soldiers, including the Special Forces Command, will become the backbone of the Turkish military's fight against separatist Kurds*”⁸. According to the same article, “*by the end of next year [2009 - WRI] no conscript soldiers will be involved in anti-terrorism operations in units on both sides of Turkey's border with Iraq, where the military is fighting the outlawed Kurdistan Workers Party (PKK).*” Presently, the commando units number about 30,000 soldiers.

According to Eurasia Daily Monitor, about 100,000 of the 600,000 strong Turkish Armed Forces are professional soldiers. Even though it remains a predominantly conscript force, in recent years the Turkish military has increased the numbers of its full-time private soldiers and non-commissioned officers (NCOs). It appears to have had little difficulty in attracting recruits. In 2007, 25,084 Turks applied for positions as full-time “specialist NCOs” in the Turkish Land Forces, of whom only 1,540 were eventually accepted. Another 3,018 specialist NCOs are expected to be enrolled in 2008. Salaries are good by Turkish standards at around US\$1,000 a month net, approximately the same as a mid-level civil servant, although fringe benefits can take the total to over US\$1,500, which is almost five times the current minimum wage⁹.

These new developments are based on a resolution adopted at the beginning of May 2008¹⁰, although it is unclear which authority passed this resolution.

Conscientious objection

Conscientious objection for conscripts

Turkey does not recognise the right to conscientious objection for conscripts. Article 72 of the Turkish constitution states: “*National service is the right and duty of every Turk. The manner in which this service shall be performed, or considered as performed, either in the Armed Forces or in public service, shall be regulated by law*”¹¹. This in principle would allow for a non-military alternative. However, Turkish law does not provide for this.

In the past, the Turkish government 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 geographical position of our country and the circumstances we find ourselves in. As long as the factors threatening the internal and external security of*

5 Turkish Embassy London, Reply to War Resisters' International, 1300/17-229-07, 14 December 2007

6 NATO, Research and Technology Organisation: Recruiting and Retention of Military Personnel, October 2007, [ftp://ftp.rta.nato.int/PubFullText/RTO/TR/RTO-TR-HFM-107/\\$\\$TR-HFM-107-ALL.pdf](ftp://ftp.rta.nato.int/PubFullText/RTO/TR/RTO-TR-HFM-107/$$TR-HFM-107-ALL.pdf), accessed 28 August 2008

7 NATO, Research and Technology Organisation: Recruiting and Retention of Military Personnel, October 2007, [ftp://ftp.rta.nato.int/PubFullText/RTO/TR/RTO-TR-HFM-107/\\$\\$TR-HFM-107-ALL.pdf](ftp://ftp.rta.nato.int/PubFullText/RTO/TR/RTO-TR-HFM-107/$$TR-HFM-107-ALL.pdf), accessed 28 August 2008

8 DefenseNews: Turkey Reworks Commando Forces for Counterinsurgency, 19 May 2008, <http://www.defensenews.com/story.php?i=3536801&c=FEA&s=SPE>, accessed 28 August 2008

9 Eurasia Daily Monitor: Turkey takes first step toward a professional army, 5 May 2008, http://www.jamestown.org/edm/article.php?article_id=2373031, accessed 28 August 2008

10 Hurriyet: Turk army implements recruitment process for professional soldiers, May 2008 (exact date unknown), <http://www.hurriyet.com.tr/english/turkey/8853828.asp?gid=231&sz=32847>, accessed 28 August 2008

11 The Constitution of the Republic of Turkey, 1982, last amended on 10 May 2007, <http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>, accessed 28 August 2008

Turkey do not change, it is considered to be impossible to introduce the concept of 'conscientious objection' into our legislation"¹².

In fact, article 45 of the Turkish Military Penal Code explicitly states: "Individuals may not evade military service, and penalties may not be revoked, for religious or moral reasons."

