



Conscientious Objection in Türkiye: The Limits of ECtHR's Influence

Question(s) at stake:

Whether the applicant's repeated convictions for refusing military service on conscientious grounds, and the treatment to which he was subjected, constituted a violation of Article 3 of the European Convention on Human Rights (ECHR).

Outcome of the ruling:

The applicant, a conscientious objector, faced repeated convictions and continued prosecution for refusing to perform compulsory military service on the basis of his beliefs, resulting in multiple periods of imprisonment and an ongoing risk of further prosecution. The Court considered that the cumulative effects of these measures placed the applicant in a situation of ongoing uncertainty and vulnerability, amounting to degrading treatment in violation of Article 3 of the Convention.

Topic(s):

- [Crime and Punishment under State Law](#)
- [Employment](#)

Keywords:

- [Military service](#)
- [Freedom of thought, conscience and religion](#)
- [Prohibition of torture and inhuman or degrading treatment or punishment](#)
- [Types and actors](#)
- [Public sector](#)
- [Armed Forces](#)

Tag(s):

- [Pacifism](#)

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Country:

[Turkey](#)

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Ülke v. Turkey, App. no. 39437/98, 24 January 2006

Link to the decision:

<https://hudoc.echr.coe.int/eng?i=001-72146>

ECLI:

ECLI:CE:ECHR:2006:0124JUD003943798

Date:

24 October 2006

Jurisdiction / Court / Chamber:

European Court of Human Rights

Remedy / Procedural stage:

Final judgment

Previous stages:

- Military Court of Cassation (3 July 1997, 4 July 1997, 30 September 1998, 7 October 1998, 22 September 1999)
- Eskişehir Command Court (6 March 1997, 22 January 1998, 4 May 1998, 11 June 1998, 26 November 1998)

- Ankara Military Court of the General Staff (18 October 1996)

Subsequent stages:

None

Branches / Areas of law:

Constitutional Law, Criminal Law

Facts:

Mr Ülke, the applicant, was born in 1970 in Türkiye and lived in Germany until 1985. After that he returned to Türkiye, completed his education, and pursued university studies. In 1993, he became an active member of the Association of Opponents of War (SKD), representing the organization at international conferences until its dissolution later that year.

In August 1995, the applicant publicly burned his military call-up papers in İzmir as an expression of his pacifist beliefs. This act led to a series of legal challenges:

In 1996, he was arrested and charged with inciting conscripts to evade military service.

In 1997, he was sentenced to six months in prison and fined for this offence.

He was also declared a deserter, and authorities sought to enlist him.

His 1997 appeal, in which he identified himself as a conscientious objector, was dismissed.

Following his transfer to a military regiment in 1996, he refused to comply with orders or wear a military uniform, resulting in further legal consequences.

He was charged with “persistent disobedience” in 1996.

In 1997, he was subjected to a fifteen-day visitor restriction as a disciplinary measure.

He received a five-month prison sentence for persistent disobedience.

His 1998 appeal against these sentences was unsuccessful.

In 1997, he was sentenced to ten months in prison for desertion, and another ten-month sentence followed in 1998.

Subsequent appeals were denied.

After his release in 1998, he again refused to wear a military uniform upon returning to his regiment, leading to an additional sentence of seven months and fifteen days for “persistent disobedience”.

His appeals against this sentence were rejected as well.

In total, the applicant served 701 days in prison due to these convictions. As a result, he went into hiding, ceased all political activities, and lived without an official address, cutting off contact with authorities. He resided with his fiancée’s family but faced significant challenges, including the inability to legally marry or formally recognize his child.

The applicant argued that the repeated prosecutions and convictions violated his rights under Articles 3, 5, 8, and 9 of the European Convention on Human Rights (ECHR). He contended that the interference with his rights was disproportionate to the objectives pursued by the national authorities.

