

**1312074 [2014] RRTA 716 (26 September 2014)**

**DECISION RECORD**

**RRT CASE NUMBER:** 1312074  
**COUNTRY OF REFERENCE:** Turkey  
**TRIBUNAL MEMBER:** Vanessa Moss  
**DATE:** 26 September 2014  
**PLACE OF DECISION:** Perth  
**DECISION:** The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act.

Statement made on 26 September 2014 at 10:17am

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431(2) of the *Migration Act 1958* and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependant.

## STATEMENT OF DECISION AND REASONS

### APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Turkey, is a [Kurdish] male who arrived in Australia on a student visa in March 2012 and applied for protection in November 2012. He fears harm because he is Kurdish, expresses pro-Kurdish political opinions and drinks alcohol, and because he has not done his military service and is “awol” from military service.
3. The applicant applied to the Department of Immigration for the visa [in] November 2012 and the delegate refused to grant the visa [in] July 2013 as she was not satisfied that he was owed protection obligations under the Refugees Convention or pursuant to the complementary protection criterion.
4. The delegate accepted that the applicant was a national of Turkey. She did not find his fear of discrimination to be serious harm amounting to persecution. Whilst she accepted that the applicant may have been subjected to derogatory remarks by his colleagues and discrimination from his managers she did not consider that this treatment amounts to persecution. She accepted that Kurds have been historically marginalised and mistreated in Turkey. On the basis of country information indicating that Hezbollah and the PKK carried out a number of violent attacks in towns including [Town 1] and [Town 2] in the mid 1990s she accepted that the applicant witnessed a number of violent incidents while growing up in [Town 3] in the 1980s and 1990s. While the applicant did not provide specific evidence that Hezbollah was responsible for the attacks on his house and his father, she was prepared to accept that this was the case. She accepted that Kurds in Turkey continue to face discrimination from the authorities and other Turkish citizens however she did not accept that such treatment automatically amounts to persecution. In respect of his claim to have been broken into in 2011 by Hezbollah members and racists connected to his employment, given that he did not report this to the police, remained in his employment for a further 5 months, and country information indicates that Hezbollah has not been engaged in violent crime since the early 2000s, the delegate did not accept that the break-in was perpetrated by Hezbollah or any other Islamic group connected with his work. She accepted that discrimination occurs against Kurdish conscripts in the military but did not consider that such treatment constituted serious harm or persecution. She relied on country information indicating that thousands of Kurdish soldiers are doing military service and that most complete their military service without significant problems. She accepted country information indicating that all conscripts may be sent to serve in south-eastern Turkey as postings of conscripts are decided on a random basis. Accordingly, she accepted that the applicant may be sent to fight in a predominantly Kurdish area of Turkey, but that the area he would be deployed to would be selected on a random basis and not selectively because of a Convention reason to single him out.
5. The applicant sought review of the delegate’s decision and a copy of the delegate’s decision accompanied his review application. He appeared before the Tribunal on 19, 21, and 27 August 2014 to give evidence and present arguments. The Tribunal also took evidence by telephone from his sister. The Tribunal hearing was conducted with the assistance of an

interpreter in the Turkish and English languages. He had requested a Kurdish interpreter however the Tribunal was unable to secure one in the dialect he requested.

6. The applicant was represented in relation to the review by his registered migration agent who attended the hearings.

### **CONSIDERATION OF CLAIMS AND EVIDENCE**

7. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.

Is the applicant credible as to his claim to be a citizen of Turkey?

8. The applicant has consistently claimed to be a citizen of Turkey. A certified copy of his Turkish identity card is on the Department's file.<sup>1</sup> It is noted in the delegate's decision that he arrived in Australia on a Turkish passport (although there is no evidence of his passport on the Department's protection file) and his movement records on the Tribunal's file confirm this. On the basis of this evidence, and there being no evidence to the contrary, the Tribunal accepts that the applicant is a national of Turkey and has assessed his claims against Turkey as his country of nationality.

