

ÖZGÜR HEVAL ÇINAR and COŞKUN ÜSTERCİ

# CONSCIENTIOUS OBJECTION

RESISTING MILITARIZED SOCIETY

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**resisting militarized society**

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ÜSTERCİ | editors



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## Acknowledgements

We hope that this book will give a new perspective on conscientious objection, as unfortunately, despite the importance of this issue, especially today, there are insufficient recent sources in English. In addition, this book considers conscientious objection both in the world as a whole as well as in Turkey specifically, going beyond previous books and articles to offer a broad discussion of the issue.

This collection was initially published in Turkey in February 2008 by İletişim Yayınları under the title *Çarklardaki Kum: Vicdani Red – Düşünsel Kaynaklar ve Deneyimler* (Sand in the Wheels: Conscientious Objection – Philosophical Sources and Experiences). We published it first in Turkish, because there was no academic book on the subject of conscientious objection in Turkey.

We would like to thank all the individuals and institutions who were the callers, participants and supporters of the International Conference on Conscientious Objection, held at Istanbul Bilgi University on 27–28 January 2007; those who presented at the conference and everyone who contributed articles to the book; Cynthia Cockburn for the preface; our translator friends; Hülya Ak, Mustafa Gündoğdu and Akin Ünver for their help; Andrew Penny and Amy Pepper, who proofread the manuscript; and Tamsine O’Riordan on behalf of Zed Books for generously offering its resources to turn this project into a book.

## Preface

CYNTHIA COCKBURN

Conscientious objection to state military service is one of the most meaningful, demonstrative and difficult forms of non-violent direct action in the repertoire of the world's anti-militarist, anti-war and peace movements. It is also, as this volume shows, a wonderfully productive focus for study, for the creation of both theory and praxis. We can be grateful to the editors and publishers of this volume for these richly varied contributions, from a range of countries, which offer us gripping material to think about and learn from.

*Conceptually*, it seems to me, conscientious objection opens up to a deeper understanding of the relation between the individual and the state. While war has always known deserters and traitors, the conscientious objector appears for the first time in the age of nation-states, when entire populations are pitted against each other in 'total war'. The individual conscript to the national army (essentially male)<sup>1</sup> is caught up in a curious circular and contradictory movement of rights and responsibilities. He has the responsibility to bear arms for the country, but in a sense this itself can be represented as a right, since it alone confers a right – the right to citizenship. Sometimes the conscientious objector has to flee the state, to reside elsewhere, in a place where he has neither responsibilities nor rights, and pays the price of being unrecognized, provisional, a 'nobody'. Even if he stays within the boundaries of 'his' state, and if he escapes military service by one device or another, we see in some of the stories here how he can be reduced to a condition of 'civil death' (memorable phrase!), unable to obtain decent employment, deprived of the services and support, even the basic human respect, to which he is entitled. The individual's refusal to fight the state's 'enemies', and the response to that disobedience, exposes the full extent of the state's power. And the conscientious objector's choice is, in a sense, a provocative act of class loyalty, because it prefigures the state's other use for its means of coercion – deployment of the army to suppress its own rebellious people.

Despite Enlightenment ideas, all citizens of the state are not equal. State militaries are contagiously hierarchial, reflecting and reinforcing the economic class, gender and racial rankings of capitalist society.

In some modern states a privileged class of men are endowed with citizenship rights that working-class men, especially ethnic-minority men of dubious legitimacy, are obliged to earn through military service. Refusing, the conscientious objector makes a statement not only about the terms of citizenship, but about the pretensions of democracy. Conscientious objection is refusal of the state's authority, the terms on which it confers citizenship – and it is even more explicit in this respect when it involves also a refusal of alternative (social) service for the state.

For me, however, the conscientious objector is most informative about the deep imbrication of nationalism, militarism and *patriarchy* – that dreadful homosocial trio, locked in mutual need and adoration. It is not every book or article about conscientious objectors which brings to the theme a gender analysis. This makes this book especially valuable. Conscientious objection can be dressed in two alternative garbs. When represented as an alternative masculine heroism, sometimes explicitly compared to the heroism of the one who is prepared to die for his country, it retains familiar masculine khaki. Or it can wear an unprecedented and surprising 'look' that refuses both of the two available masculinities – the one heroic, the other shamed and debased by refusal. It does not simulate femininity, either. Rather it dons an autonomous, self-defined, gender and sexuality. This is dress for an altogether fresh and new gender act: anti-patriarchal, anti-heteronormative, anti-homophobic and pro-feminist.

Women are engaged in patriarchal gender relations every bit as much as men. It is men who profit from the patriarchal dividend, but the majority of women settle for the patriarchal bargain. There is plentiful evidence in history of women urging the men who 'defend' them to acts of valour and acts of atrocity. Every day in our militarized societies women caught up in the popular culture act as mirrors, reflecting uniformed men admiringly at larger-than-life size. But some women wake up to the connection between the legislated violence of the state against its supposed enemies, without and within, and the endemic violence of men against women. They see that the militarized state, in requiring men to do their violent duty for the 'country', are simultaneously authorizing men to subordinate women, if necessary with violence, at home. That is why when women get involved in conscientious objection it is in some ways even more radical than men's refusal. It is likely to be a feminist challenge to the militarization not just of men and manhood, but of society as a whole. At best it will expose the malign intersectionality of patriarchy, nationalism and militarism for all to see.

As regards *oppositional praxis*, conscientious objection is specially productive. First, it provides a path from individual to collective resistance. The lonely young man refusing a period of conscription as an act of self-salvation ('I knew I couldn't survive it') can look around him and if he is lucky find a movement already there, capable of transforming his personal act into a political one. Second, it offers a route, full of choices, from a limited and co-optable to a powerfully comprehensive form of resistance. In any given country it may at the start take the form of refusing to fight a given war, or in a given theatre of war, or with particular weapons. It may progress to a more comprehensive refusal of compulsory military service, and thence seek a legal 'right to refuse'. It may go beyond that again to refuse service to a militarized state in any form, even obligatory social service as an alternative to a stint in the armed forces. A third activist strength is that, in the very first move, conscientious objection steps beyond rhetoric and puts the body into play. The conscript refuses to allow himself to be armed, armoured, by the state. The state then deals with the recalcitrant body in various (mostly unpleasant and sometimes lethal) ways. The conscientious objector in this way gives a very powerful message, which scarcely needs words, to other potentially rebellious citizens about the limitations of democracy and the crude reality of state power.

Of special interest to me, conscientious objection to military service is a rather unusual and hopeful field of struggle in which the antagonisms of gender and sexuality can potentially be transcended. Men primarily defining themselves as anti-militarist may find ways of working with feminist women and lesbian, gay, bisexual and transgender/transsexual activists in an equal partnership of insubordination to a sexist and militarizing state, understood as oppressing them all in different ways. They may be able to form such an alliance without suppressing or denying what they perceive as their identities, their political specificity. When women join or create a movement of conscientious objection they are likely to reveal not just the deformations of masculinity done by the militarist state but the way it penetrates and uses everyday life in ways that damage a wide range of popular interests – of the working class, of ethnic minorities, of children, of women, of lesbians and gays, of the elderly, of those with disabilities, of men. The action can shift to a range of practices – withholding 'defence' taxes, protesting against military contracts for university research, protesting about the use of toy weapons in nursery school. Such oppositional practice goes way beyond refusal of obligatory military service to propose an entirely different duty, the duty of assuring 'security' in the entirely new meaning of the word that feminists have been proposing now

for some years. What it imagines is a revolutionary mentality. It goes beyond the left's imagined revolution, because it does away with the recourse to armed insurgency. It is simply a mentality that does not normalize violence.

### **Note**

1 The conscientious objector is normally male, since state military conscription usually applies only to males. Recently, however, some women have declared themselves conscientious objectors, refusing

service in countries such as Israel where women are subject to conscription, and in other countries adopting it as an anti-militarist standpoint from which may derive a range of actions.



# Introduction

COŞKUN ÜSTERCİ AND  
ÖZGÜR HEVAL ÇINAR

The objection to participation in war is as ancient as war itself. Throughout history, different forms of military organizations have caused people to refuse military service for various reasons. One of the most direct forms of resisting war and military service is conscientious objection. In its most general sense, conscientious objection can be defined as a rejection of conscription owing to one's conscience or religious, political, philosophical or similar convictions.

In the United Kingdom (UK), there were 16,000 conscientious objectors during the First and more than 60,000 during the Second World War.<sup>1</sup> During the Vietnam War the number of conscientious objectors in the United States of America (USA) grew to more than 200,000.<sup>2</sup> And according to the Pentagon, at least 8,000 members of the US military deserted in the first three years of the Iraq War.<sup>3</sup>

Today, wars not only take place on the battlefield, but also involve and alter the everyday lives of civilians. Moreover, the military structure of modern states is not only in effect at times of war but also during peacetime. Contemporary forms of conscientious objection, therefore, are often not limited to times of war, but problematize peacetime militarization as well. And with the contributions of feminists and LGBTT (lesbian, gay, bisexual and transgender/transsexual) activists, conscientious objection has also come to include a problematization of the sexism and heterosexism embedded in militarist structures and ideas. As such, conscientious objectors around the world articulate their objection to wars with increasing attention to the structures and ideologies that make wars 'natural' and 'desirable'.

In response to these conscientious objection movements, various international treaties have been drafted to provide for the right to the conscientious objection to military service under freedom of thought, conscience and religion: for example, Article 18 of both the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights (ICCPR), Article 10 of the Charter of Fundamental Rights of the European Union (EU), and Article 9 of the European Convention on Human Rights (ECHR). While in theory most nation-states acknowledge this right through their international treaty commitments, this seldom translates into recognition and implementation at the

level of national law. Of the 168 countries with armed forces (out of the 192 UN members), only some 35 per cent recognize conscientious objection as a right.<sup>4</sup>

This percentage is much higher in Europe. However, the case of Turkey is especially illuminating. Among the forty-seven members of the Council of Europe, only Turkey does not recognize conscientious objection as a right,<sup>5</sup> nor does it allow any form of alternative service. The Turkish state has historically avoided recognizing conscientious objection, owing to its strong militaristic and nationalistic ideology. Turkey's military – the second largest in the North Atlantic Treaty Organization (NATO), after the USA<sup>6</sup> – has a dominant role in the country's candidacy for EU membership, and military service has huge social, cultural, political and economic significance; for instance, applicants for a job or an academic position will commonly be asked whether they have served in the armed forces.

The phenomenon of conscientious objection today deserves more public and academic discussion in countries where the army is particularly dominant, such as Turkey, Israel, Paraguay and Chile. In Turkey, the issue first came to public attention at the beginning of the 1990s, when the first objectors, Tayfun Gönül and Vedat Zencir, declared that they would not perform military service for reasons of conscience and political conviction.

To refuse to perform military service in a country where 'Each Turk is born a soldier!' is a national motto, where masculinity is defined through military service, and especially where the effects of the '1980 military coup'<sup>7</sup> are still prevalent was, even in the most optimistic wording, foolhardy. Yet, despite the hardships experienced since that day, up until the time of writing (June 2008) sixty-nine young people (thirteen women and fifty-six men) have declared themselves as conscientious objectors,<sup>8</sup> one of whom, Halil Savda, is in prison. In addition, there are hundreds, even thousands, of people, such as the Jehovah's Witnesses, who reject military service for religious or other reasons but who do not publicly link their objection with any political position. Many people manage to evade military service by obtaining an exemption or through desertion.

The process of bringing conscientious objection to the attention of mainstream society in Turkey has involved a range of triumphs, difficulties and hardships for conscientious objectors. Public interest in the subject was evident only when conscientious objectors were arrested, when campaigns were organized to support them or when lawsuits were filed against those who supported them. However, in early 2006 a ruling against Turkey by the European Court of Human Rights (ECtHR) in

the case of a 1997 application by conscientious objector Osman Murat Ülke served to ignite public debate. From the head of the Assembly of Turkey to retired generals, from lawyers to newspaper columnists, people from very different circles began discussing conscientious objection. This debate over the ECtHR decision, which demonstrated both the lack of an appropriate legal procedure for conscientious objectors in Turkey and the need for such a procedure, was important in that it made conscientious objectors visible to the public. More significantly, it contributed to breaking taboos about the military, military service and militarism in Turkey.

In today's world, where politics, law and economics are confined to the neoliberal framework, where global injustice coupled with wars causes great strife, there is a real need for a comprehensive academic discussion about conscientious objection from philosophical, political, legal and practical points of view. Among other benefits, such a discussion may contribute to the steps taken towards the demilitarization of society, politics and economics in Turkey. With these ideas in mind, a group of conscientious objectors, anti-militarists, human rights advocates, journalists and academics came together to organize an international conference on conscientious objection. After a year of preparation, the conference was held on 27–28 January 2007 at Istanbul Bilgi University.

This book has been prepared in order to share with the wider public the results of that meeting. The following chapters do not follow exactly the conference programme. The presentations from certain panels were not included as they could not be converted into text, while some chapters by authors who did not participate in the conference have been added, because their contribution extends and develops the subject matter. Nevertheless, the book presents a comprehensive coverage of the discussions held during the conference.

## **Overview**

The modern state (nation-state) monopolizes the use of violence. Having monopoly over violence requires, however, an unprecedented amount of disciplined organization. The modern state achieves this discipline by becoming institutionalized according to the organizational principles of capitalism. This is a system of control whereby the location and function of each element is determined, and each member of the society is made to function as a part of this system.<sup>9</sup> It essentially relies on a relationship of submission formed within a web of duties and responsibilities. Thus, the modern state is institutionalized as an organized force that carries, on the one hand, the tools

for shaping humans in accordance with the principle of organization and, on the other, the apparatus that will preserve that organization. As an important aspect of this institutionalization, the mass army that depends on conscription plays such a central role that it ends up shaping the daily life of the entire population during ‘peace’ time as well as during wartime.

In the first chapter in this collection, Suavi Aydın describes the role played by conscription and national armies in the process of producing citizens, beginning with the first examples in nineteenth-century Europe and going on to the Ottoman Empire and the Republic of Turkey.

As Suavi Aydın remarks, with the establishment of the nation-state conscription has turned into both a right and a sacred duty for all citizens. But because this right and duty do not promise an individual any direct personal benefit, as in pre-nation-state times, they require an ideology. Naturally the ideology of a nation-state is nationalism, and the basis for this ideology is primarily the concept of ‘homeland’.

Important tools for the construction of militarism in modern societies and the concepts of ‘homeland’ and ‘patriotism’ are thoroughly interrogated by Melek Göregenli in the next chapter.

In the late-nineteenth-century Ottoman Empire, the concept of ‘homeland’ was insufficient to keep imperial subjects of multiple religions and ethnicities together and turn them into citizens. In conditions where the disintegration and decline of the empire had accelerated, the ruling military-civilian elite sought a basis for the continuity of the state with concepts such as ‘Turkishness’ and ‘army-nation’, the latter of which was borrowed from Germany (Prussia). As Ayşe Gül Altınay states in her chapter, these concepts become important tools in the later transformation from a construction of nationalism based on citizenship during the early republic towards a racist construct of nationalism based on ethnicity. According to this construction, the army is a proudly carried attribute of Turkish culture. Moreover, as is reflected in the expression ‘Each Turk is born a soldier!’, militarism becomes a matter of biology and a ‘racial’ characteristic.<sup>10</sup>

Armies do not merely create tame, obedient, brave and altruistic citizens (soldiers). They also produce deserters, pacifists, rebels, self-mutilators and ‘war neurotics’.<sup>11</sup> In this sense, although they may have been ‘born as soldiers’, there are and will be some Turks who later change their minds and prefer desertion or evasion. In his chapter, Erik-Jan Zürcher explores the ‘evaders’ during the last periods of the Ottoman Empire. Zürcher examines the reasons why desertion rates in the Ottoman Empire – despite the claimed ‘characteristic’ of Turks

– hovered around 12 per cent during the First World War, while the desertion rate in armies mobilized in Europe at this time was between 0.7 and 1 per cent.

As Zürcher also states, military desertion became a spontaneous form of resistance against conscription and war in the conditions of ‘national struggle’ prevalent after the First World War. The military deserters were so high in number that *İstiklal Mahkemeleri* (independence tribunals) were established in order to deal with this issue and continue with the ‘national struggle’. During the years 1920–23, when these courts were active, about 1,500 military deserters were executed. For 2,827 others, a suspended death sentence was applied, such that it would be carried out if the person committed military desertion a second time.<sup>12</sup> Thousands were given sentences such as hard labour, imprisonment and public flogging.

Ulrich Bröckling notes that conscientious objection, unlike desertion, rebellion and other forms of disobedience, becomes an issue in cases where the military does not consist of volunteers or mercenaries but where personnel have a general conscription duty or are otherwise subject to some kind of compulsory recruitment. Defining the conscientious objector as ‘the sand in the wheels’, Bröckling first gives a general overview of the history of conscientious objection and then shifts the focus towards the transformation that this form of disobedience had to go through because of the present professionalization of armies. According to Bröckling, the reason many states, such as Turkey, still insist on conscription – and even go so far as to make conscientious objection illegal despite changes to the concept of war with the advances in arms technology – is less about finding enough serving soldiers for their armies and more closely related to how each conscientious objector questions the state’s right to rule over its citizens’ lives and deaths.

This conflict between states and conscientious objectors in modern disciplined societies makes visible the militarist character of the state, which depends on submission to the state and the eradication of citizens’ will. For this reason, the resistance of the conscientious objector, whether for ethical reasons or with an anti-militarist attitude, endows their action with political content.

In her chapter, Nilgün Toker Kılınç also emphasizes the political meaning and value of conscientious objection as an act of ‘civil disobedience’. According to Kılınç, the connection between conscientious objection and civil disobedience in terms of making malice visible is indicative of a possible correlation between conscientious objection and anti-militarism.

In the last chapter in the first part of the book, Taha Parla notes

that conscientious objection is not tantamount merely to a fundamental human right of the individual, but, on the contrary, it is a moral and political responsibility and a duty towards society, the public, humanity and other individuals.

Indeed, to the extent that a conscientious objector ‘is able to define being human as a form of existence that possesses the intellect and will for objectifying one’s own freedom’,<sup>13</sup> it is a responsibility to protest the logic of organization preached by militarism, which forces people to become uniform, to submit and obey.

Militarism, which can be very broadly defined as the assimilation of the authoritarian, totalitarian and hierarchical qualities of armies into social life, plays an important role in reproducing many essentialist and discriminatory mentalities and attitudes that are evident in the social organization of today’s societies. For this reason, the second part of the book is concerned with the role of conscientious objection in the critique of patriarchy, sexism and heterosexism, which underpin some of the mentioned essentialist, discriminatory approaches and attitudes.

In the first chapter, Cynthia Enloe asks ‘Where are the women in military conscientious objection?’ Noting that this is a particularly feminist question, Cynthia Enloe proposes that ‘The use of a feminist curiosity to fully understand conscientious objection means going further, exploring women’s full range of relationships to men, to ideas of manliness and to soldiering and militaristic cultures in general’. According to Enloe, it is an important political innovation when women with feminist curiosity, who question the secret and obvious forms of militarism that affect their lives, declare themselves conscientious objectors even in circumstances where they are not subject to conscription. This is at the same time a critique of the masculinized definition of politics.

In the following chapter, after examining the roles of women as ‘soldier-wife’, ‘altruistic/sacred mother’ and the exceptional ‘woman-warrior’ in the myth of the ‘army-nation’ which constructs the military as a racial and cultural characteristic of Turks, Ayşe Gül Altınay demonstrates how women conscientious objectors challenge ‘memorized patterns’ when they reject these roles that have been embraced for years without question. With this attitude, women conscientious objectors make militarism visible, on the one hand, and bring new approaches to the search for anti-militarist language and politics, on the other.

Stating that conscientious objection is not a form of action limited exclusively to men who refuse conscription, but that it predominantly

pertains to the coercion of men to use violence in performing the social responsibilities expected from them, Serpil Sancar interrogates 'male violence' and values of masculinity that prompt men to use violence.

The general rule in the present systems of conscription also applies in Turkey. The conscripts are required to be of sound mental and physical health. Thus all amenable persons of military age are subject to an extensive health examination under the relevant regulations. In the last chapter of the second part of the book, Alp Biricik portrays how the inhumane practices that homosexual men are subjected to during these health reviews reproduce hegemonic masculinity with violent intent.

After discussing from different angles the role of conscription in the militarization of societies and conscientious objection as a form of rejecting conscription in the first two parts, the third part of the book focuses on case studies of conscientious objection in certain countries. We believe each country has its own political, social, economic and cultural contexts. From each country, however, lessons can be learned regarding conscientious objection and the anti-militarist movement, which can be used for the development of appropriate strategies in other countries.

In the first chapter in this part, two activists who have been conducting international work in this area for years, Andreas Speck and Rudi Friedrich, discuss some of the important issues in conscientious objection movements and obstacles facing the movement in general in the Republic of South Africa, Greece and Paraguay. Each one of these experiences, which arise from unique political conditions and differ from one another, is very valuable in terms of the lessons to be learned. The Paraguay experience, however, has special interest. This is because Paraguay is the first and only country in the world where the right to conscientious objection is unconditionally granted and where there is no equivalent service proposed to replace military service. As the authors also note, this situation is, on the whole, a direct result of the clear and definite anti-militarist perspective of the Paraguay conscientious objection movement, which never supported an alternative service in the place of military service.

In the following chapter, defining today's US and Mexican militaries as having many of the attributes of caste armies, Matthew C. Gutmann states that both armies reflect the extreme social stratification along class, gender and racial lines in these countries. Since there is no conscription in the USA today, conscientious objection status is an option only for persons who already serve in the armed forces

and who demand discharge or relocation because of a general change in their views about war. In Mexico, however, just as there has to date not been a single conscientious objection case, there is also no relevant legislation regarding this issue. Explaining how immigrants from Mexico and elsewhere are granted the 'opportunity' for fast-track citizenship in order for the US Army to meet its recruitment quota, Gutmann analyses the relationship between citizenship and military service within the context of globalization.

The Chilean experience, outlined by Pelao Carvallo, and the Israeli experience, described by Tali Lerner, also give an opportunity to discover the similarities and differences between militaristic and anti-militaristic structures in different countries. For example, there are many similarities between the conscientious objection and anti-militarist movement in Turkey and the movements in these countries in terms of their history, levels of organization and the obstacles encountered. This is despite the difference in the case of Israel, where there is conscription for both women and men. Some of the most striking similarities are the role of military coups in the militarization of society (Chile and Turkey); the privileges and special status militaries obtain in social organization through such institutions as military-owned schools, hospitals, associations and trade organizations (Chile, Israel, Turkey); society's view of the military as the most prestigious and reliable institution (Israel and Turkey); and the fact that the country is at war (Israel and Turkey).

Cthuchi Zamorra, on the other hand, discusses the very effective role played by the conscientious objection struggle in the democratization and demilitarization of Spain after the near-forty-year rule of the Franco regime. In Spain, which is home to Europe's, and possibly the world's, largest conscientious objection movement, conscription ended after long years of struggle. A strong anti-militarist movement was forged there through anti-war campaigns and non-violent actions, such as war tax resistance and the occupation of military residences, which served as an example to other social movements.

The conscientious objection experience in Greece is relayed by Alexia Tsouni and Michalis Maragakis. According to the authors, despite the fact that some legal arrangements regarding conscientious objection have existed in Greece since 1997, authorities still treat conscientious objectors as criminals, launch prosecutions by violating their right to conscientious objection, and limit their rights to travel overseas, to obtain passports and identification cards, and to vote. Moreover, the fact that the right to conscientious objection is valid only during peacetime, the discriminatory and punitive nature of the length of the alternative service offered to conscientious objectors, and present prob-

lems such as the lack of information available regarding the alternative civilian service indicate that Greek conscientious objectors still have a long way to go.

As for the experience of Turkey, we have mentioned above that there are similarities in the problems encountered. Perhaps what is distinct for each country are the meanings conscientious objection carries beyond being a matter of conscience and an individual right, because of particular historical, political and social problems. Indeed, the attitude of conscientious objectors derives from fundamental conflicts such as ‘war and violence’ and ‘historical consciousness’, ‘nationalism’ and ‘gender roles’, ‘authoritarianism’ and ‘the culture of rights and democracy’. For instance, while the discussion of conscription in any other country could turn into a general discussion about the relationship between the citizen and the state, because of the special and ‘sacred’ meanings attributed to military service in Turkey, as Ayşe Gül Altınay also notes, it means discussing Turkish culture itself. In addition, while conscientious objectors give rise to a new civilian socialization – with their different style of opposition and language, which they forge in their non-violent actions, ‘*Militurizm*’ (militourism) festivals and the declarations of women conscientious objectors – on the other hand, especially male conscientious objectors are forced to live an isolated life which can be defined as ‘civil death’. This is particularly the case for male objectors, who are positioned between arbitrary imprisonment and life as a fugitive. The historical progression of the conscientious objection movement in Turkey and the above-mentioned problems faced by conscientious objectors are reviewed in the last chapter of the third part by Coşkun Üsterci and Uğur Yorulmaz.

Despite the particularities of country-specific experiences, because of both the universal character of militarism and the global scale of today’s military aggression, conscientious objectors have many problems in common. To alleviate these problems to some extent, the fourth part of the book is concerned with evaluations of and approaches to conscientious objection in international law and the case of Turkish law.

In the first chapter of this part Özgür Heval Çınar examines the forty-seven members of the Council of Europe and other sample countries in the world in terms of conscientious objection. He surveys which countries do not have a military, and whether the right to conscientious objection is granted to professional soldiers in countries that have made the transition to a professional army. In addition, he looks at which countries observe the right to conscientious objection and where an alternative service has been instituted in countries with

systems of conscription. He also considers which authorities regulate this service and then compares the duration of this service with the duration of military service.

In the following chapters, Rachel Brett discusses the United Nations' standards on matters such as the scope of conscientious objection, the process of decision-making, alternative service and its duration, and access to information regarding conscientious objection, and Friedhelm Schneider reports about conscientious objection and alternative service in their general contours in terms of European standards.

In his chapter, Kevin Boyle examines the most important conscientious objection case presented to the ECtHR, *Osman Murat Ülke v. Turkey*, and discusses the point reached by the European Convention on Human Rights and international law in general concerning the right to reject military service for conscientious reasons. According to Boyle, a notable transformation has recently been occurring in how international human rights law approaches the recognition of conscientious objection.

It seems that Turkey is not interested in benefiting from the developments taking place in approaches towards conscientious objection in international law. This is patently clear from the discussions that ensued after the ECtHR ruling regarding *Osman Murat Ülke*; from the fact that the ECtHR decision has not been implemented in practice (thus violations against the applicant *Osman Murat Ülke*<sup>14</sup> have not ceased); and from the continuing lawsuits against some conscientious objectors and journalists. This should not come as a surprise.

Indeed, in *Osman Can's* words, we are talking about a country ruled by a military

that does not receive any support from democratic national will, which is organized in accordance with its own enacted laws and which establishes its own judicial mechanisms. A military establishment that determines military requirements and necessities, and also the national defence requirements, which controls a huge portion of the country's budget and can also finance itself without relying on this budget, through its own foundations and companies, such as the Armed Forces Pension Fund Law (*Ordu Yardımlaşma Kurumu – OYAK*). A military that drafts the constitutions, providing itself with more and more immunity with each constitutional process, and which removes its own acts and laws from judicial review. An army that turns the male population of the country into figures maintaining militarism with the training applied to each and every man and by enabling the continuity of compulsory service through the above-

mentioned means, and which has the power to have its decisions on the problems of the country implemented through the National Security Council (Milli Güvenlik Kurulu – MGK).

Moreover, the present laws pertaining to military service were created either during the first years of the republic, when the nationalist/militarist ideology mentioned above was just being instituted, or during the era of the military coup regime. Osman Can maintains that despite all this it is impossible to argue that the present Turkish constitution, which is also a product of the 1980 coup, necessitates compulsory military service. Examining Article 72 of the constitution, which governs ‘National Service’, Can notes that military service is not the only form of service to the nation suggested by the constitution. According to Can, compulsory service is not a constitutional directive and no constitutional change is required in order to abolish ‘compulsory’ military service.

Analysing conscientious objection as a subject of crime and punishment in Turkey, Hülya Üçpınar explains that conscientious objectors who are criminally prosecuted also face additional disciplinary judgments and punishments. One must note here that actions (the conscientious objection) that cause separate punishments for conscientious objectors stem from a single personal decision. In addition to the risks and negativity caused by the vicious cycle of prosecution and punishment, conscientious objectors are also subject to de facto humiliation, mistreatment and torture. Üçpınar notes that, in practice, not only conscientious objectors but also those who support them in their words, writing or actions suffer a limitation of their freedom of thought, expression and action by being turned into subjects of crime and punishment.

Finally, we should note that the number of recent scholarly works and publications on this subject is small. This book provides an original framework for analysing conscientious objection by bringing together four different bodies of knowledge and practice: 1) historical and philosophical analyses of conscientious objection as a critique of compulsory military service and militarization at large; 2) feminist, LGBTT and queer analyses of conscientious objection as a critique of patriarchy, sexism and heterosexism; 3) activist and academic analyses of conscientious objection as a social movement and individual act of resistance; 4) legal analyses of the status of conscientious objection in international and Turkish law. Obviously, the subject of conscientious objection encompasses a vast area, especially by virtue of its anti-militarist aspect. We believe, however, that these four different bodies

of knowledge and practice give a broad idea regarding the different aspects of conscientious objection.

## Notes

1 Peace Pledge Union (2006) *Refusing to Kill – Conscientious Objection and Human Rights in the First World War*, London: Peace Pledge Union, p. 4.

2 The Center on Conscience and War in Washington – Central Committee for Conscientious Objectors; [www.objector.org/ccco/inthenews/funkco.html](http://www.objector.org/ccco/inthenews/funkco.html), accessed 3 January 2008.

3 [www.usatoday.com/news/washington/2006-03-07-deserters\\_x.htm](http://www.usatoday.com/news/washington/2006-03-07-deserters_x.htm), accessed 3 January 2008.

4 Private communication from Derek Brett in 2008. For further information regarding most of these countries see D. Brett (2006) *Military Recruitment and Conscientious Objection: A Thematic Global Survey*, Leuven and Geneva: Conscience and Peace Tax International. Also see B. Horeman and M. Stolwijk (1998, updated 2005) *Refusing to Bear Arms: A Worldwide Survey of Conscripted and Conscientious Objection to Military Service*, London: War Resisters' International; [www.wri-irg.org/co/rtba/index.html](http://www.wri-irg.org/co/rtba/index.html), accessed 12 February 2008; and M. Stolwijk (ed. Liz Scurfield) (April 2005, updated 2008) *The Right to Conscientious Objection in Europe: A Review of the Current Situation*, Brussels: Quaker Council for European Affairs.

5 Azerbaijan has a similar situation to Turkey. Article 76 of the 1995 constitution (amended in 2002) in Azerbaijan, however, explicitly recognizes the right to conscientious objection, but Azerbaijan has not yet passed any law recognizing this right.

In that respect, there is no application procedure for conscientious objection and alternative service. See Stolwijk, *The Right to Conscientious Objection in Europe*.

6 [www.economist.com/displayStory.cfm?Story\\_ID=E1\\_SJSTDQG](http://www.economist.com/displayStory.cfm?Story_ID=E1_SJSTDQG), accessed 30 June 2008.

7 In the history of the Republic of Turkey, there have been three military coups, in 1960, 1971 and 1980. The third coup, led by, among others, Kenan Evren, the Chief of General Staff, occurred on 12 September 1980.

8 See the full list at [www.savaskarsitlari.org/arsiv.asp?ArsivTipID=2](http://www.savaskarsitlari.org/arsiv.asp?ArsivTipID=2), accessed 30 June 2008.

9 N. T. Kılınç (July 2006) 'Anti-militarizm Sorumluluktur' [Anti-militarism is responsibility], *Birikim*, 207: 27.

10 A. G. Altınay and T. Bora (2003) 'Ordu, Militarizm ve Milliyetçilik' [The military, militarism and nationalism], in T. Bora (ed.), *Modern Türkiye'de Siyasi Düşünce: Milliyetçilik* [Political Thought in Modern Turkey: Nationalism], vol. 4, Istanbul: İletişim Yayınları, pp. 142–3.

11 U. Bröckling (2001) *Disiplin: Askeri İtaat Üretiminin Sosyolojisi ve Tarihi* [Discipline: The Sociology and History of the Production of Military Submission], Istanbul: Ayrıntı Yayınları, pp. 26–7.

12 E. Aybars (2006) *İstiklal Mahkemeleri* [Independence Tribunals], İzmir: Zeus Kitabevi, pp. 138–9.

13 Kılınç, 'Anti-militarizm Sorumluluktur', p. 28.

14 In 2007, the military prosecution requested the arrest of Osman

Murat Ülke on the pretext that there was a court ruling for seventeen months and fifteen days' imprisonment against him, in defiance of the ECtHR's former ruling, which

deemed the repeat punishment of Ülke on the same charges to be in violation of Article 3 of the European Convention on Human Rights, which governs the prohibition of torture.



**ONE | Conscription and resisting  
conscription in a militarized society**



# I | The militarization of society: conscription and national armies in the process of citizen creation

SUAVİ AYDIN

§ Conscription and the ‘army of the masses’ are relatively new historical phenomena. Appearing in Europe for the first time as an important tool in the processes of citizen creation in nation-states, this phenomenon hit other countries’ agenda towards the end of the eighteenth century, progressively establishing the system whereby each male of a certain age group gets conscripted. In this respect, the system made possible both the establishment of giant armies and the popularization of ‘national consciousness’ to a large mass of people via a large uneducated segment of society.

Conscription and the army of the masses were at the same time necessitated by a new kind of war – total war – that came about owing to the technological transformation underpinning the industrial society and the bourgeois society’s desire for economical-political expansion.<sup>1</sup> Total war also meant that the masses assumed to form the nation were to become soldiers as a whole. This state of conscription does not only pose a quantitative issue, but also manifests as a phenomenon that encompasses all stages of human life and involves the recruitment of groups that were previously not expected to serve in the military – such as women<sup>2</sup> and children – or causes them to be directly affected by the conditions of war. Thus a new process had begun whereby a nation in its entirety became the actor of war and the state devoted all its attention to mobilizing these masses with feelings of patriotism and keeping them ready for war.

From this point of view, the creation of nation-states, the recognition of the citizen as the legitimator of sovereignty and the conscription-based army of the masses that makes soldiers out of all are different facets of the same reality. After the French Revolution, when all individual citizens who lived on a politically determined piece of land – that is, ‘the people’ – were accepted as the direct source of sovereignty, military service, or, rather, the right to carry weapons, ceased being a privilege of the nobility and military rank ceased being a status bought with money. The right to carry weapons was granted to all citizens, thus establishing the people’s army. The military success of Napoleon,

which left its mark on the first two decades of the nineteenth century in Europe, owes much to this new military concept and to the definition of the members of this military as missionaries who spread the revolution with a kind of ‘national consciousness’. Thus soldiers had replaced the heavenly missionaries who strived to spread the religious ideal worldwide, turning into secular missionaries spreading the revolution worldwide.

After Napoleon’s dream of a world empire collapsed, military service was defined in accordance with the ideology of Napoleon’s army, as a narrower type of guardianship designed to protect and preserve the nation-state, as a mission devoted to this new but worldly sanctity for the interests of this state. The generalization of this mission in doctrine as a duty that embraces all citizens presumed to form the nation is only natural. Within this framework, the granting to all citizens of the right to carry weapons and the right to fight has turned military service into a right as well as a sacred duty for all citizens.

In pre-revolutionary aristocratic France the right to be a soldier as well as military ranks were bought and were not available to ordinary people. The revolution and the following Napoleonic era reversed this formulation and included military service within the collective rights and duties of citizens. Since this right and duty does not promise any individual or direct benefit, as it did in the Middle Ages, it requires an ideology. Naturally, the ideology of a territorial nation-state will be nationalism and its base will primarily consist of the concept of ‘homeland’. As William McNeill pointed out:

[t]he French revolutionaries broke away from ... ancient patterns, however, by summoning all Frenchmen to the defence of the *patrie* in 1793. During the next twenty years innumerable French victories demonstrated the new power that mass armies could command in an age of incipient industrialism ...<sup>3</sup>

From this point on, the construction of a framework in which conscripted citizens still say ‘long live our country’ in the face of all manner of material and emotional losses would require the indoctrination of those to be conscripted towards this end, and, more importantly, persuasion to commit altruistic acts in the name of this abstraction. In fact, it has been necessary to turn the losses suffered ‘in the name of the country and the nation’ into a matter of honour, privilege and respectability in social thought.<sup>4</sup>

Parallel to this new military model, a new front was opened which was previously unknown to the militaries of the nineteenth century.<sup>5</sup> Before the French Revolution, domestic security matters were of sec-

ondary importance and a low priority for European armies. Beginning with the Napoleonic era, governments developed a different awareness, considering their own people as a new element of threat from two directions, as mass rebellions of city dwellers estranged from the armed forces on the one hand and on the other rural revolts stemming from local problems, such as the cases of Spain, southern Italy and Poland under Russia's rule. It was thus considered necessary to keep a standing military even during peacetime with sufficient numerical strength to deter all kinds of rebellions.<sup>6</sup> The nineteenth century in Europe saw both nation-states and this new military doctrine come into existence.

While we saw the first example of this new doctrine in the Napoleonic army, the establishment and consolidation of the doctrine took place during the 1870–71 Franco-Prussian war. Additionally, a strong tie was established between the Germanic union under the leadership of Prussia and military reform. It is also conceded, however, that I. Wilhelm, known as the leader who realized the Germanic union, had learned a lot from the Napoleonic experience.<sup>7</sup> Taking the Napoleonic experience one step further, Prussia has become the model for the modern military system that is based on conscription. Many other countries followed the example of Prussia and constituted their own military reforms. This was the driving force behind the absolute victory of Prussia in the 1870–71 Franco-Prussian war. This process was also the transformational process of Prussia, and later the Germanic Empire, on the way to becoming a 'military state'. Throughout this process, the military granted itself autonomy from parliamentary control, the influence of the General Head of Staff on the cabinet increased, and military officership ceased being a 'noble' profession under the monopoly of the feudal classes and diffused into the middle classes. Further, the military population was kept as high as possible during peacetime.<sup>8</sup>

### **From the Ottoman Empire to the Republic of Turkey**

**The era of the Ottoman Empire** Such ancient empires of multiple religions and multiple ethnicities as the Ottoman Empire, the Austro-Hungarian Empire and the Russian Empire were affected differently by this process. These empires were on the one hand striving to keep up with the developing powers of Europe by trying to modernize, and on the other resisting the separatist challenges of the different groups within them. So the real problem was mostly internal, not external. On the other hand it was essential to be powerful towards the outside world in order to consolidate the internal situation.

Modernization and the effort to keep the empires intact, however,

conflicted as rather paradoxical processes. The demanding military agenda, taxed by military modernization and the necessity to preserve the empire, required conscription. As a result of the leaps of that same modernization, however, different ethnic constituents experienced a 'nationalist awakening' and imperial ideology became an insufficient basis for the new ideological stance that had served as an example to Europe since the time of Napoleon, and which was required by conscription. For all these different ethnic and religious groups the idea of a 'nation' inclusive of all imperial subjects was far fetched and the idea of a 'homeland' did not have much import. The bankruptcy of Ottomanism, which rested on the idea of a large Ottoman nation as an ideology, was a consequence of this conjuncture.

For, in an age when the source of sovereignty had been secularized, the basis of the ideology called Ottomanism necessarily imputed to the dynasty, and this dynasty referred to nothing but a 'despot' in terms of the emergent nationalisms of various people within imperial lands. That is, the true enemy, and the concept of 'homeland' denoting land occupied by military and civilian powers, connected to the dynasty.

This was precisely the paradox Ottoman rulers faced immediately after the Crimean War as a result of military exigencies, not the least of which was the need for a modern military illustrated by this war. An event described by Ahmet Cevdet Pasha is the most striking testimony in this regard. At that time, mere enlistment of the Islamic subjects could not meet the military needs of the empire and it had become the top priority of the government to generalize the enlistment system in a way that could extend to non-Muslims. When this issue was discussed by a commission formed under the leadership of Grand Vizier Fuad Pasha, Ahmet Cevdet Pasha, who was also in the commission, expressed the difficulty of this expansion in the following words:

If soldiers from the non-Muslim subjects are mixed with the Muslim soldiers, it will be necessary to keep a pastor in the unit in addition to an imam. I would say there was no harm in this if it required only one pastor. However, we have many varieties of non-Muslim subjects. Apart from being differentiated into Orthodox, Catholic, Armenian, Jacobite and Protestant, even the Catholics themselves are split into various denominations such as Latin and Armenian Catholics and Greek Catholics called Melkites and Maronites and Syrians and Chaldeans. And although they both recognize the Pope, the Melkites and Maronites are enemies of one another. Even the Bulgarians, although they too belong to the Catholic sect, have come to hate the Greeks for some time. All of these groups will request different pastors. The

Jews will request a Rabbi. It will thus be necessary to keep a great number of clergymen at the military unit. The Muslims have their Ramadan, and the Christians have their own fasts on various days. How can such a mixed group be managed? And when the commander is hard-pressed he resorts to military rhetoric, exciting the soldiers' patriotic vein to encourage patient perseverance and urging them to demonstrate immense altruism.

Also, for Muslims the most effective words in this regard are 'either a hero or a martyr, forward children for the sake of religion' and Muslims have been instilled with the words hero and martyr in their ears since they were in the bosoms of their mothers; and later having learned in school what elevated ranks hero and martyr are, this religious stimulation obligates them to choose the road of self-sacrifice. ... What will the Major of a mixed unit say in order to inspire the soldiers in case of necessity?

It is true that in Europe patriotic zeal has taken the place of religious zeal. However this has ensued after the termination of centuries of feudalism and their children too have heard this word and only after many years has the phrase 'in the name of the country' come to impact on their soldiers.

However, if the word 'country' is uttered here the soldiers will merely remember the public squares of their villages. Even if we introduced the word 'country' now, and even if in time it acquired in public opinion the power it has in Europe it still could not be as powerful as religious zeal. And it could not take its place. Its attainment would require a lot of time. Until that time our armies would remain soulless.<sup>9</sup>

When the representatives in the commission remind him that their options have considerably narrowed and that they will soon have a shortage of recruits, Ahmet Cevdet Pasha mentions that it is always the Turks who are recruited and thus weakened, proposing to take into consideration other Muslim communities of the empire that have been previously exempt from conscription:

However, we have plenty of communities exempt from military ordinances and regulations. If they were to be drafted to the military then conscription offices shall expand and our principal subjects, the Turks, shall take a deep breath of relief. Bosnia is but one example. By recruiting in Bosnia, the number of reservists will reach fifty thousand in ten years.<sup>10</sup>

The solution to the problem was not, however, as easy as Ahmet

Cevdet Pasha thought it to be. For when the Conscription Resolution copied from the French conscription system and introduced in 1847 was being implemented, many rebellions ensued in the regions of Rumeli (the European part of the empire), Anatolia and Arabia. For instance, the Albanians in Komanova and Köprülü revolted, saying ‘we shall give no soldiers’.<sup>11</sup>

Ever since the Ottoman–Egyptian War, the Ottoman government had favoured the French model for its land force owing to the military successes of Napoleon’s army and had adopted the system of conscription by lots. In addition to this, a ‘*redif*’ (militia) system was in use which was beginning to be developed by the then minister of war, Hüsrev Pasha, with the help of the Prussian captain Graf Helmuth von Moltke, a consultant to the Ottoman army.<sup>12</sup>

With the defeat in the 1877–78 Russian war, the French model was entirely abandoned, and from 1882 on, experts from Germany were brought in for the training and organization of the land army. For the conscription model, the implementation of the Prussian-inspired mobilization and reservist system was continued. The view that the Prussian model was the best practicable one in every aspect had dominated Europe, especially after Prussian success during the Franco-Prussian war. That is, this was not an issue which influenced the Ottoman Empire alone. The military successes demonstrated by the Prussian army during the wars of German Unification (1864–71) had turned into a ‘paradigm’ for all European armies, as best evidenced by the formation of the office of the Heads of Staff.<sup>13</sup>

The first German commander to visit Istanbul in this context was the cavalry colonel Köhler. Abdülhamid II had made Köhler a general and his private consultant. Upon the death of Köhler Pasha in 1883, Staff Lieutenant Colonel von der Goltz was sent from Germany in his stead. Von der Goltz was also assigned to the rank of general and the pasha was also made the commissioner of military schools. The innovations introduced by von der Goltz in military training in particular and also the concepts of tactics and strategy played a great role in the success of the Ottoman army in the 1897 Greek War.<sup>14</sup> At the same time, having been their instructor at the Military School, von der Goltz had an important influence on and was admired by the cadre that later went on to establish the republic. This influence and admiration extended further than Goltz’s person, and turned into a great admiration for Germany in general; the entire army slowly beginning to be shaped in accordance with the German idea of the state and military, which had a very strong influence on the Ottoman military bureaucracy.

The ideology of the military nation held an important place at the

centre of this idea.<sup>15</sup> The Prussian state was established by the Prussian army. Thus the political developments that followed one another in Prussia and Germany were under the influence of the military more so than they were anywhere else, and these developments usually arose from the military's relationship with the sovereign power and the wishes of the commanders. The Prussian army, which reorganized between 1807 and 1813 after the French invasion, was to be the school of the new nation and military reforms were to be complemented by political reforms.<sup>16</sup> Continuity in the Prussian army was created by the Conscription Law passed in 1814. The effectiveness of the system established by this law was manifested by the successive victories of the Prussian army until the unification of Germany, and all European countries, with the exception of Britain, adopted the universal conscription system, implemented successfully in the Prussian example, as a security measure (indeed, as a general military strategy) even during peacetime.<sup>17</sup>

Indeed, the German-cultivated and German-admiring military bureaucracy that took control of the country, especially after the declaration of the 2. *Meşrutiyet* (2. Constitutional Monarchy) in June 1908, can be said to proceed from three principles of 'liberation'. The first of these is the perception of history as a 'struggle of nations'. The second is the belief that only a strong and military nation can emerge from this struggle with success. The third principle is the necessity for the rapid transformation of the country into a 'homeland' and the imperial subjects into a 'nation' for the ideological consolidation of the military state. Indeed, the German experience had placed such a 'road to liberation' before this young cadre. The common denominator of these three principles is the wholesale militarization of society. For this reason one can say that the state project beginning with 1908 was a project for creating a military nation. The most important theoretical source of this project was a book called *Millet-i Müsellaha* (The Nation in Arms) by Colmar von der Goltz Pasha, who was the teacher of the entire cadre from the Military Academy.

In essence *The Nation in Arms* discusses the development of the conscription-based national army in Europe. Von der Goltz Pasha says the following in his introduction to the book:

The assertion that the Prussian army would in the future become the Prussian 'nation in arms' originated from the official speech delivered on 12 January 1860 by our Ruler (Friedrich Wilhelm I). Since that time three difficult wars have actually taken place. Thus my humble work was written to confirm the merit of this truth that is the 'nation in arms', to be etched in the hearts of all Germans.<sup>18</sup>

This short but concise phrase by Friedrich Wilhelm describes a military nation. General Colmar von der Goltz and other more and less important German experts instilled this doctrine into the young officers, and in the meantime the late Ottoman army was organized and reformed under the guidance of this ideology. This ideology began to mature among military circles, particularly in the aftermath of the 1912–13 Balkan wars.

For instance, Ali Fuad (Cebeşoy), the staff major, wrote an article in the *Asker* (Soldier) journal right after the declaration of the constitutional monarchy:

The connection between the army and the nation ... is stronger, more obvious and more sincere than the connection between the elements and universe which are attached to one another in the most intimate, sincere and greatest way. There is no separation between the army and the nation. The army is the life essence of the nation; the nation is the military's true and only benefactor.

The military is an organization charged with the defence of the rights and interests of the country and the nation; the nation is the community that constitutes this noble organization's source of power and support. Since the military and the nation are attached to one another with such a bond of sincerity whose dissolution is unacceptable, nothing can be more natural, more necessary, and more sacred than the military being devoted to the preservation of the security and prosperity of the nation, and the nation working painstakingly and rapidly towards the procurement of the military's good honour and fighting power.<sup>19</sup>

Noticing the lack of moral and psychological development of soldiers in the army, Third Army Third Machine Gun Unit Commander Ali Rahmi Bey had published a booklet composed of some texts he had translated from French. A first of its kind, while this booklet essentially included information on how to raise the morale of the soldiers, Ali Rahmi also stated that the main problem in the Ottoman army was that of providing the soldiers with a common ideal. Through the institution of this missing common ideal, consciousness of homeland and nation was to be instilled in the soldiers and the army was to provide education to a large mass of uneducated people. The introduction of this booklet endows the army with the mission to educate the nation. The author addresses the officers as if they were teachers, advising them to 'work for exploration of the ideas and sentiments of the nation, reinforcement of its morals, and the maintenance of its spirituality'.<sup>20</sup>

**The era of the Republic of Turkey** After the publication of *Millet-i Müsellaha* (The Nation in Arms), the social Darwinist world-view that could be summarized as the notion that history is the stage of the struggle of nations and that only the strong can survive on this stage is also mirrored in the writings of the young officers in the founding cadre of the republic. Thus nations must remain in a constant state of vigilance and mobilization, not only during wartime but also during peacetime. It is almost as if peacetime is but an interruption; accidental and temporary time intervals in the perpetuation of struggle through war between nations; periods of war preparation. For instance, Atatürk's close friend Staff Major Mehmed Nuri (Conker) states the following in *Zâbit ve Kumandan* (Officer and Commander), which was published in 1914:

Above it was stated that peace time should be regarded as the continuation of war time without fighting. Yes, we must always think ourselves to be in a state of war. If we do then when the war really begins we will not see much of a difference between the period of preparation and the period of actual execution, we will not be surprised, we will not lose. The most successful plays staged in theatre are those plays that have been rehearsed most often. This resembles the difference between the work during school year and the tests at the end of it. War is a test of peacetime work ...<sup>21</sup>

In the same year Mustafa Kemal (Atatürk), staff lieutenant colonel at the time, penned a reply to the booklet of Nuri Bey, who was his friend from his time as a military attaché in Sofia. Giving examples from the Balkan and Tripoli wars, Mustafa Kemal makes additions to Nuri Conker's booklet, and composes a tract in which admiring references to the 'national consciousness' of the Japanese soldiers during the Russo-Japanese War are notable. He praises the Japanese 'spirit of aggression', their will, and even expectation, to die in battle, and emphasizes that an offensive army must possess this spirit.<sup>22</sup> Elsewhere he refers to the need for the institution of conscription on which such an army depends:

Members that formed the armies of this last century, unlike those before, did not mostly consist of soldiers who enlisted for military service of their own free will, but rather were citizens of a nation who were, and should be, required to serve military duty. In armies formed in this way superiors are beyond the considerations of reducing excessive initiative to a moderate level and keeping it under discipline and control. For the severe discipline that has been exercised for long

years during peace time in today's armies already stifles the aptitude for agitation in most. For this reason today's superiors, in order to stimulate initiative in subordinates, must awaken them and encourage and stimulate them especially during combat.<sup>23</sup>

These basic views are also mirrored in a book entitled *Vatandaş İçin Medeni Bilgiler* (Civil Information for the Citizen) that bears the signature of Afet İnan but is known to have been written by Atatürk. In the book, 'nation', which is defined as 'a society composed of people from the same culture',<sup>24</sup> is also the source of the morality of a given deed. Hence, morality can neither be partial nor individual but only 'national'. In addition, Afet İnan says that the national bond is not only strengthened but even established by wars. Even people of antiquity are not exempt from this: 'The Greek nation begins after ancient small Greek governments consolidate to retaliate against the Iranians.'<sup>25</sup> Turks have also managed to preserve the national solidarity and bond throughout the ages against all odds, because they have been in a continuous state of war.<sup>26</sup> The guarantor of a nation's freedom is the state.<sup>27</sup>

In *Askerlik Vazifesi* (Military Duty), which served as a sequel to *Civil Information*, Afet says that although the duration of conscription has been shortened, for economic reasons particularly, in today's world 'one must accept in essence that the entire nation shall bear arms if necessary for the country and for freedom. To this end, all citizens must perform military duty and learn military practice and discipline.'<sup>28</sup> Thus, it becomes obvious what tool the state, whose fundamental role is as the guarantor of freedom, shall use in order to guarantee this freedom: the army! But a massive, qualified, national army which all citizens are required to join! Indeed, 'A national army is the most notable indicator of the unity of the nation and the presence of the state.'<sup>29</sup> Increasing the quality of the army and providing it with a national character is possible through preparation that begins before the citizens are recruited into the military:

For this, citizens must already learn and exercise certain things that will facilitate military service while they are still in school. Patriotic sentiment, 'Love of Country' [*Milli His, Vatan Muhabbeti*] and the idea of State, on the other hand, are the most fundamental instruction and knowledge that they should receive beginning in the mother's bosom and the family hearth.<sup>30</sup>

Doubtless, the most disciplined and determined means of transmission of this information shall either be the military or environments

organized under military order. For this reason, military service classes were initiated in high schools, and moreover one- or two-month-long summer military camps were instituted.

The mission taken up by the army, especially after the Balkan wars, as reflected in the words of Afet İnan, is the forerunner of a Bonapartist-corporatist state structure. The ideology of this state is of course Turkism, and the Turkism that was ignited in literary and political circles was first apparent in the army. The vanguard role of the soldier had already been confirmed in the '1908 Revolution'<sup>31</sup> and the '31 March incident'.<sup>32</sup> Şevket Süreyya Aydemir, who had reported to the Reserve Officer Military Drill Ground during the 1914 mobilization, explains what kind of a Turkist, or rather pan-Turkist, training they were subjected to: a song sung during training marches shows Şevket Süreyya's soldier generation the goal:<sup>33</sup>

We are Turks, we are constantly proud,  
As we have a history that begins with Creation.  
Turkishness beats in the heart with love,  
We have no other lover ...  
Flag in front, bayonet in hand, God in our hearts,  
We would like to rule the world.  
Our temple is the Turkish hearth,  
and our Kaaba is the brilliant 'Turan'.<sup>34</sup>

The military-nation idea as it was mirrored in Afet İnan's books, which transmitted the official ideology, is the primary condition of surviving in an international world, which was an area of struggle (or, in Atatürk's words, 'duel'). Thus, the nation must be kept fit and disciplined. The centre of fitness and discipline is unequivocally the army. The army is sanctified and given first-class status in social life.

During his visit to the Ankara Law School on 30 June 1930 Atatürk asks a student who had stated his wish to become a member of parliament: 'Why do you wish to be a parliamentarian but not a soldier?'<sup>35</sup> Hence, first of all a mental revolution must be undertaken (that is, secular thought must replace religious thought), then the society must be rid of bodily diseases (that is, diseases such as malaria, tuberculosis, typhoid and typhus must be eradicated through the use of methods called positive eugenics), and finally a population that will fight wars and participate in production must be increased.

These targets had dominated politics during the first years of the republic. Here an important mission was imposed on women: 'Give birth to soldiers!' Indeed, giving birth to male children was rewarded during those years. Moreover, even women were burdened with the

duty of 'being a soldier'.<sup>36</sup> When Atatürk visited the Ankara girls' high school in 1934 he said that 'the greatest right of a citizen is suffrage and the greatest duty military service ... You can elect representatives and become representatives, but at the same time you will be soldiers.'<sup>37</sup> Sabiha Gökçen,<sup>38</sup> who had become a professional military pilot with the personal guidance of Atatürk, is a symbol in this regard. Despite the support of Atatürk and his close circle, Chief of Staff Marshal Fevzi Çakmak's refusal blocked the prospect of official conscription for women.<sup>39</sup>

It is known, however, that women did receive military instruction. From 1937 onwards female students begin taking military classes in the second and third years in middle schools, and all years in high schools and women's teacher training colleges. Moreover, as required by the Physical Education Law (*Beden Terbiyesi Kanunu*) of 1938, 'mandatory detachments' were established in neighbourhoods and institutions and the troops undertook military training in public squares.<sup>40</sup> The practice of mandatory detachments ceased in 1945, but military instruction continued in civilian high schools through the 'National Security' course.

The first article of the National Security Instruction Guide (*Millî Savunma Öğretimi Yönetmeliği*), which had come into effect with a Council of Ministers' decision in 1947 and was renewed in 1968, defines the aim of the course as 'enhancing, in accordance with the prerequisites of total war, the already present spirit and consciousness of national security in Turkish youth in order to protect the Turkish Independence and Republic with an ever increasing might and vigour under all conditions and against all violations'.<sup>41</sup>

A secondary objective was to introduce youth to 'the Armed Forces, to bind youth to the Armed Forces with love and affection, to ideologically prepare them for the basic knowledge of main defence activities conducted by the Armed Forces; in this way, bringing them to a state where they can begin working in the Armed Forces or in active organs of civilian defence at any moment, creating a spirit of unity and cooperation, and thus cultivating a patriotic youth'.<sup>42</sup>

The same guide specified how National Security instruction should be carried out in various educational settings. For instance, in elementary schools the teachers should instil love and respect for the country, the flag and the armed forces by making the students play games that encouraged military service, march in military style and sing military marches.<sup>43</sup>

Looking at the National Security instructional textbooks, one sees the Bonapartist-corporatist state conception with its military ideology and social Darwinist mentality, which sees the world as an arena

of war where nations are constantly struggling with one another. It is especially notable that in textbooks used in the 1960s and 1970s the foremost enemy is defined as communism, and in the discussion regarding destructive activities the source of these activities is defined as the Union of Soviet Socialist Republics. In the introductory chapter of a National Security textbook written by Major Generals Faruk Güventürk and Turhan Olcaytu and assigned to high schools, the social Darwinist point of view is relayed with the following words: 'From the smallest to the biggest, each creature born to this world is compelled to confront all manner of difficulties and defend itself against them in order to stay alive. Nations are exactly like this.'

Thus national security is not just a military matter. 'This is a national cause, a matter of life and death that the state and the government and all citizens must undertake without hesitation with their hands on their hearts and minds.'<sup>44</sup> According to the authors, when the students finish reading this book: 'they will have acquired a sufficient degree of national security consciousness and culture and when service is required in national defence they shall blend this culture with the heroism which is present in our temperament and be worthy of our ancestors'. Youth, on the other hand, is given clear objectives: 'We shall all work for this land, live for this land and die for this land.'<sup>45</sup>

According to the book there are free states and captive states in the world. Free states are those that have national sovereignty within national borders. It is impossible to live freely, however (that is, independently), without armed forces. The Turkish army is 'the expression in two words of the independence of the Turkish nation'. Gaining independence depends on the awakening of national sentiment and enthusiasm, and the shaping of the nationalist movement in order to begin the struggle. This is where national strength is born. Organization of national strength is the incarnation of the state.<sup>46</sup> The same book defines military duty as follows:

The principal task is to preserve and advance the Turkish motherland, independence and republic under all circumstances and provide the security of the Turkish nation. For this task to be accomplished [the individual] must be in the strongest possible bodily and spiritual state, devoted to one's duty with awareness and full of love for the country. The objective of military discipline administered to the soldiers in the military hearth is to provide this state ...<sup>47</sup>

The aim of military discipline is to breed warriors suitable to the requirements of modern wars, through shaping and developing national morality, character and discipline for the purposes of war.

