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TURKEY: Conscientious objection a test of Turkish religious freedom

By Güzide Ceyhan,

Turkish non-recognition of the right to conscientious objection to military service contributes to conscientious objectors being in an unending cycle of prosecution - trial - punishment, Güzide Ceyhan notes in a commentary for Forum 18. The case of Muslim objector Enver Aydemir demonstrates this. He objects to conscription because of the military's "antagonistic feelings towards my beliefs". The experience of his mother and sister, who were not allowed to visit him in custody wearing veils, has, he thinks demonstrated this. Similarly trapped in the prosecution – trial – punishment cycle are Jehovah's Witness and secular conscientious objectors. The refusal of the European Court of Human Rights to address the religious freedom aspects of the Ülke case ignored the prosecution – trial – punishment cycle's coercion of a person to change their beliefs. Sadly, it appears that conscientious objection is – like non-recognition of the independent legal existence of religious communities – another example of Turkey's reluctance to recognise freedom of religion or belief for everyone.

Turkey does not recognise the right to conscientious objection to military service, along with countries such as Azerbaijan, Belarus, Turkmenistan and – in practice – Armenia, Forum 18 News Service notes. Without recognition of this right – which is embedded in the right to freedom of religion or belief - and even lack of any regulations to address their situation, conscientious objectors find themselves in an unending cycle of prosecution – trial – punishment.

In spite of Turkey's repeated statements that legal efforts are underway to address this problem, the current non-existing or inadequate legal provisions create great difficulties for conscientious objectors. These include violations of the right to freedom from cruel, inhuman or degrading treatment or punishment, and of other fundamental human rights.

The Aydemir case

The continuing case of a Muslim objector, Enver Aydemir, demonstrates this. Aydemir is a devout Muslim who objects to serving in the Turkish military forces because "the elites of the Turkish Military Forces, relying upon secular values, hold antagonistic feelings towards my beliefs and that I will never be a soldier of this order." The Turkish pacifist website savaskarsitlari.org on 15 March 2010 reproduced his July 2007 letter explaining this, in which he also commented that:

"I saw how appropriate my attitude was because my mother and my sister, who came to see me [in military custody] after two days, were not allowed in the guardhouse because of their veil. As a person whose most precious values are his faith, I cannot accept the attitude of the elites of the Turkish Armed Forces against Islamic values. For this reason I declare my conscientious objection. It is not possible for me to be part of an institution that insults even the most basic beliefs of Muslims."

Aydemir was detained and then arrested on 24 December 2009 and is held in Eskisehir Military Prison. Aydemir's lawyer, Davut Erkan, stated on 15 March 2010 that efforts were underway to trap his client in the prosecution – trial – punishment cycle. The military prosecutor has asked for Aydemir to be sentenced to up to 10 years in prison for "refusal to follow orders". Charges of "desertion" have also been raised by the military prosecutor. Aydemir himself stated, when he was tried on 31 January 2010 that he was held naked in a cold room and also punished with falaka (a punishment inflicted by beating the soles of the feet). His father sent a letter of complaint to the Human Rights Commission of the Turkish Grand National Assembly, who are investigating the complaint.

For conscientious objectors from a non-Muslim background, denial of conscientious objection along with the marginalisation of non-Muslim religious communities has a clear impact on the intolerance and physical attacks members of these communities experience. This has been demonstrated in the cases of young male Jehovah's Witnesses, who have been maltreated and repeatedly prosecuted in recent years for refusing compulsory military service on grounds of religious conscience (see F18News 10 July 2007 http://www.forum18.org/Archive.php?article_id=990).

Turkish conscientious objectors not recognised

Compulsory military service in Turkey applies only to men, not to women. Conscientious objectors to this service fall mainly into two groups: pacifists who consider themselves 'total objectors' to any compulsory state service, including any or fully civilian service, and Jehovah's Witnesses, who reject military service but are willing to serve within a strictly civilian alternative service regime. There are approximately 89 conscientious objectors who are not Jehovah's Witnesses, according to the war resistor savaskarsitlari.org web site. About 30 conscientious objectors are Jehovah's Witnesses.