The government, however, argued that Article 9 was not applicable in this case, citing established case law of the Court that does not recognize a right to conscientious objection. On the merits, the government highlighted that Turkish law mandates universal military service for all male citizens, with no exceptions for conscientious objectors. It argued that the applicant’s actions, which breached military discipline, had the potential to disrupt or unsettle conscripts, justifying the imposition of criminal penalties.

Ruling:

Mr Ülke, the applicant, was born in 1970 in Türkiye and lived in Germany until 1985. After that he returned to Türkiye, completed his education, and pursued university studies. In 1993, he became an active member of the Association of Opponents of War (SKD), representing the organization at international conferences until its dissolution later that year.

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Main quotations on cultural or religious diversity:

- “In the light of the above, the Court considers that, in the present case, the applicant's successive convictions, and the continuing liability to prosecution that he faces for refusing to wear uniform on account of his philosophical beliefs, have certainly placed him in a situation of humiliation or debasement. The Court has to address the question whether that situation is different from the usual degree of humiliation inherent in criminal conviction or detention.” (para. 59)
- “In the present case, 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.” (para. 62)

- “Under these circumstances, the Court considers that, taken as a whole and regard being had to its gravity and repetitive nature, the treatment inflicted on the applicant has caused him severe pain and suffering which goes beyond the normal element of humiliation inherent in any criminal sentence or detention. In the aggregate, the acts concerned constitute degrading treatment within the meaning of Article 3 of the Convention.” (para. 63)

Main legal texts quoted in the decision:

Domestic law

- Article 72 of the Constitution
- Article 155 of the Turkish Criminal Code
- Section 1 of the Military Service Act

International law

- Articles 3, 9, 41 of the European Convention on Human Rights

Cases cited in the decision:

- *Thlimmenos v. Greece*, App. no. 34369/97, 6 April 2000
ECLI:CE:ECHR:2000:0406JUD003436997
- *Soering v. the United Kingdom*, App. no. 14038/88, 7 July 1989
ECLI:CE:ECHR:1989:0707JUD001403888
- *Chahal v. the United Kingdom*, App. no. 22414/93, 15 November 1996
ECLI:CE:ECHR:1996:1115JUD002241493
- *Kudła v. Poland*, App. no. 30210/96, 26 October 2000
ECLI:CE:ECHR:2000:1026JUD003021096
- *Albert and Le Compte v. Belgium*, App. nos. 7299/75, 7496/76, 10 February 1983
ECLI:CE:ECHR:1983:0210JUD000729975

- *Dougoz v. Greece*, App. no. 40907/98, 6 March 2001
ECLI:CE:ECHR:2001:0306JUD004090798
- *Raninen v. Finland*, App. no. 20972/92, 16 December 1997
ECLI:CE:ECHR:1997:1216JUD002097292

Commentary

Conscientious Objection in Türkiye: The Limits of ECtHR's Influence

In some states, driven by historical and geopolitical factors, compulsory military service is enshrined as a duty of citizenship. Türkiye stands as a prominent example of such countries, with Article 72 of its Constitution mandating this as a right and a duty for all male citizens. The Article reads:

“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.”

It follows from this that conscientious objection can be recognized through legislation and that such legislation would not be unconstitutional. Turkish legislation currently does not contain a provision recognizing conscientious objection or providing an alternative civilian service for individuals who refuse military service on religious or conscientious grounds, an issue that has been raised by the Committee of Ministers of the Council of Europe and various non-governmental organizations.

The landmark case of *Ülke v. Turkey* marked the first instance of a Turkish compulsory military service case reaching the European Court of Human Rights (ECtHR). This case highlighted the legal situation faced by conscientious objectors, who lack formal recognition under the existing legal framework.

The ECtHR ruled in favour of the applicant, who had been subject to repeated prosecutions and received eight separate prison sentences for his refusal to comply with compulsory military service. The Court found these circumstances to constitute degrading treatment, as stipulated under Article 3 of the ECHR. It

further concluded that, having spent an extended duration in prison, the applicant lived under the perpetual threat of imprisonment, which resulted almost in a form of “civil death”. Additionally, it noted that the continuous criminal investigations against the applicant were conducted with the intent to suppress his intellectual personality, evoke feelings of fear, distress, and vulnerability, and undermine his resilience and determination. The Court considered that these circumstances amounted to degrading treatment within the meaning of Article 3.