Does he have a right to enter and reside in any other country?

9. There is nothing in the evidence before the Tribunal to suggest that the applicant has a right to enter and reside in any country other than his country of nationality, Turkey. Therefore the Tribunal finds that the applicant is not excluded from Australia's protection by subsection 36(3) of the Act.

Is the applicant credible as to his claims?

10. The Tribunal had the opportunity to observe the applicant give evidence over the course of three hearings during which it was able to question him at length about his claims and test the veracity of his evidence. He impressed the Tribunal with his sincerity, giving direct and unembellished answers to the questions posed by the Tribunal. The Tribunal regards him as an honest witness.
11. The applicant's claims for protection are set out in his statement<sup>2</sup> attached to his application for protection and they were further articulated in his interview with the delegate, an audio recording of which is on the Department's file<sup>3</sup>, and explored over the course of three Tribunal hearings. The Tribunal summarises his claims as follows.
12. The Tribunal accepts the applicant's claims regarding his identity, background, and family composition, which have remained consistent through the processing of his protection application. It accepts that he was born in [year] in [Town 3] an area in the centre of Kurdistan, and that his parents, [and siblings] live in Turkey. It accepts that he also has a [sibling] living in [another country]. He claims, and the Tribunal accepts, that he is of Kurdish ethnicity and speaks, reads and writes Turkish, Kurdish and English.

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<sup>1</sup> [Department file number deleted].

<sup>2</sup> [Department file number deleted].

<sup>3</sup> [Department file number deleted].

13. The Tribunal accepts the applicant's account of his education history as recounted to the Tribunal which was that he finished school in [a stated year] having completed [a stated educational level]. In the summer of [year] he studied for university entrance exams following which he studied for two years at the [Institute]. He then commenced a [degree] in [year] at the [University] in [course]. He was supposed to finish the degree in [a stated year] however did not graduate until [later], as he failed several units. He claims that whilst he was working at [Organisation 4] in [Town 1] he enrolled in a postgraduate course in [a stated year] in Istanbul, however he never attended the course.
14. The Tribunal accepts his credible claims that he was exposed to a number of violent incidents during the 1990s while living in south-east Turkey. The applicant's claims are consistent with the country information referred to in the delegate's decision which indicates that south-eastern Turkey has been the location of violent conflict since the 1990s due to the ongoing conflict between the PKK and the Turkish forces, and that both the Hezbollah and the PKK carried out a number of violent attacks in towns including [Town 1] and [Town 2] in the mid 1990s.
15. The Tribunal accepts the applicant's credible claims that between 2002 and 2008 whilst he was studying at [university] he was discriminated against by his tutors and other students on account of his being Kurdish.
16. The applicant has not claimed to be involved in any political parties or political activities, and the Tribunal so finds.
17. The Tribunal discussed with the applicant the country information which indicates that the Turkish state continues to discriminate against Kurds and that individuals who criticised the government or expressed opinions sympathetic to Kurdish nationalist or cultural independence faced arrest and imprisonment and that Kurdish individuals involved in Kurdish political groups were particularly vulnerable to harassment.<sup>4</sup> The Tribunal put it to the applicant that the country information does not support the contention that a person would be persecuted simply because they were Kurdish. He responded that this information was correct and that it is not just the Kurds who are discriminated against, as the state systematically discriminates against all of Turkey's minorities because it is endeavouring to create one nation.
18. The applicant claims that upon graduating in [year] he returned to [Town 1] in south east Turkey in the hope of finding employment. In September 2009 following his successful completion of a [exam] he secured a job at [Organisation 4] where he worked as a [occupation] from September 2009 until February 2012. He claims that he was discriminated against by managers and other employees for expressing his opinion about the treatment of Kurds and also because he drank alcohol. He claims he was sent to unfavourable locations and excluded from meetings. The Tribunal accepts the applicant's credible claims regarding his employment and experiences following his [graduation].
19. In September 2011 he claims his room was broken into as he was away for the weekend. His pet fish and Venus flytrap had their heads cut off. He believes that the break in was carried out by Hezbollah members and racists connected to his employment and was intended to give