Following the judgement of the *European Court of Human Rights* in the case of Turkish conscientious objector *Osman Murat Ülke*¹³ in January 2006¹⁴, the Turkish government declared at the *Council of Europe* that a law solving the problems would be in preparation¹⁵. However, so far the Turkish government failed to provide any more details, and it can be doubted that the law will implement the right to conscientious objection. Also, Osman Murat Ülke's legal situation has not changed, and he is still considered a deserter and has an outstanding arrest warrant. But the Turkish government did not appeal against the ECHR judgement, and also paid the compensation of 11,000 Euro to Osman Murat Ülke.

About 60 other declared conscientious objectors are in a similar situation, either after spending some time in prison or after a public declaration of conscientious objection, and ignoring a call-up.

In May 2008, the United Nations Working Group on Arbitrary Detention gave an opinion on the case of *Halil Savda*¹⁶, who has been imprisoned and sentenced repeatedly and is presently serving a sentence of 15 months. The Working Group came to the following conclusion: "The deprivation of liberty of Mr. Halil Savda during the periods between 16 and 28 December 2004, between 7 December 2006 and 2 February 2007, as well as between 5 February and 28 July 2007 was arbitrary. His deprivation of liberty since 27 March 2008 is also arbitrary, being in contravention of articles 9 and 18 of the Universal Declaration of Human Rights and of articles 9 and 18 of the International Covenant on Civil and Political Rights from which the Republic of Turkey is a State Party, falling under category II of the categories applicable to the consideration of cases submitted to the Working Group. In addition, it also falls under category III of the categories applied by the Working Group, as far as Mr. Savda would have to serve his prison term following his conviction by judgement No. 2007/742-396"¹⁷.

Conscientious objection for professional soldiers

As Turkey does not even recognise the right to conscientious objection for conscripts, it also does not allow its professional soldiers to claim conscientious objector status.

Details of Law 926 governing the service of professional soldiers, and how they would be able to leave the Armed Forces prematurely, are not known.

Draft evasion and desertion

penalties

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 months¹⁸;

12 Netherlands Ministry of Foreign Affairs, 2003

13 <http://wri-irg.org/node/638>, accessed 3 September 2008

14 Chamber Judgement Ülke v. Turkey, 24 January 2006, <http://wri-irg.org/node/615>, accessed 3 September 2008

15 War Resisters' International: Turkey defies European Court of Human Rights, co-update No 31, August 2007, <http://wri-irg.org/node/1154>, accessed 3 September 2008

16 <http://wri-irg.org/node/829>, accessed 3 September 2008

17 Working Group on Arbitrary Detention: Opinion No 16/2008 (Turkey), <http://wri-irg.org/node/272>, accessed 3 September 2008

18 Law on Absentee Conscripts, Draft Evaders, Persons Unregistered [For Military Service], and Deserters, 1930, unofficial translation, <http://www.unhcr.org/refworld/docid/3ae6b4d01c.html>, accessed 3 September 2008

- 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)¹⁹.

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 COs were Tayfun Gonul and Vedat Zencir, who declared their objections in 1990. Osman Murat Ülke, a Turkish citizen who grew up in Germany and returned to Turkey, became the first famous conscientious objector, and the first to go to prison for his conscientious objection. 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 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 imprisonment²⁰.

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, albeit with some exceptions, such as the case of *Halil Savda*. 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.

Monitoring of draft evasion and desertion is strict²¹. 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 fact that they are evading military service would be visible to any customs and immigration officer or police officer. 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.

19 Law on Absentee Conscripts, Draft Evaders, Persons Unregistered [For Military Service], and Deserters, 1930, unofficial translation, <http://www.unhcr.org/refworld/docid/3ae6b4d01c.html>, accessed 3 September 2008

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

21 Netherlands Ministry of Foreign Affairs, 2003

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 service²².

²² Quaker Council for European Affairs: The Right to Conscientious Objection in Europe – Turkey, 2005, <http://wri-irg.org/co/rtba/turkey.htm>, accessed 3 September 2008