Article 9 ECHR and conscientious objection

In its early jurisprudence, the ECtHR had established a link between Article 9 and Article 4 of the Convention, which regulates the prohibition of forced labour. According to Article 4, paragraph 3, subparagraph (b), “any service of a military nature or, in countries where conscientious objection is recognized, any other service which may be performed in place of compulsory military service by persons who choose conscientious objection” was not considered forced or compulsory labour. According to the Court, even if the majority of states recognized the right to conscientious objection, it was not possible to disregard Article 4 (3) (b). Since this provision left it to the discretion of each member state whether or not to recognize the right to conscientious objection, it could not be concluded that a state had violated the Convention based on developments in this field. Until *Bayatyan v. Armenia*, reading Article 9 in conjunction with Article 4 in conscientious objection cases meant that, although conscientious objection was recognized as part of the freedom to manifest religion or conscientious conviction in the majority of Council members, it did not enjoy the protection of Article 9 (Altıparmak 2011).

In paragraph 100 of the *Bayatyan v. Armenia* ruling, the Grand Chamber clarified that the primary aim of Article 4 § 3(b) is to offer additional clarification on the concept of “forced or compulsory labor”. It emphasized that this provision neither explicitly acknowledges nor denies a right to conscientious objection. Consequently, it should not impose restrictions on the rights protected under Article 9. Considering global legal advancements, the Court adopted a dynamic interpretation of the Convention, treating it as a living instrument. This approach

allowed the Court to extend its protection to a right – conscientious objection – that was not originally explicitly stated in the ECHR.

After this pivotal case, the Court ruled on a similar case in the same year. In *Erçep v. Turkey*, App. no. 43965/04, 22 November 2011, the Strasbourg court found Türkiye's failure to recognize the right to conscientious objection and the possibility for such individuals to perform alternative civilian service to be in violation of Article 9 of the ECHR. This judgment confirmed the Court's approach following *Bayatyan v. Armenia* and found that Türkiye's failure to recognize conscientious objection and provide an alternative civilian service was incompatible with Article 9 (Altıparmak 2011).

Implementation of the rulings

In 2011, the Justice Minister of Türkiye announced that a draft proposal was being worked on to recognize and implement the right to conscientious objection. The ECtHR had given the Turkish government a deadline to recognize and implement conscientious objection by the end of 2011 (Anılan 2011). However, the draft was later withdrawn and nothing further has been heard about it since.

Since *Ülke*, many cases brought by conscientious objectors from Türkiye have led to findings of violations of Convention rights. These cases have been gathered into the "Ülke group" and are subject to enhanced supervision by the Committee of Ministers (Yıldırım and Üçpınar 2021).

Under the current legal framework in Türkiye, military service may be performed on a paid basis, but this requires conditions such as never having been a draft dodger before, a condition many conscientious objectors cannot fulfil, and no other solution has been put forward. Paid military service also includes a 30-day period of military training and does not provide an option for exclusively civilian service. The Committee of Ministers noted that paid military service is not an alternative to compulsory military service, that it requires wearing a uniform and training with weapons, and that the required fee is not easily affordable. This fee, known as *bedelli askerlik ücreti*, is calculated based on the civil servant salary coefficient (*memur aylık katsayısı*), making its amount subject to periodic

adjustments by the state.

Limits of the Court's influence and country-specific contexts

The historical and social context regarding this issue in Türkiye is crucial for understanding the state's non-recognition of conscientious objection and resistance to the recognition and implementation of a civilian alternative to military service.