One reason for the small number of declared conscientious objectors – around 120 out of 14,000,000 men in all age groups eligible for military service - is that declared objectors have to face serious consequences for refusing military conscription. Many prefer to find other ways of avoiding military conscription. On 1 June 2008 the Minister of National Defence stated that around 1,000,000 men had either postponed military service or evaded the draft. Objectors often prefer to evade military service by postponing service (for example by continuing their education), working abroad, or desertion.

As no legal regulations address the situation of conscientious objectors, each time an objector refuses to wear a military uniform, or refuses orders, or refuses conscription, it is considered as a refusal to obey orders and the Military Criminal Code applies. Prosecution and sentencing then follows. There starts an unending cycle of prosecutions and prison sentences, because following the first conviction every act of refusal is reckoned as an independent act of "insistence on refusing to obey orders". Hence the objector is faced with a tough choice; virtually life long prosecution and prison sentence, giving up on listening to the voice of his conscience, or retreating to a life on the run.

The right to conscientious objection

Conscientious objection to military service is a legitimate part of everyone's right to freedom of thought, conscience and religion, as the then UN Human Rights Committee stated in its General Comment 22 on Article 18 of the International Covenant on Civil and Political Rights (ICCPR). It confirmed this in 2006, in a ruling on the case of Korean Jehovah's Witness conscientious objectors, Yeo-Bum Yoon and Myung-Jin Choi (Communications no. CCPR/C/88/D/1321-1322/2004 <http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/26a8e9722d0cdadac1257279004c1b4e?Opendocument>). The Committee ruled that Korea's conviction and sentencing of the two conscientious objectors was "a restriction on their ability to manifest their religion or belief". Turkey, like Korea, has ratified the ICCPR and so this decision has direct implications for Turkey in establishing the scope of its obligations under Article 18.

Turkey v. the European Court of Human Rights (ECtHR)

Despite this, the government claims that international human rights law does not protect the right to conscientious objection. This has been the government's argument in a case before the European Court of Human Rights (ECtHR) in Strasbourg about a Turkish pacifist conscientious objector: Osman Murat Ülke v. Turkey (Application no. 39437/98) (see <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=791754&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>).

The ECtHR found against Turkey in January 2006 that Ülke's conviction and punishment had been "degrading treatment" under Article 3 ("Prohibition of torture, inhuman or degrading treatment or punishment") of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Court ruled in extremely strong terms 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. 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" (see <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=791754&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>).

Serious consequences of ECtHR failure to consider Article 9

However, although Ülke also complained to the ECtHR under Article 9 ("Freedom of thought, conscience and religion"), the ECtHR concluded that "it was not necessary to give a separate ruling on the [other] complaints." But the judgment did state that Turkey's "legal framework is evidently not sufficient to provide an appropriate means of dealing with situations arising from the refusal to perform military service on account of one's beliefs. Because of the unsuitable nature of the general legislation applied to his situation the applicant ran, and still runs, the risk of an interminable series of prosecutions and criminal convictions." The Turkish government promised to address this, but has yet to do so.

The refusal of the ECtHR to address the Ülke case under Article 9 – which refusal the Turkish Government had argued for - caused great disappointment among Turkish civil society activists. This failure by the ECtHR meant that it failed to consider an extremely serious consequence of the Turkish treatment of conscientious objectors. As the cycle of arbitrary detention, prosecution and prison sentences is severe, it has the effect of applying strong coercion to a person to change their conscientiously-held belief.

This is clearly an extremely serious violation of everyone's freedom of thought, conscience and religion.

In other religious freedom cases involving individuals against states, the ECtHR has also been reluctant to rule on whether there have been breaches of Article 9 as against other European Convention articles. This was the case when two Turkish Alevi Muslims successfully brought a case to the ECtHR on the question of compulsory lessons in religious culture and ethics (see F18News 29 November 2007 http://www.forum18.org/Archive.php?article_id=1053).

ECtHR misunderstood Article 9

Unfortunately, the ECtHR, in an extremely dangerous October 2009 judgement in the *Bayatyan v. Armenia* case, has made the extraordinarily mistaken claim that Article 9 does not guarantee the right to conscientious objection to military service. This put the ECtHR out of step with the international legal standards on conscientious objection to military service, including those of the ICCPR, and is being challenged in the Grand Chamber of the ECtHR (see F18News 19 November 2009 http://www.forum18.org/Archive.php?article_id=1377).