Military discipline is a continuation and maturation of family discipline, school discipline and finally community discipline. Today the behaviour of a father who does not give his daughter to a man who has not fulfilled his military service is a reflection of the importance and value we, as a nation, place in the military and in military discipline.<sup>48</sup>

What is defined with these words is actually the military-nation ideal. Military service is portrayed as the indispensable and most imperative institution in terms of preserving both the material and the spiritual health of the organism called 'nation'. In addition to learning the positive methods of this preservation, the citizens can attain this higher consciousness only within this institution; thus, in terms of its various qualities and objectives, the military is the highest and the most accomplished disciplinary institution.

In another book published in 1981, the state's national security policy is defined as politically incontestable and shared. This policy had been prepared to establish national security and attain national objectives. Two concepts are highlighted here: national objectives and national interest. National interest consists of objectives that must be attained and preserved to provide the permanence of the state and the prosperity of the nation. National objectives are ways of attaining national interests.<sup>49</sup>

The citizens are defined as persons who share the common destiny of the Turkish nation and are devoted with their whole spiritual being to the national objective. The definition of 'Turk' is also interesting: 'The child of a Turkish father and Turkish mother is a Turk. The citizenship of a child from a foreign father and a Turkish mother shall be regulated by law.'<sup>50</sup>

It is stated that no Turk shall conduct actions that contradict their devotion to the land, that service to the country is not limited to being conscripted, that conditions of total defence, states of emergency, economical development and shared contribution to such activities complete this service and that every Turk shall perform this service with a sense of responsibility.<sup>51</sup>

In these definitions concepts such as 'national objective' and 'devotion to the country' are thrown around, leaving their meanings ambiguous. Threats against the national objective, however, are provided in sharp detail. Among the domestic threats are: thoughts and actions against the independence of the state and the indivisibility of the nation and the country; provocations of racial, religious, linguistic, intellectual and sectarian differences; inciting the people to rebel against the state

by taking advantage of economic and social discomfort; committing individual and collective murders that can endanger national security.<sup>52</sup> The subject of the threats is again abstractions such as nation and state. External threats, on the other hand, demonstrate an even more paranoid view: threats stemming from Turkey's possession of the strategically valuable Bosphorus, the crossroads between Asia, Europe and Africa, and from its proximity to Middle Eastern countries with rich oil reserves; threats created by surrounding countries; threats by industrialized countries towards the Middle East and Turkey; economic threats against Turkey; threats of regional wars that may be waged around the country and threats of general war.<sup>53</sup>

As one can see, there are almost no areas that fall outside the perception of threat. When all of these factors are considered as a whole the pieces of the policy that is deemed to be 'national' become visible. As it stands, this entire area is closed to politics and the distinctions between state/government and state/politics become clear. Military force is considered among the factors of national power that shall oppose these threats, and it is seen as a potential that can be used in the military sphere through mobilization. The greatest support for this potential is demographic power. Sufficient levels of manpower of those in their twenties positively influence military force.<sup>54</sup> Thus manpower is defined as a critical factor, and in connection with this conscription is effectively deemed an indispensable and inflexible institution, since the most important element of national power is the Turkish armed forces.<sup>55</sup>

Looking at all these factors reveals a different political picture and not a citizen-centred and democratic-parliamentarian regime. This is the picture of a society and state where areas defined as 'national' are closed to politics, and thus closed to democratic discussion and debate, and even closed to the parliament; which expects total solidarity and harmony of the society and will not hesitate to intervene directly to accomplish this harmony; which sees history as a 'struggle between nations' or rather between 'national states', and thus places the army and other factors that complement it in terms of national security above all else as the most important institution dominating society. This is a Bonapartist, corporatist and social Darwinist society and state, the examples of which range from Napoleon to the Prussian kingdom, to Bismarck's Germany and from there to the singular examples that were the main actors in the two world wars. Today the hegemonic mentality that has declared a war against the negative effects of globalization unfortunately does not represent an opposition that comes from the social or from a human rights perspective, but comes on the contrary

from a higher place that goes beyond the archaic profile of the state and society, and is the voice of a state and Bonapartist opposition that aims to reinforce them.

Today it is possible to come across striking examples of this mentality on a daily basis. A recent example was a statement made by the retired land forces commander Major General Aytaç Yalman. In a series of articles he wrote for the *Cumhuriyet* (Republic) newspaper, Yalman defends the national army against the so-called postmodern army – that is, the professional army. Yalman says:

Fighting domestically against terrorism, thus protecting our democratic, social and especially secular structure, and externally fighting against the establishment of a Kurdish state that would include the South-eastern region of our country, and defending our interests in Cyprus and the Aegean, our armed forces cannot be conceived in a structure that befits the post-modern understanding.<sup>56</sup>

For this reason, the principle of military conscription is a requisite for the Turkish armed forces, and, according to Aytaç, is ‘an indispensable guarantee of our nation-state structure’. For ‘this system endows the Turkish Armed Forces with the quality of being a part of its nation, and thus the quality of being a military-nation’.<sup>57</sup> This is where the problem lies: the Turkish armed forces, which purport to be a part of the nation, do not behave with accountability to the same nation. For instance, none of the invited high-ranking officers has shown up to give statements to the commissions formed in parliament after the ‘Susurluk incident’;<sup>58</sup> thus representatives employed in theory to supervise the expenditure of the state budget (which again is an amalgamation of the citizens’ own resources which the citizens entrust to the state in the form of a budget) were unable to hold state officials accountable in this regard. Each element of threat that Aytaç lists above is the military’s own perception of threat. This perception of threat is in no way open to civilian and democratic discussion or debate, and the investigation of different non-military solutions is systematically overlooked. Unfortunately, this structure has no other name in the relevant literature apart from Bonapartism.

*Translated by Balam Nedim Kenter*

## Notes

Editors’ note: In some references two dates are given, because these references were published before the introduction of the new calendar system. In some libraries references

will be catalogued under the old calendar system.

1 The idea of total war arose with the Napoleonic Wars at the beginning of the nineteenth century and was

theorized within the Prussian doctrine of war. Thus the idea of the outcome-focused war that consisted of a limited number of soldiers fighting in a designated area gave way to a new idea of war whereby an entire country, even an entire continent, became a battleground, and by that token everyone living in that country or continent became either actors or victims of war. For new approaches regarding total war see R. Chickering and S. Förster (eds) (2003) *The Shadows of Total War: Europe, East Asia and the United States, 1919–1939*, Cambridge: Cambridge University Press; S. Förster (ed.) (2002) *An der Schwelle zum Totalen Krieg: Die militärische Debatte über den Krieg der Zukunft*, Ferdinand Schöningh; R. Chickering, S. Förster and B. Greiner (eds) (2005) *A World at Total War: Global Conflict and the Politics of Destruction, 1937–1945*, Cambridge: Cambridge University Press.

2 For striking experiences that demonstrate how women are mobilized as both actors and victims of total war within the context of conscription and patriotism ideology, see C. Enloe (1999) *Maneuvers: The International Politics of Militarizing Women's Lives*, Berkeley: University of California Press; J. H. Quataert (1997) 'German patriotic women's work in war and peace time, 1864–1890', in D. Junker (ed.), *On the Road to Total War*, Washington, DC, and Cambridge: German Historical Institute and Cambridge University Press, pp. 449–79. For a similar programme of mobilizing women for military service in Turkey, see H. Ünder (March 2000) 'Atatürk ve Kadınların Askerliği' [Atatürk and the conscription of women], *Tarih ve Toplum* [History and Society], 33(195): 51–8, 179–86.

3 W. H. McNeill (1982) 'The draft in the light of history', in M. Anderson and B. Honegger (eds), *The Military Draft. Selected Readings on Conscription*, Stanford, CA: Stanford University Hoover Institution Press.

4 Dennis Showalter lays important emphasis on the innovation of the Napoleonic period in this area: 'On the surface, the revolutionary/Napoleonic Wars prefaced the victory of the army of the masses and the citizen soldier. Whether volunteer or conscripted, reaching ever greater numbers conditioned with universal ideals and nationalist patriotism, knowing what they fought for and fighting for what they knew, the citizen in uniform still carries the pride of having higher moral standing than both the mercenary of the eighteenth century and the contemporary professional technowarrior.' See D. Showalter (2002) 'Europe's way of war 1815–1864', in J. Black (ed.), *European Warfare: Problems in Focus, 1815–2000*, New York: Palgrave. In this context, this new motivation and its form of organization find their counterpart in the concept of Bonapartism. The content of this conception is not limited to the redefinition of military service to include peasants and urban lower classes, but also encompasses the association of this new definition with the concept of 'patriotism' that coincided with Napoleon's expansion to southern and eastern Europe. See R. S. Alexander (1991) *Bonapartism and Revolutionary Tradition in France: The Fédérés of 1815*, Cambridge: Cambridge University Press, p. 5.

5 It is well known that the great historian Hobsbawm defines the nineteenth century as 'the age of revolution' and this is the title of his book on the nineteenth century.

Therefore, on a merely technological scale, the development of the new organization and doctrine of war will not be sufficient by itself to stop the revolutionary and rebellious waves of this age. For this reason in this century we are witnessing the construction of new legal tools such as ‘national security’, ‘public safety’ and ‘public order’ by the bourgeois state and the shaping of public law in accordance with this phenomenon. Naturally, this is the source of crimes created to protect the sanctity attributed to the duty of military service.

6 Showalter, ‘Europe’s way of war’, pp. 35–6.

7 M. Messerschmidt (1997) ‘The Prussian army from reform to war’, in D. Junker (ed.), *On the Road to Total War*, Washington, DC, and Cambridge: German Historical Institute and Cambridge University Press, p. 263.

8 See G. Craig (1956) *The Politics of the Prussian Army: 1640–1945*, New York and Oxford: Oxford University Press, pp. 217–54.

9 A. Cevdet Pasha (1980) *Ma’rûzât* [Statements] (updated by Yusuf Halaçoğlu), Istanbul: Çağrı Yayınları, pp. 113–15.

10 *Ibid.*, p. 115.

11 Ş. Ziya (1957) *Tanzimat Devrinden Sonra Osmanlı Nizam Ordusu* [The Ottoman Regular Army after the Age of 1839 Reforms], Istanbul: Çeltüt Matbaası, p. 29.

12 See R. H. Davison (1973) *Reform in the Ottoman Empire, 1856–1876*, New York: Gordian Press, pp. 26–7, 238, 265. While the concept of ‘*redif*’ has no direct translation in Western languages, it roughly corresponds to the concepts of ‘*armée de réserve*’ or ‘*garde nationale*’ in French, ‘militia’ in English, and ‘*Landwehr*’ in German. Although

the experimentation with the system began in 1834, the large reserve formations were not instituted before 1836–37. During this first period of formation, instead of keeping the soldiers at military service for long durations, the suggestion was to create neighbourhood military units and enlist them in the regular army as needed. With the declaration on 6 September 1843 of war minister Rıza Pasha’s Military Bill, partly inspired by the French and partly by the German model, it was accepted that after performing five years of regular military service the soldiers were to be called up to the unit for the duration of one month every year for seven years. In 1853 the reserves were organized into four armies, in addition to the regular army of 300,000. There was now a reserve army of 150,000 soldiers. With the Hüseyin Avni Pasha Bill of 1869, which owed more to the influence of the French conscription system, the reserve duration procedure was set as four years of regular duty, one year of reserve duty and six years of militia duty, composed of two lots of three years each. In 1886, with the decision taken at a commission attended by Muzaffer Veli Rıza Pasha and von der Goltz Pasha, the reserve duty period was extended to nine years. On 28 September 1887, however, a special Reserve Duty Bill was drafted which reduced the service to eight years, and the bill was passed in 1892. The reserve organization was abolished by a bill passed on 31 August 1912. See J. Deny (1997) ‘Redif’, in *İslâm Ansiklopedisi* [Islamic Encyclopedia], vol. IX, 5th edn, pp. 666–8.

13 J. Black (2002) ‘Giriş’ [Introduction], in J. Black (ed.), *European Warfare: Problems in Focus, 1815–2000*, New York: Palgrave.

14 Genelkurmay Başkanlığı (1971) *Türk Silahlı Kuvvetleri Tarihi* [History of Turkish Armed Forces], vol. III: 1908–1920, Ankara: Genelkurmay Harp Tarihi Başkanlığı Yayınları, pp. 112–113.

15 A. G. Altınay and T. Bora (2003) ‘Ordu, Militarizm ve Milliyetçilik’ [The military, militarism and nationalism], in T. Bora (ed.), *Milliyetçilik: Modern Türkiye’de Siyasi Düşünce* [Nationalism: Political Thought in Modern Turkey], vol. 4, İstanbul: İletişim Press, pp. 140–54.

16 Craig *The Politics of the Prussian Army*, pp. xiv–xv.

17 J. Lucassen and E. J. Zürcher (1999) ‘Conscription and resistance: the historical context’, in E. J. Zürcher, *Arming the State: Military Conscription in the Middle East and Central Asia (1775–1925)*, New York: St Martin’s Press. Also, for the new Ottoman conscription system that was inspired by the French and Prussian experiences and their applications, see V. Şimşek (2005) *Ottoman Military Recruitment and the Recruit: 1826–1853*, unpublished MA thesis, Bilkent University, Ankara.

18 C. von der Goltz (1315/1899) *Millet-i Müsellaha* [The Nation in Arms], trans. Mehmed Tahir Bey, İstanbul: Matbaa-i Ebu’z-Ziya, pp. vii–viii.

19 A. Fuad (21 August 1324/1908) ‘Ordu ve Millet’ [The military and the nation], *Asker* [Soldier], 1: 12–16; 12.

20 A. Rahmi (1325/1909) *Orduda Terbiye, Maneviye ve Ruhîye* [Discipline, Morality and Spirituality in the Military], İstanbul: Ahmed İhsan ve Şürekâsı Matbaa ve Cilt-i Osmanî Şirketi, pp. 2–3.

21 M. N. Conker (1959) *Zâbit ve Kumandan* [The Officer and the Commander], Ankara: İş Bankası Yayınları, p. 14.

22 M. K. Atatürk (1962) *Zâbit ve Kumandan ile Hasbihal* [A Friendly Conversation with ‘The Officer and the Commander’], 2nd edn, Ankara: İş Bankası Kültür Yayınları, pp. 19–20.

23 Ibid., p. 25.

24 A. İnan (1930) *Vatandaş İçin Medenî Bilgiler* [Civil Information for the Citizen], İstanbul: Milliyet Matbaası, p. 31.

25 Ibid., p. 27.

26 Ibid., p. 27.

27 Ibid., pp. 33–4.

28 A. İnan (1930) *Askerlik Vazifesi*, İstanbul: Devlet Matbaası, p. 24.

29 Ibid., p. 35.

30 Ibid., pp. 24–5.

31 Editors’ note: The 1908 Young Turk Revolution, also called constitutional monarchy.

32 Editors’ note: Mass protests leading to an uprising by military units that had to be suppressed by other military units.

33 Ş. S. Aydemir (1959) *Suyu Arayan Adam* [The Man Who Searched for Water], Ankara: Öz Yayınları, p. 78.

34 Translator’s note: Turan is the ancient Iranian name for Central Asia, literally meaning ‘the land of the Tur’. The original Turanians were the Tuirya Iranian people of the Avesta age. In this context, however, Turan is an ideological term referring to a mythical Central Asian past for people who share Ural-Altaic languages: referring to Turkic, Mongolic, Dravidian languages and Ugric languages and people rather indiscriminately, implying a common ancestry and common culture; encyclopedia.thefreedictionary.com/Turan, accessed 4 February 2008.

35 M. K. Atatürk (1989) *Atatürk’ün Söylev ve Demeçleri* [The Speeches and Statements of Atatürk],

vol. III, Ankara: Atatürk Araştırma Merkezi Yayınları, p. 136.

36 A. G. Altınay (2004) 'Ordu – Millet – Kadınlar: Dünyanın İlk Kadın Savaş Pilotu Sabiha Gökçen' [The military – nation – women: Sabiha Gökçen, the first woman fighter pilot in the world], in A. G. Altınay (ed.), *Vatan, Millet, Kadımlar* [Homeland, Nation, Women], İstanbul: İletişim Yayınları, pp. 279–87.

37 M. H. Egeli (1959) *Atatürk'den Bilinmeyen Hatıralar* [Unknown Memoirs from Atatürk], İstanbul: Ahmet Halit Yaşaroğlu Kitapçılık ve Kağıtçılık Ltd, Şirketi, p. 57. Quoted in H. Ünder (March 2000), 'Atatürk ve Kadınların Askerliği' [Atatürk and the conscription of women], *Tarih ve Toplum* [History and Society], 33(195): 51–8, 179–86; 53.

38 Editors' note: For further information regarding Sabiha Gökçen, see the chapter by Ayşe Gül Altınay in this volume.

39 Ünder, 'Atatürk ve Kadınların Askerliği', p. 56.

40 Ibid., p. 57.

41 B. Bigalı (1968) *Milli Güvenlik Bilgileri Öğretmen Broşürü* [National Security Knowledge – Teachers' Brochure], p. 4.

42 Ibid., p. 4.

43 Ibid., pp. 5–6.

44 F. Güventürk and T. Olcaytu (1972) *Lise ve Dengi Okullar İçin Milli Güvenlik Bilgileri* [National Security Information for High Schools and Equivalent Institutions],

vol. 1: *Course*, İstanbul: Okat Yayınevi, p. 3.

45 Ibid., pp. 4–5.

46 Ibid., pp. 7–10.

47 Ibid., p. 64.

48 Ibid., p. 67.

49 MEB (1981) *Liseler ve Dengi Okullar İçin Milli Güvenlik Bilgisi* [National Security Information for High Schools and Equivalent Institutions], İstanbul: Milli Eğitim Basımevi, p. 3.

50 Ibid., p. 14.

51 Ibid., p. 14.

52 Ibid., pp. 14–15.

53 Ibid., p. 15.

54 Ibid., p. 16.

55 Ibid., p. 26.

56 Quoted in Mehmet Ali Kışlalı, 'Postmodern Ordu ve TSK' [The postmodern army and the Turkish armed forces], *Radikal* [Radical – daily newspaper], 20 January 2007, p. 14.

57 Ibid., p. 14.

58 Editors' note: in this car incident Abdullah Çatlı – drug dealer and terrorist – and Hüseyin Kocadağ – police chief – died and Sedat Edip Bucak – Turkish MP at the time of the incident, however – was wounded. The Susurluk incident became Turkey's Watergate, exposing the deep links between the Turkish state, politicians, terrorists and mafia. For further information see [wotisitgood4.blogspot.com/2006/12/sibel-edmonds-america-watergate.html](http://wotisitgood4.blogspot.com/2006/12/sibel-edmonds-america-watergate.html), accessed 24 April 2008.

## 2 | Patriotism and the justification of inequality in the construction of militarism

MELEK GÖREGENLİ

§ In the age of modern states and modern armies, in all systems that depend on what is termed ‘group-based inequalities’ in social psychology, militarism could be defined as the moulding of everyday life by military structures and practices formed for the purpose of establishing and maintaining the system. All critical intellectual studies nurtured by social science fields other than psychology, geared towards understanding the military, military obedience and, in a more general sense, the inner structure of all kinds of ‘armies’, mostly agree that the legitimate father of military duty as an institution is not democracy, but the modern nation-state, whether it be monarchic or fascist, or alternatively socialist or parliamentarian; the nation-state as that which mobilizes the masses on both political and military platforms, the nation-state as a mechanism of legitimization and legalization for using force by individual citizens against fellow citizens as well as citizens of other nation-states, endowing each citizen individually with the duty to protect themselves from one another. This compulsory (modern) contract the citizens make with the state indicates the right of rule the state has over life and death and expands the state’s repertoire of what it can forcefully demand from its citizens and of what it can provide for them ‘by force’ perhaps in a much more extensive manner than it ever did in the pre-modern period.

Although perceptions, definitions and representations of ‘homeland’, the *raison d’être* of armies, its land, borders and visibility and even the place it occupies in time and place, have entirely changed, the idea that ‘the enemy’ has always existed and will always exist has never changed. The general conviction that the nation-state has lost its power with globalization cannot be justified in this area; the equation can almost be imagined in reverse. It is not because the nation-state (homeland) exists that armies and the enemy also exist; on the contrary, it is because there is ‘the enemy’ that the nation-state and homeland, and thus the military and war, are almost ‘inevitable’. The idea of a community for the sake of which it is worth dying – or living – which is necessary for military duty gets all the more stronger the more imaginary it becomes. Imagined communities based on artificial unanimities regarding those

who victimize ‘us’ (sometimes the entire ‘West’ or ‘everywhere that does not resemble the West’, sometimes ‘civilization’, sometimes ‘Islam’ sharia, conservatism) reference a ‘condition of victimization’ that can be defined by the very same terms of patriotism from one end of the political spectrum to the other.

As a discipline of social science, social psychology was born as a child of this age of inequalities, and looking at social psychology literature it is possible to see the processes of militarism as fundamental instruments in perpetuating social and group-based (in both wider and narrower senses of the words than class) hierarchies. The construction of ‘us and them’ in its general usage is realized via social categorization, marginalization, prejudice based on stereotypes, discrimination and other similar processes. Many of these processes can be examined within the context of inter-group relations. How inter-group processes are realized within the militarization process of societies can be discussed from such varied perspectives as to challenge the limits of this chapter, and the entirety of social psychology literature can be associated with this subject. This chapter will focus more on how the processes of the legitimization of inequality, while not being directly ‘militaristic’ themselves, make possible the perpetuation of the hierarchical social organization that is the direct basis of militarism.

One could say that those in power maintain their hegemonic status over disadvantaged, subordinate groups in two basic ways: 1) the threat or exercise of force; 2) control over ideology and the contents of ‘legitimate’ social discourse.<sup>1</sup> It is possible for the use of direct physical force to strengthen the resistance among subordinate groups. If this use of force becomes visible as ‘excessive’ and is deemed to be ‘excessive’, the right of rule becomes illegal and loses legitimacy in the eyes of subordinate, and even dominant, groups. Delegitimization of the power of the dominant group may result in the use of even more force, which then results in an escalation of illegalization. For instance, the actual reason why France lost Algeria in 1962 is thought to be less a question of military defeat than the fact that the French elite class was unable to morally legitimize the massacres committed in Algeria under French hegemony.<sup>2</sup> Although laws ensuring that *coups d’état* and engineers of coups are never brought to court allow the military to directly take over governments, coups may also be deemed to involve the use of excessive force and the construction of their social legitimacy is more difficult than that of newer forms of intervention.

Group-based social hegemony is more efficiently and safely maintained through power over ideology and discourse than through resorting to physical force. The exercise of power over discourse has been

defined in varying terms by different writers: all leftist conceptualizations such as the production of ideology and ‘false consciousness’ (e.g. Marx/Engels), ‘political formula’ (e.g. Mosca) or ‘ideological hegemony’ (e.g. Gramsci)<sup>3</sup> have equally stressed that these concepts are used by those in power in order to convince dominant and subordinate groups alike that hierarchically organized social relationships are proper, fair and inevitable.<sup>4</sup> Differing from and yet nurtured by these traditional approaches, in social psychology literature, conceptualizations regarding hierarchy and ideologies geared towards the general legitimization of the system are discussed within the context of cognitive processes and political behaviours that arise in the implementation of such false or incorrect beliefs embraced by people which run contrary to their social interests, and for this reason maintain the disadvantaged position of the individual or their group.<sup>5</sup>

Legitimizing ideological models still serve as vehicles of legitimization regardless of whether their truth is epistemologically provable as true or false (for example, Jews make a deal with the Devil). What gives the legitimizing myths their power is not their value in association with their truthfulness but rather the extent to which people accept these beliefs as truthful, correct and fair. More powerful myths are associated with a given culture’s point of view and fundamental values and thus it is more difficult for such myths to change.<sup>6</sup> In this sense we will consider legitimization myths as important tools in the context of maintaining hierarchy and the concept of patriotism as a legitimization myth.

### **The construction of legitimizing myths**

‘Legitimizing myths are generally defined as values, attitudes, beliefs, causal attributions and ideologies that provide moral and intellectual justification for social practices that increase, maintain or decrease levels of social inequality among social groups.’<sup>7</sup> ‘Our use of the term *myth* is not meant to imply that these beliefs are epistemologically true or false but rather because they look as if they are true and because many people act as if they are true.’<sup>8</sup>

Legitimizing myths that maintain or increase hierarchy serve to legitimize practices that keep social hierarchy intact. On the other hand, legitimizing myths that decrease hierarchy do so by illegalizing practices that maintain social hierarchy or inequality and by pushing forward anti-hierarchical values. An example is the human rights belief that humans share the same equal rights by virtue of being humans. In any given society, the variations in the social support for legitimizing myths can be analysed via indicators of cultural change potential, ideological cliquing or cultural stability. Considering all variations of ideas in a

society, the part of the variation that *does not depend on unanimity* is one segment of the total variation in attitudes that derive from the fact that people belong to different groups. The variation in social attitudes that cannot be attributed to differences in group membership is the part of the total variation that *depends on unanimity*. For instance, let us imagine that four people (two military officers and two academics) are discussing how much the military must interfere in what is going on in a country. While each of the four may differ in opinion on an individual basis as well, it may also be expected that academics as a group will naturally have different opinions to soldiers as a group. For example, while academics may argue that soldiers should deal only with defence issues, soldiers may defend their right to intervene in every issue concerning the country. This is a case of variation that does not depend on unanimity. If in this discussion, however, both groups have agreed in principle that militaries have a right to intervene in politics, and there is a disagreement over the forms of this intervention, then this would be a case of variation that depends on unanimity. Variation that depends on unanimity is significant, for when people do not agree on an issue and yet keep thinking within the same terminology, they can be said to share the same ideological framework and for this reason they may communicate with one another. It is significant whether people share or do not share the same framework because it indicates that social rhetoric takes place in certain terms and does not take place in others. This shared conceptual framework not only helps inter-group communication but also functions in the continuation of the stability of the social system.<sup>9</sup> The extent to which social systems are maintained within a militarist framework is directly related to what kind of issues the unanimity is produced around and the ratio of variation between that which depends on unanimity and that which does not depend on unanimity.

In addition to the desire to defend and sustain group-based social hierarchies, legitimizing myths that depend on unanimity also function as intermediaries regarding the issue of supporting or not supporting social politics; this function indicates a direct relationship between legitimizing myths and ideologies.<sup>10</sup> Evolutionary perspectives (social superiority orientation) that explain the legitimization of inequalities in society with reference to the inequalities in nature, authoritarianism, nationalism, beliefs that the world is fair and other similar attitudes, values and belief systems that could be associated with conservatism, are disseminated through legitimizing myths that depend on unanimity and facilitate the legitimization of the system. As a measure of the extent of militarization in a society, how 'homeland', the vital concept

of militarism and 'patriotism' as a legitimization myth are defined and what kind of unanimities these concepts depend on are directly related to what kinds of issues foster the formation of stability and the dynamics of conservatism in the society.

### **Patriotism**

In social psychology terminology, patriotism is one of the most important forms of group attachment in the modern world. Although there are many different definitions, generally patriotism is a state of positive identification stemming from a person's feelings towards their country.<sup>11</sup> In the first psychological study based on empirical evidence, Adorno and his colleagues defined patriotism as 'a blind attachment to certain national values, uncritical conformity with prevailing group ways and rejection of other nations as out groups'. Despite this broad conceptualization which Adorno et al. suggested in the 1950s, in recent years there have been efforts to understand patriotism less as a one-dimensional attitude but more within the context of its different forms and the relationship of these forms of patriotism with other political attitude variables. Adorno et al. distinguished between 'pseudo' patriotism, which entailed blind attachment and uncritical conformity to national values, and 'genuine' patriotism, which entailed 'love of country and attachment to national values based on critical understanding'.<sup>12</sup>

A fieldwork study investigating the dimensions of patriotism and its relationship with other political variables made a distinction between two dimensions unrelated to one another.<sup>13</sup> These two dimensions, respectively termed blind and constructive patriotism, reinforce Adorno's critical distinction buttressed on a base of critical understanding. While these dimensions are closely related when it comes to matters of national attachment and identification, they differ according to many cognitive and behavioural criteria. While constructive patriotic sentiments are associated with political involvement, effective understanding of political content, openness to information and political activism, the blind patriotism attitude is not positively or negatively related to these variables. On the other hand, while blind patriotism is associated with nationalism and perceptions of threat towards national unity and national culture, constructive patriotism is not. While blind patriotism is found to be associated with attitudes related to unconditional positive perceptions of the homeland and unquestioned loyalty, it is possible to define constructive patriotism as a type of 'critical loyalty'<sup>14</sup> open to changes in the positive direction and supportive of the search for alternatives. Blind patriotism is closely related to political conservatism

(political party affiliation, political ideology and authoritarianism). The link between blind patriotism and conservatism is related to closed belief systems and cognitive structures or inflexible cognitive styles. This relationship does not so much define all conservatism as blind patriotism, but rather demonstrates that a political philosophy concerning blind patriotism may generally be a conservative philosophy. Although the relationship between patriotism and nationalism is not a new or interesting finding in terms of social psychology literature, in a country where a blind and uncritical patriotism is becoming more and more prevalent, predicting a rising nationalism that will keep on rising, this is an important finding. A critical and loyalty-based patriotism is not, however, sufficient for increasing nationalism. In many studies the distinction between nationalism and patriotism depends on the definition of nationalism as a form of inter-group discrimination (feelings of national superiority and a support for national dominance), and as a belief system where an unquestioned intra-group identification and attachment are experienced, blind patriotism fosters different kinds of nationalism.<sup>15</sup>

One of the most interesting findings of this study, which makes it easier for us to understand the political climate in some countries, such as Turkey, concerns the relationship of blind and constructive patriotic tendencies, political behaviours and forms of political action. While constructive patriotism is positively associated with political involvement, blind patriotism is associated with political disengagement. Under certain circumstances blind patriotism may result in political activity that arises in certain forms.<sup>16</sup> The anti-government critique that arose in 1992 after Bill Clinton was elected as president was largely organized by conservatives. Researchers believe that this increase in political engagement poses an interesting challenge to political differentiation. At the same time, high-level criticism and political participation may also trigger blind patriotism. This situation can be understood by thinking about the criticism of the government as being distinct from criticism of the country. The authors note that at the time of research many conservatives in the United States were highly critical of government policies and institutions, and that some (i.e. ‘the patriot militia groups’) even felt that the true threat to the American way of life was the federal government itself. Some of the people critiquing the government may think that American history is depicted much less gloriously than it really is, and as evidence may argue that the use of the atomic bomb in the Second World War is something to be proud of and something to add to the history books. Those with high scores of blind patriotism cannot tolerate critical approaches questioning the

greatness, magnificence and righteousness of the country (for instance, in terms of cultural, historical and military exploits), or they cannot tolerate criticism of the country's image as it is seen from the outside (i.e. the flag and national works of art – the twin towers). They criticize the government policies and actions that undermine America's superiority, for instance defence spending, or they are closed to all kinds of social change, which they believe threatens the homogeneity and distinctness of American culture (such as multiculturalism and bilingual education).<sup>17</sup> Blind patriotism may emerge more assertively when a society experiences 'difficult life conditions',<sup>18</sup> 'economic hardship or very great and rapid societal change',<sup>19</sup> and when war or other true or fabricated fear ideologies are harboured.

## Conclusion

This chapter has discussed two basic concepts that can help us understand the militarization process of societies and the social psychological dynamics of this process within 'democratic' systems. Perhaps the first thing we will notice when looking at the course followed by militarism in some countries, such as Turkey, with these basic concepts is that while this process has different aspects that can vary according to societies and geographies, it is nevertheless essentially universal. The construction and designation of the enemy, the legitimacy of unanimity achieved throughout the process of the construction and designation of the enemy, the definition of the force that shall save 'us' from the enemy, are formed in similar ways everywhere in the world. Again universally, the deviation from unanimity that depends on the legitimization of hierarchy vitally needed for the perpetuation of militarism is also stigmatized with different forms of 'treason to the nation' in similar ways.

Perhaps here it is necessary to talk about a 'new' form of legitimizing militarism that has emerged in the world with globalization (which actually no longer has any novelty), which uses traditional democratic grounds, feeds from paramilitary organizations and gains vitality by politically reinforcing them. For instance, the organizing styles and the quality of unanimity demonstrated by the 'practitioners of law' whom we have watched in lawsuits they filed on the basis of 'Article 301 of the Turkish Penal Code'<sup>20</sup> in Turkey, whereby they designated the 'traitors to the nation' one by one, are similar on many counts in terms of their contributions to the militarization of culture and their political styles to the actions of 'democratic' crowds who have recently requested from a portion of society and their political representatives that we take notice of 'the threat'. They are very similar to each other in terms of their tendency to exclude politics and law, making them

closer to fascism than any other political style, and making it easy for another politics, that of militarism, to be constructed on top of them. Another unpolitical politics which lacks legal and political substance, which promotes simple monolithic symbols and slogans that cannot be tested for truthfulness with regard to substance, reproducing legitimizing myths of hierarchy, depending on historical figures and national symbols – such as the flag – but nevertheless absolutely dependent on or reinforcing the fears created around possible future threats.

*Translated by Balam Nedim Kenter*

## Notes

- 1 J. Sidanius and F. Pratto (1999) *Social Dominance: An Intergroup Theory of Social Hierarchy and Oppression*, New York: Cambridge University Press, p. 103.
- 2 Ibid., p. 103.
- 3 K. Marx and F. Engels (1846/1970) *The German Ideology*, New York: International Publishers; G. Mosca (1896/1939) *The Ruling Class: Elements of Political Science*, New York: McGraw-Hill; A. Gramsci (1971) *Selections from the Prison Notebooks*, London: Lawrence and Wishart.
- 4 Sidanius and Pratto, *Social Dominance*, p. 103.
- 5 See J. T. Jost (1995) 'Negative illusions: conceptual clarification and psychological evidence concerning false consciousness', *Political Psychology*, 16: 397–424; 400, in Sidanius and Pratto, *Social Dominance*, pp. 103–4.
- 6 Ibid., p. 104.
- 7 Ibid., p. 104; see also R. M. Quist and M. G. Resendez (2002) 'Social dominance threat: examining social dominance theory's explanation of prejudice as legitimizing myths', *Basic and Applied Social Psychology*, 24(4): 287–93.
- 8 Sidanius and Pratto, *Social Dominance*, p. 104.
- 9 Ibid., p. 107.
- 10 T. J. Jost, A. Kruglanski, J. Glaser and F. J. Sulloway (2003) 'Political conservatism as motivated social cognition', *Psychological Bulletin*, 129: 339–75.
- 11 R. Schatz, E. Staub and H. Lavine (1999) 'On the varieties of national attachment: blind versus constructive patriotism', *Political Psychology*, 20(1): 152.
- 12 T. W. Adorno, E. Frenkel-Brunswick, D. J. Levinson and R. N. Sanford (1950) *The Authoritarian Personality*, New York: Harper, p. 107, in Schatz et al., 'On the varieties ...', p. 152.
- 13 Schatz et al., 'On the varieties ...', p. 161.
- 14 E. Staub (1989) 'The roots of evil: the origins of genocide and other group violence', New York: Cambridge University Press, in Schatz et al., 'On the varieties ...', p. 153.
- 15 Schatz et al., 'On the varieties ...', pp. 153–5.
- 16 Ibid., pp. 153–4.
- 17 Ibid., pp. 169–70.
- 18 Staub, 'The roots of evil', p. 171.
- 19 Schatz et al., 'On the varieties ...', p. 171.
- 20 Editors' note: Article 301 deals with 'Insulting Turkishness'.

### 3 | Refusing to serve by other means: desertion in the late Ottoman Empire

ERIK-JAN ZÜRCHER

§ Conscientious objection to military service has a long tradition in Europe. Since the reformation in the sixteenth century different groups within the family of Protestant churches, such as the Mennonites, Baptists and Quakers, have refused to carry arms and fight for their lords or their countries on the basis of the Sixth Commandment (Thou shalt not kill) but even more on that of the Sermon on the Mount, in which Jesus enjoins his followers to turn the other cheek. Pacifism was particularly strong in the United States, a country founded by dissenters, among whom there were many who rejected the use of arms outright. The second half of the nineteenth century saw the rise of a secular, socialist pacifism in Europe and America, alongside the religious pacifism of long standing. A separate strand of pacifism that developed in nineteenth-century Europe was that of anarchist inspiration. In this tradition the refusal to serve was based on the principled rejection of the legitimacy of the state's claims on its citizens.

As long as princes and states relied on professional (or mercenary) armies, this did not create too much of a problem. Once universal male conscription was introduced, however, beginning with Washington's draft during the American War of Independence and then, on a much larger scale, during the French Revolution, the possibility of conscientious objection had to be recognized and circumscribed in rules and regulations, as indeed it was in many countries in Europe. A specific law on conscientious objection was passed first in Denmark in the First World War. Britain also had to face the issue when it introduced conscription for the first time during the First World War. As a result, many thousands of men availed themselves of the possibility to be excused military service in all the major European belligerents, even if the main socialist parties supported the war effort of their country. Some of the objectors served the army in non-combatant roles, for instance as stretcher-bearers, while many others were assigned 'work of national importance', in effect hard labour on farms. The Mennonite communities in Russia did both: they worked in hospitals and logged timber for the state. A minority of the conscientious objectors were imprisoned, and quite often seriously mistreated.

In the late Ottoman Empire an unusually large proportion of the population (when compared to contemporary European states) was exempted from military conscription. This had nothing to do with conscientious objections, however. The groups that, until 1909, were exempted were specific sections of the Muslim population (residents of Istanbul, Mecca and Medina, pilgrims, religious officials and students in religious colleges, and tribes) and the entire non-Muslim population. The latter was expected to pay an exemption tax (*bedel*), rather than serve in the army.<sup>1</sup>

The currents from which objectors had hailed in the West were almost completely lacking in the Ottoman Empire. The Protestant tradition was weak, mostly limited to converts in the Armenian community, and without much political influence. Those who converted to Protestantism generally adhered to mainstream churches and not to movements with a pacifist tradition like the Quakers or Jehovah's Witnesses. Socialism, too, was a latecomer. It came into existence in the Ottoman Empire in the early years of the twentieth century but remained a marginal movement, limited almost entirely to non-Muslim minority communities in a few big cities of the empire.

There was no indigenous Muslim tradition of pacifism. In fact, of the world's major religions, Islam is the only one without a significant pacifist legacy. No wonder, then, that the concept of conscientious objection was entirely alien to the Ottoman elite as well as to the peasant boys who made up the main body of the conscripted army. If the concept of refusing to fight on the basis of religious or political principle was unknown, however, the other age-old way for soldiers to show their dissent was not. Far from it: desertion in the First World War Ottoman army assumed proportions completely unknown in the armies of the belligerents of western and central Europe at the time.

### **The size of the problem**

All armies engaged in the fighting of the 'Great War' encountered the problem of desertions. The German army lost some 130,000–150,000 deserters, who mostly fled to neutral neighbouring countries (the Netherlands, Denmark and Sweden). This amounted to roughly 1 per cent of the 13.5 million men who were drafted during the First World War in Germany. Numbers from the other side show the same magnitude of desertion. During the major campaigns on the Western Front the average percentage of soldiers deserting seems to have been between 0.74 and 0.92 per cent, never rising beyond 2 per cent.<sup>2</sup>

When we look at the Ottoman army we see a completely different picture. There, desertion became the main reason for the loss of

manpower, and thus the fighting ability that the army experienced in the second part of the war; even worse than battlefield casualties and contagious diseases. By December 1917, some 300,000 soldiers had deserted and the chief of the German military mission in the Ottoman Empire, cavalry general Otto Liman von Sanders, sounded the alarm. In a report entitled 'The present condition of the Turkish army' he said:

The Turkish army now has far more than 300,000 deserters. These are not people who go over to the enemy but in the main deserters to the back areas in their own country, where they pillage, plunder and generally make the land unsafe. Everywhere troops have to be raised to pursue these deserters.<sup>3</sup>

He then went on to point out that this went a long way to explain the manpower shortages of the armies in the field. The Second and Third Armies on the Caucasus front had a combined front-line strength of 20,000 rifles, while the 2,000 kilometres of coastline from the Bulgarian border to Alanya were guarded by 26,000 rifles. The Sixth Army (in northern Mesopotamia) had about 13,000 front-line troops. The only sizeable forces were concentrated in Galicia (two divisions under German command) and on the Palestinian front, where a major British offensive, which would lead to the loss of Jerusalem the day before Christmas in 1917, was impending. Almost all units were severely under strength by 1917, generally at or below 50 per cent.

It was a generalization on Liman's part to say that deserters were going only behind the front line. There had been desertions of Armenian soldiers to the Russian forces in the Caucasus at the start of the war (something that led to the general disarming of Armenian soldiers from February 1915 onwards)<sup>4</sup> and in 1917 and 1918 the numbers of Armenians and in particular Arabs who crossed the lines to the British in Palestine and Mesopotamia increased sharply. Tribal forces, whether Kurdish, Turkoman, Persian or Arab, seem to have been particularly prone to packing up and disappearing, sometimes changing sides in the process. Nevertheless, desertion to behind the front line or during the march to the front was and remained the main feature. According to Liman, every single division that was transported or marched to the front lost thousands from its original strength. Bavarian officer Kress von Kressenstein reported in October 1917 that the 24th Division that had left Istanbul with 10,057 men had arrived at the Palestinian front with only 4,635. Nearly a quarter of the soldiers in the division had deserted before it reached the front.<sup>5</sup> In Syria extreme coercion had to be used, with Arab soldiers sometimes being marched to the front in chains.

By the end of the war the number of deserters had further increased

to nearly half a million, a number far higher than that of the soldiers remaining in the field. This is a number over three times that of the deserters from the far larger German army. Where European armies lost between 0.7 and 1.0 per cent of their total mobilized strength to desertion, the percentage for the Ottoman Empire is at least twenty times as high. In view of the generally recognized soldierly qualities of the Turks ('excellent soldier material', according to Liman von Sanders, an opinion reflected in the memoirs of many of his colleagues) one has to ask why this should be so.

In Turkey, of course, the First World War had a sequel in the form of the War of Independence (*Milli Mücadele*). This war was waged both by irregular volunteer forces, collectively known as the 'National Forces' (*Kuvayi Milliye*), and the remnants of the Ottoman army. The political and military leadership in Ankara was faced both with the desertion problem it inherited from the Great War, which had resulted in a countryside infested with armed bands, and with a continuing problem of desertion in its own forces. As early as July 1920 the assembly debated a proposal to introduce 'Independence Tribunals' (*İstiklal Mahkemeleri*) to combat desertion. In his address to the assembly, the representative of Konya, Vehbi Bey, emphasized the scale of the problem: 'The desertions in the army, all of our friends know about it. They put two hundred men on a train in Konya, but only thirty arrive in Karahisar [Afyon]. A column of three hundred soldiers is down to a hundred and fifty three days later ...'

He also pointed to the fine line between a 'National Forces' guerrilla band and a band of brigands. Deserters from the national forces could easily turn into armed robbers because 'they hailed from robber bands that relied on their weapons anyway. One moment they are National Forces, but when they cross the border of Karesi province, they are robbers once more.'<sup>6</sup>

Over the summer of 1920 the number of desertions kept on growing and by September 1920 the assembly had to take action. At the insistence of the government and Chief of Staff Fevzi Pasha a Law on Deserters (*Firari Kanunu*) was enacted on 11 September and the Independence Tribunals were instituted and given unrestricted authority to enforce the law. Two weeks later the tribunals were also given jurisdiction over cases brought under the 'High Treason Law' (*Hıyaneti Vataniye Kanunu*).<sup>7</sup>

### The reasons

Why did so many Turkish soldiers desert, even though (as was pointed out to them many times) there was a specific Koranic injunction

against leaving the battlefield?<sup>8</sup> In 1917, Liman primarily blamed the policies of the army. Since the beginning of the war training had been neglected. Depleted units had been brought up to strength with raw recruits. Units were constantly being broken up and reassembled and therefore lacked cohesion and team spirit. Soldiers also did not know or trust their officers and had very little idea of what was going on. ‘They only knew that they were being sent somewhere where things were going wrong.’<sup>9</sup>

In Liman’s eyes the disastrous supply situation, as a result of which many soldiers went hungry, played only a secondary role. There is reason to doubt this assessment. However much he may insist (on the authority of Ahmet İzzet Pasha) that desertion was not a hereditary trait of the Turkish army and that it was entirely unknown until quite recently, the reports we have on the mobilization for the Balkan War in 1912 seem to suggest otherwise. British consuls stated that conscripts had reported for service at the depots in large numbers, but that after a few days’ march the supplies ran out and the hungry troops started to desert in droves.<sup>10</sup> Consistently supplying the troops in Palestine, Mesopotamia and eastern Anatolia with food, medicines, clothing and even cooking fuel proved beyond the means of the Ottoman state during the First World War,<sup>11</sup> so if lack of provisioning was a reason to desert in 1912, it must certainly have been so five years later.

Vehbi Bey, in 1920, also enumerated what he saw as the causes of desertion. First, he blamed the officers, calling some of them traitors who only looked after their own interests; second, the villagers who had witnessed for seven years how they were killed while the urban notables returned as heroes and wanted to see that reversed for once (*‘Bu kerede biz gazi, kasaba eşrafı şehit olsun diyorlar’*); finally, the fact that the soldiers were sick and hungry and dressed in rags was a great injustice. How could a soldier be expected to do his duty under those circumstances?<sup>12</sup>

If uninspiring leadership and sheer misery were the driving forces behind the mass desertions, the Ottoman soldier also had opportunities to escape that his European counterparts lacked. In countries like Britain, France or Germany soldiers were under constant surveillance from the moment they reported to the depot. They were moved to a staging post close to the front by train. Once in the front line they had little opportunity to escape, as the densely populated hinterland was patrolled constantly by a vigilant military police on the lookout for ‘stragglers’. In the Ottoman Empire, by contrast, the troops were moved thousands of kilometres through sparsely populated terrain, marches of a month or more not being exceptional. Many soldiers used the

opportunities this afforded them. In Liman's words 'they jump out of the train just like they flee from the marching columns in complicated terrain or from the camp'.<sup>13</sup>

If they had the chance, most took their weapons with them. If they had rifles and ammunition and could keep out of the hands of the gendarmes, they could set up bands that controlled small parts of the countryside. If they had none, they would stay as guests in the villages they moved through. Deserters could do that because the population often sympathized with them.<sup>14</sup>

This is perhaps the most important difference with the situation in the European countries during the First World War. The Ottoman Empire may have been involved in a modern, industrialized war that forced it to mobilize all of its resources, but its war effort was not accompanied by a modern mobilization of the population through effective propaganda and indoctrination. In Britain, a deserter had to live in hiding, because outside perhaps his closest family circle he could not count on any support. Government, media, political parties and NGOs all made a joint effort to strengthen the resolve of the population by impressing on it the idea that the war was the ultimate test of strength, the battle between good and evil and a matter of national survival. In this climate, conscientious objectors were despised as 'shirkers' and the soldiers, many of them volunteers of 1914 who by 1916 had had enough, had 'shell shock' and simply could not face the trenches any more, were seen as cowards and traitors. They quite simply had nowhere to go. In the Ottoman Empire an effort was made, with German assistance, to set up a propaganda machine,<sup>15</sup> but it barely reached into the almost completely illiterate countryside and by and large failed as an effort at mobilization. Villagers felt more akin to the peasant lads on the run than to the state or the army.

That seems to have been true also for the 'national struggle' after the First World War. The Independence Tribunals did their work and unleashed a campaign of terror in 1920 and 1921. Stanford Shaw describes how harsh punishments were meted out to deserters who were caught. Hundreds were executed. Others were sentenced to hard labour, prison and public whippings. Deserters who were ordered to report but failed to turn up brought hardship upon their families. Their property was confiscated, with their families being deported and interned in prison camps.

In a cruel way, the Independence Tribunals can be considered a success. They struck terror into the population and lowered the rate of desertion to such an extent that the Turkish nationalists could muster the 120,000-strong army that won the battle of the Sakarya

in September 1921. During the battle of the Sakarya itself, when the Greeks were threatening the heart of Anatolia, many volunteers flocked to assist and patriotic fervour reached its high point. Nevertheless, even this great victory, which was the turning point in the war, gives a mixed picture. Alongside the many reports of volunteers joining the army from all over Anatolia, a report by the British General Staff quoted by Stanford Shaw also tells us that even during this epic battle there were 10,000 deserters, 8 per cent of the total strength.<sup>16</sup>

The major European belligerents, including the former dominions of the British Empire, have now all pardoned those soldiers who were executed for desertion or cowardice during the First World War, in recognition of the fact that they had been taxed beyond endurance. France and Germany had already done so and Britain and Canada joined these countries in 2001 and 2006 respectively. The names of the soldiers that were ‘shot at dawn’ have now all been added to the rolls of honour. Ottoman deserters from the First World War received a pardon in December 1918 from the sultan’s government, but to the best of my knowledge the deserters executed on the orders of the Independence Tribunals during the Turkish national war of liberation have never been rehabilitated.

## Notes

1 E. J. Zürcher (1998) ‘The Ottoman conscription system – 1844–1914’, *International Review of Social History*, 43(3): 437–50.

2 [www.stephen-stratford.co.uk/desertion](http://www.stephen-stratford.co.uk/desertion).

3 O. L. von Sanders (1920) *Fünf Jahre Türkei*, Berlin, p. 241.

4 D. Bloxham (2002) ‘The beginning of the Armenian catastrophe’, in H. L. Kieser and D. Schaller (eds), *Der Völkermord an den Armeniern und die Shoah*, Zürich, p. 113, and E. J. Zürcher, ‘Ottoman labour battalions in the First World War’, in the same volume, p. 192.

5 F. F. K. von Kressenstein (1938) *Mit den Türken zum Suezkanal*, Berlin, p. 266.

6 TBMM Gizli Celse Zabıtları [Records of the Secret Meetings of the Turkish Parliament], vol. 1: 24 April 1336 (1920)–21 February

1336 (1921), Ankara, 1986, pp. 86–7.

7 S. J. Shaw (2000) *From Empire to Republic. The Turkish War of National Liberation 1918–1923: A Documentary Study*, vol. III, pt 1, Ankara, pp. 1005–19.

8 Koran 8 (al-Anfal), verses 15–16: ‘O you who have attained the faith! When you meet in battle those who are bent on denying the truth, advancing in great force, do not turn your backs on them for whoever on that day turns his back on them, unless it be in a battle manoeuvre or in an endeavour to join another troop, shall indeed have earned the burden of God’s condemnation and his destination will be hell. And how vile a journey’s end!’

9 Von Sanders, *Fünf Jahre Türkei*, p. 242.

10 E. J. Zürcher (1999) ‘The Ottoman conscription system

in theory and practice', in Erik J. Zürcher (ed.), *Arming the State. Military conscription in the Middle East and Central Asia, 1775–1925*, London: I.B.Tauris, p. 91.

11 E. J. Zürcher (1996) 'Between death and desertion. The experience of the Ottoman soldier in the First World War', *Turcica*, 28: 235–58.

12 *TBMM Gizli Celse Zabıtları*, p. 87.

13 Von Sanders, *Fünf Jahre Türkei*, p. 242.

14 F. Guse (1940) *Die Kaukasus-*

*front im Weltkrieg bis zum Frieden von Brest*, Leipzig, p. 92.

15 See E. Köroğlu (2004) *Türk Edebiyatı ve Birinci Dünya Savaşı (1914–1918). Propagandadan Milli Kimlik İnşasına* [Turkish Literature and the First World War (1914–1918). From Publicity to the Construction of National Identity], Istanbul.

16 Memorandum by the British secretary of state for war to the cabinet: 'The situation in Anatolia', 1 October 1921 (FO 371/6533/E 11764), given in full in Shaw, *From Empire to Republic*, pp. 1354–7.

## 4 | Sand in the wheels? Conscientious objection at the turn of the twenty-first century<sup>1</sup>

ULRICH BRÖCKLING

§ Military armament has always had, and will have, both a material and a personnel component. Those who intend to wage wars need effective armament, transportation and communication systems as well as dependable soldiers and arms manufacturers. These two components are inseparable; each stage of material armament involves specific military regulations and strategies for the recruitment and training of ‘human material’. Every form of military organization and soldier production, however, also generates specific forms of resistance and refusal: soldiers, or those being forced to become soldiers, revolt, flee, take refuge with the enemy, disobey orders, get sick or simulate sickness, wound themselves or commit suicide. Or they refuse to serve, to carry a gun or to go to the battle-front from the outset.

Different from desertion, revolt and other forms of disobedience, conscientious objection becomes an issue only in the cases when armies do not consist of volunteers or mercenaries (paid soldiers) and where personnel are subject to mandatory conscription or some other form of forced recruitment. When those who *do not want* to become soldiers are *not forced* to become soldiers, they do not need to refuse service and for this reason they will not clash with government authorities. In this case the phenomenon of conscientious objection manifests a politically and legally latent presence. Conscientious objection cases with religious motivation have been documented as early as Roman antiquity,<sup>2</sup> and since the sixteenth century Mennonites and Protestant communities such as the Quakers have made the refusal of armed service central to their belief. Most who were not exempted from military or armed service migrated.<sup>3</sup>

It is only with the institution of general mandatory military service, however, that the state’s conduct towards conscientious objectors turns into an explicit problem. Once a state declared military service a patriotic duty with an intention to enlist all (young, healthy, male) citizens in the army – and most European states and the United States had done this at the latest by the First World War – it could not refrain from regulating what was to be done about those who did not answer this

call. While such regulations can involve punitive (criminal) and military legal sanctions including capital punishment for ‘endangering military power’ at the most extreme, they can also extend to forced psychiatric treatment of those unwilling to serve or the recognition of conscientious objection as a right and the institution of civilian (reserve) service.

Viewed historically, in the beginning conscientious objectors were religious dissidents who justified their disobedience of secular laws on the basis of their obedience to the laws of God and consented to state repression instead of risking isolation from their religious community. Submitting to the biblical demand for non-violence, they wished to abstain from personally participating in wars, but the idea that they could actually contribute to preventing wars with their objection was generally beyond their purview. What was expressed in the exercise of their conscience was not the rebellion of the individual in the face of authoritarian repression or the non-violent adage ‘imagine there is a war and nobody joins’, but allegiance to a religious community.

Towards the end of the nineteenth century, and especially during the twentieth century, the ties between conscientious objection and faith first loosened and then disentangled more and more. The reference to conscience took a very vocal form. Young men who submitted non-religious reasons for their conscientious objection were added to the membership of non-violent sects; besides those who opposed the military in principle, others came along who refused to serve only in certain armies or certain wars.

Paralleling this process of individualization and secularization, conscientious objection was politicized by both state authorities and non-violent and anti-military groups alike. In the age of nationalism, war was no longer a business that ‘governments could carry on with the money in their treasury, and unemployed drifters picked up from their own and neighbouring countries’<sup>24</sup> – this is how Carl von Clausewitz characterized the ‘cabinet wars’ of the *ancien régime* – but rather the declaration of absolute mobilization of all technical and human resources. As German military journalist E. Wolter stated four years prior to the Second World War, ‘as soon as war begins’ with absolute mobilization ‘all private existence ceases and war is the only vital matter for the entire nation until it ends; thus civilian society does not even exist in theory’.<sup>5</sup> The institution of generalized mandatory conscription (and the extension of its scope with general mandatory labour) occurred concomitantly with the ideological sanctification of military service. Those who did not want to answer the call of the motherland were cursed with accusations of treason to the national cause and sabotaging military power.

The totalization of war and war preparation was accompanied by a counter-current which not only judged the escalation of military violence but also devised totalization strategies to the contrary: propagandists for total war were confronted with the equally totalizing objection proposal of radical pacifists and anti-militarists. They too, like the militarists, insisted that there was a fundamental and establishing connection between state and war. Radical war resisters inferred the exact opposite conclusion from this premise, however, and propagandized for a total objection against military service that would encompass every social area, although they were perfectly aware of the huge gap between their organizational capacities and what ought to be.

This counter-totalization and counter-mobilization found its most distinct reflection in 'Plan of campaign against all war and all preparation for war', published by the Dutch anarchist and anti-militarist Bart de Ligt in 1934 and which could literally be characterized as encyclopedic.<sup>6</sup> De Ligt listed specific possibilities ranging from anti-militarist propaganda, objection and boycott to sabotage that could be practised by all occupational groups during periods of peace, mobilization or war and thus preceded those suggested by the pacifists in the 1960s under the rubric of 'social defence' without social revolutionary impulsion. De Ligt's demand was nothing less than general strike against war. War Resisters' International had demonstrated, in principle, the same stance with its first declaration in 1925:

We ... are determined not to support either directly by service of any kind in the army, navy, or air forces, or indirectly by making or consciously handling munitions or other war material, subscribing to war loans or using our labour for the purpose of setting others free for war service, any kind of war.<sup>7</sup>

Looking at the history of conscientious objection between the two world wars, one gets an impression of fatal synchronism: at the time when conscientious objection was 'discovered' as a tool for political struggle, the hope of significantly weakening the state's capability to wage wars through mass conscientious objection was crushed with the technical rationalization of war. This was of course noticed by war resisters as well. Radical pacifist Kurt Hiller criticized his peace-loving comrades in 1931 for this reason:

The war resister fraction composed of those who view conscientious objection as a cure – all in the face of war – are behind developments – developments in the technique of war and political theory. No to

mandatory conscription! Long live conscientious objection! I still say that today. However, the struggle against compulsory conscription and a self-aggrandizing conscientious objection propaganda cannot so much as obstruct an ongoing war, let alone stop it, for it seems that the war of the future in its most hostile form will be conducted by technical elite troops composed of volunteers. Not composed of nominal volunteers however ... no, of real volunteers, war fanatics and willing advocates of war. The call of conscientious objection surely reaches these people as well, but it does not diminish their power.<sup>8</sup>

Even though the replacement of people by machines became prevalent during the years of the Second World War, human resources were still mobilized to an extent formerly unprecedented. Prior to the period between the years 1939 to 1945, never had so many people been transferred to battlefields and never had so many died. The development of the atom bomb, the ‘absolute weapon’, however, and its use on Nagasaki and Hiroshima, made possible an absolute war that did not require the absolute mobilization of society. Since then, minimal personnel is enough for creating maximal violence and eradicating societies, even humanity in its entirety, from the face of the earth.