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<sup>4</sup> US Department of State 2011, *Country Reports on Human Rights Practices 2010 – Turkey*, 8 April, Section 2 (b), - Accessed 28 April 2011.

him the message that he should leave the property and his job. He did not report this matter to the police. The Tribunal discussed with the applicant the country information referred to in the delegate's decision indicating that Hezbollah has not been engaged in violent crime since the early 2000s, and he indicated that he did not know who carried out this act, and that it was supposition on his part that it had been the Hezbollah. Whilst the Tribunal is prepared to accept that the applicant's room may have been broken into, given the country information and the applicant's concession it does not accept that it was Hezbollah or anyone connected with his employment.

20. The applicant claims that he has not completed his military service and he is a draft evader. He claims that if he is returned to Turkey he will be required to complete his military service. He does not want to use guns and does not want to be involved in attacks on people in his home area. He claims that as a Kurd he will be physically abused and possibly killed by other soldiers. He claims that he left Turkey before his military service obligations fell due, which was in May 2012. His sister corroborated the applicant's claims regarding his attitude towards military service and indicated that he had always been against fighting and that he did not believe that it was right to kill. She indicated that when he continually deferred his military service obligations he told her that the reason for this was that he was against war. She spoke about the ongoing war between the Kurds and the Turkish army, and the impact of the war on her and her brother as children.
21. The Tribunal put it to the applicant that the country information indicates that military service is almost a prerequisite for gaining employment,<sup>5</sup> and that most companies require men to have completed their military service before their job candidacies can be accepted. In addition employers are legally bound to release draft evaders from employment or face serious consequences ranging from fines to completely closing down operations.<sup>6</sup>
22. The applicant responded that his military service obligations had been deferred at that time and that he submitted his deferral form to the [organization], before getting the job. He went on to state that he had obtained deferrals on several occasions, the first being when he started attending [the] Institute, the second time being when he commenced a [degree] in [year] at the [University], the third time being when he started work at [Organisation 4] in 2009 and the last occasion when he enrolled in postgraduate studies in [year].
23. He claims that when he enrolled in a postgraduate degree in [year], he had to take a form (indicating his enrolment) to a military office in order to get an exemption from military service. He indicated to the Tribunal that his purpose in enrolling in postgraduate studies had been firstly to postpone his military service obligations, but also that he had wanted to engage in further studies. Because he did not attend the post graduate course, which he was supposed to undertake in Istanbul over the course of [a stated year], the university informed him in January/February 2012 that they would be informing the military that he no longer had student status. The applicant provided a copy and translation of a notification from the Ministry of National Defence, Military Draft Regional Head Office, to the [University] dated [March] 2012 cancelling the postponement of his military service until March 2015 for reasons of his enrolment in a [post-graduate] course, and requesting that they inform the

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<sup>5</sup> Oral, D. 2010, 'Refusing to line-up: Conscientious Objection in Turkey', *Studentische Untersuchungen der Politikwissenschaften & Soziologie*, Vol. 2, No. 2, Humboldt University Berlin website, July, pp.105, 108 <http://www2.hu-berlin.de/stups/sites/default/files/sommer-2010/didem-oral-refusing-line-conscientious-objection-turkey.pdf> – Accessed 13 December 2010

<sup>6</sup> 'Conscription in Turkey' (undated), Middle East Explorer website <http://www.middleeastexplorer.com/Turkey/Conscription-in-Turkey> – Accessed 13 December 2010

obligator, the applicant, to apply to a draft office in Turkey or overseas to receive his despatch documents, and indicating that he is subject to despatch with an August 2012 call date. He also provided a copy of an email from the university sent to him in May 2012 which he claims states that they have notified the military headquarters that he was no longer a student however no translation of the same was provided. On the basis of the notification, the Tribunal finds that the postponement of his military service obligations have been cancelled as indicated and that he was subject to despatch for military service in August 2012.