Importance of ECtHR for Turkey

Despite this, especially when the ECtHR sees that other Convention articles are involved, the Court has been becoming increasingly important in defending freedom of thought conscience and belief in Turkey (see F18News 18 January 2007 http://www.forum18.org/Archive.php?article_id=901).

The Ülke judgement has, as the Turkish government recognised, serious implications for Turkey's legal framework. Article 24 of the 1982 Turkish Constitution guarantees freedom of religion or belief, and does not allow suspension of this right even in times of national emergency. Article 72 lists military service as one of the two national service options which are "the right and duty of every Turk," the second option being an undefined "public service." There are no conflicts between the Constitution and potentially recognising the right to conscientious objection.

But this is not the case with Turkey's laws regulating military service. The 1927 Military Law states that military service is "compulsory for every male citizen." Failure to report for military service is, under the Military Criminal Code's Article 63, a crime. Article 87 of the Code describes all subsequent refusals to undertake military service as "insistence on disobedience to orders." As the Ülke judgement noted, this opens up "the risk of an interminable series of prosecutions and criminal convictions."

After the Ülke decision, Turkey informed the Committee of Ministers that regulations concerning conscientious objection will be made in due course. The Defence Ministry, in response to a parliamentary inquiry about conscientious objection, said on 2 June 2008 that work is in progress for a regulation on this right. However, nothing has to date (March 2010) been done to fulfil the requirements of the January 2006 ECtHR judgment.

Conscientious objection still not recognised

Generally speaking, arguments by military circles in favour of not recognising the right to conscientious objection are either based upon national security arguments, or the perception that conscientious objection is a concept foreign to Turkey's culture. The Ministry of Justice and Ministry of National Defence state that work on conscientious objection is ongoing since the Ülke judgment. But no information is available as to the specific content of this work, or when a result is expected. The reasons behind this slow progress appear to include the military struggle against the PKK in eastern Turkey and the many lives lost in this struggle; an inequality of risk between conscientious objectors and those who risk their lives in military service; and strong resistance from some parts of society, because of a deeply rooted notion that (against Turkey's international human rights commitments) national security needs always override religious convictions.

There have only been two positive moves since the ECtHR judgment. A draft code on conscientious objection to military service was submitted on 14 November 2008 to the Grand National Assembly by a Kurdish human rights defender and parliamentary deputy from the opposition Peace and Democracy Party (BDP), Akin Birdal. But there is no sign that this may become law, as so far political parties have been unresponsive to the Bill. Another significant development is a Decree issued on 3 July 2008 by the Ministry of Justice, attempting to prevent the endless prosecution – trial – punishment cycle that objectors have to face. This Decree states that deserters can only be arrested and detained with a court warrant by the police. This means that conscientious objectors cannot now be arrested by military authorities from the recruitment office.

Reluctance to recognise freedom of religion or belief for all

In light of Turkey's international and constitutional human rights commitments, will Turkey create a suitable legal regulation to assess claims of conscientious objection to military service? It seems there is a strong military and political will not to recognise a right to conscientious objection. Some developments, such as the Ministry of Justice Decree, which is in itself a positive step, still give the impression that the right to conscientious objection will not be recognised soon. This is because the Decree appears aimed at

eliminating the consequences of non-recognition of conscientious objection, instead of legally addressing freedom of religion or belief issues that arise when one is forced to act against genuinely held beliefs.

Sadly, it appears that conscientious objection is – like non-recognition of the independent legal existence of religious communities – another example of Turkey's reluctance to recognise freedom of religion or belief for everyone. (END)

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For more background, see Forum 18's Turkey religious freedom survey at http://www.forum18.org/Archive.php?article_id=1379.

More analyses and commentaries on freedom of thought, conscience and belief in Turkey can be found at <http://www.forum18.org/Archive.php?query=&religion=all&country=68>.

A personal commentary on the European Court of Human Rights and conscientious objection to military service is at http://www.forum18.org/Archive.php?article_id=1377).

A compilation of Organisation for Security and Co-operation in Europe (OSCE) freedom of religion or belief commitments can be found at http://www.forum18.org/Archive.php?article_id=1351.

A printer-friendly map of Turkey is available at <http://www.nationalgeographic.com/xpeditions/atlas/index.html?Parent=mideast&Rootmap=turkey>.

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