During the cold war years, most Western industrial states and all states that were members of the Warsaw Pact continued generalized mandatory conscription, while on the other hand many Western states legalized regulations whereby a civilian reserve service could be counted as satisfying the military service requirement. In this context, in the Federal Republic of Germany, with the impact of the still-recent memory of the Nazi carnage, conscientious objection found its way into the constitution. According to sub-clause 3 of Article 4 of the German constitution: ‘No one may be compelled against his conscience to render war service as an armed combatant.’ The positioning of conscientious objection within the same clause as freedom of faith and conscience indicates the intention to protect religious minorities, such as Jehovah’s Witnesses, and so on, from criminal prosecution. In keeping with this, many obstacles were created: written application preconditions were sought in order to be recognized as a conscientious objector and applicants were subject to examinations conducted by state authorities whereby only the objections of those who refused to participate in all wars on the basis of religious or ethical principles were accepted as valid.

It was observed that legalized conscientious objection was very suitable to the military structuring needs of the time. The state no longer

needed all young men as soldiers; further; it needed these young people outside the military for armament efforts. Thus, keeping potential 'insurgents and the weak' outside the barracks from the outset seemed to make more sense than attempting to make effective soldiers out of them through intense, and perhaps futile, efforts. Arms, transportation and communication systems were too sensitive and expensive to be handed to unwilling and therefore unreliable personnel. As a fundamental right, conscientious objection served as a filter that kept away those who could be 'sand in the wheels' of the military.

While letting go of forced conscription and criminal prosecution of conscientious objectors was more reasonable even from a military perspective, the right to conscientious objection corresponded to the general integration requirements of a functionally differentiated society. Creating the equivalent of military service and thereby preventing the emergence of martyrs and rebels, sub-clause 3 of Article 4 of the constitution contributed to the stability of the general order. Prosecuting these people would cause futile friction in society and result in serious costs. The examined conscientious objectors were, however, at the state's disposal. And the state needed them at least as much as it needed the uniformed soldiers. The availability of a choice between conscription and civilian service both relieved the conscience, and made possible the efficient distribution of capacity. For the male half of the population the obligation to serve continued, but forced conscription with no alternative was replaced by the obligation to choose between two services.

Until the mid-1960s, less than 1 per cent of those liable for conscription applied for conscientious objection. The number of applications has been increasing since 1968 and now the fulfilment of military service is no longer the generally valid choice, as objection is not an exception. Every year approximately one-third of all those liable for conscription refuse to serve in the military. Since all those who are liable are not recruited, the number of those who undertake civilian service is very close to the number of those who carry out the nine-month basic military service: 93,052 people enlisted for basic military service, and 83,405 enlisted for civilian service in 2005.<sup>9</sup>

The examinations whereby the applicants were intimidated with Inquisition-like hearings have by and large become a thing of the past. Normally it is sufficient to justify the application in writing. Those carrying out civilian service are an important component of the social security system of the Federal Republic of Germany; to provide for the care of the elderly, sick or disabled people without them would be very difficult.

In the 1970s, however, those undertaking civilian service were either perceived as political radicals or regarded as excessively sensitive ‘cowards’ and sniggered at. These people who were confronted with hostility at that time are now accepted in public opinion as social service workers and medical attendants. There are many indicators that the general conscription policy is actually continued because of their labour. If general conscription is to be discontinued, then the state will lose its civilian workers on whom the social security system is more dependent than ever.

Individual concerns have undoubtedly gained importance in conscientious objection. In the choice to be made between serving the German army and civilian service, conscientious reasons as we know them play a secondary role at best. The person who declares conscientious objection does not want to become a soldier, but this does not necessarily mean he is opposed to the military or the German military policy in principle. Most of those liable to conscription make their decision on the basis of individual profit–cost calculations. Here, possible advantages and disadvantages have a role to play, such as planning for future years, the duration and location of service, the attainment of qualifications and skills that could play a role in future career moves. Desires and fears that youth associate with the army or civilian service also play an important role: while for some the presence of factors such as the barracks, the uniform, obedience and armed training are enough to persuade them to choose the hospital or the nursing home, for others the real or imagined toughness of military service provides them with exactly the rite of passage to manhood they might enjoy and the opportunity to take a break from civilian life.

Kurt Hiller’s aforementioned prediction that the war of the future would be conducted by technical elite troops composed of volunteers has come true. Right now all soldiers in German units serving in Kosovo, Afghanistan, East Africa (*Ras Hafun*) or off the shores of Lebanon are professional. The same goes for American and British troops and those of other states keeping small quotas in Iraq. The professional expectations of these soldiers are so high that the use of conscripts would both be dysfunctional and politically impossible. For this reason, more and more states are discontinuing mandatory military service policies as a source of military personnel. Twenty out of forty-seven European countries have made the transition to the professional army.<sup>10</sup> In these countries, but also in other countries such as the Federal Republic of Germany that (still) have not given up on the conscription policy, those who do not want to become soldiers do not necessarily need to declare their conscientious objection. Since not

all healthy males of each cycle are recruited, the chance of not being summoned for military service, even without officially applying for conscientious objection and thus without being obligated to perform civilian service, is rather high.

Conscientious objection no longer functions as a tool for struggle which slowed down or blocked the military apparatus by depriving it of the human resources it required; that is if it had such a function in the past. Although military recruitment offices have to conduct very intensive advertising campaigns, especially in order to attract qualified officer candidates, they find enough volunteers for their reduced armies. If many states, Turkey being one of them, still insist on conscription and even go so far as prohibiting conscientious objection, reasons other than concern regarding the combat capacity of troops must be considered.

The provocation posed by conscientious objectors is not about the possibility that the army might experience an actual shortage of available personnel for service; no, the distress they cause stems from the fact that each and every single conscientious objector questions the sovereign right of states to decide on the lives and deaths of its citizens. No matter with which instruments of regulation and guidance the state upholds its dominance, it cannot do without the threat of belligerent violence and the power to order at least a portion of its citizens to die. What makes conscientious objectors a source of annoyance and causes their imprisonment is that they see their own reason to be above that of the state.

It is not only the lot of non-violent groups and human rights organizations to do everything within their power to protest against this repression and put an end to it. Since it will bring about an improvement in the condition of conscientious objectors, it is undoubtedly important for conscientious objection to be recognized as a human right. Rights that cannot enter law books and, further, those that are not reflected in practice are not, however, of much use. But states likely to be obstructive are the very states that have armies and which mobilize their citizens to take up arms. For this reason, the person who demands the right to conscientious objection is faced with a dilemma. The authority that is expected to protect conscientious objectors is none other than the same one that necessitates this objection. The states that recognize the right to conscientious objection do not waive their right to wage wars. The anti-militarist struggle does not end with the legalization of conscientious objection. On the contrary, perhaps these two issues are becoming increasingly less relevant to one another.

*Translated by Balam Nedim Kenter*

## Notes

1 Translator's note: 'Kriegsdienstverweigerung' could be literally translated as 'war service refusal' [*Krieg* (war) – *dienst* (service) – *verweigerung* (refusal)]. In place of 'conscientious objection', the concepts 'Kriegsdienstverweigerung' or 'Kriegsdienstverweigerung aus Gewissensgründen' (refusal of war service for reasons of conscience) are used in German.

2 For a comparison see L. Wierschowski (1997) 'Roma naturaliter bellicosa? – Kriegsdienstverweigerung und Fahnenflucht im Römischen Reich', in *Osnabrücker Jahrbuch Frieden und Wissenschaft*, IV, Osnabrück, pp. 131–53; and E. A. Ryan (1952) 'The rejection of military service by the early Christians', *Theological Studies*, 12: 1–32.

3 For a comparison see P. Brock (1991) *Freedom from Violence: Sectarian Non-resistance from the Middle Ages to the Great War*, Toronto.

4 C. von Clausewitz (1956) 'Vom Kriege (1832)', 16th edn, Bonn, p. 865.

5 E. Wolter (19 December 1935) 'Die Organisation des Sieges', in *Wehr, Deutsche Beilage: Die deutsche Volkskraft*, 24: 218–20.

6 B. de Ligt (July 1934) 'Plan of campaign against all war and

all preparation for war', proposed to the International Conference of the War Resisters' International, held at Welwyn (Herts, England); in B. de Ligt (1937) *The Conquest of Violence. An Essay on War and Revolution*, London, pp. 269–85. For the background of the formation see Gernot Jochheim's substantially rich research: G. Jochheim (1977) *Antimilitaristische Aktionstheorie, Soziale Revolution und Soziale Verteidigung*, Frankfurt, pp. 306–17.

7 D. Prasad (2005) *War is a Crime against Humanity: The Story of War Resisters' International*, London: War Resisters' International, p. 99.

8 K. Hiller (1932) 'Einen Schritt noch, Einstein!', in K. Hiller, *Der Sprung ins Helle*, Leipzig, pp. 167f.

9 For the figures see Deutscher Bundestag, Drucksache 16/760, 24 February 2006 (Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Paul Schäfer – Köln, Dr Kirsten Tackmann, Gerd Winkelmeier und der Fraktion Die Linke).

10 Quaker Council for European Affairs (April 2005) 'The right of conscientious objection in Europe: a review of the current situation', Brussels, p. 13, [www.quaker.org/qcea/coreport/index.html](http://www.quaker.org/qcea/coreport/index.html), accessed 1 December 2006.

## 5 | The morals and politics of conscientious objection, civil disobedience and anti-militarism

NİLGÜN TOKER KILINÇ

§ Conscientious objectors have been struggling to be heard by public opinion, as well as a highly hostile state authority. Even though their voice has been frequently marginalized and sometimes brutally repressed, conscientious objectors have nevertheless managed to establish a remarkable discourse of dissent. Implicit in this discourse, however, is a crucial ambiguity concerning the possible connections and distinctions between the concepts of conscientious objection, civil disobedience and anti-militarism. Those who refuse to perform military service call themselves ‘conscientious objectors’; their action almost always takes the form of ‘civil disobedience’ as it constitutes a deliberate, publicly declared and principled breach of the law; while, at the same time, the reasons they give in order to justify their actions are often informed by the language of a radical ‘anti-militarism’ according to which the modern state system is considered to be essentially militaristic.

When one thinks through the ways in which conscientious objectors make their appearance in the public sphere, the following questions almost inevitably suggest themselves: What is the relationship of conscientious objection to civil disobedience and anti-militarism? Is every act of conscientious objection also an act of civil disobedience? Does conscientious objection necessarily imply an anti-militarist stance? In what follows I will elaborate on these questions by unpacking the notions under consideration and enquiring into the possible connections and distinctions between them.

### **Conscientious objection as a moral stance**

The philosophical roots of the concept of conscientious objection reside in the notion of conscience. As the bearer of the integrity of the self, conscience refers to a ‘value’ that originates from and depends upon the subjectivity of the individual. Viewed in this light, conscientious objection is the expression of a moral stance taken for the sake of preserving one’s selfhood, moral integrity and subjective value. Implicit in the theoretical backdrop of such a stance is the tension between the subjective value of the individual and the collective values upheld

by the society. The individual decides not to obey the law, which is supposed to represent the ‘general good’ of society, and not to fulfil the obligations required by it when these obligations are deemed by the individual to be detrimental to his moral integrity. Hence, there is a sense in which conscientious objection constitutes an inevitably subjective and individual stance from the outset.

Conscientious objection takes its cue from the obligation to act in accordance with the ‘rules of conscience’ and leads to an act of non-compliance with those laws and commands which conflict with these rules. As Hannah Arendt reminds us: ‘[t]he rules of conscience hinge on interest in the self. They say: beware of doing something that you will not be able to live with.’<sup>1</sup> The exclusive reference to the self and its integrity suggests that the rules of conscience do not so much presuppose a social existence as, rather, concern the self as apart from all ‘external’ relations. For this reason they are at the same time the rules of individual morality and derive their binding force from the fact that they inform the individual’s moral integrity. Moral integrity is the product of a mode of life that is in conformity with one’s own conscience and regulated by the rules of individual morality. Obliging the individual to avoid all acts detrimental to the integrity of the self and thereby preventing self-alienation, a moral stance of this sort also serves to protect a ‘fundamental’ sense of self.

On account of its intrinsically moral character, conscientious objection immediately turns on the individual. The conscientious objector does not perform an ‘action’ by challenging a law or rule with a view to changing it. Instead, he commits an act of ‘non-compliance’ in order to preserve his own moral integrity vis-à-vis the law. This condition of non-compliance, which originates from a tension between the moral convictions of the individual and the legally enforced demands of the law, is actually a deviation from the political structure. It is rooted in the conscientious objector’s decision to set his subjectivity against or even above the generality of the law. In so far as the prioritization of subjectivity over generality also involves the prioritization of an individual conception of the good over what is taken to be the ‘common good’ of the society, the conscientious objector places himself outside those ties which establish the political community.

From the standpoint of the conscientious objector the main reference point of responsibility is one’s own self and not the world outside. It is because of this subjectivism that the rules of conscience cannot be generalized for they do not refer to others in any primary sense. To again cite Arendt’s words: ‘the fear of being alone and having to face oneself can be a very effective dissuader from wrongdoing, but this fear,

by its very nature, is unpersuasive of others'.<sup>2</sup> Regardless of whether the rules of conscience, or the 'voice' of conscience that one listens to in solitude, come from a divine source or the autonomous worth that the individual attributes to himself, conscientious objection is bound to be a manifestation of a subjectivity that necessarily remains external to any sort of social and political engagement.

This subjectivity, being given priority over all political and social generalities, is presented in a way that transcends them. The claim that there exists a value transcending social and political ties either resorts to a universal code which is 'superior' to positive law, as, for instance, Walzer indicates,<sup>3</sup> or underscores the priority of the individual to the law as Rawls argues.<sup>4</sup> The reference to a universal law, whether it is grounded in a divine command or an autonomous consciousness, however, does not alter the subjectivism of conscientious objection. Putting a universal code or a religious command above the positive law is no different from putting a purely individual conviction above it in so far as in both cases the point of reference is a value that is not contained in the totality of social relations but derived, on the contrary, from the standpoint of the subject.

The point of these remarks is to suggest that conscientious objection depends on one's awareness of not being able to commit an act that is deemed to be 'evil' by one's own conscience. It is, therefore, a condition of non-compliance which appeals to conscience so as to determine what is morally evil and to avoid committing it. Its central concern is not the injustice of the law but that the law orders one to commit what is considered to be evil by one's conscience. The act of conscientious objection is thus situated in the conflict between a notion of common 'good' that demands military service for the sake of society's preservation and a moral stance according to which killing is unconditionally 'evil' regardless of its purpose. The conscientious objector declares that he cannot perform the duty of military service because of his moral convictions prohibiting the killing of another human being. What is under consideration here is not a challenge against war *per se* but a statement that one cannot be involved in it because of one's own rules of conscience.

The above remarks on the conceptual implications of the notion of conscientious objection as a moral stance lead us to the following question: Where does the possibility of solving the tension between positive law and individual moral convictions within the framework of the political community reside? The possibility of a solution resides in a political and legal conception that would rearticulate the conflict in question in terms of a tension between right and law. To put it in

other words, it resides in a notion of law, a notion of generality, which would acknowledge the legitimacy of subjective claims raised by moral persons. This requires a form of social and political structure that upholds human dignity as the fundamental principle of collective life and which, therefore, considers the ‘subjective’ worth of the individual as the primary object of legal protection. More specifically, the notion of the priority of right implicit in liberal conceptions of state and society could accommodate the claims of conscientious objection on the grounds of a commitment to the principle of ‘respect for human dignity’.

As we have already seen, the philosophical roots of the notion of conscientious objection reside in the conceptualization of the conflict between social generality and individual moral convictions. Given the fact that this conflict arises in those situations where the individual’s conception of the good diverges from the common good, which is supposed to be embodied in a normative order that refers to the shared bond of social life, the tension between these two conceptions of the good, individual and collective, reveals itself as a tension between right and law. When one refuses to perform a duty demanded by the law by resorting to a right that the law is supposed to cover and protect, one thereby chooses not to fulfil a particular duty without rejecting the law itself. In this regard, conscientious objection is not a fundamental rejection of the shared ties and rationality of the social order; rather, it is a demand to preserve one’s own conception of the good within the framework of that very order.

The liberal theory of society makes the individual (or the particular) the determinant of the law (or the generality) by locating the protection of an individual’s worth and preferences at the basis of social convention as well as by tracing the origins of social life back to the need to establish those conditions under which particular interests can be pursued in security. From a liberal perspective, therefore, a law that distorts the integrity of the individual and leads to self-alienation would be the law of domination. One might nevertheless argue that there exist liberal conceptions which rationalize domination, such as the Hobbesian theory of the state. Should we recall, however, that this version of liberalism – which might be called liberal authoritarianism – turns the tension between right and law into a matter of civil war and social peace, that its main concern is the elimination of the fear of violent death, and that what essentially characterizes liberalism in theory and practice is the preclusion of domination, then we come to see what sort of a liberal conception could accommodate conscientious objection as a ‘right’.

The main complication for the recognition of conscientious objec-

tion as a ‘right’ within the liberal paradigm of rights is a conflict of duties: on the one hand, the individual is under a moral obligation to obey the law on account of the assumption that he is a party to the social contract and hence bound by it; on the other hand, he is also morally obliged to preserve his own personal integrity regardless of the social convention. This tension, however, disappears once it is acknowledged that a law which distorts the integrity of the individual cannot be deemed just. This, in turn, suggests that the principle of justice requires the recognition of conscientious objection as a right. We should also notice, however, that conscientious objection as a moral stance does not call into question whether a particular law is just; rather, it highlights that compliance with it is unacceptable for one’s own conscience.

Justice, therefore, is not the maxim of the act of conscientious objection but the maxim of its recognition as a right. To put it in other words, since conscientious objection depends on a sense of self that does not refer to political ties, the notion of justice, which is the central principle of the body politic, is not the reference point of conscientious objection *per se*, but that of the question of how the political community ought to address this particular moral act.

The just political solution to the conflict between morality and politics should accommodate the apolitical nature of individual morality. When the shared rationality of the political realm conflicts with the ‘un-political’ voice of conscience, as Arendt calls it,<sup>5</sup> politics ought to resolve this conflict in accordance with its own fundamental principle – that is, the principle of justice; and justice demands the protection of conscience.

It is at this point that we need to turn to civil disobedience. For, unlike conscientious objection, civil disobedience makes a problem of the demands of the law, not with reference to the subjective rules of conscience but on the general grounds of the principle of justice which the law is supposed to embody. Civil disobedience, whose first compelling manifestation might be traced back to Sophocles’ *Antigone*, maintains that the disagreement between human dignity and the demands of the law should make us call into question the legitimacy and justice of the latter. A dissent of this sort substantially differs from conscientious objection by virtue of its political nature.

### **Civil disobedience as political action**

The claim that a law conflicting with human dignity can be neither just nor legitimate is the distinguishing feature of civil disobedience. In contrast to conscientious objection, a dissent of this sort does not

refer to the subjectivity of the individual but belongs to the public sphere, for its point of reference is the distinction between legality and legitimacy. Even if it is originally motivated by the subjective concerns and experiences of the agent, the very act of questioning the legitimacy of the law bears on the content of the law and involves the generality implied in it.

Expressing its dissent in terms of the principle of justice, civil disobedience is always open to others and takes the form of a collective act rather than an individual one. Since the civil disobedient, in Arendt's words, 'never exists as a single individual',<sup>6</sup> and since, even when the action is initiated by a particular concern of an individual, it takes place on a ground that is open to the contribution and participation of others, civil disobedience concerns 'everyone' in principle. Its purpose is to alter a law or, for instance, to effect a change in the government's policy. Thus, it belongs to the political realm from the outset.

In so far as civil disobedience, by its definition, refers to a dissent that is expressed without challenging the civil order itself, it cannot aim to change the entire legal system. A radical challenge against the legal system itself implies the eradication of prevailing social and political relations with a view to constructing the social structure anew. The goal of civil disobedience, however, is not to effect such a radical change but to alter those arrangements that infringe justice and lack genuine legitimacy within the legal system. Its aim is therefore to protect or reconstitute justice within the already existing common world.

Since civil disobedience is the expression of a search for justice on legitimate grounds, it concerns itself with the question of what distinguishes just and unjust – that is, what the principle of justice is. Indeed, it is grounded in the very distinction between the just and the unjust which, in turn, refers to the differentiation of legitimacy from mere legality. According to Rawls, civil disobedience, as a political act grounded in the tension between legality and legitimacy, is a 'a public, non-violent, conscientious yet political act contrary to law usually done with the aim of bringing about a change in the law or policies of the government'.<sup>7</sup> Implicit in this definition is also the notion that civil disobedience appeals to moral reasons in challenging the positive law. For, in Rawls's view, calling into question the legitimacy of the law in terms of the principle of justice concerns itself with moral principles and points up a tension between morality and law as well as the ideal relationship between them.

Actually, his argument is based upon the idea that democracies must depend on moral grounds. From this point of view, the problem of the constitution of justice – that is, the problem of the legitimacy

of the law – turns on the moral content of the law. Civil disobedience takes its point of reference from this moral content and is meant to show that the law, as it exists, is in conflict with its own moral content. This means that the reference point of civil disobedience is the ‘commonly shared conception of justice that underlies the political order’<sup>8</sup> in so far as ‘in a reasonably just democratic regime there is a public conception of justice by reference to which citizens regulate their political affairs and interpret the Constitution’.<sup>9</sup> In this regard, civil disobedience is a concrete embodiment of a critical mechanism which a constitutional democracy should contain as a complement to its positive-legal framework.

Now, drawing on Rawls’s remarks, we can make the following point: civil disobedience is necessarily a public act as it depends upon a critical reflection concerning the measure of justice. When Arendt underscores the public nature of civil disobedience on account of its visibility, she argues that in order for the act of civil disobedience to become visible and address the shared consciousness of the society, it must go beyond an individual stance and emerge as the shared action of a group. For Arendt, the civil disobedient ‘can function and survive only as a member of a group’.<sup>10</sup> Arendt sees in civil disobedience an authentic act of citizenship which challenges the determinant judgement of the positive law and calls for the formation of a shared reflective judgement.

In Arendt’s view the public nature of civil disobedience also implies that it will lose its political quality when it justifies its dissent on principles of individual morality and rules of conscience. An objection against the law based upon subjective values and rules of conscience would fall into the domain of conscientious objection. A dissent aiming at changing the law, on the other hand, is the expression of a judgement regarding the shared modality of social life and a demand to share this judgement in common.<sup>11</sup> For conscience does not necessarily open up the moral person to the collective world; nor does it necessarily involve a responsibility towards others.

On the contrary, conscience might well be the source of an apolitical moral stance, leading to a self-imposed inwardness and a sense of complacency based upon having a clear conscience, while not bearing any responsibility towards the world. It is precisely for this reason that civil disobedience is defined not in terms of the tension and relation between law and individual morality, but in terms of the tension and relation between law and politics, between the normative structure and the political-public sphere.

There is a sense in which civil disobedience is ‘the’ political

action. It involves a call for the invalidation of the static structures of society, channels progressive energies, and paves the way for the re-empowerment of dynamic public spheres. This is precisely why Balibar prefers to call it ‘civic disobedience’ and defines it as the ‘disobedience of citizens who reconstitute their citizenship through a public initiative of non-subjection to the state’.<sup>12</sup>

Such an act of disobedience reveals itself in opposition to all unjust and hence illegitimate laws and policies. The invocation of civil disobedience against unjust laws and oppressive government policies is, in fact, a collective responsibility towards those people who are victimized by these laws and state actions. This responsibility constitutes the content of being a citizen that is being tied to others in a shared form of political existence. As Arendt insists time and again, in so far as human living together requires taking others into account and being bound by mutual ties of reciprocity, citizenship involves a responsibility to take the initiative for the abolishment of oppression and domination as well as for the establishment of freedom.

These views point towards the following notion: civil disobedience must take the form of a public action, and only by doing so can it have the power to change the law. At this point one can also recall Habermas, for whom the validity of the law originates from the public sphere, from the sphere of the communicative action of citizens.<sup>13</sup> For a democratic theory privileging the public sphere, civil disobedience has a very special status in so far as it constitutes the crystallization of a democratic politics whose ultimate end is the production of legitimate law by citizens. A notion of this sort asserts itself in stark opposition to the identification of legality and legitimacy, and underscores the priority of public deliberation over administrative uses of power.

From the standpoint of a democratic theory privileging public communication among citizens as the genuine form of politics, civil disobedience is also capable of becoming transformative action. In so far as it can manifest political evil and demand its abolishment, civil disobedience can even trigger systemic transformations. For instance, actions of civil disobedience inspired and informed by the notion that war is a crime against humanity demand systemic changes in interstate relations. As a matter of fact, they can be efficacious only to the extent that they succeed in forming widely shared judgements and opinions. In any case, the point of the matter is that civil disobedience, in contrast to conscientious objection, has the potential to initiate and carry on such massive and systemic transformations. While in the case of conscientious objection the obvious political evils of war are rejected for the sake of the moral integrity of the individual and

in a way limited to the refusal of military service, in the case of civil disobedience resistance takes the form of a more comprehensive action aiming at preventing war.

The following question comes to mind at this point: is it possible to establish a political relationship between conscientious objection and civil disobedience? If it is true that the act of conscientious objection discloses an evil practice, then one can well suggest that such an act, even if it originates from purely subjective concerns regarding the moral integrity of the agent, might constitute an occasion for public debate and open up a space for discussing and criticizing an unfair law or state policy. Although it is bound to remain an individual act, it might draw the attention of the broader public to a certain law or policy. This, in turn, might produce a broader dissent concerning the law or policy in question, even though (or especially when) other citizens have other reasons than the individual moral considerations of the conscientious objector.

In this regard, it is significant to note that the declarative character of conscientious objection already implies a link to the public sphere. Furthermore, one can see in conscientious objection an act of indirectly unmasking the violent and oppressive nature of the military. It is not a coincidence that the military becomes a topic for critical public debate through the cases of conscientious objectors. Besides, struggles for the recognition of the right to conscientious objection are also struggles against militarism in general. In those cases where the refusal to perform military service is not confined to the moral considerations of the individual but articulated and defended in terms of a critique of militarism in general, what seems to be an act of conscientious objection becomes, in fact, transformative civil disobedience.

### **Anti-militarism as anti-systemic critique**

Anti-militarism involves a structural critique of the modern state understood as the monopoly of the means of violence. Its conception of militarism is not restricted to practices of war; nor does it refer only to the military as an institution. Rather, the claim is that the state has a substantial military character in modern disciplinary societies based upon fear and propagates itself through its internalization. From this point of view, the refusal to perform military service amounts to disclosing and resisting the political evil that resides at the heart of the modern state.

According to anti-militarism, militarism is a regime of obedience in which the will of the citizen is subordinated to the will of the state. Therefore, resistance to militarism is understood in terms of resistance

to the subordination of free will. In this regard, anti-militarist struggles are struggles for recovering freedom. While these struggles are based upon a totalizing critique, the ways in which they express themselves may vary greatly.

And yet, it is particularly significant when anti-militarist struggles have recourse to civil disobedience as it opens up the possibility of a public debate regarding the structure of the state and the demands for freedom. When actions of refusal to bear arms and perform military service are motivated by an anti-militarist thrust and express themselves in its system-critical language, they should be regarded as political actions of civil disobedience rather than moral actions of conscientious objection. Actions of this sort are carried out either collectively or with the support of a certain group, and aim at disclosing the systemic evils of the state structure in the public realm. Such actions, furthermore, have an exemplary status in so far as they show that state control is not limitless, that it is possible to resist, and that new sites of solidarity can be created.

In the light of these remarks, I suggest that actions of disobedience informed by anti-militarist considerations should not be treated under the rubric of conscientious objection, given the moralist and subjective limitations of the latter concept. These actions are political in essence and they are grounded not so much in rules of conscience as in political dissent.

Nevertheless, it is a fact that political dissent of this sort has a moral counterpart. For instance, a critique of violence as political evil involves at the same time a moral claim regarding human dignity. Hence the following question: What is the relationship between an act of civil disobedience informed by anti-militarist considerations and an act of conscientious objection underscoring the moral evil of violence? How are we to juxtapose a conscientious objector who refuses to perform military service on account of secular or religious moral principles and an anti-militarist civil disobedient who refuses to do the same thing because of his political opinions concerning the state and its means of oppression?

On the one hand, it seems to me, there is a serious difference between these two cases because while the former has a moral and subjective character, the latter has a political and collective orientation. On the other hand, however, they are also closely related in so far as both cases bring up the possibility of questioning evil – one morally and the other politically.

Furthermore, there is another possible link between conscientious objection and anti-militarism. In order for anti-militarist considera-

tions to become a shared judgement, they must be able to address the conscience of the broader public. If public debate is at the same time a debate on the legitimacy of claims to be right, the vindication of conscientious objection as a right might also facilitate the reception of anti-militarist considerations in the public sphere. To the extent that the respective criteria of good-and-evil and right-and-wrong inform each other, the connection between morality and politics can turn into a constitutive relationship.

### **Concluding remarks**

I conclude with two remarks concerning the issue of conscientious objection. I will focus particularly on Turkey, for the reason that the case of Turkey provides a great example of the issues mentioned above. The first concerns the meaning of conscientious objection in the Turkish context. It seems to me that actions of conscientious objection that have been taking place in Turkey for the last two decades have a political rather than an exclusively moral character. They are informed by anti-militarist considerations and raise conscription as an instance of state domination. Therefore, in the light of preceding remarks, I suggest that these actions fit better into the category of civil disobedience rather than conscientious objection.

Nevertheless, in contrast to what might be expected of civil disobedience, these resisters, or ‘conscientious objectors’ as they call themselves, do not usually make strong claims for the legalization of the right to conscientious objection. I guess the reason has to do with the self-understanding of resisters. As they usually come from a radical background informed by a total critique of ‘the system’, they prefer not to express themselves in the language of rights – a language which, from their point of view, might seem too mainstream.

My second concluding remark concerns the Turkish social imagination. It is very difficult to discuss problems pertaining to the military as an institution in the Turkish public sphere. This does not have to do only with naked oppression and censorship, but has deeper reasons residing in the social imagination, in the processes of individual (for example, military service as a mark of one’s manliness) and collective (such as the founding myth of a military nation) identity formation. It seems that without a broader transformation of the social imagination and public culture, problems of justice pertaining to the military will not be able to come to the table in the public debate. The only hope for this broad transformation resides with the ongoing struggles for democratization.

*Translated by Serdar Tekin*

## Notes

- 1 H. Arendt (1969) *Crises of the Republic*, New York: Harcourt Brace, p. 64.
- 2 Ibid., p. 67.
- 3 See M. Walzer (1970) *Obligations: Essays on Disobedience, War and Citizenship*, Cambridge: Cambridge University Press, p. 5.
- 4 See J. Rawls (1971) *A Theory of Justice*, Boston, MA: Harvard University Press, pp. 24–9.
- 5 Arendt, *Crises of the Republic*, p. 60.
- 6 Ibid., p. 55.
- 7 J. Rawls (1991) ‘Definition and justification of civil disobedience’, in Hugo Adam Bedau (ed.), *Civil Disobedience in Focus*, London: Routledge, p. 104.
- 8 Ibid., p. 106.
- 9 Ibid., p. 106.
- 10 Arendt, *Crises of the Republic*, p. 55.
- 11 Ibid., pp. 74–7.
- 12 E. Balibar (1977) *Droit de cité*, Paris: Edition de l’Aube, p. 17.
- 13 See J. Habermas (1998) ‘Aux limites du pouvoir démocratique: désobédience civile et droit à la résistance’, *Actuel Marx*, 24.

## 6 | The philosophical grounds of conscientious objection

TAHA PARLA

§ Normatively we are dealing with one of the many issues that we have begun to tackle very late, where our analytical language and conceptual vocabulary are meagre and where the moral responsibility and the burden of proof actually lie with the contenders.

I would like to proceed by reversing, overturning and replacing false clichés with their antitheses. The issue is so self-evident that I will work with axiomatic statements rather than arguments. Let me state from the outset: I will not be defending conscientious objection (that is, objection to military service), anti-militarism or opposition to war or violence. Instead I will expose the Achilles' heel of those who oppose conscientious objection, anti-militarism, peace and civilian life.

To summarize in a few sentences: conscientious objection does not consist of a mere individual, fundamental human right as it has been defined in liberal thought; rather it is a moral and political responsibility and a duty towards society, humanity and other individuals of the human species. Military service cannot be legitimized as a duty to the homeland – the people – the state. Opposition to war and to training for war is the debt of each citizen in any given geography, as well as every world citizen, to humanity, societies and to other members of the species. One should not say 'I will not do military service' but rather 'Let no one do military service' and 'Let us not send our children to the military'.

### **Anti-militarism and conscientious objection**

- The individual has obligations to the society/public, not to the state/army.
- All politico-administrative organizations exist to serve society and the individuals of the human species, not the other way around.
- While military service is in no way a 'service to the homeland', one should speak of a duty towards society/public/humanity, not a duty towards some metaphysical homeland/people/state, and even less so an armed and murderous one.
- Alienating from military service, which is the art/science/activity

of killing people, cannot be a crime; on the contrary, encouraging military service should be considered a crime against humanity.

- Conscientious objection is not just a liberal individual right; it is a humanist-socialist duty and responsibility.
- Opposing and punishing conscientious objection and objectors is tantamount to denying conscience itself.
- Military service is not ‘sacred’; by definition and objective, it is based on the violation of the right to life, which is the most fundamental and natural human right.
- Conscientious objectors (youth and adults and women) should not remain a marginalized, criminalized and pathologized minority but should become the majority that will outnumber those who defend violence.
- Conscientious objection should not be reduced to religious faith or freedom of conscience; it should rest on non-religious, naturalist and humanist morality and conscience.
- In measuring the sincerity (relevancy) of conscientious objection, the declaration itself should suffice, not a history of prosecution.
- The position of civil disobedience must be abandoned for one of legal security and the moral high ground, putting those who impose military service (militarism/war) under scrutiny instead.

### **Anti-militarism and civilian life**

- Militarism is the acceptance and prevalence of a military presence, and its concepts and values in other social, political and economical areas beyond the functions of making war and guarding borders. The level of this influence is the scale of militarism in a given country: in politics, law, economy, culture, education and other areas and institutions of socialization.
- Militarism cannot be reduced to war, the war preparation of militaries, the belligerence of soldiers or other such purely professional-technical attitudes or activities. Militarism includes soldiering/military and preparation and production for war, but it cannot be reduced to them, it is much more extensive.
- It involves civilians being complacent about war, belligerence and soldierism, or soldiers imposing war and belligerence on civilian leaders and their followers as well. The military and the civilians (the political class) may separately encourage militarism or show militarist tendencies, but one needs the collaboration of the other for the circuit to be completed.
- Definitions that reduce militarism to war and belligerence cause one to overlook the militarist elements present in other areas of social

life. War and belligerence (and soldierism) are of course present in militaries but these are not the sole constituents of militarism.

- All manner of military intervention in *politics* is militarism. The severity ranges from a high level, where generals occupy the seats of presidents and officers occupy the seats of ministers, to relatively lower levels, where soldiers take part in basic political decision-making bodies or implicitly dictate their decisions on such bodies. It is of course an indication of the severity of militarism when civilians do not question such arrangements and even consider them legitimate.
- Militarization of *economics* is militarism. Beginning with a lower level, such as the prioritized development of the military industry to serve as the engine (or one of the engines) for the general economy, we can speak of increasing levels, ranging from military-industrial-complex types of relationships in advanced capitalist countries, to what one particularly observes in peripheral countries, that is ‘military corporations’ acting as both capital owners and entrepreneurs in the sectors of investment goods and consumer goods. According to Marxist economics, production and consumption in the first and second departments (the sectors of investment goods and consumer goods) return to the economy; those in the third department (the sector of tools of destruction), however, do not.
- The organization of *military jurisdiction* separately and independently from civilian jurisdiction in violation of the principle of unity in jurisdiction; the exemption of certain supreme military council decisions from judicial supervision; the prosecution of civilians in military courts, and the privileging of military law over civilian law in certain periods and places; the presence of such conditions and others is militarism.
- In the realm of *culture*, militarism is the exaltation of military values in the most concrete everyday habits and discourses of dominant elements of public/official/political culture and/or the adoption of military concepts and methods in approaching problems.
- The practice of regarding the military (and military service), which should merely be another branch of that public service organization called the *state*, as the most exalted value in a society must cease. While many civilized countries grant the right to conscientious objection either in their constitutions or with special legislation, it is profoundly worrying that conscientious objection is prosecuted in some countries with ‘inferior political cultures’ with outdated laws based on the grounds that ‘alienating from military service’ is a crime.

- What else shall we do but alienate people from military/war/ weapons? Shall we continue to reconcile people with these mistakes of humanity and with these relics from the hunter and tribal past of the human species?
- The principal methods/tools of militarism are violence and armaments, just as the military (and the police) are the primary mechanisms of repression in the hands of the state, which holds a monopoly over violence.
- If the civilians do not become truly civilian, then it is easier for the ruling classes, the bureaucracy, the soldiers/big capital/war industrialists to perpetuate militarism.
- The most distinct criteria of the transition from a traditional society to a modern society are 'social differentiation and functional specialization'. Accordingly, militaries should not interfere with other (non-military) matters.
- Military service is the art of killing humans and the duty of protecting borders. The 'new professionalism' ideology that allows soldiers into other areas is militarism.
- The absence of domestic civilian life makes for an 'inferior political culture'. Domestic civilian life, however, does not prevent external aggression and expansion.
- Military service and war overlap, but do not intersect. Military service is a very specific organizational and behavioural code. If it begins to be employed during peacetime, it means militarism is on the rise.

### **Anti-war/anti-violence and peace**

- Peace is not the interim period between two inevitable wars. If it is not cynicism or an inaccurate reading of history, this view is the illusion and deception of militaries, states, ruling classes, war industrialists and merchants.
- Instead of choosing the path of war preparation and armament on the assumption that 'the enemy' might start a war, one must attain an ethics that will allow one to say 'Let none of us start wars'.
- Everyone does not have to believe in the necessity and virtue of war; in fact the opposite is true.
- War is a massacre committed by states. The warring state not only kills the soldiers of the other side, it also slaughters its own soldiers.
- Mothers who raise soldiers for the state/army in effect murder the children of other mothers.
- As Freud said, the military (army) is one of the 'total institutions'

similar to churches: it is authoritarian, totalitarian and hierarchical; it is a mechanical and institutional structure that depends on unquestionable orders rather than critical reason.

- Kant's 'perpetual peace' is not only 'what ought to be' but also 'what is possible'.
- In the globalized neoliberal order in which we live, armed late capitalism, war industry, militarism and war go hand in hand.
- While war industry and a war budget can boost economies in the short run, in the long run they steal from basic needs (health, education, welfare, research).
- Maladies of capitalism such as 'market anarchy' and 'over-consumption' have reached a peak and the highest correlation with war during the present era.

## Conclusion

In conclusion I would like to end with a quote from Havelock Ellis's *Essays in War-Time* (1917):

Imperialisms ... even the national ambitions of some smaller Powers ... merely represent the ambition, not of the people as a whole, but merely of a military or bureaucratic clique, of a small chauvinistic group ... A German soldier, a young journalist of ability, recently wrote home from the trenches: 'I have often dreamed of a new Europe in which all the nations would be fraternally united and live together as one people; it was an end which democratic feeling seemed to be slowly preparing. Now this terrible war has been unchained, fomented by a few men who are sending their subjects, their slaves rather, to the battlefield, to slay each other like wild beasts. I should like to go towards these men they call our enemies and say, "Brothers, let us fight together. The enemy is behind us." Yes, since I have been wearing this uniform I feel no hatred for those who are in front, but my hatred has grown for those in power who are behind.' That is a sentiment which must grow mightily with the growth of democracy, and as it grows the danger of nationalism as a cause of war must necessarily decrease.<sup>1</sup>

*Translated by Balam Nedim Kenter*

## Translator's note

1 The full text of *Essays in War-Time* is available online from Project Gutenberg: [www.gutenberg.org/etext/9887](http://www.gutenberg.org/etext/9887), accessed 28 February 2008.



**TWO | Conscientious objection as  
a critique of patriarchy, sexism and  
heterosexism**



## 7 | Where are the women in military conscientious objection? Some feminist clues

CYNTHIA ENLOE

§ I received a postcard from a friend in Britain in 2007. He had discovered a series of cards, each showing a panel of the large, intricately sewn ‘Quaker Tapestry’. This particular card showed Britons supporting conscientious objection (CO) during the First World War. Well, actually, that’s not exactly what the skilled stitchers portrayed. They showed a young British man facing a three-man government conscription board, while just to the side three women in fashionable hats and dresses of the period held out white feathers. The white feather campaign had been mounted by those British women who favoured male military service in waging the First World War. Standing on street corners, they would hand a white feather to any seemingly fit young man in civilian clothes. These women deemed the white feather a symbol of humiliation, and thus sought to embarrass the young man on whom they bestowed their white feather into enlisting in the British military, thereby proving his manhood. The white feather women campaigners are the only women portrayed in this conscientious objection panel of the Quaker Tapestry.

Where are women in the entire panorama of conscientious objection? This is a distinctly feminist question. To develop a feminist curiosity about military conscientious objection in any country is to start asking where the women are, even when at first they seem to be out of the picture, or only minor figures within the frame. The use of a feminist curiosity to fully understand conscientious objection means going further, exploring women’s full range of relationships to men, to ideas of manliness and to soldiering and militaristic cultures in general. People active in a peace movement may not find it appealing to take the women wielding white feathers seriously, but to pay close attention only to those women sympathetic to men seeking CO status misses the point: women in their diverse roles and with their diverse experiences and political ideas are important actors in either sustaining or rolling back the militarism that is at the root of systems of state compulsory male military service.

There are women in every country, though perhaps most do not stand on street corners with white feathers at the ready, who hold

conscientious objectors in contempt. But there are many other women, too, who hold quite different ideas about both masculinity and military service. What do we miss if we do not discover and think seriously about these diverse women in any country that still has compulsory state military service – for instance, women in Turkey, South Korea, Germany, Greece, Russia, Mexico, Italy, Israel and Sweden?

Let's keep looking at these 'white feather women' for a minute. They may have been a minority of all British women during the First World War, but taking them seriously reminds us that governments need women to persuade men to enlist in their militaries. Men are not the only ones in any society who play roles in setting and policing the standards of conventional masculinity. Women are also influential in the ongoing politics of masculinity. Any woman who charges a man who avoids military service with failing to live up to the commonly accepted code of masculinity can assist a government in mobilizing men to fill its ranks. Further, deleting masculinity from any military's recruitment drive leaves a government severely hamstrung in its efforts to build and sustain its armed forces. On occasion, a military may become so desperate for soldiers that it is driven to enlist women into the ranks.

The British white feather campaign during the First World War stands out, however, because it was so organized and so potent in its wielding of an allegedly humiliating symbol. In other times and places, however, women as mothers, as wives and as girlfriends are encouraged to see their sons and husbands and boyfriends as less than ideally manly if they try to avoid military enlistment. Government military strategists and planners are thus always worried about women: will they be willing to uphold a militarized standard of acceptable masculinity?

In Russia today, a nationwide group of women who call themselves 'The Mothers of Soldiers' has sent waves of anxiety up the spine of the government as its members have not only exposed the military's physical abuse of young male conscripts, they have gone further: The Mothers of Soldiers has been holding seminars to teach women how to gain exemption for their sons when they receive their military service notices.

State officials' anxiety about women as constructors of standards of masculinity is prevalent both in countries with compulsory military service and in those countries that have shed (or at least temporarily shelved) conscription to institute, in its stead, voluntary military enlistment as the means for sustaining the armed forces they imagine they need to ensure 'national security'. Worries about mothers', wives' and girlfriends' criteria of acceptable masculinity (in the forms of the 'honourable son', the 'protective husband', the 'appealing boyfriend'

or the ‘home-town hero’), then, do not fade away as soon as male conscription ends. They persist.

Under an all-volunteer military today, for instance, in the United States, Australia, the Netherlands, Belgium, Japan, Canada, China and South Africa, government ‘manpower’ planners still need women, in their diverse roles, to encourage – or at least not discourage – young men to join their forces. In the USA today this translates into the Defense Department spending millions of dollars on advertising aimed at persuading women-as-mothers that military enlistment will make their young sons more reliably manly, more masculine in their maturity. Simultaneously, this perceived need to get women on their side translates into the Defense Department organizing ‘girlfriend groups’ to mobilize the girlfriends of West Point army cadets to support their boyfriends’ military careers. Driving these advertising campaigns and girlfriend groups is military planners’ anxiety that, if left to their own devices, women will not develop notions of preferred manliness that are sufficiently militarized.

Now let’s return to the ‘Quaker Tapestry’. The young British man portrayed here, as he is making his appeal for CO status before the presumably sceptical three-man conscription board, stands alone. That, however, is not in reality how the social dynamics of any young man’s CO appeal operate. We need to ask with whom this young man would have discussed his decision to ask for conscientious objector status. Would he have discussed this decision with his father, or only with his mother? Has this young man deliberately chosen not to raise the issue with his father for fear of disappointing him, of not measuring up to his paternal expectations of a manly son?

There is no certainty which of his parents might be more convinced that doing military service will ‘make a man’ out of their young son. What we do know from feminists, though, is that exploring merely ‘parents’ roles in young men’s decisions regarding military conscription is not analytically adequate. Mothers and fathers do not play identical roles in any country’s militarizing or masculinizing processes. Maternal and paternal constructions of youthful manhood are rarely the same. Men in their roles as fathers are often under considerable social pressure to certify their *own* manliness by showing that they have raised sons willing and able to soldier.

The day after raising the question of ‘where are the women?’ with the audience at the international conscientious objection conference held in Istanbul on 27–28 January 2007, several participants came up to me to chat. An activist in the German CO movement said that in his own experience it was a woman as a mother who often first came

to his counselling office on behalf of her son: 'It may seem safer for her to come; often the young men are embarrassed.' Other conference participants also mentioned that a mother often took the initiative to find out more about the possibility of her conscription-eligible son seeking CO status, either because she wanted to persuade her son to take the steps to gain such a status or because her son asked her to investigate because he felt it was too politically risky to be seen taking the first step himself.

These anecdotal accounts suggest that we always need to explore the complex dynamics inside families in order to make full sense of what either legitimizes or delegitimizes any young man's interest in seeking to become a CO. Further, families cannot be understood if they are imagined to be non-gendered. First, a father may himself as a young man have served as a military conscript. This might make him determined that his son will not endure what for him was a painful experience. Or, just as likely, a father may have come to believe that his own time as a soldier, even if painful, 'made him a man' and so has become convinced soldiering is something, as a father, he needs to make sure his own son experiences. Few mothers in any countries have themselves served in government armies (though some certainly have). Their own beliefs about what they must do to act as socially accepted 'good mothers' of sons can be quite ambivalent. On the one hand, they may believe that they need to overcome their own distaste for militarism and stay silent in order to allow their son to experience what the general society accepts as a young man's militarized 'rite of passage'. To raise objections, to seek out the CO counselling office, would thus be to behave as a 'bad mother'. Or a woman as a mother might watch what has happened to an older son or to a neighbour's son who has been conscripted (or has voluntarily enlisted) and reach the conclusion that 'bad mothering' amounted to passively allowing her younger son to be incorporated into the government's soldiery.

Recently, I had the good fortune to meet Eli Painted Crow, a Native American woman of California's Yaqui Nation. She had volunteered for the United States army and served as a non-commissioned career officer. Eli explained how joining the military was widely seen among her Native American community as 'bringing honour to the family'. Her own mother urged her to enlist and to stay in the army even when Eli herself, especially after her first tour of duty in Iraq, began to re-evaluate military service. Yet before she did decide to get out of the military – and to become active in the US peace movement – she had, in her role as a supportive and caring mother, persuaded both of her sons to enlist in the US military. Then, in 2007, a newly disillusioned

veteran and mother, Eli Painted Crow declared that soldiering ‘never did anything good’ not only for her sons, but for her uncle and for the many other members of her Yaqui community who had joined the military. Her journey as a Native American, a mother and a military veteran has been a long and winding one. At each stage along the way she assessed how military service has affected her own, her sons’ and many contemporary Native Americans’ presumptions about manly honour and about ‘warriors’ as a central source of communal pride.

Which other women are just offstage in the ‘Quaker Tapestry’? Wives. Girlfriends. Women peace activists. Thoughtful conversations with many Turkish women made it clear that women both as wives and as girlfriends think about the roles of the military in their own personal lives. Some women, as they have also expressed in conversations taking place in South Korea, see being a ‘good wife’ or a ‘supportive girlfriend’ as providing support to their partner, support that does not question his job. One Turkish woman described how she was always secretly glad that her conscript husband was ‘only an army driver’. She took comfort in his not being on the shooting end of the military. It was not, she said, looking back, something she and her husband had talked about. She had kept her ideas about military killing to herself. Now, though, thinking more about the workings of militarism, she is starting to rethink her presumptions: maybe, even as a mere army driver, he was implicated in the wielding of violence? Maybe, she began wondering, by keeping silent, out of her own sense of what she could do to be a good wife, she was indirectly fostering militarism?

Women as girlfriends may often feel as though they have little control as individuals over how the larger society, not to mention the central government, constructs the manly man, the patriotic soldier. Collectively, however, women who are involved emotionally with young men are principal actors in the dynamic historic processes of determining the standards for admired masculine behaviour. Is a girl likely to break off a relationship with a young man who takes steps towards seeking CO status? In Germany, where applying for conscientious objection status has become widespread and socially accepted by many Germans, perhaps not. In South Korea and in Turkey, however, where the very thought of conscientious objection to military service remains a distinctly marginal idea, some young women might see themselves able to take political action critiquing their country’s militarism by supporting their boyfriends’ CO application.

On the other hand, maybe many young women would look askance at a boyfriend who said he was going to avoid military service. Who would a worried girlfriend talk to? What confirmation – or challenge

– of her initial opposition to her boyfriend’s actions would she hear? Perhaps she would say nothing to anyone. She might just privately want to avoid being politically marginalized by association, tarred with the brush of political dissent; out loud, she might explain only that this relationship ‘no longer worked’ for her. Her motivation would be political. Her actual political assessment would, however, stay far below the radar. Uncurious non-feminist observers might think that they were not seeing any form of political action at all.

One of the core international feminist findings has been that ‘politics’ as conventionally defined is far too narrow. In reality, politics occurs in many more places and takes more forms than most mainstream commentators and strategists imagine – in the silences between husbands and wives, in disagreements between mothers and fathers, in the private worries of girlfriends. Furthermore, feminists from myriad countries have taught us that if we adopt only the unrealistically narrow definition of what is ‘political’ we will – intentionally or unintentionally – masculinize what counts as political action. No matter how dedicated we may be to promoting democracy in our societies and in our social movements, we will, by adopting this unrealistically narrow, masculinized definition of politics, act in ways that exclude or marginalize women, thus subverting democracy.

This brings us to women in peace movements and in movements to support both the principle of, and the individual applicants for, conscientious objection. Where are women in the CO movement? During the First World War there were women active on all sides in anti-war work. They too are invisible in the Quaker Tapestry, even though it is likely that it was British Quaker pacifist women who designed and sewed all seventy-seven panels of this provocative artwork.

Women inside peace movements have been speaking out for at least forty years to criticize the patriarchal tendencies inside their movements: against the presumption that men are best equipped to lead a peace movement; against the adoption of militant tactics by peace movements which privilege only certain kinds of masculinity and relegate virtually all sorts of femininities to the supportive sidelines; and against the unproblematized sexual politics shaping relationships between women and men inside the movement. Out of questioning these presumptions and practices have come the autonomous women’s peace movement in Okinawa, the 1980s Greenham Common Women’s Peace Camp, the Women’s Seneca Peace Camp created at the same time in upstate New York, and the 1990s Women in Black anti-war organizing in Belgrade, Jerusalem, Haifa, Madrid, New York, Tokyo, Osaka and London.

A CO movement in any country might be even more prone to

privileging masculinity and leaving patriarchal movement tendencies unquestioned than other forms of peace movement organizing. After all, with the important exception of Israel, governments impose compulsory military service today only on men in Turkey, South Korea, Russia, Sweden and Germany. It is men as individuals, therefore, who have to take the risk of applying for CO status. Men who take this risk are likely to be seen – by both men and women – as the heroes of the movement. Furthermore, those who have the greatest stake in correcting any state policy’s flaws or injustices are, not surprisingly, seen to be the natural leaders of any movement challenging that policy.

Yet militarism, the root source of the legitimization of military conscription, also privileges masculinity and makes patriarchal orderings of society seem normal and proper. Thus activists inside any conscientious objector movement that allows them to privilege masculinity and normalize patriarchy run the serious risk of not challenging but reinforcing one of the cultural pillars of militarism.

In Turkey today, a small group of feminist women who have been supportively active in the CO movement have begun to explore how they can pry apart conscientious objection from the privileging of masculinity. Out of their discussions they have crafted a declaration that a woman not subject to the state’s military conscription can personally make which enables her to declare herself to be a conscientious objector. This is a political innovation: to declare oneself a conscientious objector even though one is not called upon by the state to soldier. What has allowed these feminist thinkers/activists to carve out this new political space has been their tracing military conscription to its roots in militarism. The feminist conscientious objector declares:

I shall defy every secret and obvious form of militarism and show solidarity with anyone who defies militarism.

As much as militarism is determined to affect my life, I am determined to continue my struggle.

I REJECT!

How will men and other women active in the CO movement respond to this feminist innovation? Just as we are still trying to fully understand the multiple ways in which soldiering wends its ways through our complex lives, so we all need to open up the frames of our political awareness so that we can see which understandings of politics make women’s diverse roles in militarism invisible and which alternative understandings make women’s roles visible. It is the latter, wider frames which will make the tapestry complete and our own political engagements more effective.

## 8 | Refusing to identify as obedient wives, sacrificing mothers and proud warriors

AYŞE GÜL ALTINAY

§ Until recently, women's identities within the gendered, heterosexualized and militarized conception of Turkish citizenship were predominantly articulated inside the Kezban (obedient wife)/Little Ayşe (sacrificing mother)/Sabiha Gökçen (proud warrior) triangle. While the Kezban and Little Ayşe positions have been expected of all women without exception, being Sabiha Gökçen has been coded as an exception and a privilege. In recent years, a group of women who define themselves as 'conscientious objectors' has begun to question the basis of these expressions and expectations of female citizenship. In this chapter, I would like first to look closely at the ways in which women are positioned within the framework of the myth of the military nation and then consider the refusal of all three articulations of female citizenship by women conscientious objectors.

### **Myth of the military nation and military service as 'culture'**

The Turkish nation has preserved its military-nation character from the beginnings of history till today ... If the Turk is ... marching on the forefronts of world history, that is because of his unshakable national characteristics, military character, his grand military virtues and his ability to engage in total war for his rights and freedom. The Turk has inherited this character from his history that goes back thousands of years.<sup>1</sup>

As the utterances of Turkey's respected historian Halil İnalcık make clear, the idea that the Turkish nation is a military nation (*ordu-millet or asker-ulus*) has been one of the founding myths of Turkish nationalism.<sup>2</sup> In the *History* textbooks that constituted the first expressions of the official Turkish History Thesis developed in the 1930s, this idea was expressed as follows:

[the] Turkish nation is the nation with the most developed military spirit ... A nation with high military spirit is a nation with a history of civilization; one that embodies deep and far-reaching knowledge. It is natural that the Turkish race, which has been the ancestor of all major civilizations since the dawn of humanity, perfected this spirit.<sup>3</sup>

These statements were, however, quite different from earlier depictions of the military and nationhood in the Turkish context. For instance, in their co-authored 1930 book *Askerlik Vazifesi* (Military Duty), Mustafa Kemal Atatürk and Afet İnan had outlined the ‘necessity’ of a national army of conscripts within the framework of the contemporary mode of warfare, emphasizing the need for every citizen to participate in the country’s defence through military service.<sup>4</sup> From the 1930s onwards, however, discourse surrounding the military and military service moved away from conceptions of necessity and duty respectively and came to define military service as a cultural (in fact, racial) characteristic of the Turkish nation.

This discursive shift reflects not only the transition from a citizen-based notion of nationalism to an ethnically based (even ‘race’-based) one, but also reveals the key characteristics of the myth of the military nation. In this framework, military service is not a historically specific citizenship practice, but a feature of culture. Warriorship is represented as an immutable characteristic of the Turkish ‘race’, and a virtue of Turkish culture carried with pride: ‘Every Turk is born a soldier.’

This discursive shift, towards the conception of military service as culture, has had several implications. First, it has resulted in the construction of military service as an ahistorical reality embedded in an unchanging ‘culture’. Thus, the fact that this is a nation-state practice peculiar to the modern era has been muted. Second, it has contributed to the perception of military service as an incontestable reality, placed outside of the realm of political debate. If the nation is by its very nature a military nation, then challenging compulsory military service is not a question of redefining the nature of the relationship between the state and its citizens; it necessitates problematizing ‘Turkish culture’. Third, this formulation leaves little room for an independent, non-military, civilian sphere in national politics and cultural practice. If every Turk is born a soldier, then all Turkish life goes on (or should go on) in khaki. Imagining alternatives to a life in khaki would be equivalent to being a non-Turk, if not a traitor.

The myth of the military nation was limited neither to the textbooks of the 1930s nor the official statements of the Turkish History Thesis. Throughout the history of the Turkish republic, this myth has been reproduced in myriad ways by nationalist ideologues, leading figures of the military and civilian strata, academics, educational institutions and the media. One of the most striking examples of the intimate relationship constructed between the military and culture in recent times is the book *Türk Ordusu* [Turkish Military], prepared by the Ministry of Culture and the Ankara Chamber of Commerce in 2000.

In the foreword he penned for the book, Chief of General Staff Hüseyin Kıvrıkoğlu<sup>5</sup> writes:

Known as a ‘Military Nation’, the Turks have won numerous victories, established and sustained many states ... As the great Atatürk has stated, the victories and the history of the heroic Turkish Army began with the history of humanity and have always carried the light of civilization as well as that of victories.<sup>6</sup>

The (unsigned) introductory section that follows this foreword is entitled *Türk Askerlik Kültürü* [The Military Culture of the Turks] and again emphasizes the military nature of the Turkish nation. In other words, at the turn of the twenty-first century military service is still considered to be a cultural quality, and this hefty Turkish army book introduced by the Chief of General Staff, the prime ministry and ministers, is published not by the Ministry of National Defence but by the Ministry of Culture. What is even more important, however, is that this does not initiate any public discussion. The interpenetration of the military and civilian spheres has been normalized far beyond the discursive boundaries of official Turkish nationalism.