24. The applicant claims that if he returns to Turkey he will be required to undertake his military service, and that the deadline for his military service obligation was May 2012, and that he left Turkey before that. He claims that he was not contacted by the military regarding his military service obligations as he left Turkey before they fell due. The Tribunal enquired whether the military have been in contact with him, or his family regarding his outstanding military service obligations, and he indicated that he had not asked his family about this. The Tribunal put it to him that it found it hard to believe that he would not make such enquiries of his family. He indicated that he did not think that it was necessary for him to do so. Between the second and third hearings the applicant indicated that he had spoken with his brother, and asked him to check his military service obligations. He gave evidence that his brother attended the military service office in [Town 3] and was told that the applicant's name was on a list of draft evaders. The Tribunal questioned his sister about whether the authorities had been looking for the applicant after he left for Australia and she indicated that she did not know.
25. He claims that he has not previously been called up for military service as he had always deferred his military service obligations. On the basis of the country information provided by the applicant<sup>7</sup> and the country information annexed below, which corroborate the applicant's claim that it is possible to defer military service by two years following university graduation, the Tribunal accepts that he was able to defer his military service obligations as claimed.
26. The Tribunal asked the applicant whether he would undertake military service as required. He responded that he would not, as it is against his beliefs, and the Tribunal accepts this. He indicated that he would be required to follow orders and that there would be some things he would refuse to do. He claims that the military tortures people and that when he was growing up he witnessed the killings and torture perpetrated on his village by the military. He stated that he did not want to be part of this torture.
27. The Tribunal asked the applicant about his [brothers, who] have served in the military and he was not aware of any adverse experiences they may have had whilst serving in the military. The Tribunal asked the applicant's sister about her brothers' experiences in the army and she indicated that they had not told her anything specific about their time in the army, apart from saying that the conditions in the army were difficult. She indicated that [they] had been fortunate as they were not posted to conflict areas. She indicated that the applicant could end up having to kill his own people if he was forced to join the army. On the basis of the credible evidence of the applicant and his sister the Tribunal accepts that his [brothers] have undertaken their military service and that nothing is known about whether they experienced anything adverse during their time of service.

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<sup>7</sup> *Turkish Review* 10 January 2012, '20Q and 20A: Military Service in Turkey' Question 7, <http://www.asal.msb.gov.tr>

28. The applicant claims that he departed Turkey for Australia in March 2012. He claims that he departed on a Turkish passport issued in his name [in] 2011 and valid for 2 years. He claims he had no difficulties obtaining a passport. He claims that his passport was issued in [Town 3]. The Tribunal asked him if he had been required to demonstrate that he had undertaken his military service in order to obtain his passport and he indicated that he could not recall. The Tribunal discussed with the applicant the country information which indicates that in order to get a passport Turkish men between the ages of 20-38 years must demonstrate compliance with the country's military service obligations.<sup>8</sup> He responded that he may have provided a copy of his deferral document.
29. The Tribunal asked the applicant whether he had any problems leaving Turkey and he indicated that he did not. The Tribunal discussed with the applicant the country information indicating that a citizen's freedom to leave the country could be restricted in cases where a person has outstanding military service obligations."<sup>9</sup> He responded that he left before his military service obligations fell due, hence he had no problems leaving when he did.
30. The Tribunal discussed with the applicant the country information which indicates that all Turkish males are required to undertake military service and that this suggests that this is a law of general application and not one that is applied selectively or discriminatorily to him. He responded that on the surface everything is alright but that crimes are committed in the military. He indicated that he has two main objections to military service. Firstly he is opposed to being unfair to people and that the military is unfair to people, and secondly the military engages in torture, which he witnessed as a child.
31. He claims that if he returns to Turkey he will be called up for military service and he would be arrested because he has not done it. The Tribunal asked him what he thought would happen to him if he refused to be called up, and he indicated that he was not sure, but that some who had refused had been tortured and died.
32. The Tribunal asked the applicant how he would be treated in the army and he indicated that because of the history of conflict between the Kurds and the Turks many of the Turks wanted revenge and he claimed he would be tortured in the army. The Tribunal discussed with the applicant the country information referred to by the delegate indicating that thousands of Kurdish soldiers are doing military service and that most complete their military service without significant problems. He responded that this was simply wrong.
33. The Tribunal accepts the applicant's claims that he is against war and killing. It found him to be a sincere and credible witness and the Tribunal formed the view that his opposition to military service is grounded in his childhood experiences and observations of conflict and particularly the actions of the Turkish armed forces, and that he does not want to be complicit in such actions. It accepts that he has continually deferred his enrolment, and enrolled in postgraduate studies but not attended, and decided to further his study in Australia in order to