Türkiye emerged from the dissolution of the Ottoman Empire, following a series of conflicts with neighbouring states. Its founders, many of whom had military backgrounds, played a decisive role in shaping the new nation. Throughout its history, Türkiye has experienced multiple military coups, highlighting the military's persistent influence over its political trajectory. Thus, the military played a pivotal role in the comprehensive social and legal transformation of the state.

Furthermore, the Court's previous decisions can also undermine its authority and ability to bring about change on certain issues where there is a growing European consensus towards recognition of a right. For instance, despite a widespread consensus across Europe favouring conscientious objection and alternative civilian service, the Court has in the past shown that it can prioritize states' discretion over an existing European consensus.

One prominent example of the Court aligning with a state's position due to its particular sensitivities is the case *Sahin v. Turkey*, App. no. 44774/98, 10 November 2005 (Demir 2011). While the European consensus opposed bans on headscarves in universities, the Court framed the issue as one without a coherent European standard. Instead, it emphasized the diversity of social and political conditions across states and the need to defer to Türkiye's margin of appreciation, despite Türkiye being the only member state with such a ban. As Demir (2011) noted, following the example of the *Sahin* case, "it is not hard to anticipate that, in cases concerning the limitation of the right to conscientious objection, the Court may issue a ruling that takes into account Türkiye's cultural, historical, and traditional values". This underscores the Court's previous rulings

and raises concerns about potential inconsistencies, particularly in its application of mechanisms such as the margin of appreciation.

Literature related to the main issue(s) at stake:

- Altıparmak, Kerem. 2010. *Bayatyan'ın Görünmeyen Yüzü: Aşağılayıcı Muamelenin Alenileşmesi [The Invisible Face of Bayatyan: The Publicisation of Degrading Treatment]*, available at <http://ihop.org.tr/wp-content/uploads/2010/04/Bayatyan-Karari-Yorum_Kerem_Altiparmak.pdf> accessed 31 October 2023.
- Anılan, Erdem. 2011. *Vicdani retçilere 2 yıl kamu hizmeti [2 years of civil service for Conscientious objectors]*, available at <<https://www.aksam.com.tr/guncel/vicdani-retcilere-2-yil-kamu-hizmeti--78909h/haber-78909>> accessed 1 November 2023.
- Çınar, Özgür Heval. 2013. *Conscientious Objection to Military Service in International Human Rights Law*. New York: Palgrave Macmillan.
- Demir, Hande Seher. 2011. “Vicdani Ret Hakkı” [Right to Conscientious Objection]. *Ankara Barosu Dergisi / Ankara Bar Journal* 2011 (4): 241–283.
- Schroeder, Judah B. 2011. “The Role of Jehovah’s Witnesses in the Emergent Right of Conscientious Objection to Military Service in International Law”. *Kirchliche Zeitgeschichte* 24 (1): 169–206.
- Secretariat of Committee of Ministers, 1310th meeting (March 2018) (DH) – Rule 9.2 Communication from an NGO (European Bureau for Conscientious Objection) (14/02/2018) in the Case of Ulke v. Turkey (Application No. 39437/98), available at <[https://hudoc.exec.coe.int/eng?i=DH-DD\(2018\)209E](https://hudoc.exec.coe.int/eng?i=DH-DD(2018)209E)> accessed 21 December 2025.
- Speck, Andreas. 2012. *A Conscientious Objector’s Guide to the International Human Rights System*. UK: War Resisters’ International.
- Yıldırım, Mine. 2010. “Conscientious Objection to Military Service: International Human Rights Law and the Case of Turkey. *Religion & Human Rights: An International Journal* 5 (1): 65–92.

- Yıldırım, Mine and Hülya Üçpınar. 2021. *Conscientious Objection to Military Service in Turkey* (report), Vicdani Ret Derneği / The Association for Conscientious Objection.
- Committee of Ministers, resolution CM/ResDH(2007)109, 17 October 2007, available at < >.
- Committee of Ministers, resolution CM/ResDH(2009)45, 19 March 2009, available at < <https://search.coe.int/cm?i=09000016805ad595> >.

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