The construction of military service as cultural not only conceals the fact that citizen armies and compulsory conscription are specific to the organization of the nation-state in the modern era, but also cloaks state-based gender discrimination. Compulsory military service is simultaneously a practice geared towards the ‘defence of the country’ and a practice that differentiates the relationship between male and female citizens and the state. A conscription system that requires only men to serve as soldiers establishes a strong connection between masculinity, the state and military service. Through conscription, which is formulated as the most sacred of duties, men are granted first-class citizenship.<sup>7</sup> Compulsory military service not only masculinizes first-class citizenship, it also defines masculinity itself. Military conscription is a first step on the path to manhood; indeed, it is the *sine qua non* condition of manliness. The message given to young men is clear:

[Military service] is the obligation to learn and practice the art of war in order to protect Turkish land, Turkish freedom and the Republic ... Being a most supreme patriotic and national duty, military service familiarizes youth with the conditions of real life and educates them. *The person who does not perform military service cannot be useful to himself, his family or his country.*<sup>8</sup>

According to this description, a person can be useful to himself, his family and his country only by completing military service; in other

words, women, conscientious objectors, the disabled and gay men (the latter two are considered ‘unfit’<sup>9</sup> for military service) are automatically relegated to second-class citizenship and are not offered the opportunity of performing ‘a most supreme patriotic and national service’. As the story of Hüsmen and Kezban (below) demonstrates, the duty that befalls women is to obediently submit to their husbands, who become ‘commanders’ at home.

### Women of the military nation

After he is back in the village and has his wedding, he will tell Kezban all about the things he learned in military service ... When Hüsmen says it all to Kezban, she will be dumbfounded; the fascination of his wife ... will make Hüsmen proud. He will first teach Kezban how to identify herself [*künyesini belletecek*]. When he calls ‘Kezban’, Kezban will run to him like a soldier, stand in front of Hüsmen and, after giving the official greeting, she will say ‘Ali’s daughter Kezban, 329 Poturlar [presumably her address] ... yes, sir!’ and will wait for his orders.<sup>10</sup>

In this short story, published in the journal *Ülkü* [Ideal] in 1933, Hüsmen, a young peasant from Bergama, is spending his last day at the military barracks. The joy of the last day is not so much related to the fact that his military service is about to be over but rather derives from his desire to begin applying instantly what he has learned in the military to civilian life. He starts daydreaming and falls asleep. He dreams that the first thing he will do to his fiancée Kezban after getting married is to make her learn how to identify herself in a military way. In this story, where military knowledge signifies power over women, military service is directly associated with masculinity. In the army, Hüsmen is merely a private who takes orders. At home, however, he has gained the position of an *unconditional* commander. In this framework, women will never have access to knowledge about the nation, guns or the land. Their share of the deal is to feel admiration and submit to orders. In short, women of the young republic are expected to be ‘soldier-wife’ Kezbans to ‘commander-husband’ Hüsments.<sup>11</sup>

A second, and related, expectation is for all women to bear children for their military nation, and become selfless mothers. As Meltem Ahıska states, ‘nationalist expression makes an investment on mothers, *mothers of the nation* are holy, and they are glorified’.<sup>12</sup> A university student, whom I refer to here as Esra, recalls a role she played in a kindergarten play at the end of the 1980s:

I was four and a half years old and I was attending the kindergarten class of a state school. In one of the plays we staged I played the part

of 'Little Ayşe'. All I needed to do on stage was to sit and rock a baby doll in my arms. My partner 'Little Soldier', on the other hand, was marching like a soldier in his military uniform and rifle, tramping noisily. Then we would both begin singing the famous children's song with great enthusiasm.

This children's song runs as follows:

Little Ayşe, little Ayşe,  
 Tell me what you are doing.  
 I am taking care of my baby,  
 I am singing lullabies to it.  
 Little soldier, little soldier,  
 Tell me what you are doing.  
 I am taking care of my rifle,  
 I am attaching a bayonet to it.

It is not staged as a school performance by everyone, but almost all kids are expected to learn and sing this song in Turkey.

The third role women can play within the military nation is the role of the 'warrior woman', of which Sabiha Gökçen constitutes the most well-known example. In the words of Yeşim Arat, 'the image of Sabiha Gökçen in her air force uniform, with respectful male onlookers, including her proud father, is ingrained in the collective consciousness of at least the educated urbanites in Turkey'.<sup>13</sup> Sabiha Gökçen, the world's first woman combat pilot, whose name has been given to the second airport of Istanbul, gained her 'combat pilot' status by participating in the Dersim Air Operation of 1937 (against the mountainous region in east Turkey which had resisted central governance since Ottoman times). In the 1950s, she wanted to fight for a second time in the Korean War but because of a United Nations decision to keep women behind the front lines, this ambition remained unfulfilled.<sup>14</sup>

The position of the 'warrior-woman' can only be possible to the extent that it is allowed or needed. Indeed, the positions of 'soldier-wife' and 'sacrificing mother' play an important role in keeping the warrior position as an exception. The demand communicated to Marshal Fevzi Çakmak by Sabiha Gökçen regarding women's conscription and the reply she receives are a striking illustration of this:

*Gökçen:* This issue of women's participation in the military ... You know that my position in the military is [unclear] because there is no specific law on this issue. Atatürk has asked me to talk to you about this and ask for your help. Your decision and permission will determine whether women can become soldiers or not. Turkish women

would be grateful to you if you were to pass this law. There are so many young girls that I know who are ready to sacrifice the best years of their lives to wear this honourable uniform.

*Çakmak*: You have expressed your feelings very well, Gökçen. I too know that Turkish girls want to become soldiers and that they would feel a great honour to wear this honourable uniform. However, no, please do not ever demand this from me, my child. Because I do not agree at all that our girls, our women should become soldiers! The existence of a nation can only be possible if the women of that nation are alive.<sup>15</sup>

For Fevzi Çakmak, the primary role of women is, in the words of the feminist theorist Nira Yuval-Davis, 'the reproduction of the nation'.<sup>16</sup> Gökçen comes to the brink of tears before this unexpected reaction and, in the memoirs she wrote years later, she relays her feelings thus: 'I had convinced myself that, after all that work and all that success, we would have rights equal to men in the realm of the military as well. Yet, as usual, dreams and reality had clashed and the dream had left its place to reality.'<sup>17</sup> Sabiha Gökçen, who knew no boundaries even before becoming a fighter pilot and who had received praises in every phase of the process on account of being a woman, was to remain the only woman in this sphere for a long time to come.<sup>18</sup>

Even if they are in an exceptional position, or precisely because of this, warrior-women of the military nation are granted a special place within its historical narratives. It is significant that, of the two airports in Istanbul, one is named after Atatürk and the other after Sabiha Gökçen. There are, however, parts to Gökçen's story that do not fit the official historical narratives. For instance, the website of the airport and many other publications on the matter state that Gökçen is 'the world's first woman combat pilot', without mentioning how this status was actually earned.<sup>19</sup>

### **Sabiha Gökçen: 'The Dersim Operation and the gun that would protect my honour!'**

Adopted by Mustafa Kemal (Atatürk) in 1925 when she was twelve, Sabiha Gökçen began to take flying lessons in 1935. She completed her training in *Türk Kuşu* (the Turkish bird), and later went to Russia in order to receive aviation educator training. Upon her return to Ankara, she continued her training with a plane brought from the Eskisehir Aviation School (*Eskişehir Tayyare Okulu*). After her first solo flight in a plane with engines, Atatürk walked up to her and revealed his plans regarding her:

I thank you, Gökçen ... You have made me very happy. Now I can reveal what I have planned for you ... Perhaps you will be the first woman military pilot in the world. You can imagine how proud it would make us if a Turkish girl became the first woman military pilot in the world, can't you?<sup>20</sup>

After this, Gökçen studied for two years at the Eskisehir Aviation School and, by participating in the Dersim Operation in the spring of 1937, she became not only the world's first woman military pilot but also its first woman combat pilot.

Even though Atatürk had wished Sabiha Gökçen to become the first woman military pilot, her becoming the first combat pilot was a different matter. It was Sabiha Gökçen who wanted to participate in the Dersim Operation and who had to convince many people in order to do this, beginning with Atatürk. Informed about the operation at the last minute, Gökçen swiftly flew from Eskisehir to Ankara with her plane to tell Atatürk why she wanted to join the operation and to ask him to give her permission for it. She was able to convince him and the necessary permission was granted. Atatürk was later to tell his colleagues about his decision to send Gökçen on the operation, with the following words:

Here is another duty that has called upon the Turkish girl. Gökçen will join the Dersim operation tomorrow morning with her plane. She is no longer a young girl, but a young soldier. Just as I am confident that she will perform as well as her colleagues and fulfil her duty, you, too, should be confident ... She is aware of how dangerous this mission is. I know that if she is made to stay behind, such discrimination may result in her withdrawal from aviation, an occupation she loves. She was trained to take part in such situations. So? So she will leave early in the morning for Dersim.<sup>21</sup>

There is, however, another matter discussed between Gökçen and Atatürk which does not figure in the narrative above:

*Atatürk:* I will let you go ... if your desire to go is this strong. But this is a military operation and you can only join if the Commander in Chief, Marshal Çakmak, gives the appropriate permission. However, you should not forget this: you are a girl and the mission at hand is a very difficult one. You will be faced with a band of deceived men. They too have some weapons. In case of an accident, you might have to do an emergency landing and surrender to them. You will not know what this means until it happens to you. Have you thought about what you would do in such a situation?

*Gökçen*: You are right. The plane might always have a technical problem and force me to land, or it might crash. If something this unfortunate happens, don't you worry; I will never surrender to them alive.<sup>22</sup>

This was apparently the answer Atatürk was expecting to hear from his daughter. Gökçen remembers him being very touched by her response. He said, 'Gökçen, then, I will give you my own gun ... I hope that you will not face any risk. However, if anything that will put your honour at risk should happen, do not hesitate to use this gun against others or to kill yourself.'<sup>23</sup>

Sabiha Gökçen kissed the gun and placed it on her forehead, saying she would never forget these words. Indeed, the title of the chapter where she relays this event in her memoir reads as follows: 'The Dersim Operation and the gun that would protect my honour!'

Sabiha Gökçen may have become a young soldier, but she was also a young woman whose sexuality needed to be protected and negotiated as she was given permission to go into war. In Atatürk's view, the threat to her honour through rape, an unspoken, unnamed act in this narrative, was the ultimate danger, not death. Her permission to go was based on her readiness to kill herself in order to protect her honour and her nation's. With the unhesitating determination she demonstrated in the matter and the gun Atatürk gave her as a gift, the obstacle of honour before Gökçen could fight was removed. Gökçen could go to war as a young soldier.<sup>24</sup>

After the Dersim Operation, Sabiha Gökçen was a national hero.<sup>25</sup> Gökçen's success was very important for Atatürk:

I am proud of you, Gökçen! Not only I, but the entire Turkish nation, which has closely followed this event, is proud of you ... It is appropriate that you take pride in proving to the whole world once again what our young girls are capable of ... *We are a military nation. From age seven to seventy, from its women to its men, we are an entire nation created as soldiers.*<sup>26</sup>

By participating in this internal war effort, Gökçen had achieved two things simultaneously. First, she had taken her place beside the men who had fought for the country's independence, and had thus proved her worth to her military nation. Second, she had proved her nation, as a nation-in-arms that could also make use of its young women, to the whole world. This sense of pride was not unfounded. A story in the *New York Times* on 17 June 1937 stated that the fact that Turkish women transitioned from the veil and the harem into pilot uniforms within less than ten years had challenged even the Western imagination.<sup>27</sup> In this

striking intersection of orientalism and militarism, Sabiha Gökçen is depicted as a symbol of progress and modernization.

### **From Kezban, Little Ayşe and Sabiha Gökçen to women conscientious objectors**

Although many ruptures and transformations were experienced in Turkey during the sixty-year period from the 1930s to the 1990s, the foundational myth of the military nation and the definitions of femininity and masculinity that are at the centre of this myth have not been subjected to serious questioning. On the contrary, it is possible to say that during this time period, compulsory conscription has been institutionalized and normalized as ‘patriotic service’ and as the process of ‘becoming a man’.

One can find the first glimpses of a comprehensive questioning of this construction in three important political phenomena in the 1990s. First, the experience of war,<sup>28</sup> which began in 1984 and escalated during the early 1990s, led to the indirect questioning of military conscription and an increase in the number of military deserters.<sup>29</sup> Second, with the declarations of two youths named Vedat Zencir and Tayfun Gönül that were published in *Sokak* (the Street) magazine and *Güneş* (the Sun) newspaper in 1990, Turkey encountered the concept of ‘conscientious objection’. In the years that followed, we witnessed organizations focusing on conscientious objection, such as İzmir Savaş Karşıtları Derneği (Izmir War Resisters’ Association), political actions and campaigns conducted for conscientious objectors imprisoned in military prisons.<sup>30</sup> Third, from the mid-1980s onwards it has been possible to talk about a feminist movement that brought new openings in Turkish politics and took effective steps towards the questioning of the ‘soldier-wife’ and ‘sacrificing mother’ roles expected from women.<sup>31</sup> As a result of the conjoining of these three phenomena, we now encounter two significant dynamics: an increase in the number of male conscientious objectors and the existence of women conscientious objectors.

While women have been active in the conscientious objection struggle since the beginning of the 1990s, their involvement was initially limited to the position of ‘supporters’ of male conscientious objectors. In the 2000s, anti-militarist women chose to expand the definition of conscientious objection and define themselves as objectors.<sup>32</sup> What, however, does women’s conscientious objection mean in a setting where there is no conscription for women? If women’s objection is not an objection to their own compulsory military service, then what is it an objection to? This is how Ferda Ülker, who has been inside the movement since its inception, answers this question:

Women's 'relative' distance from the military, our 'exemption' from military service, should not lead to the conclusion that conscientious objection is not a women's 'issue' ... The military has potentially positioned me as the mother or wife of the soldiers it needs, the behind-the-frontline force of its wars, its nurse, its prostitute, its carrier of ammunition ... In the face of an institution that has so many conceptions of me, every time I tried to think of conscientious objection as 'not going to the army, not taking up arms', I found myself feeling 'there is something missing here!'<sup>33</sup>

Taking action to voice this lack and attract attention to the many various conceptions the military had about women, Ferda Ülker spoke in her declaration of conscientious objection in 2005 as follows:

The conscientious objection movement is not just a struggle against 'compulsory military service'. The concept implicates a much wider spectrum and includes a lot more. And we the women have more to say and to stand for in this movement than being its 'supporters'. Conscientious objection is the name of a stance that connotes direct opposition to militarism and all its faces. Militarist thought is not only limited to the boundaries of 'the military', but constructs a 'militarized' world that is also incorporated into everyday life. And in this construct, femininity is humiliated; women are usually ignored, rendered invisible ... Especially for the women living in this geography, militarism is 'present'<sup>34</sup> in every detail of life like an uninvited and impertinent guest. In the street, at home, at work, in our relationships, in our areas of struggle ... and everywhere else. I declare that, today, just like yesterday, I shall struggle against militarism in all its guises – whether concealed or obvious – as much as I can, with all the strength I can muster, and that I shall be in solidarity with everyone else who struggles against it.<sup>35</sup>

When we look at the declarations of women conscientious objectors, now totalling thirteen people (June 2008), we can say that three topics stand out as common ground.<sup>36</sup>

First, it is agreed that conscription should be understood as a part of the larger militarist structure and conscientious objection as an opposition to militarism and all its faces, and not simply an objection to compulsory military service. This is also a dominant theme in men's conscientious objection statements.

*Nazan Askeran:* I reject the militarist mentality that JUSTIFIES and engraves subjugation, being subjugated, giving and taking orders, killing, getting killed, war, military service and violence into every corner of our lives.

*Ayten Demir:* Believing that silence will amount to supporting wars, and because I do not want to kill, die, be oppressed or exploited, I raise my voice against all authoritarian, hierarchical, nationalist, sexist and militarist structures and declare my conscientious objection.

*Ayşe Girgin:* Although, as a woman, I do not interact with militarism within the context of the army, I encounter it in every walk of life. I struggle against militarism as much as I can in this world with all its oppressor–oppressed relationships, gender discrimination and all kinds of bloody or bloodless violence. I reject militarism with all its faces.

*İnci Ağlagül:* As long as I remain silent I shall see myself as an accomplice. However, I do not want to be an accomplice to war and militarism in any way, and become a spectator while our lives, our minds and our dreams are imprisoned.<sup>37</sup>

Second, it is agreed that, whether perpetrator or victim (Ayten Demir), subject or object (Nazan Askeran), women play many different roles within a militarist structure and that conscientious objection means the rejection of all these roles:

*Nazan Askeran:* I do not want to be the property of someone because I am a WOMAN, or be locked up, get beaten, or killed because of a twisted idea that I am somebody's honour. I do not want to be dominated, manipulated, herded, with no right or claim over my identity and body by some men and the society who assume I am their property with labels like 'mother', 'wife', 'daughter' tied around my neck just because I am a WOMAN.

*İnci Ağlagül:* Without neglecting other social factors, I see the harassment, rapes and 'honour' killings directed at women, and the humiliation or the classification as 'unfit' of individuals because of their sexual identity or orientation, as also a consequence of the prevailing militarist mentality. Because I know that as a woman I can only be considered worthy after I become an aged mother and only at the expense of the land–motherland duality (fertile–sacred) and because I despise this ... I object to military service, militarism and its enforcement as a way of life.

*Hilal Demir:* I do not want to be labelled as 'mother', 'wife', 'daughter', 'girlfriend', and be dominated just because I am a woman.

*Figen:* A patriarchal ideology, militarism determines our entire lives and leads to the perception of women in society as property, as servants, slaves, and objects that can be silenced and harassed/raped ... The emancipation of women passes through the struggle against militarism.<sup>38</sup>

As Ferda Ülker also emphasizes, ‘the common ground among women’s declarations of conscientious objection is that they are based on a feminist perspective and a critique of militarism’.<sup>39</sup> Defining an anti-militarist stance that is articulated through a feminist analysis, women conscientious objectors are rejecting all of the ways in which women are ‘brought into line’.

As Cynthia Enloe notes in her chapter in this book, because conscription is a legal requirement only for men, the conscientious objection movement carries the risk of making heroes out of male objectors and reproducing the patriarchy endemic to militarism. While urging that the conscientious objection movement be considered a part of the anti-militarist struggle, women are also placing the struggle against patriarchy at the centre of anti-militarism.

Third, it is common ground that anti-militarism represents a stance against all kinds of militarism and violence:

*Ceylan Özerengin*: I reject violence in its entirety. I think the only sacred concept in the world is human life. I also reject, in their entirety, all other ‘sacred obligations’ that are imposed on us.

*Hilal Demir*: Because I WANT to be happy and live freely as myself in a world without wars, without violence of any kind, without authority and without boundaries.

*Nazan Askeran*: I reject all kinds of violence whether organized or unorganized.

*Ebru Topal*: I declare my rejection with regards to ... the maltreatment that is expected to be endured by individuals who support life rather than death.<sup>40</sup>

In a 2006 article İnci Ağlagül notes that they critique not only dominant forms of militarism but also the dissident ones: ‘do not bear arms and go to the military, but do not bear arms and take to the mountains either’.<sup>41</sup> Remembering the conscientious objection work they did in Izmir in the 1990s, Ferda Ülker also points out what a challenging issue this has been:

We have always said ‘no to conscription and no to the mountains’. We were against all types of militarism. Thus we had a lot of problems with the left, with people from the left with whom we went to protests together. In Turkey people still do not see a third way out. It is either Saddam or Bush; you must either support Iraq or America.<sup>42</sup>

In short, women conscientious objectors in Turkey not only reject the Kezban, Little Ayşe and Sabiha Gökçen roles that official ideology deems appropriate for them, they also reject dissident movements’

militarized constructions of femininity. Developed as a reaction against the ‘Every Turk is born a soldier’ mentality in recent years, the rhetoric of ‘Every Kurd is born a guerrilla’<sup>43</sup> imprisons women in the positions of obedient wife, sacrificing mother and warrior-woman just as Turkish nationalism does.

According to Handan Çağlayan, Kurdish women are called to armed struggle with the following slogan: ‘She who fights is emancipated, she who is emancipated becomes beautiful, and she who is beautiful is loved’.<sup>44</sup> One of the first women to take this call and become a ‘legend’ within the Kurdish nationalist movement was Zeynep Kınacı, code-named ‘Zilan’.<sup>45</sup> ‘Zilan’ carried out the first suicide attack in Turkey in 1996 in Dersim/Tunceli, where Sabiha Gökçen had become the world’s first woman combat pilot, causing the death of six soldiers and the wounding of more than thirty people by detonating the bomb she was carrying.

Women conscientious objectors who say ‘do not bear arms and go to the military; however, do not bear arms and take to the mountains either’ question not only the dominant nationalism and militarism but also its dissident forms, and simultaneously reject being Sabiha Gökçen and Zilan.

### **‘The existence of women conscientious objectors is guaranteed to challenge established norms’<sup>46</sup>**

Until very recently ‘militarism’ was not a concept that was taken seriously in Turkey either in political debates or the social sciences. Many would have argued that Turkey was not militarized or that its militarism was on a negligible scale. Those who did accept that there was militarism, on the other hand, approached the issue as a taboo that was best left unattended. Other dynamics have also contributed to the lack of acknowledgement of militarism. For instance, the prevalence of sexism and heterosexism can be seen as factors that have impeded the critique of militarism. To the extent that militarist values and practices, such as military service, are equated with masculinity, questioning militarism also requires questioning the dominant constructions of masculinity. It is not a coincidence that militarism has come to the political and academic agenda with the development of feminist and LGBTT (lesbian, gay, bisexual and transgender/transsexual) critique.

Another obstacle against making militarism visible may be the militarism of dissident political cultures in Turkey. Throughout its hundred-year history, anti-militarism has been regarded as strange and ignored by leftist political movements as much as by rightist political movements. Critiques of militarism have mostly been conducted uni-

laterally (towards dominant politics) and the militarization of dissident political formations has rarely been questioned.

In recent years, 'militarism' has come to be debated widely in both universities and the intellectual sphere beyond the universities. There is also a discernible increase in the number of publications on militarism.<sup>47</sup> There are two lines of enquiry in these discussions and publications. The first is formed around the questions 'How can we make militarism more visible? How can we better understand it?' If dominant constructions of masculinity, femininity and sexuality are not made an issue while asking these questions, the layers of militarization that shape politics, economics, cultural practices and everyday life often continue to be invisible. The second line of enquiry addresses more difficult questions: 'How can we be free of militarism? How can we develop a language that is not militaristic?'

Women conscientious objectors make significant contributions to both of these quests. The fact that women have started becoming more visible as conscientious objectors since 2005 both makes different guises of militarism in everyday life more visible and brings new perspectives to the search for anti-militarist language and politics.<sup>48</sup> Pushing the limits of Turkish and Kurdish nationalism, the conscientious objector movement, leftist dissidence and feminism alike, women conscientious objectors who simultaneously object to becoming Kezban, Küçük Ayşe, Sabiha Gökçen or Zilan challenge gendered militarism in all its faces.

*Translated by Balam Nedim Kenter*

## Notes

1 H. İnalçık (1964) 'Osmanlı Devrinde Türk Ordusu' [The Turkish military during the Ottoman period], *Türk Kültürü* [Turkish Culture], 22: 49–56; 56.

2 For a more detailed analysis of this issue, see A. G. Altınay and T. Bora (2003) 'Ordu, Militarizm ve Milliyetçilik' [The Military, militarism and nationalism], in T. Bora (ed.), *Milliyetçilik: Modern Türkiye'de Siyasal Düşünce* [Nationalism: Political Thought in Modern Turkey], vol. 4, Istanbul: İletişim Yayınları, pp. 140–54; A. G. Altınay (2004) *The Myth of the Military-Nation: Militarism, Gender, and*

*Education in Turkey*, New York: Palgrave Macmillan.

3 Türk Tarihi Tetkik Cemiyeti [Turkish Historical Research Foundation] (1934) *Tarih IV* [History IV], 2nd edn, Istanbul: Devlet Matbaası, pp. 344–5.

4 See A. İnan (1930) *Askerlik Vazifesi* [Military Duty], Istanbul: Devlet Matbaası, and H. Ünder (1999) 'Milleti Müsellaha ve Medeni Bilgiler' [The nation-in-arms and civilization studies], *Tarih ve Toplum* [History and Society], 32(192): 48–56.

5 Editors' note: Hüseyin Kıvrıkoğlu retired in 2002.

6 M. Özel (ed.) (2000) *2000'li*

*Yıllara Girerken Türk Ordusu* [Turkish Military in the Early Twenty-first Century], Ankara: Ankara Ticaret Odası ve T.C. Kültür Bakanlığı.

7 Cynthia Enloe's pioneering work on the relationship between nationalism, militarism and gender provides in-depth analyses of this phenomenon. See C. Enloe (2000) *Maneuvers: The International Politics of Militarizing Women's Lives*, Berkeley: University of California Press; C. Enloe (2000) *Bananas, Beaches and Bases: Making Feminist Sense of International Politics*, Berkeley: University of California Press; C. Enloe (2000) 'Feminizm, Milliyetçilik ve Militarizm' [Feminism, nationalism and militarism], in A. G. Altınay (ed.), *Vatan, Millet, Kadınlar* [Homeland, Nation, Women], İstanbul: İletişim Yayınları, pp. 189–212.

8 MEB (1998) *Milli Güvenlik Bilgisi* [National Security Studies], İstanbul: Milli Eğitim Basımevi, p. 20 (emphasis added).

9 Translator's note: 'Çürük' literally means 'rotten'.

10 C. Sıtkı (1933) 'Askerlikten Dönüş' [The return from military service], *Ülkü* [Ideal], 1(3): 250–51.

11 For a more detailed analysis of the 'new family' of the republic and the role of women in this family, see N. Sirman (2002) 'Kadınların Milliyeti' [Nation of women], in Bora, *Milliyetçilik*, pp. 226–44.

12 M. Ahıska (2006) 'Kayıp Annelerinin Şiddete Tanıklığı' [The testimony on violence of the mothers of the missing], *Amargi*, 2: 21.

13 Y. Arat (1997) 'The project of modernity and women in Turkey', in S. Bozdoğan and R. Kasaba (eds), *Rethinking Modernity and National Identity in Turkey*, Seattle: University of Washington Press, pp. 98–9.

14 H. Kıvanç (1998) *Bulutlarla Yarışan Kadın: Halit Kıvanç Sabiha Gökçen'le Söyleşiyor* [She Raced with the Clouds: Halit Kıvanç Interviews Sabiha Gökçen], trans. Fred Stark, İstanbul: Yapı Kredi Yayınları, p. 81.

15 S. Gökçen (1996) *Atatürk'le Bir Ömür* [A Life with Atatürk], ed. Oktay Verel, 2nd edn, İstanbul: Altın Kitaplar, p. 228.

16 N. Yuval-Davis (1997) *Gender and Nation*, London: Sage Publications.

17 Gökçen, *Atatürk'le Bir Ömür*, p. 229.

18 For a more detailed analysis of Sabiha Gökçen, see Altınay, *The Myth of the Military-Nation*.

19 [www.sgairport.com/havaalani/tr/start.asp](http://www.sgairport.com/havaalani/tr/start.asp), accessed 15 May 2007.

20 Gökçen, *Atatürk'le Bir Ömür*, p. 109.

21 *Ibid.*, p. 118.

22 *Ibid.*, p. 117.

23 *Ibid.*, p. 117.

24 Regarding women's desexualization in public life and politics, see A. Kadioğlu (1998) 'Cinselliğin İnkarı: Büyük Toplumsal Projelerin Nesnesi Olarak Türk Kadınları' [The denial of sexuality: Turkish women as objects of grand social projects], in A. B. Hacımirzaoğlu (ed.), *75 Yılda Kadınlar ve Erkekler* [Women and Men in 75 Years], İstanbul: Tarih Vakfı Yayınları, pp. 89–100.

25 In official historiography, the Dersim military operation which won Sabiha Gökçen her title is an event that is almost entirely wiped out of history. Even mentioning the name 'Dersim' is considered risky. It is significant that Sabiha Gökçen uses not the newer name Tunceli but Dersim in her memoir. This narrative, however, does not contain any bombs any people who died, were wounded or forced to emigrate, or any infor-

mation whatsoever regarding the implications of the Dersim Operation. Indeed, Gökçen specifically refrains from taking up this subject by saying, 'I am not about to go into the causes and consequences of the Dersim Operation.' The silence about Dersim in a sense continues in Gökçen's narrative (see Altınay, *The Myth of the Military-Nation*).

26 Gökçen, *Atatürk'le Bir Ömür*, pp. 125–6 (author's emphasis).

27 'Turkish paradox', *New York Times*, 20 June 1937.

28 Editors' note: There has been a conflict between the Turkish state and Kurdish guerrillas of the PKK (Kurdistan Workers' Party) since 1984.

29 See N. Mater (2005) *Voices from the Front: Turkish Soldiers on the War with the Kurdish Guerrillas*, trans. A. Altınay, New York: Palgrave Macmillan.

30 The campaign that characterized the 1990s, the campaign organized for Osman Murat Ülke, who spent 701 days in prison and whose case was later sent to the European Court of Human Rights, has also obliged Turkey to make legal adjustments for conscientious objection.

31 Thanks to the feminist movement many laws have been changed since the 1990s. Among many (albeit inadequate) changes in civil law and the Turkish Penal Code are the following: the amendment of the law that dictated that women could not work without the permission of their husbands, the suppression of the definition of men as the 'head of the household', passage of Law no. 4320 that requires the violent spouse to be suspended from the house, the law amendment regarding the equal distribution between spouses of all property and savings acquired

during the course of the marriage, the definition of rape as a crime against women rather than against 'society', making more difficult the administration of virginity tests, and the recognition of marital rape. The status of women within the family was rearranged and most of the regulations that imprisoned them in a 'secondary' position have been made obsolete.

32 See E. Gedik (2006) 'Kadınlık ve Vicdani Red Üzerine Notlar' [Notes on femininity and conscientious objection], *Amargi*, 2: 38–41; N. Yurdalan (2006) 'Söyleşi: Ferda Ülker' [Interview: Ferda Ülker], *Amargi*, 2: 36–7.

33 F. Ülker (2006) 'Yine Kadınlık, Yine Vicdani Red' [Again women, again conscientious objection], *Amargi*, 3: 36.

34 Translator's note: in the Turkish version Ferda is making a pun on this word. 'Mevcut' means being present (and one would also respond to a roll-call with this word). 'Mevcut(lu)', which she uses in her declaration, however, also references a military term that means 'under custody in the accompaniment of soldiers'.

35 For the conscientious objection statements of Ferda Ülker and other objectors, see [www.savaskarsitlari.org](http://www.savaskarsitlari.org), accessed 15 May 2007. As I was unable to obtain the statements of Hürriyet Şener and Yöntem Yurtsever from this site or any other source, I could not take them into consideration.

36 Some other issues emphasized in the declarations are: objection to the harm inflicted on nature (Ebru Topal, Nazan Askeran); criticism of capitalism (all declarations); objection to borders and nationalism (İnci Ağlagül, Hilal Demir, Nazan

Askeran, Ayten Demir, Ceylan Özerengin, Eylem Barış, Figen); the role of education in militarization (Hilal Demir, Ayşe Girgin, Ebru Topal); objection to all military coups, especially the military coup of 12 September 1980 (Figen); criticism of heterosexism and the 'unfit' report given to gay men (İnci Ağlagül, Ebru Topal, Nazan Askeran, Eylem Barış).

37 Ibid.

38 Ibid.

39 F. Ülker (2007) 'Türkiye'de Vicdani Ret ve Kadınlar' [Conscientious objection and women in Turkey], unpublished article.

40 See note 36.

41 İ. Ağlagül (4 July 2006) 'Antimilitarist Gözüyle Soğuklar ve Ara Sıcaklar' [Cold and warm appetizers from the perspective of an anti-militarist], [www.savaskarsitlari.org/arsiv.asp?ArsivTipID=1&ArsivAnaID=33756](http://www.savaskarsitlari.org/arsiv.asp?ArsivTipID=1&ArsivAnaID=33756), accessed 15 May 2007.

Editors' note: The reference to taking to the mountains means joining a guerrilla group, in this case the PKK.

42 Altınay, *The Myth of the Military-Nation*, p. 92.

43 'Taşlara Kurşunlarla Karşılık Verildi' [They responded to stones with bullets], *Yeni Özgür Politika* [New Free Politics], 14 April 2006, [www.yeniozgurpolitika.org/?bolum=haber&hid=1573](http://www.yeniozgurpolitika.org/?bolum=haber&hid=1573), accessed 15 May 2007.

44 H. Çağlayan (2007) *Analar, Yoldaşlar, Tanrıçalar: Kürt Hareketinde Kadınlar ve Kadın Kimliğinin Oluşumu* [Mothers, Comrades, Goddesses: The Creation of Women and Female Identity in the Kurdish

Movement], Istanbul: İletişim Yayınları.

45 See 'Zilan'ın Eylemi 10. Yılında' [Tenth Anniversary of Zilan's Action], *Ülkede Özgür Gündem*, 30 June 2006, [www.gundemimiz.com/haber.asp?haberid=14432](http://www.gundemimiz.com/haber.asp?haberid=14432), accessed 15 May 2007.

46 Ülker, 'Türkiye'de Vicdani Ret ve Kadınlar'.

47 In recent years, various journals have published special issues devoted to the discussion of militarism and anti-militarism. See *Birikim*, 207, July 2006; *Amargi*, 2, autumn 2006. The main publications in this field are: T. Parla (1991) *Türkiye'de Siyasal Kültürün Resmî Kaynakları* [Official Sources on Political Culture in Turkey], vol. 2: *Atatürk'ün Söylev ve Demeçleri*, Istanbul: İletişim Yayınları; S. Şen (1996) *Cumhuriyet Kültürünün Oluşum Sürecinde Bir İdeolojik Aygıt Olarak Silahlı Kuvvetler ve Modernizm* [Armed Forces as an Ideological State Apparatus in the Construction of Republican Culture and Modernism], Istanbul: Sarmal Yayınevi; T. Parla (1998) 'Mercantile militarism in Turkey, 1960–1998', *New Perspectives on Turkey*, 19: 29–52; A. İnel and A. Bayramoğlu (eds) (2004) *Bir Zümre, Bir Parti: Türkiye'de Ordu* (A Class, a Party: The Military in Turkey), Istanbul: Birikim Yayınları.

48 For other similar efforts, see A. G. Altınay (2006) 'Militarizm'den Miligösteri'ye Türkiye'de Militarizmin Yeni Yüzleri' [From militarism to miliperformance: new faces of anti-militarism in Turkey], *Birikim*, 207: 56–61.

## 9 | Conscientious objection and masculine violence

SERPİL SANCAR

§ While not a form of action limited exclusively to men who refuse conscription, conscientious objection predominantly pertains to the coercion of men to use violence in performing the social responsibilities expected of them. Men's conscientious objection not only contradicts the political and ideological strategies of the nation-state, which forces them to use violence, but is also an easily overlooked necessity, because it speaks to the 'male violence' in patriarchal realms, such as the family and the market.

It is evident that dominating women and youth in the 'family', disciplining the workers assigned to production in the market, and fighting against the enemies of the nation-state are social roles expected of men, which usually involve the use of violence. The more violence the values associated with 'being a man' carry, the further entwined they tend to be with dominant strategies normalizing that relationship. For this reason, discussions about conscientious objection concern, on the one hand, the values of masculinity that urge men to use violence and, on the other hand, the ways in which men are made to perform the duties of the 'modern citizen' that form the basis of legitimization for these values. Seen from this perspective, discussions about conscientious objection necessarily demonstrate a parallel development with the questioning of 'male culture'. Men who are forced to commit violence are not simply forced to do something they do not want to do; they are at the same time imperatively required to endorse and internalize certain masculine values and behaviours. In this respect, discussions of conscientious objection also open the way for the criticism and transformation of violent male values associated with militarism.

### **Masculinity and violence**

If we are to briefly define what is understood by the term 'male violence', which is employed in discussing the relationship between male values and violence, it is first necessary to note that the term does not amount to a gender-specific – that is, biological/anatomical – phenomenon. 'Male violence' is a form of social and political relationship that

is power focused; structured over age, class, gender and ethnicity-based hierarchies; which adheres to normative principles, such as 'order', 'discipline', 'manners' and 'honour'; and whose most fundamental technique is violence of every kind. Thus 'male violence' refers less to the gender of the person who commits it and more to the behaviour itself; in terms of its consequences, the status, power and advantages it distributes through the power relationships it produces are notable. Most of the time perpetrators of 'male violence' are men and they are designated as the gender that is able to commit violence. But from time to time it is observed that women too commit violence with authority borrowed from men.

Examining this phenomenon in terms of masculine values that naturalize 'male violence', this is a view that argues that men are predisposed to commit violence because of their 'nature' or some kind of genetic 'code'. For this reason, the actions of men who commit violence are tolerated, excused and passed over lightly; this effectively denotes an overt or tacit acceptance of men's dominant and privileged status as inevitable. The view that men are 'by nature' prone to violence and that women, as their opposite, are peaceful is quite obviously a reductionist and essentialist explanation. The practice of violence, as a capacity, is a 'vital reflex' in all living beings. Whereas in men this capacity is provoked, disciplined and articulated into various hegemonic practices, it is repressed, excluded and 'weakened' in women.

Just as one cannot say that every man endorses and experiences the practice of violence, however, one cannot say that every woman lives a completely non-violent life devoid of all violence. Just as there are men who shun violence, who cannot benefit from the positions of privilege or dominance that are derived from the use of violence, there are women who, through the use of violence, share the benefits of power with the dominant. What should not be overlooked here is that institutions such as the state, the market and the family that manage 'male dominance' and organize the distribution among men of the gains derived from 'male violence', along with concepts and practices based on male dominance, such as honour, virginity, marriage, gendered labour distribution, prostitution and military service, generally construct hierarchical inequalities between men and women. In this sense, is not 'gender regime' a regime whereby different masculinities and femininities are hierarchically defined while constructing the dominance of the most powerful and 'masculine' style?

## **Different views on the relationship between masculinity and violence**

The primary field that explores the relationship between masculinity and violence is feminist thought. According to a widely accepted feminist view, the gender regimes of modern patriarchal societies grant men the use of violence as a gender-based privilege. Although not every single man directly and individually uses violence, he benefits from the privileges generated by 'male violence'. These privileges may not be equally distributed among men, who have different experiences of masculinity owing to their differences in nation, class and ethnicity.

Male violence makes possible, however, the wholesale 'subordination' of an entire gender through the suppression, inferiorization and exclusion of and discrimination against women. Each man can take his own piece of the 'patriarchal pie' if he so wishes: virginity, honour, heterosexual marriage, the invisibility of women's domestic labour, prostitution, gendered occupational models in the market that render men's labour more valuable, the basic logic of law that is built around 'middle-class male experiences'. By creating unequal relations between women and men, 'male violence' grants each man – even if he has not directly participated in male violence – a share of the 'patriarchal pie'; albeit in differing degrees, all women are harmed by the privileged areas and hegemonic practices of male superiority produced by this male violence; in one way or another the lives of all classes of women are under threat of being subjected to the dominant masculine values.

There are a couple of points left in the dark by this generally accepted feminist view: is it indeed the case that all men get a profitable share of the 'patriarchal pie' produced by 'male violence'? Are all women excluded from the arena of power created by the use of 'male violence' and in an entirely 'victimized' state of despair? To answer these questions, it is enough to merely gesture at the presence of men who refuse to commit violence and women who, with agency obtained from men, use violence and get a share of the privileges of the dominant. Examples of the former may be men's groups 'opposed to violence against women' and 'conscientious objectors', whereas examples of the latter may be women who use violence for the sake of capital and the mother-in-law who beats her daughter-in-law on behalf of her son.

The approach that tries to define the relationship between masculinity and violence with the characteristics of capitalism takes as its starting point the strategic connection drawn between the strategies of applying the working-class man to production and the male violence in modern industrial conditions of capitalism. According to this view, capitalism

was built upon muscle-powered male labour that produces in factory conditions as an extension of the machines, whereas women's labour is always primarily or secondarily located in the home and directed towards the reproduction of the male worker. In conditions of industrial capitalism the muscle power of the male can be rendered productive only through the provision of 'male violence' as male privilege. The male worker (better understood as usually being lower class, provincial or rural) displays raucous behaviour, fights with his fists, swears, attacks women; this is the 'natural aggression capacity' that must be disciplined. On the other hand, men who manage capital possess non-violent 'sterile' masculine values: gentlemanliness, competitive success, respect towards women, and so on. Men who own capital may use violence only in symbolic or economic forms; or the 'coercive' institutions of the state already do it for them.

In the post-industrial forms of capitalism, however, one encounters another new form of male violence. Because of the conditions of 'flexible production' created by the new global capitalist dynamics, a new lower class (or perhaps it is more accurate to say class outcast) of men who lack even the 'privilege' of becoming a factory worker by virtue of their muscle power demonstrate a new kind of 'vandalism'. Football hooliganism, street gangsterism, mafia-type activities, rising machismo, racism and xenophobia are some of the examples of this new 'male violence', and they are in fact forerunners of lower-class reactions to the newly emerging post-industrial capitalism.

The coupling of a form of capitalist analysis with feminist analyses in studying 'male violence' may indeed prove fruitful. Such generally 'non-gendered' analyses tend to be 'gender blind', however, and they are inadequate for understanding the gendered mechanism of violence-power dynamics. In order to understand the interrelatedness of dominant masculine values and violence, we need deeper analyses that can perceive how capitalism and the gender regime work together.

### **Different masculinities and different forms of violence in Turkey**

Here I would like to briefly outline the findings that pertain to the relationships between different types of masculinity and different forms of male violence, from a study I am currently conducting for the purpose of understanding how masculine values are changing in Turkey. It is possible to better understand the violence-power relationship by showing how different forms of 'male violence' are intertwined with different positions of masculinity. Additionally, while looking at the intensification points of violence-power relationships, it is at the

same time possible to see some male experiences that ‘short-circuit’ these relationships.

Looking at four different masculine positions in their interaction with ‘male violence’, we first encounter a masculinity that is characterized as the ‘head’ of the ‘peripheral underclass’ family shaped throughout the process of migration from the countryside to the city; forced to accept any type of working condition for the sake of ‘making ends meet’. When and if this man manages to feed his family, in return he is allowed to lead and dominate the women, children and youth in the family; to this end, as the ‘head of the household’, he graduates into committing violence under such pretexts as ‘discipline’, ‘honour’ and ‘good manners’. This type of masculinity may possess certain privileges that are indicative of the power that is the benefit, the patriarchal share, of male values that depend on what we could call the patriarchal duty of protection. He possesses a masculine power earned by dominating women, youth and children.

Second, we encounter ‘businessman’-type males who govern the management of capital; they derive their power not from the women and children they subordinate – the family – but from the ‘hegemonic’ status they forge with the money they earn. ‘Men of capital’ do not openly demonstrate a tendency towards or approval of direct physical violence. On the other hand, in the lives of ‘men of capital’ one frequently encounters symbolic violence and, more importantly, the most refined forms of economic violence. Strategies such as keeping others dependent and needy, effecting obedience through the threat of poverty and economic insecurity, constitute some of the ‘sterile’ forms of male violence used by men of capital.

Another group of men in Turkey who try to avoid participating in the forms of ‘male violence’ employed by the state, the family and capital alike, and who generally define themselves as ‘egalitarian and democratic’, defend and embrace the values of what one can call ‘civilian masculinity’. Considering themselves to be equal with women, and friends with their children, these men, who defend the democratic state, egalitarian society and the values of free individualism, argue that they easily exclude ‘male violence’ from their lives or define it as a ‘primitiveness’ that they themselves supposedly never experience. Such non-violent ‘sterile’ life narratives seem to be common in the discourse of these men. These ‘civilian males’, who only speak a language that is sensitive to state violence against citizens, prefer to ignore the relationship between masculinity and violence instead of questioning it; there are no signs that these ‘liberated men’ have the critical language or the political experience that could ‘short-circuit’ male violence.

The most striking type of masculinity encountered in the study is the new, overt and startling ‘male violence’ found in the narratives of young men whom we can call ‘ghetto youth’. In every daily practice of these young men who recently moved to the city, with little education, unemployed, single and residing in families/neighbourhoods in the peripheral social circles of the city – the father–son relationship, love rituals, entertainment among male friends, social competition – one encounters widespread, frequent and naturalized forms of ‘male violence’. Furthermore, they believe that it is normal to be under the tutelage of a ‘strong’ big brother whom they obey and that it is normal that ‘the strong’ win. This ‘new vandalism’, which argues it is impossible to survive without being ‘strong’, that one should use violence against everyone if necessary, that one should kill when defence of Turkishness, Islam or the country is at stake, is also at best indifferent to all types of male violence towards women or directly defends and practises it.

### **Anti-violent men and conscientious objection**

Looking more closely at the study findings on the experiences of masculinity that try to ‘question male violence’, we encounter some more pronounced contours with regard to the strategies of resistance against ‘male violence’ and the route of transformation associated with the relationship between masculinity and violence. It is possible to talk about the ‘silent’ presence of these types of men who try to exclude ‘male violence’ from their lives and try to create non-violent masculine values. These are men who have faced various forms of ‘male violence’ themselves: dissidents who were tortured by the state, Kurdish men who have been humiliated because of their ethnic identity, homosexuals who have a problematic relationship with their biological masculinity, war resisters, pacifists, conscientious objectors, men who were ‘educated’ while living with feminist women. These are men who try to confront ‘male violence’ by acknowledging it in their own lives and questioning their own male values. Another important factor we must add to this list is the experiences of men who grew up fatherless or outside intra-family masculine power relationships and managed to carve out their own paths.

It is not an exaggeration to say that such male experiences that are distanced from ‘male violence’ and which sometimes manage to be critical of it are not visible in any social, political or cultural context. The ‘male language’ that criticizes ‘male violence’ is still silent; it cannot find a space to represent itself properly. I would like to state, however, that this language has the potential to find channels in which to express itself in the near future.

In conclusion, it is important persistently to emphasize the fact that different experiences of masculinity situated at different places throughout power relationships produced within the context of male violence do not have a homogenous, non-conflicting or one-dimensional relationship with 'male power' at any point.

*Translated by Balam Nedim Kenter*

## 10 | Rotten report' and reconstructing hegemonic masculinity in Turkey<sup>2</sup>

ALP BİRİCİK

§ In Turkey, one of the 'stages' of 'becoming a man' and thus proving one's masculinity is to complete one's military service.<sup>3</sup> This primarily requires that the male candidate is mentally and physically healthy. Before conscription, all candidates undergo simple tests such as having their pulse taken and their height and weight measured while naked. If the candidate declares that he is homosexual, however, and claims that he is not fit for military service, a verbal statement is not deemed adequate, and the candidate must provide evidence of the extent of this 'disease' in his life.<sup>4</sup> Thus, in terms of selection during the conscription stage and choosing those that comply with the relevant health regulations, physicians at military medical institutions and hospital committees composed of physicians (who make the final decision in doubtful cases) are primary mechanisms of power.

In my view the article 'Army makes interesting decision' ('Askeriyeden ilginç karar'), which appeared on 9 May 2006 in the *Milliyet* (Independent) newspaper, is important as regards understanding how military medicine perceives homosexuality and masculinity. According to the above article, when one homosexual man, 'A.A.', received his call-up papers he applied to his conscription office, stating that he did not want to do his military service as he was homosexual. He was sent to the Air Force Hospital in Etimesgut, Ankara. Although he submitted the requested medical evidence (pictures taken during sexual intercourse and a rectal examination carried out at the surgery unit of the hospital), he was found to be 'not effeminate enough' and was declared to be fit for military service. A.A. appealed to the Military High Administrative Court, where the verdict was quashed on the grounds that 'suspicions about his being homosexual in the army would cause unavoidable problems'. Following the court decision, Cemil Çiçek, spokesman for the government and minister of justice, announced that within the context of the harmonization of Turkish legislation with that of the European Union, civilians would no longer be tried by military courts and that the relevant laws would be amended.<sup>5</sup>

I believe that this news story, and the methods of proving masculinity and homosexuality, as well as the decision-makers and the practices

discussed in the story, are good examples that may serve as a starting point for discussing how military medical institutions in Turkey are being used as a tool of the powerful and thus how hegemonic masculinity<sup>6</sup> is being reproduced through military medicine.

### **'Medical examination methods' employed to issue rotten reports and some real-life examples<sup>7</sup>**

The observation methods, documents and evaluation methods employed by modern Turkish military medicine can be briefly summarized as follows: photographs taken during sexual intercourse 'proving' that the applicant is passive (applicant's face must be visible); rectal examination to determine whether the applicant has engaged in anal sex as well as to determine the elasticity of the anal tonus;<sup>8</sup> possibly repeated interviews, which may be attended by more than one doctor and take between one minute and one hour; and personality tests such as the Rorschach Inkblot Test and the Minnesota Multiple Personality Inventory (MMPI). If, despite all these examinations, the doctor or the committee of doctors cannot reach a decision regarding the applicant's psychosexual condition, he may be kept for one to three weeks under surveillance at the psychiatry clinics of military hospitals (also known as 'pink wards'), in most cases isolated from other patients. In some cases these examinations and procedures may be repeated annually for three years under the presumption of the possible 'recovery' of the applicant.<sup>9</sup>

A patriarchal bargain<sup>10</sup> is taking place at military hospitals, and individuals have devised certain strategies in order to obtain a report and deal with these 'medical methods' reminiscent of the early nineteenth century. In my view, within the context of a rotten report (certificate of disability), these strategies offer some insights into the dynamics of power relations that are regulated by a gender-related heterosexual matrix.<sup>11</sup>

The patriarchal bargain changes shape depending on how the applicant plays his strategically chosen gender role (masculine/feminine) during the preparation of the report, and to what extent he manages to fit himself into the homosexual caricature in the doctors' minds.

For instance, Ali, one of the interviewees, says that he wore more 'flamboyant' clothes than usual in his daily life, acted in a more feminine way and agreed to provide the required intercourse pictures and undergo rectal examination. Although he managed to 'document' his homosexuality in one month, the report declared him 'disabled' as a 'transsexual', despite the fact that he had not undergone any sex-change operation. By appearing feminine in this patriarchal bargaining process, he proved that

he lacked masculinity and that he was unfit for military service. He was therefore exempted from military service. Ahmet, on the other hand, regarded submitting photographs and undergoing rectal examination as inhuman practices, and he therefore attended the interviews 'as he was'. He failed to obtain a favourable report because he refused to appear effeminate to the interviewing doctors. At the end of the bargaining, the doctors concluded that Ahmet could do his military service because he looked masculine, and he was conscripted as a result.

The bargaining that takes place and the strategy that is adopted have a direct bearing on the outcome of the report. The diagnoses of the doctors vary from year to year, depending on the language used and the gender performance displayed during the interviews. For instance, Bedri, who behaved quite irritably to defend himself against the doctors and avoid being intimidated, was diagnosed with anxiety disorder in the first year. This was despite the fact that he had provided pictures and undergone a rectal examination and psychological tests. He was then diagnosed with 'extreme homosexuality' the following year, after being kept in hospital for ten days. In this sense, those who obtain a 'rotten report' of their own free will do so through involvement in a patriarchal bargain. In other words, they choose to become 'othered' within the system.

After the report has been obtained, various forms of punishment and exclusion mechanisms, especially in the family and business circles, contribute to sustaining the process of disabling individuals. Nuri, one of the interviewees, stated that, although it had been almost ten years since he obtained his report, he was still employed on a contract basis by the government agency where he worked. He stated that he could not become a 'permanent employee' because of the 'rotten report', although he had enough work experience.<sup>12</sup>

Another interviewee, Cenk, explained that his family bought a home and a car for his brother after he completed his military service and helped him to set up a business. Whereas Cenk was unable to get any help while setting up his business because he had not completed his military service, on account of the fact that his family rejected him when they learned that he had received the report. Three of the interviewees said that 'they did not tell anyone about their report because they feared the negative attitude of their families and close acquaintances'. Nevertheless, they also said that 'before obtaining a report, they had to think carefully regarding the consequences, and that they had to consult friends who had obtained reports earlier, and that these friends had both supported them psychologically and accompanied them during their hospital visits'.

When I asked the interviewees why they wanted to get a rotten report and why they did not benefit from the fee-based reduced military service or become conscientious objectors, they responded that reduced military service was expensive, and more importantly that although reduced military service would be shorter, they would not be able to adjust to 'military discipline' and defend themselves 'amongst all those men'.

As regards the issue of conscientious objection, Kemal, who obtained his report at the beginning of the 1990s, said that conscientious objection was not even mentioned at that time in Turkey, and that even if he had heard about it he would not have risked the exclusion and social sanctions that he had heard would follow. Responding to the question 'What would you choose if you had the chance to be conscripted for social service instead of armed military service?' only two interviewees stated that they would willingly prefer social service, seeing this as a 'voluntary service for the country'. All other interviewees, regardless of the terms and conditions, stated that they did not want to serve any militarist structure. Apart from these responses, another important reason that should be mentioned is that these people did not want to disrupt their newly emerging business careers, particularly in the most productive years of their lives.

## **Conclusion**

In my view discussing the function of military hospitals, which perpetuates the hegemonic masculinity that is praised by power through separating the rotten from the fit in the 'rotten report process', by feminist/anti-militarist/LGBT (lesbian, gay, bisexual, and transgender/transsexual) groups has a vital role in the struggle that aims to change present sexual and body politics, and therefore change the patriarchal structure in Turkey.

In this context, I believe that gathering testimony regarding this issue and discussing how official power relations and tools of the system in Turkey are organized around the rotten report system are important means to understand the impact of new legislation that would prevent the socio-economic exclusion of rotten report holders. Turkey is a country that is being changed by European Union (EU) harmonization packages. One must not disregard the fact, however, that, in particular, the new legislation to be enacted for EU harmonization will introduce a new form of power and thus will establish a new gender matrix as well as new tools of power.

*Translated by Orhan Bilgin*

## Notes

1 Editors' note: 'Rotten report' is the name of a health report that certifies bodily and mental disorders of a person in military service, issued by military doctors in the military system in Turkey.

2 This chapter is based on the master's thesis I submitted in 2006 to the Department of Gender Studies of the Central European University in Budapest, entitled 'Diagnosis ... extremely homosexual: (re) constructing hegemonic masculinity through militarized medical discourse in Turkey'. The underlying testimony has been summarized from the notes of the one-on-one interviews held in April 2006 in Istanbul with eleven individuals who were issued with, denied or forced to obtain certificates of disability ('rotten reports') between 1991 and 2006, and who define themselves as 'homosexual', 'gay' or 'queer'.

3 For detailed information on the stages of becoming a man and militarism in Turkey, see E. S. Webb (2000) 'Our Bülent is a commando: military service and manhood in Turkey', in M. Ghousoub and E. S. Webb (eds), *Imagined Masculinities: Male Identity and Culture in the Modern Middle East*, London: Saqi, pp. 74–8.

4 Although not explicitly banned in the Turkish armed forces, homosexuality is subject to interpretation in accordance with Article 17/4 of the section entitled 'Psychosexual Diseases' of the Turkish armed forces' Health Eligibility Regulations. According to this provision 'the psychosexual and sexual behavioral disorder must be clearly visible in all aspects of the individual's life, and it must be established, through observation or documents, that this has or

would create problems in a military environment'. For details of these regulations, see [www.mevzuat.adalet.gov.tr/html/20176.html](http://www.mevzuat.adalet.gov.tr/html/20176.html), accessed April 2007. Apart from this provision, Article 153 of Military Law no. 1632 defines homosexuality as 'unnatural behaviour'. For detailed information, see [www.hasansen.av.tr/idealhukuk/kanun\\_detay.asp?id=1004&ch=a](http://www.hasansen.av.tr/idealhukuk/kanun_detay.asp?id=1004&ch=a), accessed April 2007. One of the main reasons for classifying homosexuality as a disease is that the Turkish armed forces are still using the American Psychiatry Society's DSM II guide on mental diseases. For detailed information, see Amnesty International, [web.amnesty.org/library/index/ENGEUR440362005](http://web.amnesty.org/library/index/ENGEUR440362005), accessed April 2007.

5 For the full text see [www.milliyet.com.tr/2006/05/09/guncel/gun01.html](http://www.milliyet.com.tr/2006/05/09/guncel/gun01.html), accessed 1 May 2007.

6 In her concept of 'hegemonic masculinity', which she started to discuss in the early 1980s and developed on the basis of feminist theory, R. W. Connell highlights the fact that the hegemony and objectification efforts of men over women and other men (homosexuals, members of other ethnic groups, and so on) in patriarchal systems vary by time and cultures and that different gender roles in the gender system must be discussed through relationality. For detailed information, see R. W. Connell (1998) *Toplumsal Cinsiyet ve İktidar* [Gender and Power], trans. Cem Soydemir, Istanbul: Ayrıntı Yayınları.

7 Pseudonyms are used.

8 Although these two practices have now been ended by military hospitals in Istanbul we have been informed by interviewees that still photographs and rectal examination continue at hospitals in Anatolia.

9 I think that the results of the 2005 study of Lambda Istanbul, which covers 399 homosexual and bisexual individuals, offer an accurate overview of the current situation. According to the study, people who agreed to talk about the report state that out of the twenty-seven homosexual/bisexual males, six were rejected after their first interview at the conscription centre, and were not sent to a military hospital, while the remaining twenty-one faced inhuman and illegal treatment at the hospitals to which they were sent. Out of these twenty-one individuals, six stated that they had submitted pictures taken during sexual intercourse, and thirteen stated that they had undergone rectal examination. In addition, seven individuals were denied a report for ‘not being effeminate enough’. Lambda–Istanbul (2006) *Ne Yanlışız Ne de Yalmız: Bir Alan Çalışması, Eşcinsel ve Biseksüellerin Sorunları* [Neither Wrong Nor Alone: A Fieldwork, the Problems of Homosexuals and Bisexuals], Istanbul: Berdan Matbaacılık.

10 As used in this context, ‘patriarchal bargain’ refers to strategies and bargaining methods developed by women and men, who are considered as others, in order to protect their individuality in a patriarchal order and vis-à-vis power. For detailed

information, see D. Kandiyoti (1991) ‘Islam and patriarchy: a comparative perspective’, in N. R. Keddie and B. Baron (eds), *Women in Middle Eastern History: Shifting Boundaries in Sex and Gender*, New Haven, CT, and London: Yale University Press.

11 In her symmetrically organized gender system analysis, which she defines as the ‘heterosexual matrix’, Judith Butler states that men are conceptualized in a masculine/man-like and women in a feminine/woman-like manner, and heterosexually. According to Butler, any subject that displays a gender and sexual *performance* that does not comply with this system is objectified by the heterosexual power, expelled from the system in order to ensure its continuation; its otherness is punished and when necessary destroyed. J. Butler (1990) *Gender Trouble: Feminism and the Subversion of Identity*, New York: Routledge.