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<sup>8</sup> Immigration and Refugee Board of Canada 2009, *Turkey: Whether the section in the Turkish passport pertaining to military service is left blank or has a horizontal line to indicate the holder has been granted a deferment of military service for academic purposes; whether this section contains a military registration number (TC Kimlik No.) that is cross-checked in a computer database by Turkish authorities at ports of entry; if so, whether this database contains detailed reasons for the deferment*, TUR103062.E, 24 February <[http://www.irb-cisr.gc.ca:8080/RIR\\_RDI/RIR\\_RDI.aspx?id=452230&l=e](http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=452230&l=e)> Accessed 23 March 2012

<sup>9</sup> US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Turkey*, March, Section; and US Department of State 2009, *Country Reports on Human Rights Practices for 2008 – Turkey*, February, Section

avoid military service, which the Tribunal considers to be an indication of his strongly held aversion to fighting. On the basis of the evidence before it the Tribunal finds that the applicant is a conscientious objector.

*Is the applicant owed protection?*

34. The Tribunal accepts that the applicant has to date avoided military service and that he will be required to undertake compulsory military service on his return to Turkey, and that he does not have grounds for exemption from these laws. It accepts that he was subject to despatch for his military service obligations following his departure for Australia and that as a consequence he is now on a list of draft evaders at the military service office in [Town 3].
35. The country information annexed below from War Resisters International indicates that the conscript registration system in Turkey is one of the most effective in the country and that the Turkish authorities strictly monitor draft evaders, and that customs, immigration and police officers are aware of draft evaders. On the basis of this information, which is accepted by the Tribunal, the Tribunal finds that upon re-entering Turkey the applicant will be identified by the Turkish authorities as a draft evader. The Tribunal accepts that upon being identified as a draft evader by the authorities, the applicant will refuse to undertake his military service as required, on grounds of his beliefs. The Tribunal finds that at this point the applicant will be identifiable to the authorities as a conscientious objector. The country information below indicates that Turkey does not recognise the right to conscientious objection, nor does it grant exemptions from military service on these grounds, and according to Amnesty International conscientious objectors who object to serving their compulsory military service face imprisonment of up to three years. Further, Amnesty International has reported that conscientious objectors are frequently ill-treated while in military custody and this is corroborated by Plus News Pakistan. The country information also indicates that Turkish conscientious objectors may be subject to repeated convictions for refusing conscription and the European Court of Human Rights has criticised Turkey's repeated punishment of conscientious objectors as "incompatible with the punishment regime of a democratic society".
36. On the basis of the country information cited below the Tribunal finds that the punishment that will be meted out to the applicant for refusing to undertake military service, that is repeated periods of imprisonment during which he would be subjected to ill-treatment, clearly involves "serious harm" as required by paragraph 91R (1)(b) of the Act in that it involves a threat to life or liberty or significant physical harassment or ill treatment.
37. On the basis of the country information cited below the Tribunal finds that Turkey's military service laws are enforced in a discriminatory way against conscientious objectors as they are subjected to harsher penalties than draft evaders, namely repeated prosecutions and convictions and mistreatment whilst in prison. In considering whether the discriminatory treatment in the enforcement of the Turkish conscription law is appropriate and adapted to achieving some legitimate object of Turkey, the Tribunal notes the ruling in 2006 of the European Court of Human Rights that Turkey should amend its legislation to prevent the 'civil death' of conscientious objectors, and the country information annexed below indicates that the Turkish conscription laws conflict with international human rights law. The Tribunal finds that in these circumstances the discriminatory punishment meted out to conscientious objectors can be regarded as persecution, for the reason that enforcement of the law may not be appropriate and adapted to achieving a legitimate national objective.