12 Specifically, Article 48 of the Law on Civil Servants (no. 657), which governs the employment of individuals at government agencies, requires civil servants to have completed their military service. For detailed information see the Law on Civil Servants at [www.gap.gov.tr/Turkish/Ikaynak/Kanun/657.doc](http://www.gap.gov.tr/Turkish/Ikaynak/Kanun/657.doc), accessed 1 May 2007.



## **THREE | Conscientious objection in the world: experiences and problems**



# II | Experiences of conscientious objection movements: South Africa, Greece and Paraguay

ANDREAS SPECK AND RUDI FRIEDRICH

I think that we can get further by saying the truth:

... That no one can be forced to follow a call-up order – that therefore we firstly have to eradicate the psychic obsession which makes one believe that one has to, has to, has to march, when they blow the horn.

You do not have to.

Because this is a simple, a primitive, a simply great truth:

One can also stay at home.

*Kurt Tucholsky, 1927<sup>1</sup>*

Refusal to take part in war is probably as old as war itself. Conscientious objection (CO) as a political and philosophical concept, however, became more important with the introduction of conscription as a more 'effective' means of recruiting (firstly in France on 5 September 1798) to meet the demands of modern warfare.

As a response, organized conscientious objection developed, especially after the First World War. War Resisters' International as the international organization for conscientious objectors was founded in 1921. At that time only two countries (Denmark and Sweden) provided any legal recognition of the right to conscientious objection. This number grew significantly, especially after the Second World War, owing to emerging movements for the right to conscientious objection, at that time mostly in western Europe and North America.

## **What is conscientious objection?**

But before we go on we want to spend some time on the term 'conscientious objection': what does it mean? What is conscientious objection?

There are probably as many definitions of conscientious objection as there are conscientious objectors. In 1983 the first report on conscientious objection to the United Nations offered the following definition:

By conscience is meant genuine ethical convictions, which may be of

religious or humanist inspiration ... Two major categories of convictions stand out, one that it is wrong under all circumstances – to kill (the pacifist objection), and the other that the use of force is justified in some circumstances but not in others, and that therefore it is necessary to object in those other cases (partial objection to military service).<sup>2</sup>

A similar definition is the basis of many CO laws. Within the international movement of conscientious objectors, however, partly organized within War Resisters' International, the debate is quite different. It does not focus on the question of conscience. The objection or refusal is the focus of the debate, and the German term '*Kriegsdienstverweigerung*' (war service refusal), or the term '*insumisión*' (disobedience), chosen by the Spanish CO movement, better reflect the approach of conscientious objectors.<sup>3</sup>

In 1973, the Italian conscientious objector Pietro Pinna defined conscientious objection in this way:

CO is a focal point of antimilitarist action. By its witness of living adherence to the idea, it operates as a major focus of debate and mobilization. In the wider revolutionary strategy, CO offers a fundamental indication, i.e. the assumption of responsibility, of autonomy and personal initiative; it serves as point of reference, as paradigm, for the extension of the concept of 'conscientious objection' in any other sectors of social life.<sup>4</sup>

This definition is important, because it points from individual to collective, anti-militarist action. In a report of a discussion on 'conscription and strategies around conscientious objection' at the War Resisters' International Triennial Conference in Brazil in December 1994, the discussion is summarized as follows:

In recent years the debate by the 'CO movements'<sup>5</sup> has led us to believe that what we as objectors are basically striving for is the demilitarization of society, while the state, on the other hand, wants to maintain or promote militarization. We have to evolve strategies which prevent the CO movement remaining static on this vertical axis [see Figure 11.1], planning to approach what would be a diagonal trajectory, which would be the ideal – that is, progress towards a demilitarized society which would be accompanied by an increase in individual liberty.<sup>6</sup>

### **Challenging hegemonic masculinity**

Perceptions of one's own masculinity play an important role in producing 'willingness to serve' in the military. The fear of losing

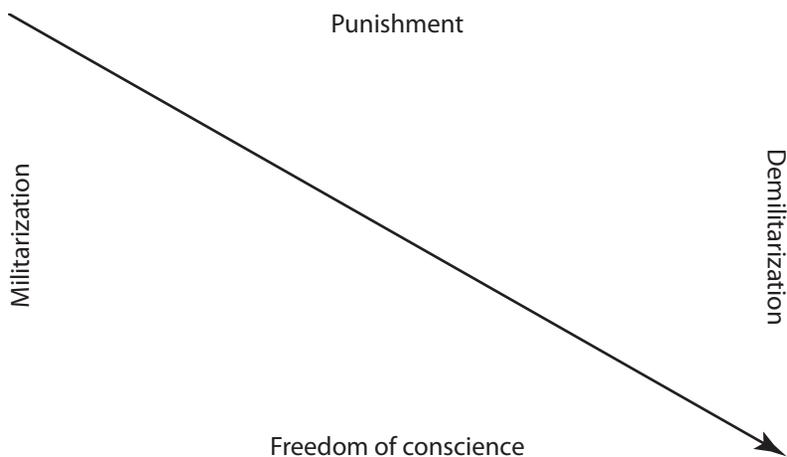


FIGURE 11.1 Relationship between demilitarization and freedom of conscience<sup>7</sup>

one's 'masculinity' can produce such willingness to serve in spite of opposition to the military and military solutions. This is especially true for working-class notions of masculinity, which emphasize physical strength, and can easily be exploited by the military. As German researcher Hanne-Margret Birckenbach puts it: '[u]nder the disguise of "no to killing – yes to killing for the purpose of defence" conscientious objectors and those willing to perform military service do not only fight about military violence, but also – without knowing – about ideals of masculinity'.<sup>8</sup>

While it might be easy for refusal movements to reject the notion of the 'man as warrior', it is much more difficult to embrace the issue of gender (and sexuality, for that matter) fully, but more importantly. Cynthia Enloe writes:

As we have accumulated more and more evidence from more and more societies, we have become increasingly confident in this assertion that to omit gender from any explanation of how militarization occurs is not only to risk a flawed political analysis; it is to risk, too, a perpetually unsuccessful campaign to roll back that militarization.<sup>9</sup>

As long as we as anti-militarists continue to reproduce the gender stereotype of the 'strong and powerful man' in our non-violent actions and in the image of total resisters who are 'strong enough' to face prison, our efforts will be doomed. It will be crucial for the refusal movement (and the non-violent movement in general) to develop forms

of non-violent action that address all forms of violence – direct physical violence, structural violence and cultural violence. If we fail to do so, then we are doomed to engage in a ‘perpetually unsuccessful campaign to roll back that militarization’.<sup>10</sup>

### Case studies

With three different case studies, we want to raise some important issues and challenges for CO movements around the world.

**South Africa** Until 1994 the system of apartheid existed in South Africa. White people held the power and prevented all coloured people from participating in society. Organizations with a majority of black people, such as the African National Congress (ANC), struggled against this system. In order to maintain the power of white people the military and the government created obligatory military service for white men. Such was the situation in 1983, when a campaign was started by white and coloured people who wanted to work against the apartheid system. The campaign was called the End Conscription Campaign (ECC), a name that speaks for itself.

Conscription was the main basis for maintaining the system of apartheid. Only white men were obliged to undertake military service, although coloured people also joined the army on a voluntary basis. In the middle of the 1980s, the South African Defence Force had about 900,000 soldiers. Through the system of conscription the regime also tried to commit white people to the system.

Therefore the founding of a group of white people to fight against this main basis of the apartheid system was a very important step. It challenged the mainstream and demonstrated solidarity with the struggle of coloured people. It also brought to the attention of the nation the fact that every individual could struggle against the system.

The South African government reacted by introducing a law on conscientious objection. This law had a very repressive character. Civilian service was one and a half times longer than military service, a total of six years. It was mostly Jehovah’s Witnesses who made applications on this basis. This law, however, was not seen as an alternative. In the following years some of the conscientious objectors who refused to serve, such as Charles Bester and David Bruce, were sentenced to the maximum penalty of six years. A lot of conscripts left South Africa.

Some years after the foundation of ECC, in 1987, the first twenty-three conscientious objectors went public. They declared their conscientious objection as a part of a struggle against the militarized system

and the system of apartheid. They did not make an official application for the status of conscientious objector.

In 1988 143 objections went on public record, and the following year about one thousand. The ECC started to open a register to give this struggle more publicity. At the same time, the ECC demanded a better law. The organization asked for a civil service with the same duration as the military service, which would provide opportunities to work in alternative projects. Within the organization itself, however, this position was controversial and was considered to be contradictory to the name of ECC. The ECC also started to inform conscripts about the possibility of evading military service. A leaflet was produced with information about exemptions, the struggle against the call-up, leaving the country, not informing the authorities about one's new address and so on. At least the facts decided the main thrust of the struggle. By the beginning of the 1990s more and more people were evading military service. The government did not consider it possible to prosecute all of them. Evading the draft was much better than conscientious objection as the latter resulted in a long civil service period. Most men did just that, a figure rising to 70 per cent. The arrested objectors were released.

In August 1993 the defence ministry stopped the call-ups. This was the end of the conscription system in South Africa. The ECC stopped its work after reaching its goal. It was a success as regards one aspect of militarization, but it did not stop the militarization of the country in itself. Today South Africa has the biggest army in Africa and there is no right of conscientious objection. South Africa exports weapons and is sending troops to different parts of Africa. Despite this, the achievements of the ECC are impressive. Some important points to add:

- Although the activists had different opinions about how to go about mounting their battle against conscription, it was possible to work towards one goal: to fight against conscription as one part of the apartheid system.
- The ECC considered organizations of conscripts in exile in Great Britain, Germany and the Netherlands, as well as conscripts and reservists who evaded military service, as playing an important role in the struggle, although they did not take a stand in public. The ECC said this was a vote with their feet.
- The ECC went out to publicize the situation in South Africa and their struggle to the whole world. They organized tours in Germany, but they also went to other countries.
- The struggle for conscientious objectors was seen as an important issue for the ruling minority in South Africa.

- The ECC received a lot of international support from South African refugees in Great Britain, from War Resisters' International (WRI), and from some others. For instance, David Bruce, who was in prison for about four years, alone received 24,000 postcards.

**Greece** The first publicly known case in Greece was that of the conscientious objector Michalis Maragakis, in December 1986. He was arrested some months later and sentenced to four years' imprisonment. On appeal the sentence was reduced to twenty-six months. Shortly after, Thanasis Makris was sentenced to eighteen months.

In both cases a big international campaign was launched, demanding the recognition of conscientious objection and the release of the objectors. Hundreds of protest letters were sent to the Greek president. At the same time the Greek Solidarity Committee organized events and demonstrations and supported about twenty additional conscientious objectors. Owing to international support conscientious objectors did not have to face harsh prosecution after the cases of Michalis Maragakis and Thanasis Makris. Arrest warrants forced them to live underground, however – as is currently the case in Turkey. From 1990 to 1997 only three Greek objectors were arrested. Most of them received a suspended sentence of one year's imprisonment.

During that same period a lot of conscripts went abroad, for instance to Germany. Since they had the right to stay in Germany as citizens of the European Union they were able to evade military service. About three to four thousand a year used another method: they declared themselves to be mentally deranged and were exempted from military service.

Around the same time, the Greek group demanded the introduction of a law recognizing conscientious objection, including the proposal for an alternative civil service. A group of total resisters worked separately, but did not receive much attention. The Greek government had promised the introduction of a law since 1988. A law was introduced in 1997, which was very restricted, and the duration of civil service was eighteen months longer than military service. The law also excluded soldiers and reservists from having the right to declare their conscientious objection.

Since then some conscientious objectors have been sentenced to between six and twenty-four months in prison. Lazaros Petromelidis was prosecuted in 1992 and is refusing to serve thirty months of civil service instead of four months of military service. Once more these objectors were called up only to be prosecuted again. EBCO (European Bureau for Conscientious Objection), Amnesty International and War

Resisters' International declared in May 2005 that Greece was breaking the European consensus. Nothing has changed, however.

The question is: why was it not possible to gain better results in Greece? We have to understand:

- the fact that the group of conscientious objectors did not succeed in questioning the very important role of the military in Greek society;
- that it was not possible to include the whole resistance in one common strategy: draft evaders, total resisters and conscientious objectors acted independently;
- the fact that a law should include solutions for conscripts as well as for soldiers and reservists – and for people who were conscientious objectors in the past (without amnesty) – was overlooked.

**Paraguay** Paraguay introduced the right to conscientious objection with the new constitution of 1992, after the end of the Stroessner dictatorship in 1989. According to Article 37 of the constitution, 'The right to conscientious objection for ethical or religious reasons is hereby recognized for those cases in which this Constitution and the law permit it.' Paragraph 5 of Article 129 states: 'Those who declare conscientious objection will provide services to benefit the civilian population, in aid centres designated by law and operated under civilian jurisdiction. The law implementing the right to conscientious objection will be neither punitive nor impose burdens heavier than those imposed by military service.'<sup>11</sup>

It is important to note that the constitution does not refer to any procedure for the recognition of conscientious objectors, and this is generally interpreted as meaning that there is no basis for any examination of a claim of conscientious objection. A law on conscientious objection has, however, never been implemented. In practice this means that in Paraguay the right to CO is recognized, without any investigation of a CO claim, and without any substitute service.

In August 1994 the third public declaration of conscientious objectors took place in the offices of the human rights commission of the parliament, and led to the establishment of a simple procedure for the recognition of conscientious objectors: a conscientious objector declares his/her objection in front of the commission, and will then be provided with a conscientious objector ID card by this commission. This ID card has the same status as a military ID; this means it protects from recruitment and ensures the conscientious objector can present an ID whenever the law requires a military ID.

As we mentioned above, however, no law regarding the actual

implementation of conscientious objection and substitute service exists so far in Paraguay. In 2003, attempts to pass a law on conscientious objection were finally shelved.

On the other hand, there is a strong conscientious objection and anti-militarist movement, because since the beginning of the conscientious objection movement in 1993, numbers have risen dramatically: from five in 1993 to 12,000 in 1999 and 2000, and 41,000 in 2001, when there were attempts to restrict the right to conscientious objection. Today, there are roughly 8,000 conscientious objectors annually, 5,500 serving in the military, and 45,000 evading military service.<sup>12</sup>

One of the CO organizations, Movimiento de Objeción de Conciencia Paraguay (Paraguay Conscientious Objection Movement – MOC-Py), characterizes itself as a ‘political, anti-militarist, and alternative movement’:

- political, because it is aimed at the transformation of society, resisting any form of domination and discrimination;
- anti-militarist, because the movement radically rejects any form of militarism and all military institutions, and works to abolish war;
- alternative, because the movement proposes alternative values.<sup>13</sup>

The movement in Paraguay used certain tactics and strategies, which will be briefly listed here.

- A cornerstone was *massive public and collective declarations* of conscientious objectors. The public and collective aspects are important, as they work against the individualization of conscientious objectors, which is so often inherent in a focus on individual conscience. This included, on 9 April 1999, the first public declaration of women objectors, although women are not conscripted according to Paraguayan law.
- This was accompanied by *information and campaigning* on related issues such as military expenditure.
- *Non-violent direct action* also played a vital role in highlighting the issues in relation to conscientious objection and anti-militarism.

The work of MOC-Py often focused on coalitions, on building what in Spanish is called a ‘*colchón social*’ (social mattress). This means creating a broad network of support from all sectors of society and walks of life – journalists, churches, artists, parliamentarians, judges, members of political parties, NGOs, and so on. Important partners for MOC-Py were the ‘Families of Victims of Military Service’, as well as youth and human rights organizations.

In its struggle MOC-Py always used a variety of strategies, often

simultaneously. These included legal/judicial, social and political strategies. One important feature was the use of divisions within the ruling political party, and between the ruling and the opposition party. The constitutional recognition of the right to conscientious objection, for example, has been achieved in this way.

In spite of the successes of the Paraguayan CO movement, problems remain, especially in rural areas, where, for example, forced recruitment and psychological pressure are evident, with the military going from house to house in order to recruit. And in spite of the number of conscientious objectors, Paraguay has in recent years experienced an increased militarization, especially in the triple-border area and with US troops in the country. In terms of the right to conscientious objection, however, the achievements are impressive, and are largely due to the CO movement. It has to be highlighted that Paraguay is and remains so far the only country in the world where the right to CO is recognized and is not linked to a substitute service. This is largely due to the clear anti-militarist perspective of the Paraguayan CO movement, which never promoted substitute service as an alternative to military service.

## Conclusion

Although the three situations differ greatly, some important aspects can be summarized:

- The need to put the struggle for CO into a broader context: the struggle against apartheid in South Africa, or against militarism in the context of Paraguay.
- The need for a broader strategy that is inclusive, and does not focus only on legislation to support conscientious objection.

Obviously, each country has its own political context. Strategies that worked in one context cannot simply be copied to another context. Lessons can be learned, however, which can be used for the development of appropriate strategies in various countries. The case studies presented here can be used for exactly this purpose – to learn from other successful or less successful CO movements, and adapt the strategies for use in other countries, such as Turkey.

## Notes

1 Originally K. Tucholsky (as Ignaz Wrobel) (11 October 1927) 'Über wirkungsvollen Pazifismus', in *Weltbühne*. Cited in K. Tucholsky (1982) *Unser Militär! Schriften gegen*

*Krieg und Militarismus. Büchergilde Gutenberg*, trans. Andreas Speck, Frankfurt/Olten/Wien, pp. 396–401.

2 Report by Mr Eide and Mr Mubanga-Chipoya (27 June

1983) 'Question of conscientious objection to military service', E/CN.4Sub.2/1983/30, para. 21.

3 Bart Horeman looks at the different translations of the term in the draft European constitution: B. Horeman (26 April 2006) 'Conscientious objection in the EU constitution', unpublished article. These are, however, only the 'legal' or 'official' terms. Conscientious objection movements might adopt other terms, as the Spanish MOC did with the term '*insumisión*'.

4 P. Pinna (1973) 'Functions and policy of WRI', *War Resistance*, 3(1/2).

5 At ICOMs (International Conscientious Objectors' Meetings – the last one took place in 1996 in Chad. AS).

6 R. S. de Rozas and H. Valiente (June 1995) 'Conscription and strategies around conscientious objection', *The Broken Rifle*, 32. See also Report on the XXI Triennial Conference of War Resisters' International, wri-irg.org/pubs/br32-en.htm#Heading6.

7 Ibid.

8 H.-M. Birckenbach (1986) 'Das Ambivalente Verhältnis Zur

Gewalt. Psychosoziale Grundlagen Militärischer Kampfausbildung', *Antimilitarismus Information*, 7.

9 C. Enloe (1988) 'Beyond "Rambo": women and the varieties of militarized masculinity', in E. Isaksson (ed.), *Women and the Military System*, proceedings of a symposium arranged by the International Peace Bureau and Peace Union of Finland, New York/London/Toronto/Sydney/Tokyo.

10 Ibid.

11 English version: [www.oefre.unibe.ch/law/icl/pa00000\\_.html](http://www.oefre.unibe.ch/law/icl/pa00000_.html), accessed 17 February 2007; for the Spanish version see [pdba.georgetown.edu/Constitutions/Paraguay/para1992.html](http://pdba.georgetown.edu/Constitutions/Paraguay/para1992.html) and [pdba.georgetown.edu/Constitutions/Paraguay/para1992.html](http://pdba.georgetown.edu/Constitutions/Paraguay/para1992.html), accessed 17 February 2007.

12 MOC-Py (18–20 July 2006), unpublished presentation, International Meeting of Solidarity for Conscientious Objection in Colombia (Bogotá).

13 MOC-Py, *Declaración Ideológica*, [moc-py.cabichui.org/index.php?catid=2&blogid=1](http://moc-py.cabichui.org/index.php?catid=2&blogid=1), accessed 17 February 2007.

## **12 | Military conscription, conscientious objection and democratic citizenship in the Americas**

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§ This chapter is about military conscription, conscientious objection and democratic citizenship in the Americas, especially in the United States and Mexico, today and historically. In the United States there is at present no formal military draft, but when they turn eighteen all men, including those who reside illegally in the United States, must nevertheless file their names and contact information with the Selective Service System (SSS) office of the federal government. As there is no formal conscription in the United States today, only those who enlist and then have a change of heart can apply for conscientious objector (CO) status. In Mexico, all men who are born in the country or become naturalized citizens are obliged to report for possible military service, and one in three young men are chosen by lottery and must actually serve a year in the Mexican army. Mexican law does not recognize the right to conscientious objection and for this reason there is no recorded history of young men in Mexico refusing to serve in the military for religious or moral reasons.

In the context of the ever greater militarization of the United States following 11 September 2001, and the doubling in size of the Mexican military in the last two decades, this chapter examines the situation of young men in that most sanctified of modern male experiences: serving in a citizen army. I discuss the meaning of voluntary and coercive military service for young men and women in Mexico and the United States; briefly describe efforts to achieve conscientious objector status by enlisted personnel in the US armed forces today and historically; and analyse the relationship of democratic citizenship to military service, including with respect to the notorious 2002 presidential executive order to fast-track US citizenship for soldiers from other countries.

Together with voting, military service is in both the United States and Mexico officially and popularly considered the quintessence of exercising one's rights of democratic citizenship. In both countries, albeit in distinct ways, enlistment provides youth, especially male and poor youth, not only with practical rewards in the form of jobs but also with idealistic ones. Military service is presented as a way out of

poverty as well as an opportunity to contribute to the broader good of society. Today in the United States this supposedly entails ‘spreading freedom’ to Iraq and Afghanistan and other foreign lands. In Mexico it supposedly means helping to curb the spread of drug trafficking in that country. Yet in both countries, recruitment slogans about democracy, service and freedom become appropriated, to adapt philosopher Wendy Brown’s phrase, for the most cynical of political ends.<sup>2</sup> In the case of US soldiers in Iraq, for example, democratic citizenship through military service is used as a subterfuge to justify their chauvinism and active participation in the colonialist subjugation of sovereign peoples.

### **Militias, citizen soldiers and caste armies**

As of 2007, nearly 9 per cent of the US population, some 26 million people, had served in the military at some time. Twelve million of these people were over sixty years old. And by this time, the militia tradition of the United States that inspired the American colonists to defeat the standing army of King George III in the late eighteenth century was long since a quaint historical relic. Twelve per cent of the population and fully 56 per cent of eligible men in the United States were in the military in the Second World War. Some in the United States still refer to the Second World War as ‘the good war’ by virtue of the popular support for enlistment in that war relative to earlier and later conflicts. Fifty years following the Second World War – that is, by the end of the twentieth century – not only were the US armed forces the largest employer in the country, but the United States also had more troops stationed outside its borders than any other country in history.<sup>3</sup>

Although the US armed forces have always reflected more general patterns of social stratification by class, race and gender, increasingly in the last three decades we may speak of the military in the United States as a caste army. Today young men, and to a lesser extent young women, without economic, political and cultural capital in the United States are recruited to carry out the requirements of empire in which ever more troops are needed to invade and occupy ever more countries around the world. A caste of soldiers has emerged from the more powerless members of US society.

One country that has experienced multiple US invasions is Mexico. Although military missions for the two countries differ dramatically because Mexican troops are deployed only domestically, in other fundamental respects there are real similarities in that Mexico, too, has what is in effect a caste army staffed by its famous *olvidados*, the forgotten ones in society. Among the few options available to Mexican youth with limited resources is to join the military and try to rise through the

ranks.<sup>4</sup> Of course, for Mexican youth migration to the United States is an even more common choice, yet it is not necessarily the alternative they might imagine.

The history of conscription in the United States can be traced back to the years before the country was founded. Periodic calls for ‘healthy men’ in the revolutionary war against Britain (1775–83) and the war of 1812 were usually coupled with promises of land following military service. During the US Civil War (1861–65), conscription replaced voluntary enlistment on both the Confederate (southern) and Union (northern) sides. Not all men went willingly, as evidenced by the New York Draft Riots of July 1863, when thousands of men, predominantly Irish, violently protested against both the draft and African-Americans. Beginning with the Spanish–American War of 1898, a war that many scholars consider the beginning of the United States as an imperialist world power, the government declared that all men between eighteen and forty-five were subject to military duty. In 1917, when the United States entered the First World War, the US Congress passed the Selective Service Act, establishing local, district, state and territorial civilian boards to register, classify, examine and induct (or defer) men aged between twenty-one and thirty. At least 50,000 men applied for exemptions from the draft; over 250,000 failed to register at all. In 1918, in one famous round-up, 16,000 men were arrested for failure to register. Yet overall, millions of men in the United States did register. Around 2.8 million were drafted and almost 5 million men had served in the US armed forces by the end of the war.

Between the world wars enlistment in the US armed forces was voluntary. In 1940, in preparation for entering the Second World War, and while Europe was already engulfed in armed conflict, the US Congress enacted the Selective Training and Service Act. All men between twenty-one and thirty-five were ordered to register for a military draft and a first National Lottery was established. In this first ‘peacetime’ draft, young men were shipped to army induction centres. After the United States entered the war in 1941, the draft age was lowered to eighteen and men were called not by lottery but by age, with the oldest going first.

The draft ended following that war, only to be reinstated in 1948, as the cold war (1947–91) intensified and the US military was deeply engaged in the Korean War (1950–53). During the Korean War, men aged eighteen and a half to thirty-five were drafted for two years; the Second World War veterans not in the Military Reserves were exempted. The Universal Military Training and Service Act was passed in 1951 and remained more or less in effect through the ‘Viet Nam’<sup>5</sup> War (1960–75),

with every man required to register for the draft during most of this period. In 1969, in response to massive anti-war protests, including in opposition to the draft, the 'nineteen-year-old draft' was ordered, so that all young men not drafted at age nineteen were essentially exempt from future service and a random-selection lottery system was implemented to replace the system of drafting men according to age. The draft officially ended in July 1973 in the United States and the so-called All Volunteer Force (AVF) began operating. Between 1975 and 1980 there was not even registration of young men by the Selective Service System.

### **Conscription in the United States today**

In 1980, the US Congress reinstated registration for eighteen-year-olds. Since that time all men have been required to register for the draft when they turn eighteen. Much is made in the United States of the fact that all 500,000 soldiers in the army, 180,000 marines and 350,000 personnel in both the air force and the navy have enlisted voluntarily; in other words, that every year 200,000 young men and women individually and willingly have joined the military branch of their choice. Females make up 15 per cent of the armed forces in the United States today.

According to the Selective Service System's 2005 *Annual Report to the Congress*, compliance rates for registering among the more than 2 million young men in the United States who turned eighteen the year before were over 90 per cent. In thirty-four states young men could not receive a driver's licence unless they registered. In addition, 45,000 men were automatically registered with the SSS when they completed applications for immigrant visas. In 2005, more than 177,000 names and addresses of suspected violators were forwarded to the federal Department of Justice for investigation and possible prosecution.<sup>6</sup> Nevertheless, although registration was compulsory, according to War Resisters' International, 'there have been no convictions for failure to register since 1985'.<sup>7</sup>

Today the United States government brags about its all-volunteer military, despite the fact that enlisted personnel can be, and often during the Iraq War have been, forced to remain in the military after their initial voluntary enlistments have expired and against their expressed desires.

In 2005, the third year of the Iraq War, the army failed to meet its recruiting goals by a wider margin than at any time since 1979. Recruiters offered more educational and financial incentives for new enlistees with two-thirds of recruits qualifying for bonuses that averaged \$11,000. What was more, previously the army allowed only 2 per

cent of recruits to score below certain levels on aptitude tests but in 2006 they doubled the number allowed. In addition, the maximum age for enlistment was raised from thirty-five to forty-two.<sup>8</sup>

Only by employing these and other frantic means were military recruiters able to meet their quotas and maintain overall troop levels that in turn enabled the Pentagon to station 235,000 men and women in North Africa, the Near East and South Asia, 77,000 in East Asia and the Pacific, 100,000 in Europe, and 1.1 million in the United States and its legal territories. This is an imperialist military, and an utterly negative example for the rest of the world.

As the Iraq War dragged on, there were also indications that citizenship requirements were being loosened in order to recruit more immigrants into the US armed services. The length of duty before non-citizen soldiers could apply for citizenship was also shortened from three years to *one day*. As of December 2006, more than 40,000 non-citizens were in the US active and reserve military, around 3 per cent of the total enlisted ranks (officers must be US citizens). In recent times about 8,000 'permanent resident aliens' enlisted for active duty service each year. Of the 3,000 US soldiers who had died in Iraq by 1 January 2007, 100 were foreign nationals (around 3 per cent of the total casualties). Unable to recruit armed forces solely by appeal to native-born citizens, the US government has resorted to changing immigration laws and the meaning of democratic citizenship. Because democracy is routinely depicted in the United States as anything its leaders say it is, and by definition is good, important and necessary, then the creation of an actual foreign legion within the armed forces is not treated as an embarrassment because the military cannot seduce more youth who are already citizens. Rather it is an extension of the government's democratic largesse as it reaches out to 'allow' nationals of other countries the 'opportunity' to fight and die for the United States in its wars of conquest and occupation.<sup>9</sup>

Yet even if they do not want to be citizens, democratic or otherwise, of the United States, 'undocumented aliens' must nevertheless register with the Selective Service System. That is, young men residing illegally in the United States are simultaneously subject to both deportation and conscription by the US government. The fast pass to US citizenship through service in the US military 'during authorized periods of conflict' was brought about through an executive order that was signed by President Bush on 2 July 2002.

The home website of the Selective Service System was still posting this message in early 2007: 'You want to protect yourself for future US citizenship and other government benefits and programs by registering

with Selective Service ...' (bold in original).<sup>10</sup> In July 2006, the US Under-Secretary of Defense for Personnel and Readiness, David Chu, cheerfully informed the US Senate Committee on Armed Services that the Department of Defense estimated there were 50,000 to 65,000 'undocumented alien young adults' in the United States who could potentially be recruited into the armed services if it were deemed 'vital to the national interest'.<sup>11</sup>

As part of the military's efforts to achieve a robust group of enlistees each year, new advertising gimmicks are periodically invented that aim to concentrate youthful priorities in snappy slogans. Six years ago, ongoing recruiting problems led to the replacement of the army's long-standing recruitment catchphrase, 'Be All You Can Be'. In January 2001, recruiters went forth promoting an 'Army of One'. In November 2006, marketing research once again determined that it was time for a slogan shift and 'Army Strong' was presented as the new sales package intended to appeal to youth who were seeking to improve the strength of their physiques, their emotional well-being and their moral fibre.<sup>12</sup>

Newspaper commentators estimated that by 2006 the US military was spending \$16,000 in promotional costs for each soldier it managed to sign up – that is, the armed forces allocated nearly \$5 billion for recruiting overall, not including the actual financial incentives doled out directly to the recruits. Such profligate spending on marketing and 'voluntary' conscription is a crucial element in the recruitment of young men and women into the US armed forces. The decision to enlist is never made in a vacuum, never based simply on individual values and needs, but occurs in a context of extensive propaganda blitzes on billboards, television and radio advertising, and through the constant hectoring by military recruiters who telephone the homes of youth at dinner time, and harass, cajole and besiege them in public locations where youth congregate. Recruiters lie, cheat and steal to meet their monthly and annual quotas, promising youth they will get the jobs listed on their enlistment contract and assignment to locations that the recruiter is in no position to guarantee. Claims to 'volunteer' armed forces in the United States must be understood as reflecting a formal and partial truth at best. There is no *de jure* draft of able-bodied young men in the United States today, but there is a *de facto* conscription within the lower classes to form an actual caste army of the United States.

There is evidence that motivations for joining the army and the marines also vary across racial groups in the United States. In one poll conducted with young recruits a few years ago, two out of five white en-

listees said a 'desire to serve their country' was the most important motivation for joining the military. Only one out of five African-American enlistees gave this reason, whereas one in two African-American young men and women stated that education, benefits and pay were their principal reasons for joining. One out of five whites said they enlisted for specifically economic motivations.

### **Conscientious objection in the United States**

In the United States, since the revolutionary war, when Quakers who refused to fight had land confiscated from them, men who choose not to raise arms against others, whether in the name of their country or anything else, have been slandered and mistreated by federal and local governments and military authorities. Historically members of religious groups like the Quakers, Mennonites and Amish have refused to serve in the military in the United States. In the First World War, members of these 'peace churches' were among the 2,000 men who served in non-combat military roles, though there were reportedly more than 65,000 men who filed applications during the war to be exempted from military service of any kind on religious grounds. In the Second World War, through a government entity known as the Civilian Public Service, 12,000 men performed 'work of national importance' that did not include service in the armed forces.<sup>13</sup>

The US Department of Defense (DoD) dates the inception of formal conscientious objector status from its Directive 1300.6, issued on 10 May 1968, during the Viet Nam War. According to official DoD statistics, between 1965 and 1970 more than 170,000 men who registered for the draft also applied for conscientious objector status. There are no official estimates for the number of men who applied for CO status during the entire Viet Nam War, but the number is believed by many to exceed 200,000. In 1971, the requirements for qualifying for CO status were broadened by the US Supreme Court to include not only established religious beliefs but also beliefs defined as non-traditional and non-theistic in nature.<sup>14</sup>

Today the right of persons to seek the status of conscientious objector to military service in the United States is established under the Military Selective Service Act and the Implementing Selective Service System Regulations. As there is today no draft in the United States, the Selective Service System does not classify young men when they register; therefore CO status applies only to those already serving in one of the US armed forces who seek a discharge or reassignment based on a change in their beliefs about war in general.

Exact figures on how many soldiers apply for CO status have

continued to be difficult to determine. From 1 August 1990 to 31 July 1991, during the first Gulf War (1990–91), the US military reported that there were 473 CO applications. During the war, the US Army prohibited soldiers from filing CO applications until they arrived in Saudi Arabia, a manoeuvre unquestionably designed to discourage and inhibit GIs from becoming conscientious objectors. After the armed forces granted CO status to 111 soldiers in that war, they put a stop to the practice and sent some 2,500 other soldiers who had applied to prison. CO applicants were often charged with other crimes, such as desertion, and some of these men claim the military never processed their applications. During the Gulf War it was reported that 8,000 soldiers were charged with being absent without leave (AWOL), undoubtedly a reflection in part of opposition to the war among some troops, and their numbers just as assuredly overlap with those who wished to file for CO status.

According to the website of the Central Committee for Conscientious Objectors accessed in December 2006, ‘New Pentagon statistics show that more than 5,000 soldiers have now been charged with desertion from US and overseas bases since the invasion of Iraq in early 2003.’ ‘They make it hard to get conscientious objector status,’ said Steve Morse, the GI Rights Program coordinator for the Central Committee for Conscientious Objectors. ‘The military says they do not keep statistics on the number of applications filed. However, in 2004, it was probably in the high hundreds – close to 1,000 – and not many were granted.’

As tragic as I find it to note that over four thousand men and women of the so-called volunteer army of citizen soldiers who wear the uniforms of the US armed forces have been killed in Iraq as of May 2008, this number is minuscule in comparison to the hundreds of thousands of Iraqis who have lost their lives since the US invasion nearly five years before. On a final exam I regularly administer in my university I ask the students to respond to the following question: ‘Will the Bush twins join the army and get sent to Iraq any time soon?’ The question is too easily answered but the responses of my students none the less reveal the widespread knowledge *and acceptance* of the fact that poor young men from the United States routinely get sent to kill and be killed in the name of their country. Young women like Jenna and Barbara Bush, the twin girls of the current president of the United States, are true representatives of an elite that is loath to send its daughters into harm’s way.

Unfortunately there is little opposition to this situation, although Charles Rangel, a US congressman from New York, in November 2006

drafted legislation for the draft to be reinstated as a way to expose the social iniquities of who enlists and who dies in the name of the United States in Iraq.<sup>15</sup> Neither my students nor anyone I know believe the draft will be reinstated in the foreseeable future precisely because in the United States the middle class, to say nothing of the elites, would not at this time acquiesce to their sons, much less their daughters, being conscripted by force. In the meantime, the military will continue to tap new sources of recruits such as homosexuals and foreign nationals, just as nearly thirty years ago they targeted young women, who were then less than 2 per cent of the personnel in the military, as a 'new' population to augment dwindling enlistment numbers.

### **Conscription in Mexico**

While the United States today, and for the last one hundred years or so, has had one of the largest armed forces engaged in frequent and long-term military invasions, incursions and occupations of foreign regions across the globe, Mexico by contrast has a relatively small military for a country of over one hundred million citizens that is by law prohibited from activities outside its national borders. For this reason, some prefer to think of the Mexican military as a national police force.<sup>16</sup>

The first significant effort to implement a national system of conscription in Mexico occurred in 1942, during the Second World War, through the National Military Service Act. All physically and mentally fit eighteen-year-old males were to receive military training within their municipality each Sunday morning and where possible twice during the week. Today the legal basis for conscription in Mexico is still the Act of 1942.

And with some variation, the entire conscription system has remained in place to the present day. All Mexican men between eighteen and forty are expected to report for military service, making Mexico one of approximately seventy countries in the world with some form of formal military conscription for men. The length of service is one year and consists today of military training on Saturday mornings in the area near where the young man resides. Registration and medical examination occur when the young man is seventeen, and selection of conscripts is by 'ballot'. In recent years, somewhat over 1 million young men have registered annually and 320,000 of these youths have been selected by lottery to serve, although youths with greater financial resources and political connections often, and fairly easily, avoid military service – for example, through bribing government officials and/or military personnel to falsely list them as reporting for duty.

As for conscientious objection, according to the Mexican govern-

ment, '[t]o date there have been no cases of conscientious objection to military service, *since Mexicans are conscientious about performing their military obligations as citizens* and there is no legislation in this regard' (emphasis added).<sup>17</sup> Thus the obstacles to achieving CO status in Mexico are formidable, because for a claim of conscientious objection to be made, a young man would first need to prove that Mexican law is in violation of international law. That challenge could only be mounted through a collective mobilization by anti-militarization social movements in Mexico, and there is no such initiative under way today.

As many Latin American societies in the 1980s sought to make the transition from military dictatorships to more participatory forms of government, paradoxically Mexico may have lagged behind other countries precisely because it is the only country in the region to have never experienced a military coup and therefore the need to address the form and content of democratic civil–military relations was deemed less urgent. Attention was instead focused far more on eliminating fraud in elections and dismantling social programmes regarded as ineffective.

Yet despite a lack of public discussion of the place of the armed forces in a democratizing Mexico, the military has seen tremendous growth in recent years. Revealing of recent remilitarization in this region is the fact that whereas in 1985 the size of the Mexican military was only 130,000, by 2003 there were 240,000 enlisted personnel in the Mexican armed forces. There is effectively a two-tier system of military service in Mexico, one voluntary and the other coercive. Volunteer enlisted men and women are responsible for military activities proper (there are now just under six thousand women in the Mexican military or less than 3 per cent of enlisted personnel). The one-third of young men who are conscripted into the army when they turn eighteen fulfil 'military' service through a variety of social welfare activities. In both circumstances young men serve in uniform and are formally part of the Mexican armed forces. Yet while the mission of the first group of volunteers revolves around domestic security and stability (defence of territory, counter-narcotics and 'protection of the social order'), the latter conscripts are tasked with civil service duties such as those relating to health, construction of roads and reforestation.

While all Mexican males are required by law to register with a military recruitment centre and, if chosen by lottery, provide military service for a year, for these conscripts service entails little military training per se. One urgent research problem for scholars is to better distinguish civilian attitudes towards and experiences with each kind of military service, to better understand the relationship of democratic citizenship to issues

such as whether male-only conscription is approved and supported, criticized and/or simply taken for granted; whether Mexico's caste-based military service grounded in class and ethnic social inequalities is viewed more as an opportunity or a burden; and perceptions among indigenous peoples regarding issues like social mobility and racism in the armed forces.

### **By way of conclusion: caste armies and democratic citizenship**

If voluntary service to the nation in the form of military enlistment is touted as among the finest contributions to society a young man or woman can make, we must judge the current staffing of the armed forces in the United States and Mexico as an abject failure. Because the US and Mexican militaries can reasonably be characterized today as in many respects caste armies, they well illustrate the extreme social schisms along class, gender and racial lines that prevail in their respective lands. Nor is it lost on the young men and women of these countries who in society are obliged to serve time in military uniforms and who are not. Historically the embodiment of democratic citizenship has often been achieved by society's most dispossessed men and women through military service. Yet the bromide of democracy in which citizens from all walks of life supposedly will take up arms if and when requested by the nation-state is losing whatever formulaic allure it may once have held for millions of youths in the United States in particular. The 'War on Terrorism' declared by the US government seems as endless as it is senseless, yet to conduct this war the government must not only retain public support for its efforts in general but more specifically continue to motivate millions of its youth to serve in the military and wage war.

The experiences and insights of young soldiers who are today questioning the Iraq War can provide the seeds of hope that we may one day achieve more truly and fully democratized societies. I close with the testimony of one US soldier who was stationed recently in Iraq, and his description of the political and moral epiphanies he experienced. His commentary reflects an awakening that other young men and women in the US armed forces may also appreciate; a series of realizations that may lead them, sometimes, towards conscientious objection and anti-war activities more broadly.

When he was interviewed in 2006, Garrett Reppenhagen was a thirty-one-year-old high school dropout and the son of a career military father.<sup>18</sup> He joined the military in his mid-twenties, after a period in which he worked in several low-paying jobs, had a new baby and found himself slowly sinking into debt. Garrett described what it was

like as a cavalry scout sniper in the First Infantry Division to routinely stop and search civilians during his tour of duty in Iraq. Sometimes, he related:

I found myself at checkpoints where we would almost shoot up a car for driving at it too fast, because they didn't see it in time. And you are yelling at the guy in the car – he does not speak English. You are trying to open the door, but the door's jammed. So you just grab the guy and you pull him out the window. You throw him on the ground and you zip-strip him [with plastic ties]. And then you realize that his wife and kids are staring at you with this intense hatred in their eyes – and you just realize you are part of the problem. And you do not mean to be – you do not want to be – but you are there. The crime is that you are there.

Many US veterans of the Iraq War are today speaking publicly about their disillusion and anger with parts of or all of the military project in Iraq, and their empathy for people caught in the war, both Iraqis and their fellow soldiers. For those who turn against the war's objectives and execution, many seek alternative ways of expressing an idealistic impulse to protect others by working to end the war. In tracing a political evolution from recruitment through time in the war zone and the return home, these soldiers tell a number of important stories about the evolution of loyalties in the crucible of this war. The lives of these young soldiers illustrate the wartime polarization of public life and the real-time meaning of democracy and citizenship in a time of war.<sup>19</sup>

The choices open to working-class youth in both the United States and Mexico will continue to include enlistment in the military. The voices of dissident Iraq War veterans from the US military ensure that timely and compelling critique of this war will continue to provide youth the choice of counter-conscription and conscientious objection. This is an entirely positive example for the rest of the world at a time when we are all in a profound sense Iraqis just as, with Hrant Dink,<sup>20</sup> we are all today Armenians.

## Notes

1 A summary of this chapter was submitted at the international conscientious objection conference, which was held in Istanbul on 27–28 January 2007. I am very grateful to Özgür Heval Çınar, Coşkun Üsterci,

and Ayşe Gül Altınay who were the conference coordinators, and also to the editors of this book – Özgür Heval Çınar and Coşkun Üsterci – for their invitation to participate in this conference and to learn from activists

and scholars in Turkey and other parts of the world involved with these important issues. I am delighted to offer this brief history to all readers and welcome commentaries. My thanks also to my undergraduate student Samantha Harrington for her research assistance in preparing this chapter.

2 Wendy Brown (1995) *States of Injury: Power and Freedom in Late Modernity*, Princeton, NJ: Princeton University Press, p. 5.

3 For a general history of conscription in the United States, see Wikipedia (2007) 'Conscription in the United States', [en.wikipedia.org/wiki/Conscription\\_in\\_the\\_United\\_States](http://en.wikipedia.org/wiki/Conscription_in_the_United_States), accessed 12 February 2007; see also TeacherVision (2007) 'Chronology of conscription in the US – colonial era to 1999', [www.teachervision.fen.com/u-s-civil-war/biography-person/5669.html](http://www.teachervision.fen.com/u-s-civil-war/biography-person/5669.html), accessed 12 February 2007.

4 For a general history of conscription in Mexico, see Wikipedia (2007) 'Military of Mexico', [en.wikipedia.org/wiki/Military\\_of\\_Mexico](http://en.wikipedia.org/wiki/Military_of_Mexico), accessed 12 February 2007.

5 I understand there are different ways to spell this country in English. The preferred spelling according to the Vietnamese themselves is Viet Nam.

6 Selective Service System Senior Staff (2005) *Annual Report to the Congress of the United States*, [www.sss.gov/PDFs/AnnRpt2005.pdf](http://www.sss.gov/PDFs/AnnRpt2005.pdf), accessed 12 February 2007.

7 War Resisters' International (WRI) (2007) 'Military service in the United States of America: issues of conscience and human rights', [www.wri-irg.org/news/2006/usa0603-en.htm](http://www.wri-irg.org/news/2006/usa0603-en.htm), accessed 12 February 2007.

8 On recent recruiting in the US armed forces, see especially Associated Press (2006) 'Army lowers

standards, tops recruit goal', [www.msnbc.msn.com/id/15197832](http://www.msnbc.msn.com/id/15197832), accessed 12 February 2007; Associated Press (2006), "'Army Strong" replaces "Army of One"', [www.msnbc.msn.com/id/15197720](http://www.msnbc.msn.com/id/15197720), accessed 12 February 2007; D. Cave and T. Shanker (24 December 2006) 'With bigger army, a bigger task for recruiters', *New York Times*; N. Turse (2006) 'Dirty Dozen: the Pentagon's 12-step program to create a military of misfits', [www.tomdispatch.com/index.mhtml?pid=121072](http://www.tomdispatch.com/index.mhtml?pid=121072), accessed 12 February 2007; N. Turse (2006) 'US is recruiting misfits for army: felons, racists, gang members fill in the ranks', [www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2006/10/01/ING42LCIGK1.DTL](http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2006/10/01/ING42LCIGK1.DTL), accessed 12 February 2007.

9 See D. S. C. Chu (2006) 'Prepared statement before the Senate Armed Services Committee', [armed-services.senate.gov/statemnt/2006/July/Chu%2007-10-06.pdf](http://armed-services.senate.gov/statemnt/2006/July/Chu%2007-10-06.pdf), accessed 12 February 2007.

10 Selective Service System (2007) Home page, [www.sss.gov](http://www.sss.gov), accessed 12 February 2007; see also US Citizenship and Immigration Services (2007) 'Naturalization information for military personnel', [149.101.23.2/graphics/services/natz/MilitaryBrochurev7.pdf](http://149.101.23.2/graphics/services/natz/MilitaryBrochurev7.pdf), accessed 12 February 2007.

11 Chu, 'Prepared statement ...', p. 5.

12 See Associated Press, "'Army Strong" replaces "Army of One"".

13 Wikipedia (2007) 'Conscientious objection: United States of America', [en.wikipedia.org/wiki/Conscientious\\_objector#United\\_States\\_of\\_America](http://en.wikipedia.org/wiki/Conscientious_objector#United_States_of_America), accessed 12 February 2007.

14 American Friends Service Committee (AFSC) (2007) 'Whatever

happened to Vietnam era war resisters?', [www.afsc.org/youthmil/conscientious-objection/Vietnam-war-resisters.htm](http://www.afsc.org/youthmil/conscientious-objection/Vietnam-war-resisters.htm), accessed 12 February 2007.

15 C. Rangel (21 November 2006) 'Reinstate the draft: it's a matter of fairness', press release, [www.house.gov/apps/list/press/ny15\\_rangel/PR112006.html](http://www.house.gov/apps/list/press/ny15_rangel/PR112006.html), accessed 12 February 2007.

16 See Wikipedia, 'Military of Mexico'.

17 War Resisters' International (WRI) (2007) 'Mexico', [www.wri-irg.org/co/rtba/mexico.htm](http://www.wri-irg.org/co/rtba/mexico.htm), accessed 12 February 2007.

18 With Catherine Lutz, I am writing a book about the lives of six anti-war veterans of the Iraq War. The working title of the book is *War Epiphanies: Iraq Vets Break Ranks*.

19 See C. Lutz (2001) *Homefront: A Military City and the American 20th Century*, Boston, MA: Beacon Press.

20 Editors' note: Hrant Dink was an Armenian journalist. He was killed by a seventeen-year-old Turkish nationalist on 19 January 2007.

## 13 | Conscientious objection in Chile

PELAO CARVALLO

§ Chile is a South American country with a population of approximately sixteen million; with another million Chileans living abroad for political and economic reasons. Since the mid-twentieth century, its population has started to move to urban areas, with more than one-third of Chile's population now living in the capital, Santiago.

Chile is today a highly militarized country. The situation has not always been like this during the history of the republic, however. Until 1973, the influence of the military on the government was very limited and, historically, the development of Chile was always conducted in a secular and civilian manner. The military was needed only for wars, and even in this regard they were dependent on the will of the civilian government. On the other hand, despite being governed by civilians, Chile was an expansionist and militaristic state. The country has geographically extended its borders by way of invading the territories of neighbouring countries (Peru, Bolivia) and of indigenous people (Mapuches, Rapanuises, Onases, Kaweshkars, Yámanases, Tehuelches, and so on) through wars.

The Pinochet dictatorship, after 1973, destroyed this externally militaristic but internally 'civil and secular' culture. It constructed a militaristic system which still has a strong influence in the country. Its history became a succession of battles and wars, generals and military heroes. School uniforms were introduced and children were taught to sing military marches. The entire country was under a de facto military occupation and lived under military government until 1990. This was a 'war' declared by the armed forces against the rest of the country, to the extent that the number of people killed, tortured or disappeared is not known.

During this period, the military managed to indoctrinate Chileans into being submissive, obedient, xenophobic, hierarchical, less creative, authoritarian, macho and conservative. The most fanatical aspects of Catholicism found a friendly environment in which to put down roots. The Chilean experience presents a good example of how fundamentalism is fed by a militaristic culture.

This is why the anti-militarist struggle in Chile would need quite a long time to succeed and would face huge difficulties. An intense effort

is required in order to transform the militarist culture. The military still has a lot of power and retains its autonomy economically. Chile has one of the highest rates of military expenditure throughout the whole of the Americas. The armed forces have their own industries, schools, universities, hospitals, and all these institutions have a special status different from that of similar institutions throughout the rest of the country. Although Chilean citizens have to save from their own earnings in order to get a pension, which is, in any case, below the level required to live a dignified life, these institutions are continuously supported by state funds.

Military service (SMO) is compulsory under the Chilean constitution. The relevant provision was imposed by the military after the rigged elections of 1980. The younger generation are enslaved, ill treated and dehumanized during military service. Deaths and accidents during SMO have become an everyday occurrence. Nevertheless, in 1996, when nobody was punished after the disappearance and death of a conscript (Pedro Soto Tapia), criticism of and protests against compulsory service increased significantly. In 2005, the death of forty-four conscripts from exposure on the slopes of the volcano Antuco struck a serious blow against military service, enforcing change in the recruitment process.

According to the new system, conscripts would be designated by way of a 'drawing' model. This new system started to be implemented last year, but it appears that things remain the same. The poor, as always, constitute the majority of conscripts; as they do not have what are considered strong grounds, such as being a professional or a student, for avoiding military service. The idea of transforming the compulsory service into a 'voluntary' one has turned out to be a failure for the government and the ministry of defence.

The continuance of the compulsory military service system doubled the number of objectors. Thus, when the armed forces started to face some difficulties in conscripting soldiers, they started campaigns to call up women while granting a 'pardon' for 'deserters'. Moreover, attempts were made to transform the army into a professional one, according to the European model. During this process, the anti-militarist movement in Chile has pursued its struggle by promoting conscientious objection to compulsory military service, advocating boycott, disobedience and direct action.

Despite being formally founded last August, the Anti-militarist Movement of Conscientious Objection (El Movimiento Antimilitarista de Objeción de Conciencia – MAOC) has a long history; even longer than Neither Helmet Nor Uniform (Ni Casco Ni Uniforme), which

has been around for ten years. It is composed of different movements, including Flores con Sorpresa de Osorno, Gampoc de Concepción, Ni Casco Ni Uniforme de Santiago, Re/evolución de Linares, Rompiendo Filas de Temuco and other libertarian and anarchist groups and political organizations. The MAOC coordinates all of these organizations in order to undertake joint campaigns and actions. It also assembles the National Assembly of Anti-militarists and Conscientious Objectors (Encuentro Nacional de OC y Antimilitarismo – ENOCAM) annually. The requirements for a local organization to join the MAOC include anti-militarism, self-finance and a non-violent strategy.

The disobedience movement objecting to military service in Chile is now in a delicate situation. The armed forces make efforts to strengthen their position by using advertisements and the media. They are trying to prevent the dramatic decrease in the number of conscripts on the one hand, while seeking to keep down the voices rising against numerous murders since the Antuco case.

The MAOC, and in particular Neither Helmet Nor Uniform, encourages disobedience by declaring non-participation in compulsory military service. Additionally, it carries out activities demonstrating against the current government's non-recognition of the right of conscientious objection, which has now become an international obligation for all governments in the world. The government response was classic: not to create conflict. As a result of this, we (the number of conscientious objectors is around twenty-five for this year) found ourselves again in conflict with the law.

The above law has been in force since September 2006 and the strategy of the MAOC against this law is to create conflict by means of 'non-violent direct action' performed after sustained and determined preparations. That is why much of our activity last year was dedicated to training and exercise in 'non-violent direct action'. More specifically, the main focus was to oppose repression directed towards the anti-militarist/anarchist movement in the country. Our organizations are all self-financed with inadequate resources, none of them getting support from public funds. We do not mean to complain; rather we would like to draw a realistic picture. In other words, we are in a condition that prevents us from doing many things. We have still made some important achievements, however. For example, we very recently carried out a summer course programme in Santiago developed by MAOC and organized by Neither Helmet Nor Uniform.

On the other hand, the struggle for conscientious objection is complicated by the false propaganda promoted both by the government and the armed forces, stating that the military service is in fact 'voluntary'.

This situation is partly the result of activities of Marxist left parties lobbying for the recognition of the right of conscientious objection and of the harmful acts of churches and related institutions and NGOs. According to these organizations, the right of conscientious objection should:

- be supported by a certificate as legal proof of that status;
- be approved by a committee composed of representatives of government and the armed forces;
- be substituted with ‘citizenship service’ or any other ‘complementary social service’ under the control of the armed forces, and this service should be performed as a workforce under the auspices of NGOs having charity status and as a ‘peacekeeping force’ under the UN, such as the one in Haiti; and
- not be exercised in the event of war.

Against all these, the MAOC stands as an alternative organization sticking up for direct action, self-finance and anti-militarism. It has a long way to go, because this is not a country where anti-militarism has already gained a place in the social awareness of the people.

*Translated by Defne Orhun*

## **I4 | Conscientious objection in Spain: disobedience**

CTHUCHI ZAMARRA

§ A bloody civil war that claimed the lives of a million people took place in this country in the 1930s and in this war the extreme rightist coalition (consisting of supporters of the king, fascists, Carlists and traditionalists) confronted the coalition of left-leaning groups.

Primarily composed of socialists, communists and anarchists, this leftist coalition also received support from anti-fascists loyal to the republic. After the defeat of the Republicans in 1939 the government of autonomous militia organized by the labour unions in the first months of the war was replaced by a military dictatorship of fascist ideology under the leadership of General Francisco Franco, which was to last for nearly forty years.

Towards the final period of the dictatorship, there was a huge pro-democratic resistance movement, which had a strong influence among the students' organizations, but they were not opposed to military service. In that time, there were at least four armed groups that were fighting with violence (terrorism) against the dictatorship (the Basques had ETA, the Catalonians Terra Lure, the communists GRAPO and the anarchists FRAP), and military service was considered among the activists as a way to learn to use the weapons, and use this knowledge for the revolution. But also a rather small non-violent movement began to form parallel to the democratic resistance movement. This movement was organized in camps that were often attended by European activists. Launched with the hopes of social revolution that May 1968 stirred throughout Europe, this movement proclaimed its anti-militarist ideas by sending letters to the Ministry of Defence demanding the right to conscientious objection and civilian service as an alternative to conscription.

During this period Pepe Beunza began the work that would make him the first conscientious objector in Spain in later years. Hitchhiking to countries such as France, Belgium and Germany during his vacations, Beunza established connections with the existing conscientious objectors and anti-militarist groups in those countries. When Pepe Beunza rejected conscription and refused to receive military training in 1971, he was arrested. He was held in various prisons throughout Spain, and

was even sentenced to forced labour and sent to the Spanish Sahara, which was then still a colony of Spain.

Throughout this process many people mobilized to support Pepe Beunza, the high point of this mobilization being the march from Geneva to the prison in Valencia. With this campaign, which began with but a little spark, an anti-militarist and anti-violence movement had begun which permeated the entire country and was able to bring together all the conscientious objector groups. As a result of these developments, demands for the right to conscientious objection and civilian service were raised, along with other political demands. Pepe Beunza was released from prison in 1974. Franco died in 1975. Thus the process of transition to a democratic regime began and this regime was given form in the constitution that came into force in 1978.

The year Franco died, a proposal for a ‘Volunteer Project for Development’ (*Proyecto de Voluntariado para el Desarrollo*) was initiated, and signed by more than a thousand young people ready to perform alternative civilian service. Also, people from an initiative set up in the Can Serra neighbourhood who had not performed military service undertook various civilian service projects at different locations. These people began meeting among themselves, coordinating their activities. Indeed, some of them were even sent to prison from time to time.

In these groups formed by the first conscientious objectors two different factions dominated: the first of these viewed the movement as a kind of ‘objectors’ syndicate’ and thus was intent on complying with the law. The other conceived of conscientious objection as a strategy of civil disobedience and advocated working for the demilitarization of society. Those who favoured the strategy of civil disobedience referred to themselves as ‘*insumisos*’<sup>1</sup> (insubordinates), a word that anti-militarist movements had borrowed from Tolstoy and used during the Civil War since the term ‘conscientious objection’ was unknown in the country at the time.

With a 1977 legal reform, a norm that defined those who declared themselves conscientious objectors as ‘*incorporación aplazada*’ (deferred participation) was already in place. The same year, the Conscientious Objection Movement (Movimiento de Objeción de Conciencia – MOC) was established, and two years later, in its first ideological declaration, the movement was to define itself as an anti-militarist (in the wider sense) and anti-violence movement, proposing ‘Non-violent Popular Defence’ (*Defensa Popular Noviolenta* – DPN) as an alternative to the military. Non-violent Popular Defence is a concept developed by the European Anti-militarist Movement within the War Resisters’ International (WRI), inspired by the proposal that Bart de Ligt from

Holland made in 1934 for stopping the impending Second World War. Although there were no imprisoned conscientious objectors at that time, several people were arrested in 1980 on charges of insulting the military, and nineteen more people were arrested during subsequent protests. As a reaction to these developments protests increased and the circle of support was expanded by bringing international connections to the fore.

In 1982 the Spanish Socialist Workers Party (PSOE), a social democratic party, won the elections and stayed in power for three legislative periods. In 1983 work began on the project that was to be the Conscientious Objection Law (*Ley de Objeción de Conciencia* – LOC). This project elicited different interpretations among conscientious objectors: on the one hand were those who demanded the recognition of civilian service and the improvement of this practice from within, and on the other hand those who advocated a declaration of total objection, management of civilian service non-governmentally by the movement itself, and non-violent struggle. The latter was the stance of the MOC, which issued a manifesto calling for civil disobedience in the month of December.

Towards the end of 1984, the Conscientious Objection Law was ratified, but because of the objections made to the Constitutional Court to the effect that the bill was unconstitutional, its implementation was delayed. In accordance with this law a National Council of Conscientious Objection (Consejo Nacional de Objeción de Conciencia – CNOC) was established which was to be responsible for accepting applications for conscientious objector status. In the meantime, it was ruled that ‘Substitutive Social Service’ (*Prestación Social Sustitutoria* – PSS), which was the name given by the MOC to ‘alternative civilian service’, was not to be accepted, and moreover the legitimacy of the courts that probed eligibility for military service was rejected. Contrary to expectations, however, in 1985 the National Council of Conscientious Objection accepted the collective application of the MOC, which demanded retroactive legal exemption for more than 15,000 people, bringing together objectors.

A year later, in 1986, when the unconstitutionality of the Conscientious Objection Law was discussed, the anti-militarist movement gained great momentum thanks to the referendum on NATO (North Atlantic Treaty Organization) membership. Conscientious objection was not the anti-militarist movement’s only campaign; a couple of years prior to that a civil disobedience campaign had been organized against military spending under the name ‘War Tax Resistance’. Within the context of this campaign the portion of taxes that fell to the share

of the Defence Department was not paid but instead forwarded to alternative projects.

In such an optimistic atmosphere, when the claims of unconstitutionality were denied one year later, a new action strategy was planned against the Conscientious Objection Law called the ‘Valencia Strategy’. According to this strategy, on the one hand the civilian service (PSS) was to be boycotted, and on the other it was decided that former conscientious objectors would use their right to conscientious objection again. These people had asked to forgo their objector status and to be referred to as ‘*filas*’ (those who formed ranks). In this way they wished to benefit from the amnesty granted one year later to the 22,000 objectors who were in ‘*incorporación aplazada*’ (deferred participation) status. These people, who gave up their objector status, were called ‘*reobjectores*’ (reobjectors) because they also objected to participating in the military units to which they were later sent.

Meanwhile, objectors formed regional committees and as a result about two hundred objectors in Orió decided to organize a campaign of collective civil disobedience called ‘*insumisión*’ (disobedience) in order to reject the objector status which the National Council of Conscientious Objection did not recognize anyway. Thus, on 20 February 1989 those who did not comply with the new law were introduced collectively in public. Eleven out of the fifty-seven *insumisos* who introduced themselves to the public with an act of protest were arrested and prosecuted.

Soon after, sixty other *insumisos* introduced themselves with a second action and only two of them were arrested. A group of unemployed people who were sent out to work in social areas in Catalonia demanded to be placed in the staff positions evacuated by the first *insumisos* who had refused to be part of the PSS. Subsequently, in November, the first trials against *insumisos* ended with thirteen-month prison sentences for each. Towards the end of the following year, the number of declared *insumisos* was 2,450, and only 130 of them had been arrested. Those who were arrested stayed in prison for very short periods of time, until the court reached a verdict, which took about a month on average. At the time those who failed to undertake compulsory military service (*Servicio Militar Obligatorio*) were tried in military courts and charged with a minimum of thirteen months’ imprisonment. The *insumisos* were tried in civilian courts, however, and the minimum term of incarceration was two years, four months and one day. At the time only three *insumisos* received a sentence of one year or less, and their sentences were suspended. In the meantime the number of applications sent to the National Council of Conscientious Objection was rapidly rising.

Towards the end of 1991, an amendment was made in the military service law in order to deal uniformly with *insumisión* cases. In this context all *insumisos* were tried and each received a sentence of at least twenty-eight months of imprisonment. Out of the 107 cases tried in 1992, three were tried in military court. This was because the acts of disobedience that prompted the trials took place while the persons were at the military unit. In some regions, however, the trials took place in a more intense atmosphere. In Navarre, in particular, support groups and the anti-militarist movement aimed to publicize anti-militaristic messages in their campaigns rather than focusing on the repression suffered by particular individuals. During the first months of 1993, 108 trials had been concluded with about three-quarters of those tried receiving sentences of less than a year. This outcome demonstrated that courts did not implement the laws equally. In response, many *insumisos* who were given sentences of less than a year instead of twenty-eight months refused the suspension of their sentences and were consequently imprisoned again.

A new amendment was made to the penal system in September 1993. According to this amendment, the *insumisos* were to automatically receive a third-degree penalty, thus only going to jail to 'sleep'. Shortly afterwards, in December, the *insumisos* started up the nationwide and coordinated 'collective rebellion' strategy. According to this strategy, those who received third-degree sentences would refuse to go to 'sleep' in jail and would give up this status, demanding to receive second-degree sentences once more. The aim of this action was to criticize the discrimination suffered by other *insumisos* who were not granted a reduction in their sentences and to send an anti-militaristic message.

In fact, not all *insumisos* participated in all of these actions. In each period each *insumiso* had to choose the degree of their *insumisión* themselves under the protection of their own group. Those who decided in favour of going to prison formed a support group composed of people from their own circle who would take care of logistical issues, communicate with the families, with MOC groups and other supportive groups, and deal with the media. These groups consisted of people who were not normally part of social movements. In many cases people encountered activism for the first time in these groups. MOC held training for these groups on legal issues, helping people confront the reality of prison, as well as training on preparation for non-violent actions. Within the context of these campaigns, social solidarity and self-incrimination actions were prepared, signatures collected from well-known people, and many rock groups mentioned and defended *insumisión* in their songs, some of them directly citing MOC.

In 1996 there were 348 *insumisos* in prison and fifty-eight of these were given second-degree sentences at the time; the penal code was changed in a way that replaced ten-to-fourteen-month prison sentences with community service and twelve-to-fourteen-month prison sentences with daily fines that ranged between 2 and 300 euros and withdrawal of governmental aid. Nevertheless, the prison sentence of six months to two years for those who failed to undertake military or community service was still effective.

The right-wing Popular Party (Partido Popular) which came into power shortly afterwards announced that the military was to become completely professional by the year 2002. This of course meant that conscription was abolished and it was a victory of sorts for the *insumisos*. In response to 'civilian service in public positions', which was dubbed 'civil death' by the movement, a network was established among local governments that opposed this article of the law. Again shortly afterwards, almost all universities in the Basque region and Aragon similarly decided to object to this article of the law. Hence there was a rapid increase in conscientious objector status applications and *insumisión* cases. Only one out of five people who legally applied for conscientious objection status actually carried out PSS (public service). This was thanks to the resistance that spread wide enough to garner support from labour unions and institutions. It was not possible to create a sufficient number of staff positions even for those who volunteered to perform civilian service.

The MOC started a new campaign against conscription in 1997 and called it 'civil disobedience in the barracks'. The objective was to publicize conscientious objection declared after enlisting in a military unit. Within the framework of this campaign committees were formed in order to release people who were given prison sentences or who were incarcerated in military prisons. In addition, the conscientious objection applications to the CNOC became so widespread that their number reached 130,000 that year. Around the same time 12 million euros were spent on the campaign designed to hype the image of the professional army, and since a sufficient number of candidates was not found, the advertising budget had to be gradually cut down. The following year more than forty people were prosecuted for actions such as occupying military residences and disobedience at the barracks.

In the same year, 1998, the Popular Party made reforms to the penal code for the first time, decreasing the maximum term of public service sentences to four years and granting amnesty to the *insumisos* who were incarcerated with a third-degree sentence. The Conscientious Objection Law was also reformed, making the duration of PSS (which used to be

thirteen months) the same as the duration of conscription (nine months) at a time when more than a million people were expecting to serve.

In 1999 the anti-militarist campaigns focused on protests against the Spanish army's participation in NATO's intervention in Serbia. Intensive actions were organized, especially against the Spanish Air Force bombing of Belgrade. Even though it was a time of war, disobedient conscientious objectors kept flooding the military facilities and holding actions at military residences.

Finally, in 2000, the last conscription lot was drawn amid nationwide celebrations and actions. The following year reserve soldiers left the barracks for good and out of 91,000 people who were drawn only 5,000 were conscripted. Also, the number of professional soldiers who could be conscripted remained at 72,000 rather than the estimated 102,000. There were seven *insumisos* who were still incarcerated at Alcala de Henares military prison.

In 2002 the government had to change the penal code and the military penal code. An amnesty was granted which was geared towards retroactively annulling the criminal sentences of *insumisos*, including the 4,000 that were still effective, and of the twenty *insumisos* who had rebelled at the barracks.

The aim of the conscientious objection movement in Spain has never been limited to the recognition of the right to conscientious objection. The fundamental concern of the movement has always been the demilitarization of society. The concern was not just to discard military obligations and military spending, but to do away with the militaristic values and principles that had permeated all social relationships. After a long process of struggle conscription was finally abolished, and an experienced anti-militarist movement has been forged that can undertake anti-war campaigns (war tax resistance, occupation of military residences, and so on). No less important was the transfer to the public arena of the discussions about the possibility of undertaking the struggle for social change with non-violent actions and peaceful alternatives and about the demilitarization of society. Despite the fact that conscription has been abolished, however, there has been a recent increase in the militarization of society and thus there is still a lot of work to be done.

*Translated by Balam Nedim Kenter*

## **Note**

Editors' note: the objectors who referred to themselves as '*insumisos*' (insubordinates) are 'total objectors'

who reject alternative civilian service as much as they reject military conscription itself.

## 15 | Conscientious objection in Israel

TALI LERNER

§ Israel is a country that built its social and political structure on compulsory service for both men and women. For sixty years now the only way to be a part of Israeli society, formally, financially and socially, has been to be a part of the Israeli army. Until ten years ago the draft rates in Israel were close to 100 per cent. Beginning with the first Lebanon war in 1982, but increasing in numbers significantly only after the events of October 2000, a movement of conscientious objectors was formed. A large group of soldiers and reserve personnel refused to take part in the Lebanon war and were jailed for it. This continued with small numbers of objectors in the years 1990–99. After October 2000, with the beginning of the ‘second intifada’ and armed battles between Israeli and Palestinian civilians, more and more people began organizing in groups calling actively for refusal as part of the fight to end the Israeli occupation.

The two main groups were the ‘Senior’s Letter’, a group of sixty-two teenagers declaring in a letter to the prime minister their refusal to join the army, and ‘Courage to Refuse’, a group of former officers who refused to take part in army activities in the occupied territories as part of their reserve duty service. Alongside them was a growing struggle, led by individuals and by groups such as ‘New Profile’, for recognition of conscientious objection (CO) in the law and exemption on those grounds.

More than two hundred people objected to military service between 2000 and 2002, and most were sentenced for two or three periods of twenty-eight days, for all kinds of charges, but never for refusing to serve in the army. After spending two or three months in military prison they would be discharged as ‘unfit’ for military service. In April 2003 the military decided to change its methods and tried five of the main activists of the ‘Senior’s Letter’ on the charge of refusal under the compulsory service law. They were found guilty and sentenced to one year in prison, added to their prior detention for five to ten months before the trial. The severe punishment worked like a charm, and the number of objectors dropped drastically. Young people, fearing long periods of imprisonment, chose other ways to be exempted, trying to find a job that would not demand them serving in the occupied territories. During

all this time women were being frequently discharged by a conscience committee that worked under a specific law that exempted women on grounds of ‘conscious or religious lifestyle’, and in fact exempted almost everyone who applied to it. Men had a different conscience committee that was a fiction and never exempted anyone.

Around this time, the Supreme Court issued two rulings that changed the entire way in which conscientious objection is treated by the army. The first ruling was regarding a pacifist named Yoni Ben Artzi. Yoni declared his total objection to any kind of military service but was still rejected by the conscience committee. He petitioned the Supreme Court and was acknowledged as a conscientious objector and exempted from military service. He still had to spend over a year in military prison, however, awaiting the court’s decision.

At the same time another male objector petitioned the Supreme Court on the basis of discrimination between men and women, claiming that the same opinions could get you discharged if you were a woman but not if you were a man. The army’s reply to this claim was that women were only discharged in the same way as men, on grounds of pacifism, and any other exemption that may have been made was a mistake. This was wrong, but henceforward the army changed its ways and started discharging pacifist men and women, although it stopped discharging women on any other grounds. A woman named Laora Milo was sent to prison for refusal to serve on grounds of objecting to the occupation, and then petitioned the Supreme Court. The petition was rejected and the verdict annulled the special law regarding women, transforming it so that it worked only in relation to requests based on religion.

The formal status of conscientious objection in Israel today is very problematic. Exemption is given only to total pacifists, both men and women, but any other kind of conscientious refusal is rejected – leading to dozens of imprisonments every year. This is an example of how legal struggle can lead to bad consequences for the conscientious objection movement. All these developments brought refusal to the forefront of Israeli awareness, however, and broke some of the myths surrounding military service.

Another very important strategy that the objection movement and especially ‘New Profile’ chose to use was changing the way Israeli society looks upon people exempted on psychological grounds. Until recently receiving exemption on these grounds was rather easy and could be achieved by anyone by just asking for a psychiatric evaluation in the army pre-enlisting medical tests and leaving the impression of an unstable personality. The exemption in this case is considered on the

basis of health issues and is better known as Profile 21, the number being the lowest of a ranking system for health in the army's system.

In recent years, activists from 'New Profile' have been making a big effort to decrease the prejudice surrounding Profile 21. In Israel, where a person is measured by his army history, rank and profile, having health Profile 21 would cause difficulties in finding a job, applying to university, getting loans and would adversely affect your public image in general. Unless you are able to explain the health condition that prevented you from being drafted, and say how sorry you are about it, you would find yourself somewhat cast out from normal Israeli society.

The efforts were concentrated in two main fields, the first being legal status. We fought and are still fighting to stop the use that all state authorities and other people are making of the health profile to measure one's abilities. For years, when applying for any kind of job, you were asked about your military service and profile and were judged by it. This was also used to discriminate against Arabs, who do not serve in the army. By petitioning based on laws against discrimination in the workplace we managed to get those information requests declared illegal, although the struggle still continues for their enforcement. We followed a similar process regarding university admission and other issues.

At the same time we have used other tactics to change the way people look at Profile 21. We talk freely about the falling draft rates every year and the growing numbers of people who choose Profile 21 as the right way (here we have received great assistance from the army, which, in an attempt to scare the general public, publishes the growing numbers of draft evaders, trying to create an atmosphere of concern that will lead to more sanctions against the evaders). We have written about it, in both political and personal terms, speaking of our own experiences. As time passes more and more people who have never served in the army or have chosen to leave it make it into jobs and universities, proving it is possible. By talking about it openly whenever we could we have broken the fear in society that surrounded this choice, and more and more people have received exemption from the draft for psychological reasons.

As the numbers grew and the issue of legal options relating to civilian service arose the army decided to fight back once again. Last summer they changed the health profile rankings, creating a new status of 'special health soldiers', who are allowed to take only specific roles, most of them civilian jobs that the army takes charge of. To get exemption on psychological grounds in the new system you have to be taking psychiatric medication. The new health rankings are only now slowly

going into the system and we are still waiting to see what effect they will have on people's ability to get exempted.

One other tactic the CO movement has used in the last two years is trying to generate discussion on the role of the army and the politicians' use of the army and of military life as a political tool and not only for ensuring the so-called 'security' of the people. There are big question marks over the last few years in the occupied territories, the Gaza siege and the last Lebanon war, and more and more people are starting to ask who is gaining from these wars, understanding that politicians and wealthy industrialists are the only ones to profit from them.

A problem that repeats itself constantly in the Israeli CO movement is that of disputes between different sectors within the CO movement itself. Gender issues arose and tore apart the first 'Senior's Letter' group when the army's attitude to gender translated into hierarchical issues between men and women in the group. The growing numbers of Druze (a specific Arab group whose members usually serve in the army) could not bring themselves to be part of the CO movement as a result of different thinking on the meaning of refusal, and other problems occurred when objectors who brought a different agenda with them (feminism, communism and others) were imprisoned and needed support.

Another issue standing in the way of the growth of the CO movement is the use many groups and sectors make of their own military service as a criterion for being an Israeli and being fully equal in every part of life. The feminist movement, the homosexual rights movement and even Arab groups such as the Bedouin have tried in recent years to tie their struggle to their willingness to serve in the army, thus increasing the army's status in Israeli society. Changes to the status of the army in Israel have been very slow, but as recent figures show, draft rates are now less than 90 per cent and the rates of completion of service are close to 65 per cent, which is a big change for a society that is as militarist as Israel.

The next couple of years will be a test for the Israeli CO movement. As the pressure of the occupation grows, other wars are being fought, by Israel directly or by the United States in cooperation with Israel, and Israeli society is becoming more extreme, some moving towards racism and others towards understanding and choosing of non-violence. This is the time to make the CO movement into a mass movement. If we can create a movement that will support all its different parts and learn to speak to radical activists and to the ordinary people who want to live quietly and awaken them – then we can bring an end to conscription in Israel.

## 16 | Refusing to serve in the army for reasons of conscience in Greece

ALEXIA TSOUNI AND MICHALIS MARAGAKIS

### The history

The institution of conscription was introduced in Greece in 1911, a short while before the involvement of the country in a series of wars (the Balkan Wars, the First World War, the campaign in Ukraine and the Asia Minor campaign). The duration of this involvement (more than one decade) and the consequent exhaustion of the soldiers, many of whom were enlisted in 1911 and discharged only in 1923, resulted in the first mass desertions from the Greek army. For the next sixty years the conscientious objectors came exclusively from the Jehovah's Witnesses. The military courts gave them heavy sentences, and as a result of successive convictions they were usually imprisoned for ten to fifteen years in military prisons. During the Greek Civil War some conscientious objectors were sentenced to death and executed.

In September 1977, on the last day of the parliamentary sessions, the Karamanlis government of New Democracy (a right-wing party) passed Law no. 731, under pressure from international organizations, especially the Council of Europe. According to this law, those who refuse to be drafted for religious reasons can choose between undertaking a four-year unarmed service in a camp or being imprisoned for four years in military prison, being exempted afterwards from any new call to serve. Two years before, during the constitutional reforms of 1975, the proposal of PASOK (the Pan-Hellenic Socialist Movement) for the institution of an alternative civilian service for those who refused to undertake military service for religious or ideological reasons had been rejected by the ruling party of New Democracy. Although the movement for the respect of soldiers' rights was particularly active, the issue of non-religious conscientious objection remained a taboo for the political parties and the youth movement.

The political questioning of some of these institutions, particularly of obligatory military service initially, gained ground in the circles of draft evaders and environmentalists as part of the anti-authoritarian movement. The first occasional reports on the subject were published between 1982 and 1984, when the *Ecological Newspaper* and the exceptional (at that time) magazine 'I Deny' gave voice to and directed

the newborn anti-authoritarian movement. The movement developed international relations, actions and articles multiplied, relative cohesion was achieved, and its direct objectives were not yet causing conflict. These were the release from prison of the Jehovah's Witnesses, the ending of prosecutions, and the institution of an alternative civilian social service.

Between 1986 and 1987 the first non-religious conscientious objectors appeared. Their statements were subversive, they had a humanitarian character and they did not limit the refusal to some kind of army or political system. They promoted non-violence and social disobedience. In March 1987, twenty-eight-year-old Michalis Maragakis, the first person to make his refusal to enlist publicly known, was arrested, and in June he was sentenced to four years' imprisonment.

The government persisted in its harsh attitude, despite the impressive support that developed in Greece and internationally. The lack of political will was concealed by estimates of the non-compliance of conscientious objection and the alternative service with the constitution. After his appeal hearing in February 1988 Maragakis's sentence was reduced to twenty-six months' imprisonment. On 22 February 1988 he began a hunger strike, which ended on 1 May 1988 when the government, alarmed by international support, stated that it would examine the issue of conscientious objection in a positive light.

On 12 April 1988 conscientious objector Thanasis Makris was arrested and went on hunger strike in solidarity with Maragakis. On 26 May 1988 he was given a five-year sentence (later reduced to eighteen months), and he began a new hunger strike in which Maragakis joined him. This strike ended in July when the government announced a bill. This draft law, which also provided for an alternative civilian service of double duration, was never introduced for discussion in parliament.

During the imprisonment of Maragakis and Makris an enormous international campaign of thousands of support letters developed, putting the government on the defensive. In Greece dozens of concerts and events were organized in support of Maragakis and Makris, while more than twenty people declared their conscientious objection for ideological reasons.

Michalis Maragakis was released in December 1988 after three successive hunger strikes of seventy-one, fifty and twenty days; while Thanasis Makris was released in July 1989 after two strikes of fifty-five and thirty-three days. Both were released having served two-thirds of their sentence. Meanwhile, in February 1988 a new law was introduced providing for unarmed military service for the ideological conscientious objectors as well. Nobody made use of the new regulation, however.

During the same period, and as the groups supporting Maragakis and Makris evolved, the Association of Greek Conscientious Objectors was founded by twelve people who declared themselves conscientious objectors during a press conference in Athens on 18 November 1987. Although the Jehovah's Witnesses continued to be jailed (in those years there were always about four hundred Jehovah's Witnesses in military prisons serving four-year sentences), prosecutions against the non-religious conscientious objectors, with the exception of administrative sanctions, were suspended.

The situation changed in May 1991 when Nikos Maziotis was arrested. The arrest of Pavlos Nathaniel followed in September. In their statements they declared the reason for their objection to be their class/anti-authoritarian conscience, and stated their unwillingness to undertake any form of alternative civilian service. They were given one-year sentences suspended for three years and were released, while call-up papers were delivered to them, a usual practice on the part of the recruiting authorities. Maziotis was arrested again on 9 October 1992. He began a hunger strike that would last fifty days and would end with his release.

In 1992, the government of New Democracy announced the preparation of a bill whose course was terminated by the end of the year when the solely consultative Legal Council of State rejected it as non-compliant with the constitution. The next governments spread rumours regarding a bill that would recognize conscientious objection, trying with various deceptive formulations such as 'social service in the army' to minimize pressure both from abroad and from within the country. The number of conscientious objectors had reached around one hundred, although they were not all willing to undertake an alternative civil service, if and when provided by law.

Most conscientious objectors had moved from their homes, and the authorities did not pursue them, a situation that would change with the arrest of Nikos Karanikas in 1995. Karanikas was transferred to a military prison and given a four-year sentence for draft evasion during a time of general mobilization. In December 1995, following a strong show of support, the military court of appeal reduced his sentence to one year in prison suspended for three years. Nevertheless, while he was leaving the courtroom he was issued with new call-up papers. Karanikas did not report for duty so he was charged with desertion. Also charged with desertion was Nikos Maziotis. He had been arrested in the meantime for another offence, and was sentenced in 1998 to a ten-month term of imprisonment, which the court of appeal reduced to eight months.

After the Association of Greek Conscientious Objectors together with the İzmir Savaş Karşıtları Derneği (Izmir War Resisters' Association) was honoured with the Friedrich Siegmund-Schultze Peace Prize by the German EAK (Evangelische Arbeitsgemeinschaft zur Betreuung der Kriegsdienstverweigerer) in February 1997, the Greek parliament passed a law (Law no. 2510 of 27 June 1997) introducing a form of civilian social service as an alternative to military service. The legislative process took significantly longer in comparison with the rest of Europe, however. The term conscientious objector was mentioned for the first time in a legal text, though without marking the formal recognition of conscientious objection as a human right. This is clearly shown by the preamble, where it is stated that 'dealing with the relative issue of the conscientious objectors, respecting always the obligatory and catholic character of the military service, is necessary for the compliance of the country with obligations undertaken under international conventions'. The main law governing the refusal of conscription for reasons of conscience today is Law no. 3421/2005.

The attitude of the army hardened a great deal immediately after the law was introduced. The first Jehovah's Witnesses who refused to undertake an alternative service were given six-year sentences, which was double the duration of the alternative service at that time. Lazaros Petromelidis and Yannis Chrysovergis appealed against the excessively long sentence and the conditions involved in undertaking the alternative service. Petromelidis was arrested near his residence and in April 1999 he was given a four-year sentence. Following a large solidarity campaign, the military court of appeal ordered his release.

As expected, the law did not solve the several and complex problems that had accumulated over all these years. Nevertheless, its introduction was welcomed as a positive step both abroad and by the Greek conscientious objectors who chose to support the institution with their participation. Since 1998 around two thousand conscientious objectors (the vast majority being Jehovah's Witnesses) have undertaken or are undertaking an alternative civilian service. The process of implementation of the civilian alternative service has, however, revealed a series of problems, for which additional legislative regulations are required. These regulations have been adequately analysed in the exceptional report of the Greek Ombudsman (1999) as well as in the proposals of the National Commission for Human Rights.<sup>1</sup>

### **The situation today**

Conscription continues to exist in Greece. Article 4 on Equality of Greeks in the Greek constitution states in paragraph 6 that: 'Every Greek

that can carry guns is obliged to contribute to the defence of the Country, according to the provisions of the laws.<sup>7</sup> An explanatory statement was added in the last review of the Greek constitution, in 2001: ‘The provision of paragraph 6 does not exclude the provision by law of the compulsory offer of other services, inside or outside the armed forces [alternative service] by those who have a documented conscientious objection for performing armed or in general military service.’<sup>2</sup>

Thus, conscientious objection is not recognized fully and clearly as a human right in the Greek constitution. Even the alternative service is offered as an option to governments; they can introduce it by law or not. In addition, the word ‘documented’ means that conscientious objectors must somehow document their conscientious objection; so they must be judged, for example by a special committee.

The latest law on conscription, Law no. 3421/2005,<sup>3</sup> which was passed by parliament on 23 November 2005, provides for unarmed military service and alternative service in its tenth chapter. This law amended the previous law on conscription, Law no. 2510/1997,<sup>4</sup> which had introduced alternative civilian social service for the first time in Greece, starting on 1 January 1998. Still, however, both in law and in practice, the alternative service continues to be not purely civilian and of a punitive and discriminatory nature. Therefore, it must be reformed on the basis of European and international standards and the recommendations of the Greek Ombudsman and the Greek National Commission for Human Rights.<sup>5</sup>

In addition, conscientious objectors in Greece are usually called up for military service, and every time they refuse to serve in the army a new prosecution is brought against them on grounds of disobedience, insubordination or desertion. This violates Article 14, para. 7 of the International Covenant on Civil and Political Rights (ICCPR), which states that: ‘No one shall be liable to be tried or punished again for an offence for which he has been finally convicted or acquitted in accordance with the law and penal procedure of each country.’<sup>6</sup>

The main problems in relation to the legal framework for alternative service in Greece are the following:

- The duration of the alternative service is discriminatory and punitive. As the law currently stands, the full military service is twelve months, while the full alternative civilian service is thirty months. Following a decision of the minister of defence, the full alternative civilian service can be reduced, but it must be at least twenty-three months, as it is now.
- The administration of alternative service, including the examination

of applications and any ensuing court process, does not fall entirely under civilian authority, as it should. Currently the administration is under the Ministry of Defence. The minister of defence decides on applications, following an opinion by a special five-member committee with two military members; and the conscientious objectors, though civilians, are tried by military courts.

- Conscientious objectors do not have the right to claim conscientious objector status at any time after entering the armed forces. Currently they can claim conscientious objector status only before entering the armed forces.
- The right to conscientious objection does not apply at all times, but only during peacetime. Currently, in times of war, the provisions for alternative service can be suspended following a decision of the minister of defence, and conscientious objectors would then be obliged to perform unarmed military service.
- The status of conscientious objector, and therefore the right to alternative civilian service, should never be revoked. Currently the status can be revoked for carrying out trade union activities, for participating in a strike or for disciplinary breaches, and conscientious objectors are then obliged to perform armed military service.
- The conscientious objectors currently face clear discrimination in several fields. For example, they do not have the right to buy off some part of their service, as conscripts do. They are also not allowed to serve in the prefectures of Attica and Thessalonica, in the prefectures of their birthplace, origin or residence, or in cities with a high population density, while conscripts are allowed to serve anywhere.<sup>7</sup>

In addition, the main problems for the conscientious objectors in practice are the following:

- Several conscientious objectors face prosecution and have been deprived of some of their rights. The government must put an end to the prosecutions of conscientious objectors and allow them to recover their full civil and political rights, including that of travel abroad, the right to a passport and identity card, and the right to vote.
- The vast majority of the conscripts are still not aware of the option of performing alternative civilian service instead of military service. The government must guarantee the availability of adequate and timely information about the right to conscientious objection to military service, and the means of acquiring conscientious objector status, to all persons affected by military service.

- There are several problems regarding the procedure for applying for conscientious objector status, owing to impediments such as strict deadlines, difficulties in acquiring the required documents, non-recognition of those who report to a military camp to postpone their service on health grounds, and questionable decisions by the special committee, mainly on non-religious applicants. The government must eliminate the problems in the application procedure.<sup>8</sup>

According to recent official data provided by the Ministry of National Defence,<sup>9</sup> only four out of twelve non-religious applicants for alternative service were accepted in the four-year period between 2002 and 2006, while the decision on one application is pending. In contrast, the religious applicants number in the hundreds every year, almost all of them Jehovah's Witnesses, and they usually face no problems in being recognized as conscientious objectors. They submit certification from their church and their application is accepted without their even being interviewed by the special committee.

In addition to the applicants for alternative service, there are also a number of conscientious objectors who publicly declare their objection but either they are not allowed by the law to apply for alternative service or they just do not want to. The first category includes those who have served in the armed forces in the past or are currently serving: conscripts, professional soldiers, reservist soldiers and soldiers who served in the armed forces in their country of origin but are obliged to serve in the Greek army as well, after being granted Greek citizenship and coming to stay in the country permanently. The second category includes the conscientious objectors who do not apply for alternative service because it is still clearly punitive, discriminatory and not purely civilian, and also the objectors who completely oppose the alternative service.

Moreover, there are many people who object to military service for reasons of conscience but prefer not to declare it publicly. Therefore, they either do not report for military service or try to be exempted from it for psychological reasons. The persons of the first category are included in the 31,180 people who were deemed insubordinate (inside and outside the country) on 10 January 2007. Those in the second category are included in the 37,242 who were considered unsuitable for conscription for health reasons between 1997 and 2006.<sup>10</sup>

Finally, the Greek authorities must stop treating conscientious objectors as criminals, prosecuting them in violation of their human right to conscientious objection.

## Notes

1 Association of Greek Conscientious Objectors (January 2007) 'Refusing conscription for reasons of conscience in Greece – brief flashback', arnisi-strateusis.gr/?q=node/219, accessed 23 February 2007.

2 The Greek constitution, Article 4, 2001, www.parliament.gr/politeuma/syntaxmaDetails.asp?ArthroID=4, accessed 23 February 2007.

3 Ministry of National Defence, Law no. 3421/2005, www.stratologia.gr/N.342105.pdf, accessed 23 February 2007.

4 Ministry of National Defence, Law no. 2510/1997, www.stratologia.gr/nomo\_2.htm, accessed 23 February 2007.

5 Amnesty International (May 2006) 'Greece: high time to comply fully with European standards on conscientious objection', AI Index:

EUR 25/003/2006, web.amnesty.org/library/Index/ENGEUR250032006?open&of=ENG-345, accessed 23 February 2007.

6 International Covenant on Civil and Political Rights (16 December 1966), Article 14, para. 7, www.ohchr.org/english/law/ccpr.htm, accessed 23 February 2007.

7 Amnesty International (May 2006), web.amnesty.org/library/Index/ENGEUR250032006?open&of=ENG-345, accessed 23 February 2007.

8 Ibid.

9 Ministry of National Defence (15 December 2006) 'Answer to Question 1404/21-11-2006 of MP Fotis Kouvelis', F. 900a/5279/8857.

10 I. Sotirhou (February 2007) '“I” for Ideology', *Galera Magazine*, 17: 38, galera.gr/magazine/modules/articles/article.php?id=572, accessed 23 February 2007.

## 17 | Conscientious objection in Turkey

COŞKUN ÜSTERCİ AND UĞUR YORULMAZ

§ Among all the dissident movements in Turkey, we think that the story of the anti-militarists and conscientious objectors is one of the most interesting. We believe that the asymmetry between the centre of power that is opposed and resisted and the resisters; the fact that the resisters do not have a leader; that a non-violent resistance is effected against an institution and a mentality that organizes violence; and the search for an anti-militarist language and politics that may be considered quite new for Turkey more than deserve attention. We would like to touch upon some of the turning points in this story, which we find important.

Turkey was first introduced to the concept of conscientious objection in 1990 when Tayfun Gönül and Vedat Zencir announced their objection to military service in the pages of a periodical called *Sokak Dergisi* (The Street Magazine). It is always an act of courage to be the first and to risk the many unforeseen consequences of the initial step. Above all, what they were up against was the widespread belief that ‘the military is a racial characteristic of Turks’. In this respect military service was accepted as the ‘highest’ service that any Turkish male could perform for the country and nation, as well as the only way to gain an identity and social status. Naturally, it indeed required great courage for these two young people to reject their ethnic, social, cultural and even sexual identities and almost prefer being ‘nothing’. Furthermore, the effects of the 1980 military coup, which had violently crushed all semblance of opposition, continued, and there was an undeclared civil war raging in the country. Fortunately their anxieties were not realized: faced with an unprecedented kind of resistance that did not resemble the usual language and form of opposition, the state and the army were taken aback and did not demonstrate the expected harsh reaction.

The foundation of the War Resisters’ Association (Savaş Karşıtları Derneği – SKD) in Izmir in 1992 with the initiation of a group of anti-militarists including Tayfun Gönül and Vedat Zencir was a very important turning point for conscientious objection and the anti-militarist movement. As the association became active, work on conscientious objection and anti-militarism gained a collective quality and public

visibility. Even the state began discussing the concept of militarism: the authorities demanded that the statement ‘being against militarism’ be removed from the constitution of the SKD on the grounds that there is no militarist structure in Turkey. As a result of written correspondence the governor’s office of Izmir decided on the dissolution of the association. It was soon re-established, however, as the Izmir War Resisters’ Association (İzmir Savaş Karşıtları Derneği – İSKD), with an increased number of participants.

This association in Izmir did not limit its work to the issue of conscientious objection. It worked on such diverse issues as the democratization of the country, human rights, the environment, racism, sexism and discrimination, relationships with Greece, the Cyprus issue, and especially the ongoing war resulting from the Kurdish problem. Any other way of organizing would have been unimaginable, as the association was established in order to struggle against militarism as a whole and against the structural violence that materializes within the socio-political system in which we live. The association aimed at opening up a new line of struggle that was largely foreign to the leftist dissident tradition of this country and at launching non-violence as a liberating form of political struggle.<sup>1</sup> Also, with regard to the ongoing war, the aim of the association was to organize a kind of struggle that was truly independent from both parties to the war. In this respect the call of the association, ‘Neither military service nor the mountains!’, was very important.

The democracy experience and the efforts to create an alternative culture within the association were, however, at least as important. Behind such endeavours was the view that transformation begins with the singular experiences of individuals; that a liberating political culture can only be the product of liberating practices. Thus the association did have a board of directors since it was required by law, but in truth it never had directors. It carried out its activities as a local organization that lacked a central and hierarchical structure and which depended on the principles of autonomy. The public statements of the association were grounded in non-violent direct action. It used methods such as street theatre and invisible theatre as well as humour in its actions.<sup>2</sup> This was truly a new language and a new form of political struggle for Turkey.

As a result of the intensification of the work the association was doing on conscientious objection, six people collectively declared their objections in early 1993. In the summer of 1993, the International Conscientious Objectors’ Meeting (ICOM) was organized by the İSKD with ninety participants from nineteen countries convening in Milas–

Ören; the meeting not only advanced international relationships and solidarity but also the movement itself in every aspect. In the years that followed, because of its holistic approach, the İSKD not only worked on issues concerning Turkey but also undertook multidimensional roles in the international war resisters' movement and became an effective and sought-after constituent.

In the autumn of 1993, the broadcasting by a national TV channel, HBB, of an interview conducted with Aytek Özel, the director of İSKD, and conscientious objector Menderes Meletli, a member, caused major public repercussions. This time, however, the reaction of the state/military was quite severe. Prosecutors acted upon the direct order of the head of the Chief of Staff, and first the producer and the cameraman of the programme that aired the interview and then the director of the İSKD and its conscientious objector member were arrested. All of these people were tried in a military court on the charge of 'alienating the public from military service' on account of the statements they had made in the TV programme. The director of the association and its member were convicted. This was the first time conscientious objectors and civilians interested in the subject had been tried in a military court. This was to be the first link in the long chain of trials of conscientious objectors and members of the press which continues to this day. What is really interesting is that the article of the penal code concerning 'alienating the public from military service', which had not been used for over sixty years, was put within the scope of the military judicial system as the result of a sudden decision in the autumn of 1993 and, consequently, all such cases were seen single-handedly by the General Command Military Court in Ankara.<sup>3</sup>

Over time, anti-militarist political work began to be undertaken in other cities as well. Another War Resisters' Association was instituted in Istanbul in 1994. After a press meeting where new conscientious objectors were introduced, the association was raided, detentions and arrests followed, and soon the association in Istanbul was also closed, ceding its place to other anti-militarist structures.

The arrest of Osman Murat Ülke in 1996 is significant for having added new dimensions to the conscientious objection struggle. Since other chapters in this collection already address Osman Murat Ülke's story in detail, we will concentrate more on the aspects of this story that influenced the struggle.

Prior to Osman Murat Ülke's arrest, a support and solidarity campaign was planned by İSKD in case of possible arrests and imprisonment. The main objectives of the campaign were:

- making the issue of conscientious objection understandable to various social segments, beginning with the defenders of human rights and democracy;
- expressing and making visible the injustice and mistreatment suffered by the arrested conscientious objectors to a wide spectrum of society from the parliament to the press;
- getting other people apart from the activists involved in the process.

In this way, we could first of all prevent Osman Murat Ülke from being subject to torture or mistreatment during his resistance, and secure his life. Following this, the civilian and military authorities would be urged to release Ülke. Given the power and nature of the militarist structure and the political situation of the time, the prospect of advancement in the democratization of Turkey, and thus the implementation of a legal arrangement concerning conscientious objection, was seen as a distant possibility, so the association focused more on the strategies of ‘resistance’ and ‘popularizing the resistance’. The aim was to get another arrested after the release of each conscientious objector and thus to keep the confrontation constant.

What was experienced after the arrest greatly exceeded the predicted plan. Solidarity groups were formed for Osman Murat Ülke in numerous cities. The Anti-militarist Initiative (Antimilitarist İnsiyatif – AMİ) was formed in Istanbul and various support actions were organized. As part of the support and solidarity campaign, a comprehensive file was prepared for national and international distribution.

An international alarm network and solidarity and support groups were formed with organizations that worked on conscientious objection, especially War Resisters’ International (WRI), in countries such as Germany, Spain, France and Belgium. These organizations and groups organized many individual or collaborative support actions. Especially in Germany, where many people from Turkey reside, Turkish and Kurdish conscientious objectors made collective declarations of conscientious objection in support of Ülke. In the meantime, many international solidarity and observation delegations came to Turkey in order to follow Ülke’s trials and visit him in prison. Thanks to all this work, Amnesty International (AI) declared Osman Murat Ülke the symbol of Article 18 of the UN Universal Declaration of Human Rights, which guarantees freedom of thought, conscience and religion, in an AI campaign celebrating the fiftieth anniversary of the Declaration. The United Nations Working Group on Arbitrary Detention evaluated Osman Murat Ülke’s case and decided that in this case the

principle of *ne bis in idem* – that is, the principle that ensures that no one is tried or convicted repeatedly for a crime they have already been convicted or acquitted of – had been violated.<sup>4</sup> In the meantime, the Association of German Protestant Churches also awarded a ‘Peace Prize’ to İSKD.

During the national distribution of the campaign file, face-to-face meetings were conducted with numerous journalists, writers, politicians and human rights advocates, including Orhan Pamuk, whereby the issue of conscientious objection and the process were discussed in detail. As a result, support articles were penned regarding Osman Murat Ülke, his trials were followed, and signature campaigns conducted. The Human Rights Association (İnsan Hakları Derneği – İHD) awarded the Human Rights Prize to Osman Murat Ülke in 1997.

Meanwhile, some conscientious objectors made attempts to get themselves arrested in order to increase the number of conscientious objectors behind bars. One of them, Vedat Zencir, in an act of civil disobedience, repeated his former conscientious objection declaration at a press conference and made a criminal complaint about himself on the grounds of ‘alienating the public from military service’ to the prosecutor of the State Security Court. Interestingly, however, Zencir was neither arrested nor sued.

This multidimensional support did not perhaps cause a radical change in Ülke’s legal situation but it prevented him from being subjected to more severe treatment in prison. This result was in some respects viewed as a success by the organizers of the campaign, who feared that, let alone facing the risk of torture and mistreatment, Ülke might even lose his life during detention.<sup>5</sup> Of course, the actual benefit of the campaign was making the struggle of conscientious objection visible. In the period during which the support campaign was at its height, it was significant that in the Türkiye Büyük Millet Meclisi (Turkish General Assembly – TBMM), Demokrasi Partisi (Democracy Party – DEP) deputies drafted a bill on conscientious objection, and Sosyal Demokrat Halkçı Parti (Social Democratic People’s Party – SHP) members drafted one geared towards preventing civilians from being tried in military courts, even though the proposal did not become law.

This process also had a price, however. Although Vedat Zencir was not sued, many writers, journalists and artists who supported the conscientious objection struggle of Osman Murat Ülke were taken to court on the charge of ‘alienating the public from military service’ after the precedent of the first case in 1993 and some of them were convicted.

Moreover, what happened to Osman Murat Ülke throughout the vicious circle of military unit, court and prison, with no end in sight, discouraged many people who were considering becoming conscientious objectors, making them have second thoughts. On the other hand, despite the angry reaction towards the injustice inflicted on Osman Murat Ülke, seeing how his non-violent, rational attitude based on dialogue and conviction actually created serious distress for the army was encouraging for new conscientious objectors. The Anti-militarist Initiative put Istanbul in front of its name in 1998 and turned into İAMİ. As a result of the work of the İAMİ in the same year, a massive ‘Conscientious Objectors’ Festival’ was organized with more than four hundred participants. In 2000, at another festival with 1,000 participants, three people, two of them former military school students, declared that they objected to conscription.

In 2003, upon the eve of the US invasion of Iraq, conscientious objectors, through their actions, became active components of the anti-war coalition that was formed in Turkey. In 2004, as a spin on traditional rice pilaf days, a ‘Conscientious Objectors’ Rice Pilaf Day’ (*Vıdani Retçiler Pilav Günü*) was organized in front of the Sıhhiye military barracks in Ankara where new conscientious objection declarations were made.<sup>6</sup> The same action was repeated one year later in front of the Harbiye Military Officers’ Club in Istanbul.

In 2004, a ‘touristic’ event was organized in Istanbul, in order to make critical visits to militarist, nationalist institutions, monuments, symbols and rituals encountered every day in the streets of the city and during everyday life, and to make fun of this ironic situation. During this event, which was named the ‘Militourism Festival’ (*Militurizm Festivali*), women also declared their conscientious objections for the first time. Women objectors, whose actions are detailed in Ayşe Gül Altınay’s chapter in this collection, opened up a valuable and transformative discussion within the conscientious objection movement. After all, this was the objective of the Militourism Festival: ‘In addition to making militarism visible, also to enliven the discussion inside the anti-militarist movement.’<sup>7</sup> In the following years, with the collective declarations of conscientious objection at Militourism Festivals held in Izmir and Ankara, the number of conscientious objectors increased, among both women and men.

The strategy of getting new conscientious objectors arrested, thus generalizing resistance and keeping the confrontation constant, as was anticipated during the detention of Osman Murat Ülke, was not implemented for various reasons, such as the harsh attitude of the state on the one hand and the inability of the movement to achieve a

level of organization to implement an action of this massive scale on the other. Later arrests did not occur as a wilful intervention in this sense. Nevertheless, each new arrest did lend permanence to the ‘ad hoc’ organizations formed for support and solidarity, and at the same time allowed the issue of conscientious objection to stay on the agenda for a longer time thanks to the actions of the organizations. Here we would like to briefly mention the experiences of arrested conscientious objectors Mehmet Bal, Mehmet Tarhan and Halil Savda, as they are indicative of the scope and diversity of the problems conscientious objectors may face.

Mehmet Bal,<sup>8</sup> who decided to become a conscientious objector while performing military service in 2002, returning the uniform given to him, saying that he did not need it any more, was tried for insubordination and sent to military prison. When he also refused to wear the uniform mandatory at the military prison, he was subjected to mistreatment and torture: Bal was violently forced to wear the uniform. He was handcuffed from behind to prevent him from taking it off. When he refused to have his hair cut, he was beaten and had his hair cut forcibly. Because he did not stand to attention during headcount, his ankles were cuffed to simulate the pose. Since the cuffs used blocked blood circulation, a special chain was made for him. Whenever Bal left his cell for various reasons, such as a meeting with lawyers or a visit to the doctor, his feet were chained. These practices demonstrate that objection to conscription after one has completed some military service will never be tolerated. For the military it is confounding and certainly unacceptable that someone who has gone through that impressive, suppressive training does not turn into a compliant, obedient and altruistic soldier. Thus for him to serve as a deterrent to others who are silently watching, the ‘objector soldier’ must be disciplined by all means necessary. In sum, he was again arrested at the beginning of June 2008. He was subjected to violence and intense torture in Hasdal Military Prison. He went on hunger strike<sup>9</sup> and was released on 24 June 2008. His situation is unclear, however, like that of other objectors in Turkey at the time of writing (June 2008). He might be rearrested in the future.

Mehmet Tarhan was also subject to similar practices during the time he was imprisoned. Even before he made it to the military prison, the rumour ‘a traitor is coming’ was circulated among the prisoners. As a result, he was subjected to a lynching attempt by the prisoners the moment he stepped into the block. Thanks to the intervention of some sensible inmates, Tarhan survived this attack. The aggressors later continued their threats and attacks on Tarhan, however. Despite

insistent notifications issued by the lawyers, the events were ignored by the prison administration. Tarhan, who refused to have his hair cut or shave, was violently forced to shave. He was arbitrarily sent to solitary confinement countless times. He was unable to enjoy some of the rights other prisoners had and his meetings with his lawyers were obstructed.

Conditions faced by Halil Savda, who was still imprisoned at the time of writing, were not very different. The frequency of the disciplinary penalties given Savda, however, on the justification that he allegedly broke disciplinary rules, caused him to be in 'perpetual solitary confinement'.

In addition to all this, the fact that Tarhan was of Kurdish origin and homosexual, and that Savda was also of Kurdish origin and had been punished as a former member of the Kürdistan İşçi Partisi (Kürdistan Labour Party – PKK), caused them to receive more punishment. As related by Alp Biricik elsewhere in this collection, Mehmet Tarhan was almost forced to go through a medical procedure demeaning to homosexual people. No matter how clearly Halil Savda made it plain that he had become a conscientious objector for anti-militarist and non-violent reasons, because of his unapologetic assertion of his Kurdish identity the military authorities considered his attitude and behaviour within the context of his conscientious objection to be PKK propaganda, subjecting him to additional repression as a result.

The conscientious objection struggle in Turkey has been nourished by an anti-militarist critique from the outset. Except for the first conscientious objectors, all are women and men who were either very young or as yet unborn at the time of the 12 September 1980 military coup. These people formed their identities and world-views within a militarist/paternalist culture generalized and augmented by the military coup and under conditions of war. For this reason, conscientious objection holds meanings beyond self-expression and assertion of a personal right. Even if they have embarked upon the journey solely for the purpose of 'being themselves', the process itself forces them to confront numerous historical national issues such as 'war and violence', 'nationalism' and 'the culture of rights and democracy'. Although there are different political views among conscientious objectors today, most are anarchists embracing the total objection attitude. Additionally, an anti-militarist critique is something shared by all.

The state/military approach to conscientious objectors has generally been one of indifference and connivance. Despite its prodigious intelligence facilities, the state rarely performs the routine search procedures aimed at finding those who are eligible for military service in the case

of conscientious objectors. The main justification for this attitude of ignoring objectors is that it is to avoid popularizing ideas about conscientious objection as a right, and the creation of new public debates about conscientious objection through the support work undertaken by the allies of conscientious objectors when one of them is arrested.

Another ‘benefit’ it is hoped will be reaped from ignoring conscientious objectors is related to the scope of efforts to create a surveillance society in Turkey. There are existing legal arrangements geared towards preventing military deserters from getting support from society and towards making their lives difficult in Turkey.<sup>10</sup> Both such laws, and the recent moves to make citizens’ personal information available electronically, have created a powerful regulation and surveillance system that makes the lives of military deserters and conscientious objectors difficult, limiting their mobility. Thus it becomes impossible for conscientious objectors and military deserters to satisfy their most basic everyday needs, such as being employed, travelling, lodging, getting married, getting a passport, opening a bank account, doing invoiced shopping, and so on. Because any condition requires an identity check, this marks the beginning of a vicious circle of military unit, court and prison, which we tried to explain above, with no certainty as to when and how the conscientious objector will get out of it. Additionally, in these lands where ‘traitors’ and ‘others’ are easily produced, the objectors have to explain their situation diligently and insistently to everyone in their social circle, beginning with their own family and friends. In its *Ülke v. Turkey* decision, the European Court of Human Rights (ECtHR) defines these severe living conditions of conscientious objectors, which amount to a kind of social isolation, with the striking concept of ‘civil death’.

When the conscientious objector and the state cross paths and physically meet one another, and when the conscientious objector confronts the problem with determination and insistence, in these moments especially the state adopts a very harsh attitude. We have tried to demonstrate the extent of this harshness above by relating state policies towards conscientious objectors.

The draconian attitudes of the state are, of course, not only aimed at repressing the imprisoned conscientious objector. Those who are in support of and in solidarity with them also receive more than their share of this attitude. In fact, some conscientious objectors and anti-militarists have been fired from their jobs by ‘deep’ interventions; some have been taken into custody at military courts where they offered support to conscientious objectors, or were subjected to brute force. Phone tapping, tailing and harassment took place. We can also include

the signed and unsigned threats and physical attacks of nationalist, fascist forces in this regard. The most recent example of this is the attack conducted under the leadership of such institutions as Milliyetçi Hareket Partisi (Nationalist Movement Party – MHP), Ülke Ocakları (Idealist Hearths – the youth groups of MHP) and Gaziler Derneği (Association of Veterans) against the solidarity group that turned up to follow Halil Savda's trial on 15 March 2007. During the above event, instead of preventing and dispersing the attackers, the security forces attacked the solidarity group with pepper spray and batons.<sup>11</sup>

As the ECtHR states in its *Ülke v. Turkey* decision, Turkey still lacks a legal regime for conscientious objectors. Although more than a year and a half has elapsed since the verdict, the state has yet to take a concrete step in this direction. After the 15 June 2007 meeting of the Council of Europe Committee of Ministers, however, which oversees the implementation of ECtHR decisions, a statement was published indicating that Turkey was working on a new military service law which would prevent the repeat of lawsuits and convictions of those who refuse military service on conscientious and religious grounds. Also, it was stated that the issue was to be taken up again at the next meeting of the Committee of Ministers on 15–17 October 2007.<sup>12</sup> This looks like a development that could to some extent appease the conscientious objectors. In conditions where political tension is climbing, e-warnings are issued by the military, preparations for cross-border operations are being made, and the disapproval of the army is possible, it is rather questionable, however, whether those in political power can demonstrate the will to pass such a bill. Even if we assume for a moment that such a will can be demonstrated, the question of the contents of a possible conscientious objection law is also important. Although government representatives have stated that preparation is under way, nothing has been shared yet with the parties concerned with the issue. Although there is no tradition of asking for the opinion and suggestions of the public during the preparation of bills in this country, we must openly admit that, in the event of a possible public debate, apart from an ability to express their general disapproval of the subject, the conscientious objectors are not especially well prepared.

In fact, despite the not-so-short history of struggle of the conscientious objection movement in Turkey, at this point the movement not only lacks the quality of organization and collective activity that the struggle requires, but also elements of the movement are demonstrating exhaustion and dispersion. There are many reasons for this, but one of the first that comes to mind is that the struggle has not acquired a mass base. For this reason, despite all the serious difficulties suffered

for years, the entire burden has been shouldered by a small number of activists. This has inevitably caused general exhaustion and burnout in activists. On the other hand, specific reasons, such as the indifferent stance of conscientious objectors and anti-militarists towards organization and normative duties and responsibilities in particular, as well as their lack of interest in the political perspective and common history, further complicate the formation of plans and strategies that could generalize and strengthen the struggle for conscientious objection. For instance, we can see such a lack of planning and strategy in approaches towards Jehovah's Witnesses, military deserters and runaways. While these groups could become the most direct target of demilitarization activities, the conscientious objection movement has no concrete policy with regard to them. In addition to having no policy, the movement has next to no knowledge about their problems and needs, and the relationships that could be exploited to forge collaboration and solidarity are entirely incidental.

It is of course possible to cite many other such examples that fall within the scope of criticism/self-criticism. By way of concluding without further ado, however: rapid changes and disheartening developments are occurring in the world, and especially in our country. Militarist aggression is acquiring new faces and developing new methods. The influence of the military, encompassing many areas from politics to law, from the economy to culture and education, is penetrating deeper. In fact, military intervention threats publicized through e-warnings are in the offing. In these conditions, the foremost task facing conscientious objectors and the anti-militarist movement is to take responsibility for creating a comprehensive programme of transformation with regard to the demilitarization of Turkey, in collaboration with all elements of opposition that believe this is necessary.

*Translated by Balam Nedim Kenter*

## Notes

1 Since the leftist opposition in Turkey has not faced the fact that, whether capitalist or socialist, every type of modern state is by nature militaristic, they have in general found anti-militarism odd, even ignoring it. For a long period, because the republic was founded after a 'national liberation war', an important segment of the leftist opposition regarded the military as

an anti-imperialist force, the pioneer and guardian of Turkish modernization. This view led to it overlooking the consequences and effects of the militarist tutelage regime; and furthermore it led to support for the regime, including rallying on the streets, despite the e-coup in the spring of 2007 (during which the General Staff made a statement on their website warning against the

democratic movement in Turkey), despite all the repression, such as the military coups, martial law, and so on. On the other hand, an important part of the leftist opposition, which could put a relative distance between itself and the regime, disregarding the balance between means and ends, aimed to achieve an end such as ‘liberation’ with a means such as ‘violence’, which effectively annuls the former.

2 After a nine-year struggle, owing to problems such as political repression, physical and psychological deprivation and exhaustion, the inability to build a mass basis, and on the grounds that it had lost the possibility of existing meaningfully in the public arena, İSKD dissolved itself in 2001 after a decision by the board of directors.

3 Although the crime of ‘alienating the public from military service’ was outlined in Article 155 of the Turkish Penal Code in effect at the time, it was brought into military jurisdiction based on Article 58 of the Military Penal Code. With a change to the ‘Military Courts Foundation and Trial Procedures Code’ (30 July 2003 – 4963 S.K./6. md.) in 2003, however, it was decreed that when the crimes specified under this heading are committed by civilians during peacetime, they cannot be processed in military courts, thus taking the crime of ‘alienating the public from military service’ out of the jurisdiction of military courts. Nevertheless, recently (in the summer of 2006) a worrying decision placed the crime of ‘alienating the public from military service’ (Article 318 of the New Turkish Penal Code) under the jurisdiction of the ‘Anti-Terror Law’. Criminal complaints under this heading are, however, still filed by the

Military Prosecutor of the General Chiefs of Staff.

4 OPINION no. 36/1999 (TURKEY): United Nations Working Group on Arbitrary Detention (E/CN.4/2001/14/Add.1). (Editors’ note: For more detailed information about this decision see Chapter 19 of this book.)

5 The true cause of concern was the torture and mistreatment cases (and even some resulting deaths) in detention facilities and prisons reported by the media and human rights organizations at the time. See the death of soldier Hamdi Deniz in custody (Türkiye İnsan Hakları Vakfı – TİHV/Human Rights Association of Turkey [1996] ‘Human rights report’, p. 323) and the death from torture of deserting soldier Halil Tüfekçioğlu at a military prison (*Hürriyet*, *Ülkede Gündem* and *Evrensel* newspapers, 6 October 1998).

6 Editors’ note: In Turkey, most military and civil schools usually organize ‘traditional rice pilaf days’ for gatherings and solidarity. In addition, the objectors in Turkey organized the first pilaf day in 2004 due to draw attention to the issue of conscientious objection and for solidarity with objectors in Turkey.

7 See Ayşe Gül Altınay (July 2006) ‘Militarizmden Miligösteriye Türkiye’de Anti-militarizmin Yeni Yüzleri’ [From militourism to mili-performance: the new faces of anti-militarism in Turkey], *Birikim*, 207: 56–61 for an evaluation of a form of struggle based on non-violent action and humorous resistance that has gained more visibility and popularity with these festivals, although the anti-militarists have embraced and have been trying to internalize it from the beginning.

8 The process that led Mehmet Bal to become a conscientious objector is an intriguing story in its own right. While doing military service, Mehmet Bal was arrested for a former crime and was imprisoned for eight years. While Mehmet Bal was at Eskisehir Military Prison, Osman Murat Ülke was coincidentally put in the same block. Holding nationalist and conservative views at the time, Bal was antagonistic towards Osman Murat Ülke's thoughts and actions, but his sense of justice led him to protect Ülke from possible attacks from other inmates and from discrimination. As a critical reader, Bal initially engaged in heated arguments with Ülke. In time, however, he was influenced by Ülke's anti-militarist ideas and a strong friendship was forged between the two. Upon being released from prison at the end of his sentence, Bal was sent to complete the rest of his military service. After trying to tolerate it for some time, he saw that conscription is contradictory to the anti-militarist values that he had internalized and he decided to become a conscientious objector.

9 See the statement of the Istanbul branch of the Human Rights Association, no. 2008/21, 10 June 2008.

10 Military Penal Code,

Article 75/1 (changed clause, 30 April 1945 – 4726/2 md.): 'Those who incite soldiers to flee or who make the desertion or the continuance of desertion easier, or those who knowingly employ deserters, those without permission, draft dodgers, call dodgers, hideaways and reserve officers and soldiers who fail to show up for duty, in private or state service, or those who hide them or those who employ them for whatever reason in state, municipal or city departments and any institutions under these or in banks and occupational institutions and associations for the public good and those who do not fire them in the event of notification by the government, shall be convicted from three months to a year and from one to three years for repetition of the crime in peacetime, six months to two years in times of mobilization and states of emergency and up to seven years if the crime is repeated in times of mobilization and states of emergency.'