38. The Tribunal further considers that the persecution which the applicant fears involves systematic and discriminatory conduct, as required by s.91R(1)(c) of the Act, in that it is deliberate or intentional.
39. The Tribunal finds that the essential and significant reason for the persecution feared by the applicant is on account of his being a conscientious objector which may be seen through the prism of the Convention grounds of membership of a particular social group. The requirements of s.91R(1)(a) of the Act are therefore met. The Tribunal's findings are based on the following reasoning.
40. In Applicant S<sup>10</sup>, Gleeson CJ, Gummow, and Kirby JJ said:

A particular social group must be identifiable by a characteristic or attribute common to all members of the group. Secondly, the characteristic or attribute common to all members of the group cannot be the shared fear of persecution. Thirdly, the possession of that characteristic or attribute must distinguish the group from society at large. A group that fulfils the first two propositions, but not the third, is merely a "social group" and not a "particular social group"
41. The particular social group "conscientious objectors" can be recognised because, firstly the members of the group share the attributes in common of moral, religious or political objection to bearing arms, secondly those common attributes are not a shared fear of persecution; and thirdly, the possession of those attributes distinguishes the members from male Turkish citizens in society at large who perform military service.
42. The country information annexed below indicates that the Turkish state refuses to recognise conscientious objectors to military service, and they face limitations in civil services such as applying for an identification card or opening a bank account. On the basis of the country information the Tribunal finds that conscientious objectors are a cognisable group, set apart within Turkish society.
43. On the basis of the evidence before it the Tribunal finds that there is a real chance that the applicant will suffer serious harm amounting to persecution due to his membership of the particular social group comprising conscientious objectors if he returns to Turkey now or in the foreseeable future.
44. The Tribunal finds that the serious harm capable of amounting to persecution that the applicant would face upon his return to Turkey would be inflicted by the state and thus state protection is not available to the applicant.
45. The Tribunal finds that the applicant has a well-founded fear of persecution for the purposes of the Convention if he were to return to Turkey now, and that this would extend into the reasonably foreseeable future.
46. The Tribunal finds that the prospect of the applicant being able to internally relocate within Turkey is not available to him due to the circumstances of the case.
47. Having made these findings in respect of the applicant's main claim, the Tribunal has not gone on to consider the remainder of the applicant's claims relating to discrimination on the basis of his being Kurdish.

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<sup>10</sup> *Applicant S v MIMA* (2004) 217 CLR 387.

## **CONCLUSION**

48. For the reasons given above, the Tribunal is satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a).

## **DECISION**

49. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act.

Vanessa Moss  
Member

## **ANNEXURE A**

### **RELEVANT LAW**

50. The criteria for a protection visa are set out in s.36 of the Act and Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the ‘refugee’ criterion, or on other ‘complementary protection’ grounds, or is a member of the same family unit as such a person and that person holds a protection visa.

#### **Refugee criterion**

51. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
52. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:
- owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
53. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the Regulations to a particular person.
54. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
55. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve ‘serious harm’ to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). Examples of ‘serious harm’ are set out in s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
56. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors.
57. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a

particular social group or political opinion. The phrase ‘for reasons of’ serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.