11 [www.savaskarsitlari.org/arsiv.asp?ArsivTipID=8&ArsivAnaID=38415&ArsivSayfaNo=1](http://www.savaskarsitlari.org/arsiv.asp?ArsivTipID=8&ArsivAnaID=38415&ArsivSayfaNo=1), accessed 1 July 2007.

12 Editors' note: For more information about this issue, please see Chapter 23 in this collection.

**FOUR | Conscientious objection and law**  
**A International law**



## **18 | A view on international implementation of the right to conscientious objection**

ÖZGÜR HEVAL ÇINAR

§ The right to conscientious objection is evaluated under the right to ‘freedom of thought, conscience and religion’ elaborated under Article 9 of the European Convention on Human Rights and Article 18 of the International Covenant on Civil and Political Rights (ICCPR), as well as the Universal Declaration of Human Rights. Indeed, the first article of the Universal Declaration of Human Rights firmly asserts that ‘All human beings are endowed with reason and conscience’. In addition, Article 18 of the ICCPR proclaims that:

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

In practice, the United Nations (UN), European Union (EU) and Council of Europe (CoE) have also, in their numerous resolutions, comments and recommendations, declared that this right is in fact connected to freedom of thought, conscience and religion.<sup>1</sup> For instance, the Committee of Ministers of the Council of Europe, in Recommendation R(87)8 in 1987, requests of member states that ‘anyone liable to conscription for military service who, for compelling reasons of conscience, refuses to be involved in the use of arms, shall have the right to be released from the obligation to perform such service ...’ It continues as follows: ‘the government of member states, insofar as they have not already done so, [should] bring their national law and practice into line ...’

Presently, there are no armed forces in twenty-seven countries in the world.<sup>2</sup> Of the 192 UN members, however, 168 still have armed forces, which are either professional or based on compulsory military service.<sup>3</sup> As I have mentioned above, the right to conscientious objection is recognized by most international instruments and over 35 per cent of the 168 countries with armed forces have recognized conscientious objection as a right.<sup>4</sup> This percentage is significantly higher in Europe, however.<sup>5</sup> Moreover, nineteen of the forty-seven member states of

the CoE, in addition to recognition of conscientious objection, have an alternative service, which should be civilian in accordance with international law.<sup>6</sup> It is very important to understand why alternative service was created, and what the difference between military and alternative service is as regards duration. This chapter focuses on which countries have a civilian alternative service and considers by whom the alternative service is coordinated.

More than eighty of the 192 members of the United Nations have a professional army instead of a system of compulsory military service.<sup>7</sup> It is important to know, however, which countries have recognized conscientious objection as a right for professional soldiers. Therefore, this chapter also focuses on this issue.

When we focus on Europe in particular, we see that in twenty-six of the members of the Council of Europe (in twenty-one of which there is a professional army) there is no compulsory system of military service. These are Belgium, Bosnia-Herzegovina, Bulgaria, Croatia, the Czech Republic, France, Hungary, Ireland, Italy, Latvia, Luxembourg, Macedonia, Malta, Montenegro, the Netherlands, Portugal, Romania, Slovakia, Slovenia, Spain and the United Kingdom. Andorra, Iceland, Liechtenstein, Monaco and San Marino have no armed forces.

Nineteen member states of the Council of Europe do, however, have a system of compulsory military service, and the right to conscientious objection is recognized. In addition, conscientious objectors in these countries are provided with an alternative service. These countries are Albania, Armenia, Austria, Cyprus, Denmark, Estonia, Finland, Georgia, Germany, Greece, Lithuania, Moldova, Norway, Poland, the Russian Federation, Serbia, Sweden, Switzerland and Ukraine. Of the forty-seven members of the Council of Europe, only Turkey does not recognize the right to conscientious objection. In addition, in Azerbaijan this issue is complicated. Outside the Council of Europe, there are other countries such as Belarus,<sup>8</sup> Colombia, the Republic of Korea, Singapore and Turkmenistan that are in a similar situation to Turkey and Azerbaijan.<sup>9</sup>

In Azerbaijan, the regular period of military duty is eighteen months, whereas for university graduates the period is twelve months. Despite Article 76 of Azerbaijan's 1995 constitution (amended in 2002), which explicitly acknowledges the right to alternative service, there is no further law that recognizes the right to conscientious objection. In that respect, there is neither an application procedure for the right to conscientious objection nor an alternative service. In 2004, however, a draft law for the right to conscientious objection was prepared, although this law has not yet been adopted by the parliament of Azerbaijan.

In Turkey, Article 72 of the 1982 constitution entitled ‘National Service’ explains the legal side of military service in its most basic form. It states that ‘national service is the right and duty of every Turk ...’ In addition, the 1927 Military Service Act no. 1111 proclaims: ‘All male subjects of the Republic of Turkey must perform military service in accordance with this law.’ In Turkey, the regular period of military duty is fifteen months, whereas for university graduates the period is twelve months as an officer, or alternatively six months as a soldier. The right to conscientious objection is not recognized, however, and there is no alternative service in Turkey.

### **Non-armed countries and the right to conscientious objection for professional soldiers in Europe**

In this section, we will examine whether the members of the Council of Europe do or do not provide the right to conscientious objection for professional soldiers in their regulations. In addition, we will touch upon the reasons for the absence of an army and the conditions under which compulsory military service is exercised in some of these countries and some sample countries from other parts of the world.<sup>10</sup>

There are no armed forces in Andorra, as France and Spain provide its external security.

Belgium made a full transition to a professional army in 1995. In Bulgaria, there has been no compulsory military service since 2008.<sup>11</sup> There are, however, no regulations for conscientious objection for professional soldiers in either country.

Bosnia-Herzegovina has had no compulsory military service since 2006.<sup>12</sup> Prior to abolishing compulsory military service, the right to conscientious objection had been recognized. There are, however, no sources to date (June 2008) to confirm whether professional soldiers can benefit from the previous law or recent regulations.

In Croatia, there has been no compulsory military service since 2008.<sup>13</sup> In addition, in the Czech Republic, since 1 January 2005, in France, since 2002, and in Hungary, since December 2004, the army has consisted of professional soldiers. There are, however, no regulations for conscientious objection for professional soldiers in these countries.

In Iceland, neither conscription nor armed forces exist. This country’s defence is provided by the United States under the joint defence agreement signed in 1951 and by NATO. In addition, the USA has a base in Iceland. Furthermore, in accordance with Article 75 of the 1944 constitution, conscription may be introduced only in circumstances constituting a threat to the nation.

Compulsory military service has never been utilized in Ireland. According to Article 28 of the 1937 constitution (amended in 1992 and 1995) and Article 54 of the 1954 Defence Act, conscription may be enabled in circumstances of national emergency. There are, however, no regulations regarding the right to conscientious objection for professional soldiers.

Since 1 January 2005, Italy has had a professional army. No regulations regarding professional soldiers exist, however.

In Latvia, the army has consisted of professional soldiers since 2007. Latvia had recognized conscientious objection as a right through the Law on Alternative Service in 2002. This was only for conscripted soldiers, however. Since compulsory military service was abolished, there have been no sources indicating whether there have been recent regulations for conscientious objection for professional soldiers.

Liechtenstein does not have armed forces. According to Article 44 of the 1921 constitution (amended in 2003), conscription is not exercised except in time of war or emergency.

Luxembourg abolished conscription in 1967. The country has an army of 900 professional soldiers. There has not been a case of conscientious objection among professional soldiers and no legal regulations exist regarding such objection.

Since 2006, there has been no compulsory military service in Macedonia. Macedonia had recognized the right to conscientious objection through the Law on Defence promulgated in 2001. The law was only for conscripted soldiers, however. There are no regulations regarding the right to conscientious objection for professional soldiers.<sup>14</sup>

Malta has never had compulsory military service. Only 2,140 professional soldiers remain. Once again, there are no regulations regarding the right to conscientious objection for professional soldiers.

Since its external security is provided by the French armed forces, Monaco has no army.

In Montenegro, there has been no compulsory military service since 2006. In addition, since 11 May 2007, Montenegro, as a member of the CoE, separated from Serbia. Prior to this separation, regulations regarding conscription, conscientious objection and alternative service were the same as Serbia's. There were no regulations regarding the right to conscientious objection for professional soldiers. Since the separation, there have been no sources to confirm whether professional soldiers do or do not have any right to conscientious objection.

In the Netherlands, the army has consisted of professional soldiers since January 1997. According to Article 3 of the 1962 Law on Conscientious Objection, it is possible for professional soldiers to withdraw

from military service by declaring their objection. The Ministry of Defence declared in 2004, however, that under certain conditions, such as the Iraq war, bringing forward such an objection would not be considered an appropriate reason.<sup>15</sup>

Since November 2004, the Portuguese army has consisted of professional soldiers. No regulations exist, however, regarding the right to conscientious objection for professional soldiers.

Romania abolished conscription in 2007, having recognized the right to conscientious objection by the 1996 Law on the Preparation of the Population for Defence (Law no. 46/1996) and the 1997 Government Decree (Law no. 618/1997). There are, however, no regulations regarding the right to conscientious objection for professional soldiers.<sup>16</sup>

San Marino has no army.<sup>17</sup> Conscription may be exercised only in times of war or emergency.

In Slovakia, there has been no compulsory military service since 2005. Prior to the transition to a professional army, the right to conscientious objection was accepted on the basis of religion and conscience. This right was not provided for professional soldiers, however. There are still no regulations regarding the right to conscientious objection for professional soldiers.<sup>18</sup>

Since 2004, the Slovenian army has consisted of professional soldiers. The right to conscientious objection has been recognized since 1992. According to the suggestion of the Council of Europe's Committee on Legal Affairs and Human Rights (Doc. 8809 Revised, 4 May 2001), professional soldiers should have benefited from the Military Service Act. In fact, only conscripted soldiers had the right to conscientious objection in accordance with the Military Service Act. Since the abolition of compulsory military service, there have been no recent regulations for conscientious objection for professional soldiers.<sup>19</sup>

Since 2002, Spain has had a professional army. No regulations exist, however, regarding the right to conscientious objection.

The United Kingdom abolished conscription in 1960. It took three more years, however, to release the last conscripted soldiers from compulsory military service. According to relevant legislation, professional soldiers who object on conscientious, religious or political grounds are forced to retire or are honourably discharged.

### **Non-armed countries or professional armies in other sample countries in the world**

There are twenty-two other countries in the world that do not have an army. These countries are the Cook Islands, Costa Rica, Dominica, the Federated States of Micronesia, Grenada, Haiti, Kiribati, the Maldives,

the Marshall Islands, Mauritius, Nauru, Niue, Palau, Panama, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines (Western) Samoa, the Solomon Islands, Tuvalu, Vanuatu and Vatican City.<sup>20</sup>

I would also like to focus on some sample countries in the rest of the world which have a professional army.<sup>21</sup> The question again arises, however, as to whether or not they recognize the right to conscientious objection for professional soldiers.

In Australia, there has been no compulsory military service since 1972. There is, however, no recognition of conscientious objection for professional soldiers. If they develop a general opposition to military service or a particular conflict, they can apply for discharge or transfer to another unit.<sup>22</sup>

In Canada, there has been no conscription since the Second World War.

According to the government, professional serving members of the Canadian Forces, who would not otherwise be entitled to release on request, may apply for release as conscientious objectors if they become firm, sincere objectors to war in general or to the bearing and use of arms as a military service requirement. The conscientious objection must be based on religious or moral study and belief and must be general. Objection to participation in or the use of arms in a particular conflict does not qualify an individual to be recognized as a conscientious objector. Similarly, a politically motivated objection is not accepted.<sup>23</sup>

In Japan, there has been a professional army since 1954. There is no legal provision for conscientious objection. It appears, however, that professional soldiers are allowed to resign from the army if they claim conscientious objection.<sup>24</sup>

In the USA, there has been no compulsory military service since 1973, but the Military Selective Service Act is still part of the US Code.<sup>25</sup> According to Section 6 (j) of the Military Selective Service Act, ‘nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the Armed Forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form’.<sup>26</sup>

### **The right to conscientious objection and alternative service**

Historically, it is clear that there have always been a great number of people who have objected to participating in wars. For instance, there were more than 200,000 conscientious objectors in the USA during the Viet Nam War.<sup>27</sup> Wars do not only occur on the battlefield, however.

The army also needs supporting logistically. Therefore, states created an alternative service in order to employ those people who would not fight and would not use weapons, since they needed to use their physical and cerebral capabilities for certain jobs of national importance. In fact, states were willing to make these people part of wars.

There were three types of conscientious objectors during the First and Second World Wars. On the one hand, there were absolutist conscientious objectors. 'Absolutists were opposed to the system of compulsory military service as well as to war and killing. Most of them were committed pacifists and were opposed to the whole idea of armed forces and war. They absolutely refused to help wage war in any way at all.'<sup>28</sup>

Two further categories of conscientious objectors are outlined below:

### **1 Non-combatant conscientious objectors**

Non-combatants did not oppose the whole military system, unlike some other conscientious objectors. They were prepared to accept the right of the government and military authorities to take charge of their lives for a period of time as long as they were not required to fight or handle weapons. In the UK, most of them were in the Non-Combatant Corps or Royal Army Medical Corps.<sup>29</sup>

### **2 Alternativist conscientious objectors**

Alternatives were willing to work under civilian authority but not military control. They did not oppose working on behalf of the government to help civilians, but they refused to work for the military or to do any work which would help the military. Therefore, they would not wear any uniform or obey military orders and they were free to live wherever they pleased as long as they had a full-time job doing *work of national importance*.<sup>30</sup>

For example, 10,851 conscientious objectors worked in hospitals, coal mining, and so on, as of 31 December 1945 in Canada.<sup>31</sup>

At present there are two main categories of conscientious objectors: total objectors, who were previously called 'absolutist objectors', and a group that consists of non-combatant and alternativist objectors. There may still be a misunderstanding about alternative service, however. One may think that if there is an alternative service conscientious objectors have the option not to fulfil this obligation. Therefore, I would like to stress that 'where alternative service exists it is a requirement imposed by the State, not a right'.<sup>32</sup> In reality, in the twenty-first century, alternative service is not voluntary any more. If an objector does not

want to fulfil their military or alternative service obligation, they will be punished by domestic law.

I will now mention the issue of military service and alternative service, their periods and the supervising authorities in the member states of the Council of Europe and some sample countries in the world that recognize the right to conscientious objection and exercise an alternative service. First, I will analyse the member states of the Council of Europe.<sup>33</sup>

According to Article 166 of its 1998 constitution and the 2003 Law on Military Service (Law no. 9047/2003), the right to conscientious objection is recognized in Albania. Both alternative and military service are for twelve months. Alternative service is administered by the Defence and Labour/Social Affairs ministries.

Since 1 July 2004, Armenia has recognized the right to conscientious objection in accordance with the 2003 Law on Alternative Service, which offers a forty-two-month alternative-service system. In addition, according to the Law on Alternative Service, one can also undertake unarmed military service in the armed forces, which takes thirty-six months. Military service takes twenty-four months. Alternative service is administered by the Ministry of Defence.

Austria has recognized the right to conscientious objection since 1974. This right is presently based on Article 9(a) of its 1945 constitution and the 1986 Law on Civilian Service. Alternative service is administered by the Ministry of Internal Affairs and is of twelve months' duration, as opposed to eight months for military service.

Military service is of twenty-five months' duration in Cyprus. In Section 5 of the National Guard Law (Law no. 2/1992, amended in June 2007), alternative service is defined for a period of thirty-four months outside the armed forces. It is also possible to undertake unarmed military service in the armed forces, which is for twenty-five months. Alternative service is administered by the Ministry of Defence.

Denmark has recognized the right to conscientious objection since 1917. In accordance with the 1987 Civilian Service Act (Law no. 588/1987, last amended in 2006), alternative service is administered by the Ministry of Internal Affairs. Alternative and military services are of four months' duration.

According to Article 124 of its 1991 constitution and the 2000 Defence Forces Service Act, Estonia recognizes the right to conscientious objection. Alternative service is administered by the Ministry of Internal Affairs or the Ministry of Social Affairs in accordance with Article 73 of the 2000 Defence Forces Service Act. The alternative service period is sixteen months, exactly twice the period of military service.

Finland has recognized the right to conscientious objection since 1931. The 1991 Civilian Service Act (Law no. 1723/1991) is now in effect and alternative service of thirteen months is administered by the Ministry of Labour. Military service, on the other hand, is for a period of six months.

By promulgating the 1997 Law on Alternative Service, Georgia legally recognized the right to conscientious objection. The alternative service is for thirty-six months, twice the eighteen-month period of military service. Alternative service is administered by the State Commission for Civilian Service (part of the Ministry of Health and Social Affairs).

Article 4/3 of the 1949 German constitution states: 'no one shall be compelled to perform armed war service contrary to his conscience'.<sup>34</sup> In addition, this right is also regulated by the 2003 Law on Conscientious Objection. 'Around 150,000 conscientious objectors every year'<sup>35</sup> are directed to alternative service administered by the Federal Office of Civilian Service (appointed by the Ministry of Youth, Family Affairs, Women and Health) for a period of nine months. The period of military service is also nine months.

According to the 1997 Law on Conscientious Objection (Law no. 2510/1997), Greece recognizes the right to conscientious objection. Alternative service is of twenty-three months' duration and is administered by the Ministry of Defence. Military service, on the other hand, is for twelve months.

Lithuania recognized conscientious objection as a right in 1992, through Article 139 of its 1992 constitution and the 1996 Law on National Conscription (Law no. 1593/1996). Administered by the Ministry of Defence, alternative service takes around eighteen months as opposed to twelve months for military service. Military service is, however, six months for university and college graduates.

Moldova recognized the right to conscientious objection in Article 3 of the Alternative Service Act adopted in 1991. Military service takes twelve months, but is reduced to three months for university graduates. Alternative service is for twenty-four months and is administered by the Alternative Service Department.

Norway has recognized the right to conscientious objection since 1922. Presently it is based on the 1965 Law on Exemption of Military Service for Reasons of Personal Conviction. Norway is the only country in Europe where opposition to nuclear armaments is considered as a reason for conscientious objection. Alternative service takes thirteen months, whereas military service is for twelve months.<sup>36</sup> Alternative service is administered by the Ministry of Justice.

Poland has recognized the right to conscientious objection since 1988.

This right is included in Article 85 of its 1997 constitution. Presently it is based on the 2004 Law on Alternative Service and the 1999 Law on the Obligation to Defend the Republic of Poland. Alternative service is administered by the Ministry of Labour, and takes eighteen months, in contrast to nine months of military service. Alternative service is, however, six months for university graduates. Military service, on the other hand, is three months for university graduates.<sup>37</sup>

The Russian Federation recognizes the right to conscientious objection according to Article 59/3 of its 1993 constitution and the Law on Alternative Civilian Service, which entered into force in 2004. Military service is for twenty-four months, whereas for higher education graduates the period is reduced to twelve months. Alternative service takes around forty-two months, a period that is reduced to twenty-one months for higher education graduates. It is also possible to undertake unarmed military service in the armed forces, which is thirty-six months for male citizens, but eighteen months for higher education graduates. This service is controlled by the Ministry of Defence.

Serbia has guaranteed conscientious objection as a right through Article 45 of its 2006 constitution and the Decree on Military Service (amended in 2005). Military service takes nine months, as opposed to thirteen months of alternative service,<sup>38</sup> which is administered by the Ministry of Defence.

Sweden has recognized the right to conscientious objection since 1920. Presently it is based on the 1994 Total Defence Service Act (Law no. 1809/1994). Alternative service is administered by the National Service Administration (part of the Ministry of Defence). Alternative and military services are of seven and a half months' duration.

In Switzerland, the right to conscientious objection was recognized by the 1996 Law on Civilian Service and Article 59 of the 1999 constitution. Alternative service is for 390 days, whereas military service takes 260 days. The supervision of alternative service is carried out by the Ministry of Economic Affairs.

In Ukraine, Article 35/3 of the 1996 constitution and the 1999 Law on Alternative Civilian Service recognize the right to conscientious objection. Alternative service takes twenty-seven months, reduced to eighteen months for higher education graduates. Military service, however, takes eighteen months for male citizens, but twelve months for higher education graduates. Alternative service is administered by the Ministry of Labour and Social Policy.

**Alternative service in other sample countries in the world** Bermuda recognizes conscientious objection. According to the amended

1965 Defence Act, alternative community service as well as a non-combatant service within the Bermuda Regiment are provided. The length of alternative service (three years and two months) is the same as military service. There is no clear information about who carries out supervision.<sup>39</sup>

In Brazil, the right to conscientious objection is recognized in Article 143/1 of the 1988 federal constitution. There is an alternative military service (unarmed military service) which takes twelve months, the same length of time as military service.<sup>40</sup> It is administered by the chief of the armed forces in coordination with the military ministries.<sup>41</sup>

In Cuba, according to several sources, there is no alternative service.<sup>42</sup> According to the government, however, 'alternative civilian social service' may be performed for the same time (three years) as the duration of military service, at places and in roles designated by the government in accordance with the 1973 Law on Social Service, which includes some rather vague clauses that seem to allow military service to be performed in social service projects.<sup>43</sup> If this is the case, there is no clear information about who carries out supervision.

## Conclusion

As I mentioned at the outset, conscientious objection, including that for professional soldiers, is recognized by most international bodies, such as the UN Human Rights Committee, the Committee of Ministers of the CoE, and so on. In fact, none of the mentioned countries has any regulations regarding the right to conscientious objection for professional soldiers except Germany, the United Kingdom and the Netherlands<sup>44</sup> in Europe. In addition, there are several countries, such as the USA, in the rest of the world which also have regulations for conscientious objection for professional soldiers. The right to conscientious objection has to be extended to professional soldiers, however, as stated in the Council of Europe Parliamentary Assembly's Recommendation 1518 (2001), which provides for 'the right for permanent members of the armed forces to apply for the granting of conscientious objector status'.<sup>45</sup>

In the mentioned nineteen member countries of the CoE which have an alternative service, this service is administered by the Ministry of Defence, the Ministries of Labour and Social Policy, Economic Affairs, Justice, Internal Affairs and Health, and so on. In fact, alternative service (or civilian service) should have a non-combatant or civil character.<sup>46</sup> If the alternative service is administered by the Ministry of Defence, this will damage the 'civilian' character of such a service.

Apart from Albania, Denmark, Germany and Sweden, in all countries

in Europe alternative service is longer than military service. According to Recommendation 1518 (2001) of the Council of Europe Parliamentary Assembly, however, alternative service must be ‘neither deterrent nor punitive’. Conversely, the duration of alternative service leads to discrimination and other human rights violations in the majority of the countries mentioned.<sup>47</sup>

In 1999, the UN Human Rights Committee also held that:

The author has claimed that the requirement, under French law, of a length of twenty-four months for national alternative service, rather than twelve months for military service, is discriminatory and violates the principle of equality before the law and equal protection of the law set forth in Article 26 of the Covenant. ... The Committee recognizes that the law and practice may establish differences between military and national alternative service and that such differences may, in a particular case, justify a longer period of service, provided that the differentiation is based on reasonable and objective criteria, such as the nature of the specific service concerned or the need for a special training in order to accomplish that service. In the present case, however, the reasons forwarded by the State party do not refer to such criteria or refer to criteria in general terms without specific reference to the author’s case, and are rather based on the argument that doubling the length of service was the only way to test the sincerity of an individual’s convictions. In the Committee’s view, such argument does not satisfy the requirement that the difference in treatment involved in the present case was based on reasonable and objective criteria. In the circumstances, the Committee finds that a violation of Article 26 occurred, since the author was discriminated against on the basis of his conviction of conscience.<sup>48</sup>

In addition, it should be noted that according to Article 1 (Part II) of the European Social Charter, which is entitled ‘Right of work’, the member states should ‘protect effectively the right of the worker to earn his living in an occupation freely entered upon ...’ (Part II, Article 1/3). Also, in its decision of 25 April 2001 (*The Quaker Council for European Affairs v. Greece*, Application no. 8/2000), the European Committee of Social Rights decided that Greece was guilty of a breach on the grounds of an extended alternative service period.

Some people may argue that the alternative service model in most countries actually serves the problem of conscientious objection. As we have seen in the case of Finland, Norway and Sweden, however, a number of total objectors also refuse to carry out alternative service as well as military service.<sup>49</sup> Therefore, some people argue that this fact proves that alternative service also does not provide a solution.

## Notes

1 UN Human Rights Committee, *Brinkhof v. Netherlands*, Communication no. 402/1990, 30 July 1993, and *Westerman v. Netherlands*, Communication no. 682/1996, 3 November 1999. Also the UN Commission on Human Rights' Resolution 1987/46; the resolutions of the EU Parliament on 13 October 1989 and 19 January 1994; the Council of Europe Parliamentary Assembly's Resolution 337 (1967) and the Council of Europe Parliamentary Assembly's Recommendations 816 (1977) and 1742 (2006).

2 C. Barbey (2001) *La Non-militarisation et les pays sans armée: une réalité*, Switzerland: APRED. See also [www.demilitarisation.org/Countrieswithoutarmy.htm](http://www.demilitarisation.org/Countrieswithoutarmy.htm), accessed 12 February 2008.

3 For further information regarding most of these countries see B. Horeman and M. Stolwijk (1998, updated 2005) *Refusing to Bear Arms: A Worldwide Survey of Conscription and Conscientious Objection to Military Service*, London: War Resisters' International, [www.wri-irg.org/co/rtba/index.html](http://www.wri-irg.org/co/rtba/index.html), accessed 12 February 2008. See also D. Brett (2006) *Military Recruitment and Conscientious Objection: A Thematic Global Survey*, Leuven and Geneva: Conscience and Peace Tax International, and M. Stolwijk (ed. Liz Scurfield) (April 2005, updated 2008) *The Right to Conscientious Objection in Europe: A Review of the Current Situation*, Brussels: Quaker Council for European Affairs.

4 Private communication from Derek Brett in 2008. And for further information regarding most of these countries see Brett, *Military Recruitment*. See also Horeman and Stolwijk, *Refusing to Bear Arms*, and

Stolwijk, *The Right to Conscientious Objection*.

5 Stolwijk, *The Right to Conscientious Objection*; see also Brett, *Military Recruitment*.

6 Ibid.

7 Private communication from Derek Brett in 2008. And for further information regarding most of these countries see Brett, *Military Recruitment*; see also Horeman and Stolwijk, *Refusing to Bear Arms*, and Stolwijk, *The Right to Conscientious Objection*.

8 Belarus is a candidate for membership of the Council of Europe. In Belarus compulsory military service exists and there is no law recognizing the right to conscientious objection. The regular period of military duty is eighteen months, whereas this period is twelve months for university and college graduates.

9 For further information regarding these countries see Horeman and Stolwijk, *Refusing to Bear Arms*. See also Brett, *Military Recruitment*, and Stolwijk, *The Right to Conscientious Objection*.

10 For further information regarding the members of the Council of Europe see Stolwijk, *The Right to Conscientious Objection*, and Brett, *Military Recruitment*.

11 [www.ebc0-beoc.org/pdf/statistics/200711/Table-of-the-situation-of-military-service-and-conscientious-objection.pdf](http://www.ebc0-beoc.org/pdf/statistics/200711/Table-of-the-situation-of-military-service-and-conscientious-objection.pdf), accessed 30 June 2008.

12 Ibid.

13 Ibid.

14 The Broken Rifle (May 2008) 'Professionalisation of the military – end of conscientious objection in Europe?', War Resisters' International newsletter, 78, [wri-irg.org/pubs/br78-en.htm](http://wri-irg.org/pubs/br78-en.htm), accessed 30 June 2008.

15 According to the reply of the USA, 'The right to conscientious objection in Europe', in the Analytical Report of the Office of the High Commissioner for Human Rights, *Civil and Political Rights, Including the Question of Conscientious Objection to Military Service*, 27 February 2006, E/CN.4/2006/51, p. 9, the right to conscientious objection for professional soldiers is recognized in the Netherlands. According to Stolwijk, *The Right to Conscientious Objection*, however, and The Broken Rifle, 'Professionalisation of the military', the Netherlands has no application procedures for conscientious objection for professional soldiers. Only in Germany and the United Kingdom is there such an application procedure.

16 The Broken Rifle, 'Professionalisation of the military'.

17 Barbey, *La Non-militarisation et les pays sans armée*.

18 The Broken Rifle, 'Professionalisation of the military'.

19 Ibid.

20 Barbey, *La Non-militarisation et les pays sans armée*.

21 For further information regarding these countries see Horeman and Stolwijk, *Refusing to Bear Arms*, and Brett, *Military Recruitment*.

22 The Analytical Report of the Office of the High Commissioner for Human Rights, 27 February 2006, p. 9.

23 See Canadian Department of National Defence (2 August 1996), Reply to CONCODOC questionnaire; UN Commission on Human Rights (1991), Report of the Secretary-General prepared pursuant to Commission Resolution 1989/59, Geneva: United Nations, [www.wri-irg.org/co/rtba/canada.htm](http://www.wri-irg.org/co/rtba/canada.htm), accessed 12 February 2008.

24 [www.wri-irg.org/co/rtba/japan.htm](http://www.wri-irg.org/co/rtba/japan.htm), accessed 12 February 2008.

25 The Act requires all males between the ages of eighteen and twenty-six to register for compulsory military service in the USA.

26 See A. Mager (1988) United States Report to International Conscientious Objectors' Meeting (ICOM), War Resisters' League, New York; R. J. Toney (1996) *Military Service, Alternative Social Service, and Conscientious Objection in the Americas: A Brief Survey of Selected Countries*, Washington, DC: NIS-BCO, [www.wri-irg.org/news/2006/usao603-en.htm#fn12](http://www.wri-irg.org/news/2006/usao603-en.htm#fn12), accessed 12 February 2008.

27 The Center on Conscience and War in Washington – Central Committee for Conscientious Objectors, [www.objector.org/ccco/inthenews/funkco.html](http://www.objector.org/ccco/inthenews/funkco.html), accessed 3 January 2008.

28 Peace Pledge Union (2006) *Refusing to Kill – Conscientious Objection and Human Rights in the First World War*, London, p. 9.

29 Ibid., p. 8.

30 Ibid., p. 8.

31 J. A. Toews (1959) *Alternative Service in Canada during World War II*, Manitoba: Publication Committee, Canadian Conference of the Menonite Brethren Church, p. 61, [www.alternativeservice.ca/service/index.htm](http://www.alternativeservice.ca/service/index.htm), accessed 3 January 2008.

32 Brett, *Military Recruitment*, p. 105.

33 For further information regarding the members of the Council of Europe, see Stolwijk, *The Right to Conscientious Objection*, and Brett, *Military Recruitment*.

34 In Germany, professional soldiers have the right to conscientious objection.

35 Stolwijk, *The Right to Conscientious Objection*, p. 34.

36 According to Brett, *Military Recruitment*, p. 122, military service is for nine months in Norway.

37 Poland is planning to make a full transition to a professional army by 2010.

38 The Ministry of Defence announced in 2005 a reduction in military service from nine to eight months, and alternative service was also reduced from thirteen to twelve months. See [wcd.coe.int/ViewDoc.jsp?id=879091&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75](http://wcd.coe.int/ViewDoc.jsp?id=879091&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75), accessed 30 June 2008.

39 [www.wri-irg.org/co/rtba/bermuda.htm](http://www.wri-irg.org/co/rtba/bermuda.htm), accessed 12 February 2008.

40 [www.wri-irg.org/co/rtba/brazil.htm](http://www.wri-irg.org/co/rtba/brazil.htm), accessed 12 February 2008.

41 Brett, *Military Recruitment*, p. 110.

42 See Amnesty International (1991) *Conscientious Objection to Military Service*, London: Amnesty International; UN Commission on Human Rights (1997) 'The question of conscientious objection to military service', Report of the

Secretary-General Prepared Pursuant to Commission Resolution 1995/83, [www.wri-irg.org/co/rtba/cuba.htm](http://www.wri-irg.org/co/rtba/cuba.htm), accessed 12 February 2008.

43 DIRB (7 January 1994) [www.wri-irg.org/co/rtba/cuba.htm](http://www.wri-irg.org/co/rtba/cuba.htm), accessed 12 February 2008.

44 See note 15.

45 For more information see also the Parliamentary Assembly of the Council of Europe's Recommendation 1742 (2006). In addition, see the Analytical Report of the Office of the High Commissioner for Human Rights, 27 February 2006.

46 The UN Commission on Human Rights' Resolution 1998/77.

47 Ibid.

48 Human Rights Committee on *Foin v. France*, Communication no. 666/1995, Session 67, 9 November 1999, para. 10/3.

49 In Finland, approximately seventy total objectors per year; in Norway, between 100 and 200 total objectors per year; and in Sweden, approximately four hundred total objectors per year refuse to carry out military service and alternative service; in Stolwijk, *The Right to Conscientious Objection*. See also the Council of Europe's Committee on Legal Affairs and Human Rights (2001).

## 19 | International standards on conscientious objection to military and alternative service

RACHEL BRETT

§ The issue of conscientious objection to military service has been addressed within the United Nations (UN) human rights system in a number of ways, but most notably through resolutions of the (former) UN Commission on Human Rights, through the Special Procedures of the (now) Human Rights Council,<sup>1</sup> and through the Human Rights Committee<sup>2</sup> in both individual cases and when considering state reports under the International Covenant on Civil and Political Rights, as well as in their General Comment 22 on Article 18 of the covenant.<sup>3</sup>

For instance, some countries, such as Turkey, have already been the subject of UN attention with regard to conscientious objection to military service. The UN Working Group on Arbitrary Detention and the Special Reporter on Freedom of Religion and Belief have both addressed the Turkish government on the subject. The Special Reporter raised it in the report on his visit to Turkey in 1999,<sup>4</sup> and the case of Mehmet Tarhan was taken up in 2005.<sup>5</sup> The Working Group on Arbitrary Detention addressed the case of Osman Murat Ülke (Opinion no. 36/1999),<sup>6</sup> and, having concluded that his imprisonment after the first occasion was arbitrary as contravening the *ne bis in idem* principle, adopted a Recommendation 2 on ‘Detention of Conscientious Objectors’.<sup>7</sup>

### The UN standards

**The right of conscientious objection to military service** Both the Human Rights Committee and the UN Commission on Human Rights have recognized the right of conscientious objection to military service, as part of the right to freedom of thought, conscience and religion enshrined in Article 18 of both the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights.

Since 1989, resolutions of the UN Commission on Human Rights (adopted without a vote) have recognized ‘the right of everyone to have conscientious objections to military service as a legitimate exercise of the right to freedom of thought, conscience and religion’ (1998/77).<sup>8</sup>

The Human Rights Committee identifies conscientious objection to military service as a protected form of manifestation of religious belief

within Article 18/1 of the covenant. In its most recent and definitive case<sup>9</sup> on the subject, *Mr Yeo-Bum Yoon and Mr Myung-Jin Choi v. Republic of Korea*, it held that the Republic of Korea had violated Article 18 by not providing for conscientious objection to military service for two Jehovah's Witnesses. Like Turkey, the Republic of Korea is a country with conscription and no recognition of conscientious objection. As a result, conscientious objectors such as these Jehovah's Witnesses are sent to prison for their refusal to perform compulsory military service.

The committee definitively laid to rest suggestions that conscientious objection is not recognized in the covenant either because it was not included specifically (an argument it had already addressed in its General Comment 22 on Article 18),<sup>10</sup> or because of the reference to conscientious objection that is included in Article 8. Article 8 concerns the prohibition of forced labour. Its paragraph 3 states that for these purposes, the term forced or compulsory labour does not include 'any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors'. The committee stated, 'Article 8 of the Covenant itself neither recognizes nor excludes a right of conscientious objection. Thus, the present claim is to be assessed solely in the light of Article 18 of the Covenant.'<sup>11</sup> The 'Article 8' argument is one that has been used by Turkey, among others, in the past.<sup>12</sup>

Under the covenant, Article 18/1, covering both the right to freedom of thought, conscience and religion and to manifest it, is non-derogable even during times of national emergency threatening the life of the nation.<sup>13</sup> Some restrictions are permitted, however, on the right to manifest one's religion or belief, but only those set out in Article 18/3 of the covenant. These are only those which are 'prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others'. The Human Rights Committee has made clear that 'such restriction must not impair the very essence of the right in question'.<sup>14</sup> Thus these possible limitations cannot excuse making no provision for conscientious objection.<sup>15</sup>

**Scope/extent of the right of conscientious objection** Although defined as a manifestation of religion or belief, this does not mean that conscientious objection to military service can only be based on a religious belief. The Human Rights Committee in General Comment 22 simply referred to situations where 'the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief' (para. 11). In the General Comment,

however, it also gives a broad scope to the terms religion and belief, stating, ‘Article 18 protects theistic, non-theistic and atheistic beliefs ... Article 18 is not limited in its applications to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions.’<sup>16</sup> The committee has specifically addressed this issue in Concluding Observations on State reports under the Covenant, calling, for example, on Ukraine to ‘extend the right of conscientious objection against mandatory military service to persons who hold non-religious beliefs grounded in conscience, as well as beliefs grounded in all religions’.<sup>17</sup>

This broad basis ties in with Commission on Human Rights Resolution 1998/77, which recognizes ‘that conscientious objection to military service derives from principles and reasons of conscience, including profound convictions, arising from religious, moral, ethical, humanitarian or similar motives’.<sup>18</sup>

In other words, it is clear that although conscientious objection may be based on a formal, religious position, this is not required. Indeed, both the committee and the commission have made clear that no discrimination is permitted between the religion and belief on which the objection is based.<sup>19</sup>

Since the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights both recognize the right to change one’s religion or belief,<sup>20</sup> it is clear that a person can become a conscientious objector, even if they originally agreed to undertake compulsory military service,<sup>17</sup> or even volunteered to join the armed forces. This is also explicitly recognized in UN Commission on Human Rights Resolution 1998/77, which states: ‘persons performing military service may develop conscientious objections’.<sup>21</sup> Thus, any arrangements for conscientious objectors cannot be such as to prevent applications after joining the armed forces, or even after completion of military service – for example, by those listed as reserves or subject to further regular or periodic call-up or training.<sup>22</sup> Equally, any payment in lieu of military service is not the same as, nor a substitute for, recognition of conscientious objection.<sup>23</sup>

**Decision-making process** Trying to judge another person’s conscience or the sincerity of their belief is an inherently difficult task. The UN Commission on Human Rights has welcomed ‘the fact that States accept claims of conscientious objection as valid without inquiry’ (Resolution 1998/77),<sup>24</sup> but if there is to be an inquiry then it must be undertaken by an ‘independent and impartial decision-making’ body.<sup>25</sup> The Human Rights Committee has commented that this means

under the control of civilian authorities and not of the Ministry of Defence.<sup>26</sup>

**Alternative service** Alternative service in lieu of compulsory military service is not required<sup>27</sup> but is not prohibited, provided that it is compatible with the reasons for the objection, of a civilian character, in the public interest and not of a punitive nature. In addition to civilian alternative service, unarmed military service may be provided for those whose objection is only to *personally* bearing arms (Resolution 1998/77).<sup>28</sup> The term ‘punitive’ covers not only the duration of alternative service but also the type of service and the conditions under which it is served.

**Duration of alternative service** The question of the length of alternative service in comparison to the length of military service has been the subject of a number of cases considered by the Human Rights Committee. In 1999, however, the committee settled in *Foin v. France* on the test that it has subsequently applied. This starts from the requirement that the alternative service must not be discriminatory. This does not preclude a different duration to that of military service, however, but any difference in length in a particular case must be ‘based on reasonable and objective criteria, such as the nature of the specific service concerned, or the need for a special training in order to accomplish that service’.<sup>29</sup>

**Non-discrimination** As already mentioned, no discrimination is permitted ‘among conscientious objectors on the basis of the nature of their particular beliefs’.<sup>30</sup> Equally no discrimination is permitted in law or practice between those who do military service and those who do alternative service as to the terms or conditions of service. Nor may conscientious objectors subsequently be subjected to discrimination in relation to any economic, social, cultural, civil or political rights because they have not done military service.<sup>31</sup>

**Access to information about conscientious objection** The importance of making information available to all affected by military service (not only to first-time conscripts) is stressed by UN Commission on Human Rights Resolution 1998/77, and has also been taken up by the Human Rights Committee in Concluding Observations, to ensure that people know about the right of conscientious objection and also how to acquire conscientious objector status.<sup>32</sup>

**Punishment of unrecognized conscientious objectors** The UN

standards establish three essential points in relation to the punishment of unrecognized conscientious objectors, whether the lack of recognition arises because there is no provision for conscientious objection or because the individual concerned is not accorded such status in a situation where there is some provision:

- Conscientious objectors should not be imprisoned for their refusal to do military service (Resolution 1998/77);
- Conscientious objectors should not be subjected to the death penalty for their refusal to undertake military service or for desertion resulting from their conscientious objection (Sub-Commission on the Promotion and Protection of Human Rights Resolution 1994/4); and
- Conscientious objectors should not be subjected to repeated punishment because the continued refusal to undertake military service constitutes the same offence and, therefore, repeated punishment contravenes the ‘*ne bis in idem*’ principle (Resolution 1998/77) and Article 14 of the covenant.<sup>33</sup> It also contravenes Article 18/2 of the covenant since it amounts to coercion intended to change the convictions of the conscientious objector.<sup>34</sup> Furthermore, in the *Ülke v. Turkey* case, the European Court of Human Rights found that the successive convictions and risk of continuing penal proceedings were humiliating and degrading, in violation of Article 3 of the European Convention on Human Rights.

**Other matters** The UN has addressed the issues of international protection (refugee status) and post-conflict amnesties (Commission on Human Rights Resolutions 1998/77, 2004/35), and also supported selective objection in the case of refusal to enforce apartheid (General Assembly Resolution 33/165).

## Conclusion

Conscientious objection to military service is recognized in international law as a legitimate exercise or manifestation of the right to freedom of thought, conscience and religion enshrined in Article 18 of the Universal Declaration on Human Rights as well as Article 18 of the International Covenant on Civil and Political Rights. Countries should, therefore, be urged to make provision for conscientious objection to military service in their domestic law as soon as possible and to implement it in practice.

For instance, the government of Turkey should be encouraged to submit its first report to the Human Rights Committee on its implementation of the International Covenant on Civil and Political Rights.

When it does so, information about the situation of conscientious objection to military service should be provided to the committee by non-governmental organizations in time for this to be included in the committee's list of issues.

Finally, for those states that are also parties to the First Optional Protocol to the covenant, individual cases of conscientious objection to military service in which all domestic remedies have been exhausted could be submitted to the Human Rights Committee for its consideration.

## Notes

1 The UN Human Rights Council replaced the UN Commission on Human Rights in 2006. Each in turn is the main UN intergovernmental human rights body.

2 The Human Rights Committee is the body of independent experts that oversees the implementation of the International Covenant on Civil and Political Rights. All states parties to the covenant are required to report to the committee on a regular basis. The committee questions them and adopts Concluding Observations highlighting improvements needed as well as progress made. The committee also produces General Comments clarifying and interpreting the covenant's provisions. In those states which are also parties to the First Optional Protocol, individuals can send the committee complaints alleging violations of the covenant.

3 Human Rights Committee General Comment no. 22 (CCPR/C/21/Rev.1/Add.4, 30 July 1993), 'The right to freedom of thought, conscience and religion' (Article 18).

4 Addendum 1 to the interim report on elimination of all forms of intolerance and of discrimination based on religion or belief, prepared by Abdelfattah Amor, Special Reporter of the Commission on Human Rights, in accordance with UN

General Assembly resolution 54/159 of 17 December 1999, dealing with his visit to Turkey from 30 November to 9 December 1999. (A/55/280/Add.1) of 10 September 2000.

5 Addendum to the Report of the UN Special Reporter on Freedom of Religion and Belief: Summary of cases transmitted to Governments and replies received (E/CN.4/2006/5/Add.1).

6 OPINION no. 36/1999 (TURKEY): United Nations: Working Group on Arbitrary Detention (E/CN.4/2001/14/Add.1).

7 Report of the UN Working Group on Arbitrary Detention (E/CN.4/2001/14).

8 UN Commission on Human Rights Resolution 1998/77, 'Conscientious objection to military service'.

9 *Mr Yeo-Bum Yoon and Mr Myung-Jin Choi v. Republic of Korea*, CCPR/C/88/D/1321-1322/2004, 23 January 2007.

10 In 1993, the Human Rights Committee stated in its General Comment 22 on Article 18 that a claim of conscientious objection to military service could derive from the right to freedom of thought, conscience and religion inasmuch as the use of lethal force seriously conflicted with the individual's convictions.

11 This was an important clarification as in an early case (*L.T.K. v. Finland*, Application no. 185/1984, 9 July 1985), while ruling the case out at a preliminary stage, the committee had suggested that the wording of Article 8 precluded a requirement on all states to provide for conscientious objection to military service. A similar argument has arisen under the European Human Rights Convention whose Article 4(3)(b) is almost identical to Article 8(3)(c)(ii) of the covenant.

12 See, for example, the government's response to the Working Group on Arbitrary Detention in relation to the *Ülke* decision (E/CN.4/2001/14, para. 6).

13 International Covenant on Civil and Political Rights, Article 4.

14 *Mr Yeo-Bum Yoon and Mr Myung-Jin Choi v. Republic of Korea*.

15 In its General Comment 22, the Human Rights Committee observed that 'national security' is not one of the permitted grounds of limitation listed in Article 18, unlike in relation to some other articles of the covenant.

16 Human Rights Committee General Comment 22, para. 2

17 Human Rights Committee, Concluding Observations on the Ukraine, November 2006 (CCPR/C/UKR/6), para. 12.

18 To the same effect, the Council of Europe Parliamentary Assembly Resolution 337 (1967), 'the Right of Conscientious Objection', 26 January 1967 (22nd Sitting). The Council of Europe Committee of Ministers Recommendation R(87) 8, 'Conscientious objection to compulsory military service', 9 April 1987, simply refers to 'compelling reasons of conscience'.

19 Human Rights Committee General Comment 22, para 11; Commission on Human Rights Resolution 1998/77.

20 See also Human Rights Committee General Comment 22, para. 5.

21 Council of Europe Parliamentary Assembly Recommendation 1742 (2006) refers to 'the right to be registered as a conscientious objector at any time, namely before, during or after military service, as well as the right of career servicemen to be granted the status of conscientious objector'.

22 Council of Europe Parliamentary Assembly Recommendation 1518 (2001), 'Exercise of the right of conscientious objection to military service in Council of Europe Member States', 23 May 2001 (Standing Committee, acting on behalf of the Assembly).

23 Human Rights Committee, Concluding Observations on Syria (CCPR/CO/84/SYR), 2005, para. 11.

24 The Council of Europe Committee of Ministers Recommendation R(87) 8 refers to accepting 'a declaration giving reasons by the person concerned'.

25 The Council of Europe Committee of Ministers Recommendation R(87) 8 states that 'The examination of application shall include all necessary guarantees for a fair procedure', and that 'An applicant shall have the right to appear against the decision at first instance'.

26 Human Rights Committee Concluding Observations on Greece (CCPR/CO/83/GRC). Council of Europe Parliamentary Assembly Recommendation 816 (1977) specifies 'the decision-taking body shall be entirely separate from the military authorities, and its composition shall guarantee maximum independence and impartiality'.

27 The Committee of Ministers of the Council of Europe, Recommendation R(87) 8: 'Alternative service, if any ...'

28 To the same effect, Committee of Ministers of the Council of Europe, Recommendation R(87) 8.

29 *Foin v. France*, Communication no. 666/1995, CCPR/C/D/666/1995, 9 November 1999.

30 Human Rights Committee General Comment 22, para. 11.

31 Human Rights Committee General Comment 22, para. 11; Commission on Human Rights resolution 1998/77. The Council of Europe Committee of Ministers Recommendation R(87) 8 is clear on both points, stating, 'Conscientious objectors performing alternative service shall not have less social and financial rights than persons performing military service. Legislative

provisions or regulations which relate to the taking into account of military service for employment, career or pension purposes shall apply to alternative service.'

32 Human Rights Committee Concluding Observations on Paraguay (CCPR/C/PRY/CO/2), 2005, para. 18. The Committee of Ministers of the Council of Europe, Recommendation R(87) 8, is categorical that 'persons liable to conscription shall be informed in advance of their rights' but permits states to allow private organizations to do this rather than necessarily doing it themselves.

33 Human Rights Committee General Comment 32 (CCPR/C/GC/32), 23 August 2007, para. 55.

34 Working Group on Arbitrary Detention Recommendation no. 2 (E/CN.4/2001/14).

## 20 | European standards on conscientious objection and alternative service

FRIEDHELM SCHNEIDER

§ By way of introduction I would like to refer to the situation in the country I come from: in Germany the fundamental right of conscientious objection to military service is explicitly laid down in the constitution. Since alternative service was established in 1961, about 2,500,000 young men have performed civilian service, especially in social non-profit organizations. In October 2007 the three millionth application for conscientious objector status was granted by the Federal Office of Civilian Service. Of course, the considerable number of conscientious objectors has repeatedly led to political discussions, but over the years alternative civilian service has found broad acceptance in German society and politics. So the coalition treaty of the present government emphasizes the socio-political importance of civilian service as an area of learning and development for young men. The experience of Germany and some other European countries is that legal provisions efficiently protecting freedom of conscience contribute to the inner strength and persuasive power of a democratic system of government. When the right to conscientious objection and the implementation of alternative service are guaranteed in a liberal way, this tends to strengthen social cohesion, as well as the identification of young men with their state and society.

I have been asked to outline European standards on conscientious objection and alternative service. The Council of Europe was the first European institution to deal with the right of conscientious objection to military service. Over forty years ago, on 26 January 1967, the first European resolution on the right of conscientious objection was adopted by the Assembly of the Council of Europe. To this day the 'Basic Principles of this resolution'<sup>1</sup> have been reiterated and set out in numerous recommendations and resolutions of the Council of Europe<sup>2</sup> and the European Parliament.<sup>3</sup> In order to promote awareness-raising measures concerning conscientious objection, the Council of Europe published a 'booklet' in 2002.<sup>4</sup> In the last few years the recognition of conscientious objection to military service and the introduction of alternative service have been monitored as criteria for the admission of new members to the Council of Europe. Currently this process is

going on in Armenia and Azerbaijan. Let us come back to the 1967 resolution, however. Its Basic Principles read as follows:

- 1 Persons liable to conscription for military service who, for reasons of conscience or profound conviction arising from religious, ethical, moral, humanitarian, philosophical or similar motives, refuse to perform armed service shall enjoy a personal right to be released from the obligation to perform such service.
- 2 This right shall be regarded as deriving logically from the fundamental rights of the individual in democratic Rule of Law States which are guaranteed in Article 9 of the European Convention on Human Rights.<sup>5</sup>

European institutions have continuously agreed in demanding that the protection of conscientious objectors to military service should take into consideration a wide range of convictions and should not be reduced, for example, to religious motives. Furthermore there has always been unanimity that conscientious objection must be regarded and respected as a human right 'inherent to the concept of freedom of thought, conscience and religion as recognized in Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms'.<sup>6</sup> The implementation of this principle must clearly go beyond the tendency of the European Court of Human Rights to condemn only 'excessive discrimination or disproportionate penalization of conscientious objectors',<sup>7</sup> instead of protecting the right of conscientious objection itself as a human right.

On 12 December 2007 the Charter of Fundamental Rights of the European Union was proclaimed in Strasbourg by the presidents of the Parliament, Council and Commission. This charter has been conceived as the first legally binding international human rights instrument<sup>8</sup> that explicitly recognizes the right of conscientious objection as part of freedom of thought, conscience and religion. Article 10/2 of the charter is a consequence of the common political will that during the past decades has continuously been expressed by the European institutions. The charter recognizes conscientious objection 'in accordance with the national laws governing the exercise of this right'. This article must be understood in the light of Articles 21 and 52, which refer to the principle of non-discrimination and stress the obligation to respect the essence of the rights and freedoms recognized by the charter. Consequently EU member states that refuse or criminalize conscientious objection are in breach of the Charter of Fundamental Rights.

In this context the chairman of the European Parliament Committee on Constitutional Affairs emphasizes that the right of conscientious

objection must not be misunderstood as a right regarding only those (today ten) member states of the European Union that are still maintaining conscription:

... also for the remaining seventeen states with all-volunteer armies, the duty arises from the Charter of Fundamental Rights to grant the right to refuse military service. Since each soldier – man or woman – is responsible and continues to be responsible to his or her own conscience, freedom of conscience must also be guaranteed in conflict situations. This possibility is also to be recognized legally and implemented liberally.<sup>9</sup>

On the European level concrete standards on conscientious objection and alternative service have most recently been summarized in Recommendation 1518 (2001), which represents the latest pertinent text issued by an organ of the Council of Europe. This recommendation was adopted in Istanbul on 23 May 2001. It underlines first ‘the right to be registered as a conscientious objector at any time: before, during and after conscription, or performance of military service’ and second ‘the right for permanent members of the armed forces to apply for the granting of conscientious objector status’. These two requests reflect the evidence that the awareness of conscience cannot be reduced to the time before military call-up. On the contrary, the voice of conscience may be perceived at any time owing to specific situations or experiences that can of course also happen to professional soldiers and reservists.<sup>10</sup> The Council of Europe Parliamentary Assembly stresses furthermore ‘the right for all conscripts to receive information on conscientious objector status and the means of obtaining it’. Finally Recommendation 1518 (2001) insists firmly upon a ‘genuine alternative service of a clearly civilian nature, which should be neither deterrent nor punitive in character’.<sup>11</sup>

As to the civilian and non-punitive nature of alternative service it should be recalled that in its Resolution of 19 January 1994 the European Parliament ‘calls on the Member States to ensure that compulsory military service and civilian service performed at institutions which do not come under the supervision of the Defence Ministry are of the same length ...’<sup>12</sup> Obviously the equal duration of both military and alternative service corresponds best to the basic principle of non-discrimination.

Describing the minimum standards to be observed when the protection of conscientious objectors is implemented, however, the Council of Europe Committee of Ministers stated in 1983: ‘Alternative service shall not be of punitive nature. Its duration shall, in comparison to

that of military service, remain within reasonable limits.<sup>13</sup> In this context it may be of interest to remind ourselves that the European Committee of Social Rights repeatedly stated that it is a violation of the European Social Charter when the additional duration of civilian service 'is excessive and thus constitutes a disproportionate restriction on the right of the worker to earn his living in an occupation freely entered upon ...'<sup>14</sup>

The civilian character of alternative service implies first that the procedure of admission to alternative service shall be separate from the military administration.<sup>15</sup> Furthermore it is to be stressed that governments 'shall ensure that conscientious objectors are employed in social work or other work of national importance'<sup>16</sup> and their service shall be 'performed at institutions that do not come under the supervision of the Defence Ministry'.<sup>17</sup> The work of alternative service personnel shall correspondingly not be subject to military planning, structures or terms of service, but rather marked by the character of their occupation which contributes to social welfare or is of benefit to the public. The working conditions of alternative service personnel should correspond to those of the other employees at their place of work. On the whole it is to be guaranteed that 'conscientious objectors performing alternative service shall not have less social and financial rights than persons performing military service'.<sup>18</sup>

The Final Act of the 1990 Copenhagen Conference on Security and Cooperation in Europe approves 'forms of alternative service which are compatible with the reasons for conscientious objection'.<sup>19</sup> As to the motivation of conscientious objectors, we know there are a wide range of convictions ranging from strong anti-militarism to the individual need to safeguard one's personal identity against military exploitation. Among those who agree to perform civilian service there is a similar variety of expectations. I will try to outline some of the demands that are regularly made on civilian service. Of course, alternative service should be clearly separate from military functions or institutions. Civilian service activities should be of a constructive instead of a destructive character; they shall be seen within the framework of being useful to other people, of preserving life and overcoming violence. Civilian service should be open to international experiences, to international understanding and helping developing countries. To summarize these aspects: civilian service must not be reduced to a substitute service that has as its only function to compensate for the stress of military service. Alternative service should not be a waste of time, but should make possible good experiences that are useful for objectors and society. The framework of European resolutions

and political work in favour of conscientious objectors leaves room for these expectations.

In April 2006 the new Human Rights Commissioner, Mr Thomas Hammarberg, presented himself to the Council of Europe Parliamentary Assembly. On this occasion he stressed the necessity to ‘focus on implementation. This goes for all human rights work now: the time has come to move from rhetoric to reform, genuine reforms’.<sup>20</sup> I hope that this chapter may contribute to implementing genuine reforms for conscientious objectors wherever the fundamental right of conscientious objection to military service is not (or not fully) respected.

## Notes

1 The Assembly of the Council of Europe, Resolution 337 (1967) on the right of conscientious objection.

2 See Recommendation 816 (1977) on the right of conscientious objection to military service; Recommendation R(87) 8 of the Committee of Ministers to member states regarding conscientious objection to compulsory military service; Resolution 1042 (1994) of the Parliamentary Assembly on deserters and draft resisters from the republics of the former Yugoslavia; Exercise of the right of conscientious objection to military service in the Council of Europe member states, Recommendation 1518 (2001), adopted by the Standing Committee acting on behalf of the Parliamentary Assembly; Human rights of members of the armed forces, Recommendation 1742 (2006) of the Parliamentary Assembly.

3 See Resolution of 7 February 1983 on conscientious objection; Resolution of 13 October 1989 on conscientious objection and alternative civilian service; Resolution of 11 March 1993 on respect for human rights in the European Community, paras 46–53; Resolution of 19 January 1994 on conscientious objection in the member states of the Community.

4 The Directorate General of Human Rights (2002) ‘Conscientious objection to compulsory military service’, CoE Doc. H(2002)2.

5 Resolution 337 (1967).

6 European Parliament, Resolution of 19 January 1994, para. C.

7 *Ülke v. Turkey*, Application no. 39437/98, 24 January 2006.

8 According to the Treaty of Lisbon, ‘The Union recognizes the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union ... which shall have the same legal value as the Treaties’ (Treaty on European Union, Article 6(1)). Originally the Lisbon Treaty was scheduled to be ratified in all EU member states by the end of 2008 and to enter into force on 1 January 2009. After Ireland’s rejection of the Lisbon Treaty resulting from the referendum of 12 June 2008 this timetable could no longer be maintained. Correspondingly the future of the Lisbon Treaty, including the status of the charter as part of it, had to be put again on the agenda of the European Union.

9 Jo Leinen (15 January 2008) ‘A Europe of civil rights explicitly guarantees the freedom of conscientious objection’, press release; see [www.joleinen.de](http://www.joleinen.de) or *EBCO Newsletter*

*Edition* (spring 2008) 'The right to refuse to kill', [www.ebco-beoc.org](http://www.ebco-beoc.org).

10 This insight has recently been recalled by the Organization for Security and Cooperation in Europe. See OSCE Office for Democratic Institutions and Human Rights (ODIHR) (2008) *Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel*, Warsaw, pp. 74–86.