58. Fourth, an applicant’s fear of persecution for a Convention reason must be a ‘well-founded’ fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a ‘well-founded fear’ of persecution under the Convention if they have genuine fear founded upon a ‘real chance’ of being persecuted for a Convention stipulated reason. A ‘real chance’ is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
59. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression ‘the protection of that country’ in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.
60. Whether an applicant is a person in respect of whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

### **Complementary protection criterion**

61. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) (‘the complementary protection criterion’).
62. ‘Significant harm’ for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. ‘Cruel or inhuman treatment or punishment’, ‘degrading treatment or punishment’, and ‘torture’, are further defined in s.5(1) of the Act.
63. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

### **Section 499 Ministerial Direction**

64. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration – PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.

## ANNEXURE B

### COUNTRY INFORMATION

#### COUNTRY INFORMATION.

65. The following extract from the Canadian Immigration and Refugee Board provides a useful summary of the information on compulsory military service in Turkey:

‘Sources indicate that Turkey has compulsory military service for men for a standard length of 15 months (AI 11 June 2008; WRI 23 Oct. 2008; Child Soldiers 2008) Some sources state that men must perform their service when they are between the ages of 19 and 40 years old (AI 11 June 2008; WRI 23 Oct. 2008; Child Soldiers 2008), while other sources indicate that it is for men 20 years and older (*Today's Zaman* 25 Apr. 2010; *Hürriyet Daily News* 23 Apr. 2010; Turkey 6 May 2010). According to War Resisters' International (WRI), a London-based organization promoting non-violent action against the causes of war (WRI 24 July 2008), students may be able to postpone their military service until the age of 29 years and post graduate students until the age of 35 years (ibid. 23 Oct. 2008). WRI and a Turkish media source indicate that university graduates have the option of serving a shorter term of six months as ordinary soldiers or twelve months as reserve officers (ibid.; *Hürriyet Daily News* 25 Apr. 2010). The Coalition to Stop the Use of Child Soldiers indicates that health problems and disability are possible grounds for exemption from military service in Turkey (Child Soldiers 2008).

In 6 May 2010 correspondence with the Research Directorate, an official at the Embassy of the Republic of Turkey in Ottawa stated that male Turkish citizens are required to report to the military draft branches between 1 January and 31 October of the year of their twentieth birthday for the process of "final military draft inspection." The Official also agreed that the following information, originally submitted to the Research Directorate in 2003 and 2006, remains accurate:

Those draftees who are not ready for military service have to submit their documents showing the reasons (being a student, being unable to perform military service due to health reasons, being in prison, etc.). If these persons fail to report to their military branches, they become *yoklama kaçagi* (pre-registration draft evaders) as of November 1st of that year.

Draftees who complete their final military draft registrations join the military during the year that they become 21 years old. Those who do not attend to the call of the military branches or those who fail to join the related military training center or unit after completing their registrations become *bakaya* (post-registration draft evaders).

Once the government is aware of those who have become *yoklama kaçagi* or *bakaya*, their name and address is forwarded to the security authorities (the police or gendarme) by the administrative authorities (the governorships) and consequently, security authorities are authorized to begin to search for these persons. Simultaneously, the military branches of the persons in question send an official letter to their address, stating that they have become draft evaders and that they have to apply to their military branch to complete the relevant procedures. (Turkey 6 May 2010)

According to the Official, draft evaders (both *yoklama kaçagi* and *bakaya*) are not allowed to travel abroad until they legalize their situation (ibid.). WRI similarly

indicates that draft evaders cannot leave Turkey, and that customs, immigration and police officers would be aware that they are evading military service (WRI 23 Oct. 2008).

WRI reports that the police and gendarme are responsible for locating draft evaders and deserters and are authorized to conduct house searches (ibid.). WRI also indicates that draft evaders may be arrested in the course of routine police checks, such as during traffic control (ibid.).

According to Turkish military law, Article 63 of the Law on Absentee Conscripts, Draft Evaders, Persons Unregistered [For Military Service], and Deserters, draft evasion in peacetime carries the following penalties:

One month imprisonment for those who report to the authorities within seven days;

Three months for those who are arrested within seven days;

Three to twelve months for those who report within three months;

Four to eighteen months for those who are arrested within three months;

Four to twenty-four months for those who report after three months;

Six to thirty-six months for those who are arrested after three months (WRI 23 Oct. 2008; Turkey 1930).