11 Standing Committee, Recommendation 1518 (2001), para. 5.

12 European Parliament, Resolution of 19 January 1994, para. 9.

13 Recommendation R (87) 8, para. 10.

14 See *inter alia* European Committee of Social Rights, European Social Charter (Revised), Conclusions 2002, Romania and Article 1/3. The committee holds continuously that under Article 1/2 of the Revised Social Charter the duration of alternative service may not exceed one and a half times the length

of military service. Accordingly Estonia, Finland, Greece, Moldova and Romania have recently been considered as being in breach of the European Social Charter (Revised). See Conclusions 2006, [www.coe.int/T/E/Human\\_Rights/Esc/](http://www.coe.int/T/E/Human_Rights/Esc/).

15 See Council of Europe Resolution 337 (1967), para. B.2 (Recommendation 816 (1977) Appendix, para. B.2): 'the decision taking body shall be entirely separate from the military authorities and its composition shall guarantee maximum independence and impartiality'. Cf. Recommendation R (87) 8, paras 5–7.

16 Resolution 337 (1967), para. C.3.

17 Resolution of 19 January 1994, para. 9.

18 Recommendation R (87) 8, para. 11.

19 *Ibid.*, para. 18/4.

20 Council of Europe, Document CommDH/Speech (2006)3.

## 21 | Conscientious objection in international law and the Osman Murat Ülke case

KEVIN BOYLE

§ *Affaire Ülke c. Turquie* (*Ülke v. Turkey*), the judgment of the European Court of Human Rights Second Section, adopted on 5 January 2006, represents the latest case in which that court avoided deciding squarely the question of the status of conscientious objection to military service under the European Convention on Human Rights. The case is, however, an important step in the evolution of the right of a citizen to refuse to undertake military obligations required by the state by reason of conscience.

In 2003, the highest British court, in a case linked to Turkey, *Sepet and Bülbül v. Secretary of State for the Home Department*, was of the opinion that conscientious objection to military service had not yet crystallized as a norm of international law by that date. The court considered it an emerging principle, however.

In 2005, in *Cristián Daniel Sabli Vera et al. v. Chile*, the Inter-American Commission on Human Rights held that that the failure of the Chilean state to recognize ‘conscientious objector’ status in its domestic law, and the failure to recognize the petitioners as ‘conscientious objectors’ to compulsory military service, did not constitute an interference with their right to freedom of conscience under the American Convention on Human Rights.

In November 2006, however, following that opinion of the Inter-American Commission, comes a significant finding by the Human Rights Committee in two petitions from South Korea. In *Yeo-Bum Yoon and Myung-Jin Choi v. Republic of Korea*, in complaints under the Optional Protocol procedure to the International Covenant on Civil and Political Rights, the Human Rights Committee found that the imprisonment of two conscientious objectors to compulsory military service was a violation of Article 18, paragraph 1 of the covenant. That meant that their imprisonment was an unjustified restriction on the manifestation of their religious beliefs. So where does international human rights law now stand on the question of conscientious objection to military service, and where stands Turkey?

I will do two things in this chapter. First I will consider the most

important case to date to reach the European Court of Human Rights on the question of conscientious objection to military service, *Osman Murat Ülke v. Turkey*. Second, in the light of the Ülke case, I will discuss where the European Convention and also international law generally now stand on the right to object on grounds of conscience to military service.

### **Osman Murat Ülke v. Turkey**

**Background** The litigation that culminated in the judgment of Application no. 39437/98, *Osman Murat Ülke v. Turkey*, has been a long process.<sup>1</sup> It began over ten years ago when I met Hülya Üçpınar<sup>2</sup> in Ankara to discuss a possible individual petition on behalf of Osman Murat Ülke under the European Convention on Human Rights. The case was lodged with the former Commission on Human Rights exactly a decade ago on 22 January 1997. The file was transferred to the new European Court of Human Rights on 11 November 1998, when the new Protocol 11 Court came into existence. The chamber declared the application admissible on 1 June 2004 and gave judgment on the merits on 5 January 2006. That judgment was not referred to the Grand Chamber of the court. Neither the applicant nor the government made an application for a referral, and hence under the convention the chamber judgment became final on 24 April 2006. It is worth noting here that the chamber sought to have the Ülke application considered by the Grand Chamber at an early stage of the proceedings.<sup>3</sup> Article 30 of the Convention provides for such a step on the ground that the case ‘... raises a serious question affecting the interpretation of the Convention or the protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court’.

The convention also states, however, that if any party objects, the referral fails. The Turkish government did object on the grounds that there was no new issue of interpretation. It argued that the convention’s jurisprudence was clear that the convention guaranteed no right to conscientious objection. Thus it was the Second Chamber which deliberated and decided on the case. The possibility remained of referring the judgment of the chamber to the Grand Chamber – as a form of appeal is also provided for under the convention. Both parties chose to do so and the reasons will be discussed below.<sup>4</sup>

**The facts** The facts and arguments advanced in the case of Osman Murat Ülke are best provided by reference to the facts as found in the court’s judgment. Osman Murat Ülke was born in 1970. He lived and

studied in Germany until 1985. He then returned to Turkey, where he continued his education to university level.

In 1993, he became an active member of Savaş Karşıtları Derneği (War Resisters' Association – SKD), founded in 1992. He represented the SKD at various international conferences in a number of different countries. SKD was dissolved in November 1993 to be replaced by İzmir Savaş Karşıtları Derneği (İzmir War Resisters' Association – İSKD). Osman Murat Ülke served as its chairman from 1994 to 1998.

**Convictions and punishments** In August 1995, aged twenty-five, Osman Murat Ülke was called up for military service. He refused to undertake military service on the ground that he had firm pacifist convictions. He called a press conference in Izmir on 1 September 1995 and publicly burnt the call-up papers. A year later he was arrested and charged by the military prosecutor attached to the General Staff Court in Ankara with incitement to evade military service under Article 155 of the Penal Code and Article 58 of the Military Penal Code.

In a decision of 28 January 1997, the General Staff Court in Ankara sentenced him to six months' imprisonment and to a fine for the offence of incitement to evade military service. The court also declared, however, that he was a deserter and ordered the military prosecutor attached to the General Staff Court to enlist him in the army.

On 3 March 1997, Osman Murat Ülke appealed to the Military Court of Cassation. He argued then that the conviction was contrary to Articles 9 and 10 of the European Convention, which was binding on Turkey, and he declared that he was a conscientious objector. The court upheld the conviction in a judgment of 3 July 1997.

Meanwhile, Osman Murat Ülke had been transferred on 22 November 1996 to the 9th Regiment attached to the Bilecik gendarmerie command. He refused to wear military uniform and to execute the orders from the regiment commandant. He was detained and placed in the detention house of the regiment, where he refused to wear prison uniform. On 26 November 1996, the military prosecutor charged him with 'persistent disobedience' under Article 87 of the Military Penal Code. He was eventually convicted again and sentenced to five months' imprisonment. When released on 27 December 1996, he did not rejoin his regiment. He was arrested and detained pending trial. On 7 March 1997, the military prosecutor attached to the command tribunal charged the applicant with desertion and 'persistent disobedience'. He received a sentence of ten months' imprisonment and a fine in October 1997.

And so it went on: Osman Murat Ülke refusing to join the regiment and refusing to wear a uniform, being imprisoned and on release

returning to court and further punishment and imprisonment. Amnesty International, which adopted Osman Murat Ülke as a prisoner of conscience, declared he was being made to serve a life sentence on the revolving-door principle. The fuller details of his harsh saga of convictions and punishments are contained in the court's judgment, but in all he was to spend 701 days in imprisonment as a result of eight separate convictions.

**The experience of 'civil death'** Osman Murat Ülke has not been arrested since his last conviction, imposed on 26 November 1998. Since that date, however, he has lived with the knowledge that he could be arrested at any time. He has no official address and has broken off all contact with the state authorities. He has been sheltered by the family of his fiancée, with whom he has been unable to contract a legal marriage. He has also been unable to recognize the child born from their union as his son. In effect the court said that his clandestine life, which he had been forced to live in order to follow his conscience, was a form of civil death. And it found these effects to amount to an unacceptable punishment regime in a democratic society.

**Judgment of the court** The court held that in their treatment of Osman Murat Ülke the Turkish military authorities had violated the prohibition on degrading treatment under Article 3 of the European Convention.<sup>5</sup> The court declared that:

taken as a whole and regard being had to its gravity and repetitive nature, the treatment inflicted on the applicant had caused him severe pain and suffering which went beyond the normal element of humiliation inherent in any criminal sentence or detention. In the aggregate, the acts concerned constituted degrading treatment within the meaning of Article 3.

**Conscientious objection and the guarantee of freedom of conscience** In its judgment of 5 January 2006 the European Court of Human Rights vindicated the struggle that this brave man had pursued since he was first called up for military service in 1995. The laws and policies pursued by the state in respect of those who refuse to serve in the military were condemned as breaching international human rights standards binding on Turkey. These laws and policies will have to change. The guidance that the judgment gives as regards the reforms necessary will be discussed below, but first it is important to take note of the fate of the other major human rights argument advanced by Osman Murat Ülke in his complaint to the European Court of Human Rights.

**Article 9 arguments** Osman Murat Ülke had argued that the state had a duty under its own constitution and the European Convention to recognize and to protect his freedom of conscience. Article 9 of the convention declares that ‘everyone has the right to freedom of thought, conscience and religion’. He sought to have the European Court of Human Rights confirm in its judgment that he was entitled to respect for his decision based on his philosophical pacifist beliefs not to undertake military service. To make such service compulsory, as is done through the conscription system in Turkey, without allowing for any exception for those of its citizens who had fundamental objections to engaging in any military activity, was to violate Article 9 of the Convention on Human Rights.

He presented the court with detailed legal arguments on the nature of conscientious objection to military service, and on the long-established tradition and movement of resistance to service in war in Europe and other parts of the world.<sup>6</sup> The achievements of that grassroots movement which brought together those whose beliefs were religiously based and those whose beliefs were based on non-religious philosophical convictions was set out. The arguments included the fact that Turkey stood alone among the forty-seven member states of the Council of Europe to which the European Convention applied in not recognizing conscientious objection to military service.<sup>7</sup>

For its part the Turkish government argued that the convention and its Article 9 did not refer to conscientious objection to military service. It cited earlier cases where this claim had been raised and noted that the rulings of the former Commission on Human Rights had always been that the scope of Article 9 did not extend to recognizing a right to refuse compulsory military service as being contrary to one’s beliefs.<sup>8</sup> These earlier cases had been based on a certain understanding of language in Article 4 of the convention, which concerns forced labour.<sup>9</sup>

That article, in defining the prohibition on forced labour, offers certain clarifications as to what does *not* amount to forced labour. Thus compulsory military service does not count as forced labour. Nor does labour required of conscientious objectors instead of compulsory military service ‘in countries where [conscientious objection] is recognized’ count as forced labour. The Turkish government relied on earlier decisions of the former Commission on Human Rights, which had taken the view that the drafters of the convention in Article 4 had understood that conscientious objection to military service was not recognized in all states and it therefore could not be said to be a requirement under Article 9 of the convention. This argument has

come to be seen as flawed and wrong by commentators and indeed by judges. The reference to conscientious objection in Article 4 is no more and no less than a definitional reference about forced labour. It does not control the meaning of freedom of conscience in the article that addresses this freedom – Article 9.

Although the European Court of Human Rights had in later cases moved close to recognizing that actions motivated by objection to war or pacifist beliefs are within the scope of the protections of Article 9, it had never previously been faced with the question directly as in the Ülke case.<sup>10</sup> The Second Chamber at the outset of the case had recognized this and as explained above had sought to have the Grand Chamber Court decide the case at the outset. As already noted, however, the Turkish government objected and under the convention the Chamber Court was required to continue to deal with the case itself. The Second Chamber itself did not deal with the Article 4 and Article 9 arguments presented to it by the applicant's pleadings. Instead it took the course of avoiding answering them.<sup>11</sup> That does not mean, however, that it accepted the government's reasoning or that it rejected Osman Murat Ülke's arguments. They are simply not addressed and so are open for another decision at another time.

**Reference to the Grand Chamber** As explained above, the option was available to Osman Murat Ülke to seek leave to 'appeal' the Second Chamber's judgment to the Grand Chamber of seventeen judges within a period of three months from the publication of the judgment. After much deliberation, however, this was not done. The truth is that it would be navigating untested waters to seek leave to refer to the Grand Chamber a judgment that was favourable to the applicant, complaining a win on other grounds would have been preferred. It was also open to the state to challenge the judgment. It was the state which had lost the case. It did not do so, however. That means it is bound by the judgment of the chamber and obliged to implement that judgment.

**The implications of the judgment** Apart from the steps Turkey must take to implement the judgment, the most important point to make is that the next stage of the campaign to achieve the right to conscientious objection shifts back to Turkey; to the education of public opinion and to democratic argument rather than litigation. It is therefore important to grasp and to act on what the court did decide – that the *legal regime* for conscientious objectors must be addressed in Turkey. As Osman Murat Ülke put it in a press release after the judgment:

The European Court of Human Rights, prioritizing Article 3 of ECHR, has revealed that there is a problem [in Turkey] in terms of the general principles of law. Accordingly, crime and punishment must be proportional and each act can only have a single sanction. I would like to particularly draw your attention to this point. Before the discussion even gets to conscientious objection, this is the point we are stuck at. Within the framework of current laws, the state lacks the means to try individuals who object to compulsory military service on the grounds of conscience.

Osman Murat Ülke went on to say that the judgment is best understood as *guidance* to Turkey on how to change its laws. Turkey needs to accommodate the freedom of conscience of those who have deeply held beliefs against war, sometimes based on religious grounds or on personal ethical grounds. Their beliefs are such that they will not serve in the army. The government should stop treating them as deserting soldiers.

So what is to be done? The public debate that will hopefully begin in the light of the Ülke judgment should note that the Turkish constitution *does not* preclude the recognition of conscientious objection to military service. The relevant article, Article 72, reads:

#### NATIONAL SERVICE

Article 72: 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.

The article is headed ‘National Service’, not ‘Military Service’, and any reading of the article makes indisputably clear that such national service can be performed in public service other than the armed forces. No law has been passed, however, to make other public service options available. Therefore what should be done now is to introduce such a law under the constitution, offering the option of public service divorced from military service to conscientious objectors. It is important to underline (as the European Court of Human Rights itself noted in the Ülke case) that there is no constitutional difficulty in such a course. The difficulty rather may be the absence of sufficient political will and the current state of public opinion. Indeed, the Ülke judgment has highlighted the fact that there has been a failure on the part of the government and the Grand National Assembly to fulfil a constitutional duty to provide for non-military public service. Article 72 states that the public service ‘shall be regulated by law’, but no law has ever been

passed. The military conscription law dates from 1927.<sup>12</sup> When that law was passed the vast majority of countries in Europe and elsewhere enforced conscription of youth for military service without any exception for those who had objections of conscience. Thus there is nothing surprising in the fact that Turkey had such a law in 1927. The issue for open debate in Turkey is whether eighty years later the country should base its military recruitment system on the same law.

**The next stages in the Ülke case** The Ülke case is still not over in Strasbourg. The judgment in all its implications has to be implemented. Under the rules of the European Convention it is the role of the Committee of Ministers, the intergovernmental arm of the convention, to oversee the implementation of judgments of the court. It is of course a duty on the Turkish government in the first place to fulfil the judgment. The Committee of Ministers will monitor the responses of Turkey, however, and will remain involved until it is satisfied the judgment has been honoured. It is a duty that civil society as well as the lawyers should also monitor over the coming period.

More than two years have passed since the Ülke judgment became final on 25 April 2006. On 10 July 2006 the Secretariat of the Committee wrote to the government requesting it to inform the committee of its ‘action plan’ to implement the judgment for consideration at its meeting on 5 December 2006. The government did not, however, submit any action plan as requested. It did inform the committee that the judgment had been disseminated to relevant authorities and it noted that the judgment had been given wide media coverage. It is also known that the government has paid financial compensation and fees as awarded by the court.<sup>13</sup>

At its meeting on 5 December 2006 the committee (which includes the Turkish permanent government representative) expressed its concern, saying that it was a matter of urgency that the government remedy the violations of the convention as they affected Osman Murat Ülke directly and personally – in particular his status of ‘civil death’, whereby he is liable to arrest and prosecution and is effectively unable to lead a normal life. Apart from these individual measures, the committee reminded the government that in addition it wished to know the ‘general preventive measures taken or envisaged concerning the legal framework governing the situation of those who refuse to perform military service on conscientious or religious grounds, so as to bring this framework into line with the requirements of the European Court of Human Rights’ judgment.<sup>14</sup>

**The European Parliament** In September 2006 the European Parliament, which has long been concerned with human rights in Turkey, published a further report on that topic which included important information on the government's plans in respect of the Ülke case, as well as expressing concern over what was actually happening in practice. The European Parliament

... recalls that the European Court of Human Rights advised Turkey to prepare a new legal framework for conscientious objectors and reminds Turkey that the right to conscientious objection is recognized in the European Charter of Fundamental Rights; therefore welcomes the initiative by the Ministry of Justice to legalize the right to conscientious objection and to propose the introduction of an alternative service in Turkey; is concerned that in a recent judgment of the Turkish military court a conscientious objector to military service was sentenced to imprisonment and that the military court openly declined to follow a relevant ruling of the European Court of Human Rights; condemns the on-going persecutions of journalists and writers who have expressed their support for conscientious objection to military service.<sup>15</sup>

More needs to be known concerning what exactly the Ministry of Justice is proposing as regards law reform and alternative service. Certainly it appears that the Committee of Ministers of the Council of Europe dealing with the Ülke judgment has yet to be informed of any such proposals. It is also worrying that in practice the punitive and oppressive treatment of conscientious objectors by military tribunals continues in defiance of the Ülke judgment. The cases of Mehmet Tarhan, Halil Savda and Mehmet Bal are among those that the Parliament had in mind. Not for the first time in Turkey there are different messages coming from different parts of the state.

To conclude: what is required to fulfil the Ülke judgment is both that there be an end to the intolerable personal situation experienced by Osman Murat Ülke and also that a 'plan of action' be instituted, which needs to include legislation to ensure that all future conscientious objectors do not experience what he has had to live through over the last decade. Osman Murat Ülke's lawyers will seek to intervene in future meetings of the committee through written observations to inform the committee about any developments in his situation, but also to urge broader movement by the government to institute the reforms necessitated by the court's judgment. The legal submissions will certainly include the worrying evidence that nothing much has changed after the Ülke judgment in the oppressive treatment of other objectors. The

cases of Mehmet Tarhan, Halil Savda and Mehmet Bal are among those that will be raised.

### **The status of conscientious objection in international law**

As has already been noted, there is an undoubted shift in the understanding of the requirements of international human rights law as regards recognition of the conscientious objector to military service. While the Ülke case did not directly rule on that question, it has indirectly advanced the full recognition of the legitimacy of the exception to any general conscription law for military service for those who have an ethical, religious or philosophical conviction against undertaking military service. The European Court of Human Rights will have further opportunity to address the issue in other cases. One case recently admitted involves Armenia. This case, *Vahan Bayatyan v. Armenia*, is at an early stage, but the court has admitted that the key issue for consideration is whether Article 9 is applicable to the applicant, a Jehovah's Witness who was convicted and sentenced to two and a half years' imprisonment owing to his refusal to undertake military service by reason of his religious beliefs.<sup>16</sup> The case concerns facts before the date of the Law on Alternative Service of 2003.

At the level of the United Nations the right to conscientious objection to military service is considered a legitimate exercise of the right to freedom of thought, conscience, religion and belief, as articulated implicitly in Article 18 of the International Covenant on Civil and Political Rights (ICCPR) and Article 18 of the Universal Declaration of Human Rights. That recognition was made explicit by the Human Rights Committee in its General Comment no. 22 on Article 18 of the ICCPR. The committee has now, in an individual petition under the Optional Protocol, found a violation of Article 18, paragraph 1 in a most significant case – *Mr Yeo-Bum Yoon and Mr Myung-Jin Choi v. Republic of Korea*.<sup>17</sup> The two applicants were religious objectors and Jehovah's Witnesses and were imprisoned for their refusal to undertake compulsory military service. The committee ruled that their imprisonment amounted to an unjustified restriction on their freedom to manifest their religion. Thus for the first time an international body has ruled on the status of conscientious objection under the International Covenant which has been ratified by the great majority of states in the world, including Turkey.<sup>18</sup> It is unnecessary here to examine the committee's decision further as it is extensively considered in the chapter by Rachel Brett.<sup>19</sup> It is likely, however, to be highly persuasive to other bodies, national and international, and notwithstanding the contrary position taken by the Inter-American Commission on Human Rights in 2005.<sup>20</sup>

The definitive shift in international law towards recognition of the conscientious objector has received important support from the European Union's Charter of Fundamental Rights of the European Union (2000). This charter, which has authoritative status for the twenty-seven states of the Union, provides: '... 2. The right to conscientious objection is recognized, in accordance with the national laws governing the exercise of this right.'<sup>21</sup>

Turkey aspires to membership of the European Union. It is clear that full membership, when that comes, will require it to accept this explicit recognition of the conscientious objection right.

Thus, in conclusion, if we take the position of international law at the universal level, the United Nations Human Rights Committee has now recognized the right to conscientious objection under a treaty that Turkey has ratified. The European Court of Human Rights has ruled in the Ülke case that at the least Turkey must modify its laws to acknowledge that it has no proper legal regime for the conscientious objector, and the court is likely in later cases to confirm formally that there is such a right under the European Convention on Human Rights, a convention to which Turkey is also a state party. Finally the European Union's most important human rights declaration of 2000 explicitly affirms the existence of the right to conscientious objection. There can be no doubt now that the era of uncertainty as to what international law requires of states in respect of conscientious objection has changed for ever. It is now for Turkey to act to bring its national law and practice into line with this new norm of international law.

## Notes

1 *Osman Murat Ülke v. Turkey*, Application no. 39437/98, 24 January 2006. The judgment is available in French only, but unofficial translations have been made in Turkish and English. Osman Murat Ülke's situation was also referred by Hülya Üçpınar, his lawyer in Turkey, to a United Nations body, which held that he was a victim of arbitrary detention. Working Group on Arbitrary Detention of the Commission on Human Rights, Opinion no. 36/1999 (Turkey), E/CN.4/2001/14/Add.1, 9 November 2000, pp. 53–5.

2 Editors' note: Hülya Üçpınar

is Osman Murat Ülke's lawyer in Turkey.

3 Article 30 – Relinquishment of jurisdiction to the Grand Chamber.

4 Article 43 – Referral to the Grand Chamber: '1) Within a period of three months from the date of the judgment of the Chamber, any party to the case may, in exceptional cases, request that the case be referred to the Grand Chamber, 2) A panel of five judges of the Grand Chamber shall accept the request if the case raises a serious question affecting the interpretation or application of the Convention or the protocols

thereto, or a serious issue of general importance, 3) If the panel accepts the request, the Grand Chamber shall decide the case by means of a judgment.’

5 Article 3: Prohibition of Torture: ‘No one shall be subjected to torture or to inhuman or degrading treatment or punishment.’

6 For a comprehensive account, see Conscience and Peace Tax International (2006) ‘Military recruitment and conscientious objection: a thematic global survey’, Leuven, Belgium.

7 Azerbaijan has not passed any legislation to date providing for conscientious objection to military service but its constitution does explicitly recognize the right.

8 For a short account of these Commission decisions, see C. Ovey and R. C. A. White (2006) *Jacobs and White, European Convention on Human Rights*, 4th edn, Oxford: Oxford University Press, pp. 270–72.

9 Article 4: Prohibition of slavery and forced labour:

‘1) No one shall be held in slavery or servitude.

2) No one shall be required to perform forced or compulsory labour.

3) For the purpose of this Article the term forced or compulsory labour shall not include:

a. any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;

b. any service of a military character or, in case of conscientious objectors in countries where they are recognized, service exacted instead of compulsory military service;

c. any service exacted in case of

an emergency or calamity threatening the life or well-being of the community;

d. any work or service which forms part of normal civic obligations.’ (Emphasis added.)

10 See *Thlimmenos v. Greece* (GC), Application no. 34369/97, § 43, ECtHR 2000–IV.

11 ‘[The court] considers that no separate examination of the complaints under Articles 5, 8 and 9 of the Convention is necessary.’

12 Article 1 of the Military Service Act no. 1111 of 17 July 1927 provides: ‘... every man who has Turkish nationality is compelled to do military service’.

13 Ten thousand euros in compensation for non-pecuniary loss to the applicant Osman Murat Ülke and 1,000 euros in legal expenses.

14 Minutes of the Committee of Ministers, 5 December 2007; www.coe.int/.

15 European Parliament Resolution report adopted on 13 September 2006, 2006/2118(INI).

16 *Bayatyan v. Armenia*, Application no. 23459/03, Admissibility Decision – Third Section, 12 December 2006.

17 Communications nos 1321/2004 and 1322/2004, 3 November 2006.

18 Turkey signed this covenant on 15 August 2000 and ratified it on 23 September 2003.

19 See Chapter 19.

20 *Cristián Daniel Sabli Vera et al. v. Chile*, Case 12.219, Report no. 43/05, Inter-American Human Rights Committee, OEA/Ser.L/V/II.124 Doc. 5 (2005); and see *supra*.

21 Article 10: Freedom of thought, conscience and religion; see also Recommendation 1518 (2001) of the PACE: Exercise of the right of

conscientious objection to military service in Council of Europe member states. In para. 2 the Assembly declared that the right of conscientious objection was a fundamental aspect

of the right to freedom of thought, conscience and religion enshrined in the Universal Declaration of Human Rights and the European Convention on Human Rights.

## **B The case of Turkey**



## 22 | Conscientious objection and the Turkish constitution

OSMAN CAN

§ Until my article dated 10 July 2005 in the newspaper *Radikal* 2 (Radical 2) on ‘Conscientious objection and the constitution’, the topic of conscientious objection had been confined to the context of international law and human rights. Following this article, several articles have been published in newspapers and academic journals, stating that the concept of conscientious objection also has a constitutional aspect, and the Turkish constitution is not entirely closed to this phenomenon in Turkey. As for today, after the judgment in the case of Osman Murat Ülke by the European Court of Human Rights (‘the court’), notwithstanding the silence of the authorities, we were led to a point of no return.

### **The assessment of the court**

According to the perception of the media, the court’s judgment convicted the Turkish government on the issue of conscientious objection. It is considered, however, that this conviction has other meanings hiding the core of the case, carrying various political and institutional concerns.

Osman Murat Ülke, the applicant, complained in his application about being prosecuted and convicted on account of his pacifist beliefs and conscientious objection. He relied upon Article 3 (prohibition of inhuman or degrading treatment), Article 5 (right to liberty and security), Article 8 (right to respect for private and family life) and Article 9 (freedom of thought, conscience and religion) of the European Convention on Human Rights.

The court reached its decision by assessing the complaint of Ülke only through Article 3. In the legal grounds of the judgment it is briefly stated that:

Despite the large number of times Ülke had been prosecuted and convicted, the punishment had not exempted him from the obligation to do his military service;

Since there was no specific provision in Turkish law governing penalties for objectors, the conscientious objectors run the risk of an

interminable series of prosecutions and criminal convictions, they would be under this threat for the rest of their lives just because of not fulfilling military service and this result would be disproportionate to the aim intended;

By 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, he is compelled to adopt 'civil death'. Consequently, this sanction is incompatible with the punishment regime of a democratic society.

The court did not, however, make any connection with the rule of *ne bis in idem* while reaching this assessment. As such, this judgment lags behind even the 1968 judgment of the Federal Constitutional Court of Germany on a similar situation regarding total objectors, and providing that the reconviction after a conviction and the second conviction thereof were not compatible with the constitution. Although it was claimed in our case that each time a new crime had been committed, it is not possible to hide behind the masks of positivism in the presence of an objective legal directive and the uniformity of the sanction imposed for violation of this legal directive. The attempts to perform tricks with the law in terms of the description of the crime by resorting to positivist cunning should be dismissed by judicial authorities and the rule of *ne bis in idem* should be applied.

It is noteworthy that the court did not assess the case under Article 9, which provides, or at least should provide, protection against nullification, devaluation and humiliation of one's conscientious beliefs and their meanings for life, society and the political system – in brief, human dignity and esteem on the basis of justifiability under the paradigm of power relations. The court does not correlate the humiliation of a person as a result of his conscientious objection, which simply demonstrates the conflict between his conviction and military service, with the freedom of conscience of that person, and thus does not consider making any analysis in this regard. The justification of this behaviour is thus: conscientious objection is not recognized in the European Convention on Human Rights. Moreover, under Article 4, obligatory activities in accordance with compulsory military service (or an alternative service entirely left to the discretion of national systems) do not fall within the scope of the prohibition of forced labour.

This approach seems to add another crucial dilemma to that which has emerged from the jurisdiction of the European Court of Human Rights. Considering the case together with Article 53 of the convention, the court might well have emphasized that the Turkish constitution

enables the right to conscientious objection and the removal of this possibility by legal arrangements. As in several other areas, in this area the court assumes itself to be the common European standard-setter and totally ignores the possibility of any national regulation providing a higher guarantee. Besides, the gradually increasing workload of the court reflects the emptiness of its judgments. The court has gained its prestige through its progressive approach, however, its endeavour to promote the minimum European standards and transforming the standards of the 1950s into those of the twenty-first century. The court has now switched, however, from being the guardian of liberties to being the protector of its deservedly acquired prestige and the authority deriving from this prestige. It is impossible for the court not to realize that opening a door to total objection, or even to the objection to military service on the basis of conscience, would start a process in which the existence of the court would also be questioned. In my opinion, the court has already lost its revolutionary character in regard to a case law in favour of 'conscience'.

### **National analysis**

The constitutional analysis should be considered in the light of the historical record of legal regulations on military service. In other words, we first need to understand how the conscientious objectors' refusal compares with the situation in other European countries. Taha Parla stated in an article that the advocacy of conscientious objection needs to fight directly and straightforwardly with militarism.<sup>1</sup> Now I will try to sketch out the legal aspect of this fight.

The main laws on the military are as follows:

- Military Service Act no. 1111 of 21 June 1927
- Military Penal Code no. 1632 of 15 June 1930.

Both of these laws are the products of totalitarianism and isolationism fed by the trauma generated by the Sheikh Said rebellion of 1925 and continuing with the dissolution of the Progressive Republican Party (Terakkiperver Cumhuriyet Fırkası). In the following era, in which nationalistic trends reached their peak as a result of financial crises all over the world, a single-party dictatorship was established, making its mark on these laws. This period can also be read as one characterized by the rapid replacement of liberalization within politics, economics and local governments by centralist, planned and autocratic tendencies.

The legal arrangements that emerged after the establishment of military jurisdiction bear the date of 1961 and later; which means that

they bear the signature of the military coup of 27 May 1960, during which no democratic participation was possible. For example:

- Armed Forces Pension Fund Law (*Ordu Yardımlaşma Kurumu Kanunu – OYAK*) no. 205, dated 3 January 1961 (MBK Law).<sup>2</sup> There has been a lot of controversy regarding the military getting economic independence without any need for democratic legitimacy as a result of OYAK achieving economic power and obstructing the foundation of any democratic structure within the dialectic of economy.
- Military Judges Law no. 357, dated 26 October 1963 (civilian rule under military control).
- Law no. 353 on the Organization and Procedure of Military Courts, dated 26 October 1963 (civilian rule under military control).

Some of the laws on military issues were made following the 1971 military coup:

- Military Court of Cassation Law no. 1600, dated 8 July 1972 (12 March interim government).
- High Military Administrative Court Law no. 1602, dated 20 July 1972 (12 March interim government).
- Law no. 1402 on Martial Act, dated 15 May 1971 (12 March interim government).
- Law no. 2935 on State of Emergency, enacted 27 October 1983 (the Act adopted by the military government).

In brief, the laws in regard to the armed forces and the defence of the country are:

- the products of the extraordinary military situation between 1925 and 1930; or
- the products of military coups; therefore they were made by the military itself. In other words, they were not enacted by the democratic will as has been provided for in the current constitution of the state.

Moreover, there is a crucial issue that needs to be noted. Article 43 of the Military Penal Code states: ‘The Turkish Armed Forces are above and beyond all political views.’ This wording has a problematic aspect, as, by virtue of this statement, the military is not only excluded from politics, but also, by opening the door to a different and problematic paradigm, is raised to a stage above politics. As such, the military becomes the common denominator and the basic value, thus the sacred element of the body politic. It is definitely another problem that the Turkish political elite and bureaucratic dynamics are inured to

these problematic structures and do not consider this matter at length. Leaving aside marginal political movements, none of the mainstream parties would make any fundamental objection to the military. In the parliament, composed of the representatives of national will, no criticism is or may be voiced against the army. In judicial decisions, when the subject of the dispute is ‘military requirements’ and ‘the military’ constitutes one of the parties, constitutional and legal guarantees are somehow ‘left aside’ or sometimes not be remembered at all. Judges may be removed from office on the charge of bringing the judiciary into confrontation with the military. In democratic and libertarian systems, the judiciary is expected to stand against the institutions holding state power and to limit state power for the benefit of the people.

Nevertheless this situation is not surprising at all; since we are talking about a military that does not receive any support from democratic national will, which is organized in accordance with its own enacted laws and which establishes its own judicial mechanisms. A military establishment that determines military requirements and necessities, and also the national defence requirements, which controls a huge portion of the country’s budget and can also finance itself without relying on this budget, through its own foundations and companies such as the OYAK. A military that drafts the constitutions, providing itself with more and more immunity with each constitutional process, and which removes its own acts and laws from judicial review. An army that turns the male population of the country into figures maintaining militarism through the training applied to each and every man and by enabling the continuity of compulsory service through the above-mentioned means, and which has the power to have its decisions on the problems of the country implemented through the National Security Council (Milli Güvenlik Kurulu – MGK).

This is a frequently spelt out reality of Turkey. In the Turkish constitution, however, it states that ‘sovereignty is vested fully and unconditionally in the nation’. Its parliament enacts laws in the name of the nation; its government and the head of state govern the country in the name of the nation; its judicial organs review and consider each case ‘in the name of the Turkish Nation’. In order to be sovereign, however, one needs to produce and define policies, and take binding decisions for all institutions with regard to fundamental political matters; in brief, to have self-determination. Sadly, however, in terms of the practical and legal components outlined above, it is not possible to see the ‘nation’ in a ‘ruling’ position. Since there is no place for respect for individuals in this nation, for their demands for freedom or for their free will within the ruling power system, it is not clear whether the above-mentioned

constitutional wording is just symbolic, apocalyptic or merely a tool to be presented as evidence for the legitimacy of power ‘if necessary’. The only certainty is the multidimensional, complex and formidable character of the problems and threats facing conscientious objectors.

### **The transformation of perception**

This picture may of course be improved. It is possible to designate some topics of struggle relating to conscientious objection:

- Even though the situation is gradually improving, the struggle with anti-democratic legal arrangements (Turkish Penal Code – TCK – Article 318, discouraging people from performing military service; 319, instigating people against military service; Military Service Act no. 1111, Article 1 et seq.; Military Penal Code, Article 45, punishment of acts of conscience; 58 and 96, discouraging the performance of military service, and so on).
- Even if it is not anti-democratic in itself, the struggle with the anti-democratic interpretation and implementation of regulations; in other words, the struggle with dominant legal perceptions. It can be said that there has been a transformation in this regard, but the resistance has not yet been broken.
- Beyond these two categories, the struggle with ruling-power perception, which has entirely ignored the constitution and the laws. There is no guarantee that the perpetrator of this kind of practice will not also be the judge. With regard to this kind of practice, I prefer to use the concept of ‘a question of power’, ‘a question of legal culture’ or ‘an ethical problem’ instead of ‘legal question’.

In my opinion, the problem is one of perception. The dramatic trigger of conscientious objection works in multiple ways.

- Military service is a sacred ideal; no conscientious reason can justify any denial of service. It would harm the sacred.
- Turks are naturally soldiers. The military lies at the heart of this nation. Any denial of service means betrayal of the nation.
- Military service represents the protection of our country from surrounding enemies. Since the traumatic ‘protection from the enemy’ has become sacred, any denial would lead to traumatic symptoms. There is no legitimacy for ideas interfering with the sacred.
- The army also protects the regime. Draft evasion undermines the protector of the constitutional system, namely the armed forces. There is no legitimacy for opponents of the regime.

It can be said that these perceptions not only hypnotize a significant

part of society, but also – according to some critical responses – constitute the main perception of the apparatus of state. In this regard, it would not be realistic to claim that the judicial authorities stay independent from these perceptions.

There is another, more important matter in this context: Article 35 of the Turkish Armed Forces Military Code no. 211, which is a product of the 27 May military coup, states that ‘The duty of the Armed Forces is to protect and defend the Turkish homeland and the Republic of Turkey, as determined by the Constitution’. On close examination it can be understood that this protection is required not for the borders of the Republic of Turkey, but for the ‘Turkish homeland’, which would trigger some broader emotional and historical links. In this context, denial of military service is considered as being within the category of the worst sins. Besides, there is no reference to the protection of *democracy* in the wording of the law.

**Has there been any transformation in these perceptions?** It is possible to give a few examples of the signals of perception transformation and the strengthening factors of these signals: the acquittal of Perihan Mağden; the public awareness raised after the European Court of Human Rights’ judgment; the effect of this judgment on academic research about conscientious objection; and finally the emergence of a new judgment of the Constitutional Court. This judgment is not about conscientious objection, however, but the protection of ‘human dignity’. Moreover, it constitutes the first example of the concept of human dignity being used effectively and in a positive manner in the context of military service. The Constitutional Court used this concept in its judgment no. 1963/132, dated 28 June 1966, but it interpreted the concept narrowly, while emphasizing the military requirements.

The recent judgment concerns the amendments to the Military Penal Code made by Law no. 4551. The Constitutional Court considered the case upon the application of the formal main opposition party, Fazilet Partisi (Virtue Party), and annulled the provision in the amended Article 35 of the Military Penal Code, which states that ‘the penalty of demotion in rank shall be executed by ripping the rank badge off in the presence of the whole battalion’. The reasoning of the court is as follows:

The third paragraph of Article 17 of the Constitution provides that ‘No one shall be subjected to torture or ill-treatment; no one shall be subjected to penalties or treatment incompatible with human dignity.’ As stated in the judgments of the Constitutional Court, the

concept of human dignity implies the recognition of and respect for the intrinsic and absolute value of a human being, notwithstanding the situation of a particular person or the conditions he/she lives in. The development and establishment of this concept have taken so long [but] the abolition of punishments such as shackle, exhibition, headlock and corporal punishment [has finally been] achieved ... In this regard, for example, the corporal punishment of a person as a result of committing an offence is incompatible with human dignity. Similarly, public execution is also not compatible with democratic rule of law within the framework of modern criminal policies targeting the reformation of offenders.

In respect of non-commissioned officers, when they are convicted of certain military offences, a penalty of demotion in rank would be applied and this punishment would be executed by ripping the rank badge off in the presence of the whole battalion. This form of execution of the penalty of demotion in rank also results in the exhibition of the offender. However, the exhibition of the offender is not only incompatible with the modern criminal law, but also violates the principle under Article 17 of the Constitution stating that ‘No one shall be subjected to penalties or treatment incompatible with human dignity.’

This judgment is certainly not adequate to solve the problem, but it is remarkable as an important signal of a transformation in perception. In particular, it should be emphasized that this judgment of the Constitutional Court, if considered in the context of its consequences, runs in parallel with the European Court of Human Rights’ judgments and carries a significant effect by ruling that inhuman treatment cannot be tolerated even under military service. On the other hand, the constitutional values conflicting with the requirement of ‘visual evidence’ for homosexual conscripts also become clear in the face of this Constitutional Court judgment. Nevertheless, we argue that our constitution can provide a further outcome, that we can reach the determination which the European Court has avoided, which means that the recognition of the right to conscientious objection is a constitutional obligation.

### **Constitutional review**

The only category of service ordained by Article 72 of the constitution is ‘National Service’. The provision itself, however, explains how this national service must be understood. The forms of fulfilment of this obligation are alternatively listed:

- in the armed forces; or
- in the public service; or
- considered as performed.

What is the meaning of this triple alternative? It demonstrates that the fulfilment of the national service obligation in the armed forces is not the only alternative provided by the constitution. Moreover, it shows that not providing an alternative service violates the wording of the constitution. National service is perceived as offering alternatives. It is indisputable.

According to the rationale of this provision drafted by the military junta:

- 1 It is aimed at offering convenience for workers living abroad.
- 2 Because of population growth, the impossibility/lack of necessity of placing everyone on active duty is declared and it is expressly stated that the dynamic population should be employed in a more efficient way.
- 3 Above these, there is another statement opening the obligation of military or public service to dispute. It lets ‘the manner in which this service shall be ... considered as performed ... to be regulated by law’.
- 4 By referring to Article 60 of the 1961 constitution, the reasoning of Article 72 implies that this regulation has been carried over exactly to the new constitution.

The reasoning of the 1971 amendment relating to Article 60 of the 1961 constitution is also highly revealing:

The necessity to settle this provision about national defence rights and duties on some points resulted from the difficulties faced recently in solving some problems. As a consequence of population growth, the number of citizens on active duty also increases proportionally and leads to an extreme financial burden on the State. However, it is essential to benefit from the young population at military age, since our country is now passing through a fast development process. Thus, the state would benefit from current manpower in the most effective way.

The title of the article therefore changed, enabling both ‘military service’ and ‘other public services’. It can be seen that compulsory military service has lost its constitutional grounds since that date.

The clear wording of Article 72 of the 1982 constitution, which goes a step further than the 1961 constitution, implies, by stating ‘or considered as performed ... shall be regulated by law’, that the

state may well consider national service to be performed without any hierarchic relationship, namely without even performing any public service. Of course, a legal regulation is required for this.

Compulsory military service is not a constitutional directive, nor would it be necessary to make constitutional amendments in order to abolish the compulsory character of military service.

It may well be said that these possibilities are at the discretion of the legislator, thus there is no chance of amendment without the initiative of the legislator. Indeed, considering the conditions of the country, the legislator seems to have some discretion in regard to the fulfilment of national service. It should also be pointed out, however, that the discretion of the legislator is limited by the need to observe the meaning and weight of fundamental rights and freedoms under the constitution. Now it is time to determine some points related to freedom of conscience.

Conscientious conviction means any decision of an individual, binding for himself/herself under certain conditions, causing serious conscientious impacts on him/her if contravened, based on a genuine moral preference – in other words towards the categories of ‘good’ and ‘bad’.<sup>3</sup> In order to protect freedom of conscience, there is no need for these ‘good’ or ‘bad’ categories of the individual to be objectively good or bad. It is the decision of the individual that is to be protected, not the objective value of that decision. Rather than the objectivity of personal (subjective) decisions, it may be more appropriate to speak of their consistency with dominant power perceptions. The first paragraph of Article 24 of the constitution guarantees the ‘freedom of conscience’ without any limitation clause. This constitutional preference further and absolutely emphasizes the freedom of conscience by not including this freedom in the scope of Article 15, which provides that fundamental rights under the constitution can be partially or entirely suspended ‘in times of war, mobilization, martial law or state of emergency’. In other words, even under a state of emergency, the conscience of individuals would be absolute, and they cannot be charged or condemned as a result of their conscientious convictions.

Undoubtedly these statements do not mean that every step taken by individuals in accordance with their conscientious convictions would be enshrined and privileged. First of all, none of the rights can be used in violation of others’ fundamental rights. None of the fundamental rights of any individual can prevail over any similar fundamental right of another person. For that reason, as for all constitutional norms, all fundamental rights are valid in an optimum area limited by other fundamental rights.

Second, even if there is no limitation clause provided, fundamental rights may inevitably be restricted by certain constitutional values under some circumstances. Nevertheless, it should be kept in mind that, excepting the fundamental rights of others, none of the constitutional values is a natural value on its own, but carries its value as long as and to the extent that it aims to protect fundamental rights. In other words, only ‘instrumental’ characteristics of a constitutional value that might restrict the scope of an unlimited fundamental right should be taken into account.<sup>4</sup> Thus, it should be remembered that the balance we are applying is between a fundamental right as the main value and a constitutional value as an instrumental value.<sup>5</sup> The result of this process of balance is that, even if it is expressly stated in the constitution, in order for a constitutional value to limit the freedom of conscience it should be ‘exceptional and as a last resort’ and proportional. If it is possible to produce alternatives for the continuation of the protection, and thereby the functionality of that constitutional value, then it will not be compatible with the constitution to produce a condition restricting the freedom of conscience. As mentioned above, according to Article 72 of our constitution, military service represents only one of the alternative forms of national service. Freedom of conscience is, however, recognized without any alternative or limitation.

In the light of these explanations, it is clear that we can have the disapproved and despised 1982 constitution do what has not been done by the European Court of Human Rights. With very simple mental elasticity:

- 1 National service is provided alternatively under the constitution.
- 2 Under the constitution, conscientious conviction cannot be limited, argued against, condemned, forced to disclose; to sum up, this freedom is described as a fundamental right giving the state no possibility of interference. Moreover, in Article 15 of the constitution it is stated that even in times of war, mobilization and martial law – namely when the country is in a struggle for its life – this freedom cannot be suspended.
- 3 Consequently, when there is a dispute between these two categories, the priority should certainly be given to the freedom of conscience.
- 4 Therefore, by making military service compulsory for everyone while regulating national service, the legislator evidently conflicts with the constitutional preference.

Now let us briefly review the relevant legislation. According to the Military Service Act no. 1111 of 21 June 1927 (Article 1), ‘Every *male*

who has Turkish nationality is compelled to do military service.’ This is the point where the problems emerge. First, while the constitution states that national service is the right and duty of every Turk, this obligation is introduced only for men. This problem can be overcome by reading it as ‘considered to be performed’ within the above-mentioned discretion of the legislator. Again, it can also be read as positive discrimination in favour of women according to Article 10 of the constitution.

Second, this law is the product of a period when the principle of the supremacy of the constitution was not in force. This legislation, dating from 1927, shows weak *prima facie* evidence of compatibility with the constitution, because it was not enacted by a legislative organ obliged to act in accordance with the constitution. Since this constitution providing the possibility of alternative service came into effect, no unconstitutionality claim against this provision has yet been raised.

Third, the law narrows the constitution’s content. To narrow a possibility recognized by the constitution without using the conditions provided for by the constitution is indisputably against the wording of the constitution. Moreover, leaving aside any obligation towards narrowing, the directives under Articles 24 and 15 towards implementing the alternatives and broadening undoubtedly restrict the legislator. No necessities and obligations can prevail over human dignity. Article 15 of the constitution expressly states that even the country’s struggle for life cannot present a justification for interference with conscientious convictions.

Finally, taking into account the recent decision of the Constitutional Court referring to human dignity, in view of a category of immunity and unlimited freedom, we may reach the conclusion that to make an alternatively provided public service compulsory against the freedom of conscience would violate ‘human dignity’. In my opinion, this decision needs to be discussed in depth.

There are also a few points regarding the unconstitutionality claims. The unconstitutionality claims regarding the controversial provisions of the Penal Code (former Article 155/present Article 318) have not been taken seriously by courts.<sup>6</sup> It should be highlighted that this amounts to a breach of the constitution. The same consideration is also appropriate for Article 45 of the Military Penal Code.

It is not accurate to claim that there is no interference with conscientious convictions, compared with entering into public service. One enters into public service by his/her own conscientious choice; whereas military service is compulsory, and conscientious convictions have no importance. It should be accepted that freedom of conscience also provides a guarantee after entry into public service, even during

military service. One does not lose one's 'individual' character as a person when conscripted; one only becomes a 'uniformed individual'. One cannot be compelled to apply a decision contrary to one's conscientious convictions; a conscript cannot be employed in a position contrary to his convictions. Nobody can be compelled to execute an order against human dignity. These expressions may seem fantastic when viewed from a Turkish perspective. We should bear in mind, however, that last year in Germany, where the right to conscientious objection was recognized, the Federal High Administrative Court held that a conscript had freedom of conscience even if he did not exercise his right to conscientious objection.

A major did not act in compliance with an order issued by his commander regarding presentation of a contribution to the development of a military computer program, as a result of his conscientious convictions fed by his serious doubts about this programme being used to support the Iraq war. He was sentenced to a demotion in rank, but the Federal Administrative Court did not find him guilty. The chamber concluded in this case that a military order could not annul the freedom of conscience under the first paragraph of Article 4 of the German constitution. According to the court, this order was not binding on the major. The major evidently established the seriousness of his convictions. A serviceman benefits from freedom of conscience under the constitution, whether or not he applies to be recognized as a conscientious objector under the third paragraph of Article 4 of the constitution, since service personnel are also included as subjects of this right. The military, as a part of the executive function, is invariably bound up with laws (Article 20/3), and in particular the binding character of fundamental rights is unlimited for them. It is not possible for the military to ignore fundamental rights by way of suggesting military causes or functions.<sup>7</sup> In this judgment, despite it being critical in some aspects, the court referred to an argument of the German Constitutional Court that: '[t]he Constitution obliges the armed forces to be bound by fundamental rights, not the fundamental rights to be bound by the resolutions and requirements of the armed forces!'<sup>8</sup> One cannot claim that the same result cannot be reproduced by the constitution of the Turkish Republic.

### **Suggestions**

While the norms and foundation of the constitution have an obligation to enable conscientious objection, it is obvious that those who claim the impossibility of this in Turkey maintain by their perceptions, and conclusions deriving from these perceptions, a practice in violation of

the constitution. Governing power-holders supported by the militarist drive of society think themselves superior to the constitution, and this way of thinking actually justifies the argument of total objection.

The prospect confronting the concept of conscientious objection, notwithstanding the constitution, justifies the following discourse:

The constitution is actually not functioning ... The legislative, executive and judicial organs are governed not by rational legal data and the idea of liberty, but by 'real' facts determined by variously coloured, variously formed (albeit ultimately the same) hierarchies of violence. In Turkey the government is determined not by the constitution, but by constitutional facts confining the constitution to words. On the other hand, ordinary people are gradually losing confidence in law, state and the implementation of reforms in our country.

Again, the whole composed of legislative, executive and judicial organs, namely the state, is the only power capable of proving the inequity of these descriptions. And the method for this should be the implementation of the constitution. In this regard:

- 1 Military service may be recognized as a professionally served duty based on volunteerism. There is no constitutional barrier impeding this option. Thereby, any woman volunteer can also have the 'right' to national service recognized by everyone under the constitution. Indeed, it may be argued that this method would provide a means for modernization and socialization for women in some regions of the country.
- 2 Military service may be compulsory with recognized exceptions. In this case:
  - Conscientious objectors may be employed without uniforms and in unarmed service units.
  - Public service may be recognized as a general form of national service and conscientious objectors may be employed within the public service for a period of time. For a period of eighteen months to two years, professional conscripts may be employed within the public service wherever needed.
  - The paid military service option may be maintained and conscientious objectors may choose this option.
- 3 As for total objectors who refuse hierarchic structures including public service, they may be considered as having performed their military service following a proportional penal sanction (penalty of imprisonment or fine) at worst. The problem of Mehmet Tarhan, Osman Murat Ülke and other conscientious objectors was not only to be sentenced to imprisonment, but also, after serving this

sentence, to be conscripted again and sentenced to a new term of imprisonment. It should be noted that it would also be a disproportionate sanction to record the provided penal sanction in the judicial register.

The capable and responsible authorities of the Republic of Turkey do not have to wait for the country's conviction by the European Court of Human Rights in order to take a further step towards the freedoms of its own citizens. It would be enough for them to implement the constitutionally recognized beliefs, convictions, opinions and philosophies of individuals and make a genuine effort in this regard. We need to stop being a country behind the common European standard and determined by it, and to become a country setting out and advancing this standard. A little bit of self-confidence and insight would be sufficient.

*Translated by Defne Orhun*

## Notes

1 *Radikal* 2 [Radical 2], 30 October 2005.

2 According to Provisional Article 4/3 of the 1961 constitution, this law cannot be subjected to constitutional control.

3 Constitutional Court of Germany, BVerfGE 12, 45 (55).

4 In this regard see E. W. Böckenförde (1970), 'Das Grundrecht der Gewissensfreiheit', VVDStRL 28, 33 et seq.

5 M. Kotzur (2006), 'Gewissensfrei-

heit contra Gehorsamspflicht', p. 30.

6 The Third Chamber of the Military Court of Appeal, Reg. no. 1997/302, Dec. no. 1997/302, 27 May 1997.

7 BVerwG 2 WD, 12 April–21 June 2005. For a critique of this decision arguing that it did not adequately take 'human dignity' and 'freedom of conscience' into account, see Kotzur, 'Gewissensfreiheit contra Gehorsamspflicht'.

8 BVerfGE 59, 1 et seq.

## 23 | The criminality of conscientious objection in Turkey and its consequences

HÜLYA ÜÇPINAR

§ 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 undertake military service, refusing to bear arms or refusing to pay taxes that 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'.

In Turkey, however, 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 where 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. As soon as it starts to interact with the public sphere, however, 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 chapter is an attempt to discuss the criminalization of conscientious objection in Turkey and its consequences, in light of the viewpoint summarized above.

### **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 first 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 owing 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 contains only one provision regarding military service. The only constitutional provision that includes a direct reference to military service is Article 76. It stipulates that candidates for parliament must have completed their military service. This article does not, however, 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 Service Act no. 1111: ‘All male subjects of the Republic of Turkey must perform military service in accordance with this law.’ Article 45 of the 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 have even this unconstitutionality claim reviewed by the Constitutional Court.<sup>1</sup> 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.<sup>2</sup>

### **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. 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.

If we look at the ‘crimes’ investigated in these proceedings,<sup>3</sup> 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 of between one month and three years, depending on the circumstances.<sup>4</sup> 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 undertake 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 of between one month and one year.<sup>5</sup>

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.<sup>6</sup> 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.<sup>7</sup>

When they join the army unit, conscientious objectors are faced with the charge of ‘persistent disobedience’,<sup>8</sup> 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. Owing to this regulation,<sup>9</sup> 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 during both the so-called ‘recruit training’ and the ‘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.<sup>10</sup>

Military prosecutors and military courts usually decide that conscientious objectors' decisions 'to refuse being involved in militarism' and consequently 'to refuse to comply with the requirements of military service' are motivated by 'persistent disobedience for the purpose of avoiding military service'.<sup>11</sup> 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.<sup>12</sup> Although they refuse to enquire 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 of between five and ten years for this alleged intention.<sup>13</sup>

### **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.<sup>14</sup> 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 chapter was being written – June 2008) shows that the treatment of conscientious objectors violates not only the ban on torture and maltreatment, but also the ban on discrimination.<sup>15</sup>

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.<sup>16</sup> Although discrimination, torture and maltreatment are banned by the constitution and penalized by the Turkish Penal Code,<sup>17</sup> 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 proved.

Although they object to military service and its consequences, when faced with this kind of treatment conscientious objectors are regarded as individuals undertaking 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 within a short time and is probably going to have 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. Consulting a doctor in the army, however, 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. Almost no complaints have so far been successfully filed, however, concerning violence in the army, which can in some cases even violate the right to life.

### **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.<sup>18</sup>

Criticism of the army was added to the scope of the Anti-Terror Law in 2006, in addition to the amended Penal Code.<sup>19</sup> 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).<sup>20</sup>

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. It is an interesting fact, however, 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.<sup>21</sup> Although she was not sentenced for this declaration, the reason specified by the prosecution for filing this indictment was 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.<sup>22</sup>

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.<sup>23</sup> 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. Starting with the Handyside ruling, however, 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’.<sup>24</sup> 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.<sup>25</sup> 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.

### **Moreover ...**

Although this chapter 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.

**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. Article 4 is mainly about slavery and forced labour, however, and deals with conscientious objection only in that context. The Council of Europe 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 owing to their moral convictions.<sup>26</sup>

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.

**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.<sup>27</sup>

**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.<sup>28</sup> 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.<sup>29</sup>

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 that resulted from them and the constant alternation between prosecutions and terms of imprisonment had been disproportionate to the aim of ensuring that he undertook his military service. Noting that these proceedings ‘were more calculated to repress 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.<sup>30</sup>

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 rights, 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 Law<sup>31</sup> 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 46<sup>32</sup> of that convention, to redress the grievance of a person, or in cases where the grievance arises from a legal provision, the source of that grievance, in accordance with the decisions of the ECtHR. In its 5 December 2006 session, where it discussed the implementation of the decision taken in the Ülke case for the first time, 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 undertake military service for conscientious or religious reasons.<sup>33</sup>

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. Officials at the Ministry of Foreign Affairs refused to provide information about progress in this regard, however, claiming that the relevant information was confidential.<sup>34</sup>

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.<sup>35</sup>

The Republic of Turkey has, however, 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.<sup>36</sup>

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. Conscientious objectors should not, however, 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 for justifying reasons<sup>37</sup> and stay of execution decisions<sup>38</sup> 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 claim unconstitutionality only 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 enquiring 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 came 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 [www.savaskarsitlari.org/arsiv.asp?ArsivTipID=8&ArsivAnaID=39283&ArsivSayfaNo=1](http://www.savaskarsitlari.org/arsiv.asp?ArsivTipID=8&ArsivAnaID=39283&ArsivSayfaNo=1), accessed 10 July 2007.

15 Editors’ note: See Chapter 17, by Coşkun Üsterci and Uğur Yorulmaz, in this publication. It provides a detailed account of the discrimination and torture faced by conscientious objectors in Turkey.

16 [www.bianet.org/2004/05/19/34889.htm](http://www.bianet.org/2004/05/19/34889.htm); [www.bianet.org/2005/12/20/71887.htm](http://www.bianet.org/2005/12/20/71887.htm), accessed 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 three-quarters 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 [www.bianet.org/2006/04/07/77324.htm](http://www.bianet.org/2006/04/07/77324.htm), accessed 10 July 2007.

22 [www.bianet.org/2006/07/27/82842.htm](http://www.bianet.org/2006/07/27/82842.htm), accessed 10 July 2007.

23 [www.bianet.org](http://www.bianet.org), accessed 13 June 2006.

24 *Handyside v. United Kingdom*, Application no. 5493/72, 7 December 1976. See also *Süreç v. Turkey*, no. 24762/94; *Ceylan v. Turkey*,

no. 23556/94; *Öztürk v. Turkey*, no. 22479/93; *İbrahim Aksoy v. Turkey*, nos 28635/95, 30171/96 and 34535/97; *Karkin 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 chapter will not go into further detail since this issue is discussed by Rachel Brett in Chapter 19.

27 For more detailed and comprehensive information, see Chapter 19.

28 Article 43/1 of the 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 judgments*: ‘1) The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties, 2) The final judgment 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.o.AKG.Y. 0.0-156.50-2007/55635/03 to the information request dated 14 February 2007 filed by Osman Murat Ülke's lawyer with the Council of Europe 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 note 7.

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.'

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