WRI reports that prison sentences of less than one year are usually commuted into fines in cases of desertion or where conscripts fail to register for enlistment or examination (WRI 23 Oct. 2008). Prison sentences of more than three months, for cases in which conscripts did not voluntarily report to the authorities, could not be commuted into fines (ibid.). Prison sentences that are less than six months in length are generally served in military prisons, whereas longer terms are served in regular prisons (ibid.).

According to WRI, there are no statistics available on the prosecution of draft evaders, but there are believed to be approximately 60,000 cases a year, half of which are for cases where conscripts report back for military service less than a week late after a period of leave (ibid.). Sources indicate that prison sentences do not absolve draft evaders from completing their military service (ibid.; AI 8 Apr. 2010; ECHR 24 Apr. 2006, No. 62; Forum 18 17 Mar. 2010).

Sources indicate that Turkey does not recognize the right to conscientious objection (AI 8 Apr. 2010; Forum 18 17 Mar. 2010; WRI 23 Oct. 2008). According to Amnesty International (AI), conscientious objectors who publicly object to serving their compulsory military service face imprisonment of up to three years (AI 8 Apr. 2010). WRI reports that in addition to charges of evading military service, conscientious objectors who speak out may be punished with imprisonment of six months to two years under Article 318 of the Turkish Criminal Code for "alienating the people from the armed forces" (23 Oct. 2008). Human rights organizations report that conscientious objectors have been subject to repeated prosecutions and imprisonment for refusing conscription (ibid.; Forum 18 17 Mar. 2010). AI reports that conscientious objectors are "frequently ill-treated" while in military custody (AI 19 Nov. 2009). Plus News Pakistan corroborates the mistreatment of conscientious objectors in military prisons (3 Jan. 2010).

In 2006, the European Court of Human Rights (ECHR) found in favour of a Turkish conscientious objector who was sentenced to imprisonment eight times for refusing conscription (ECHR 24 Apr. 2006, No. 60). The court found that the successive convictions caused him to be in a "situation of humiliation or debasement" (ibid., No. 59) and characterized the applicant's life as "amounting almost to a 'civil death'" which is "incompatible with the punishment regime of a democratic society" (ibid., No. 62). He was awarded 11,000 Euros in damages, costs and expenses (ibid., No. 74, 77). AI reports that in 2007, the same conscientious objector was ordered to appear before the military prosecutor to serve another prison term (AI 19 July 2007). The defendant's lawyers suggested that the military prosecutor may have issued the order because the authorities did not publish and distribute the ECHR judgement to relevant authorities, including military staff (ibid.)

Forum 18, a Norwegian and Danish non-profit organization promoting the right to freedom of thought, conscience and religion (Forum 18 n.d.), reports that in an attempt to prevent the cycle of prosecutions against conscientious objectors, the Turkish Ministry of Justice issued a decree on 3 July 2008 which states that deserters can only be arrested with a court warrant by the police and not by the military recruitment office (17 Mar. 2010). Further information on the decree could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

Sources report that a conscientious objector was arrested in December 2009 for refusing to serve in the army on religious grounds (Forum 18 17 Mar. 2010; AI 11 Jan. 2010; Plus News Pakistan 3 Jan. 2010). According to AI, the defendant alleges that he was beaten with truncheons while in military prison and forcibly dressed in military uniform (11 Jan. 2010). Forum 18 reports that the defendant stated on 31 January 2010 that he was held naked in a cold room and also punished with *falaka* (beating the soles of his feet) (17 Mar. 2010). Forum 18 also states that the military prosecutor was seeking up to 10 years' imprisonment for "'refusal to follow orders'" and "'desertion'" (ibid.).

According to Forum 18, there are approximately 120 declared conscientious objectors in Turkey, of which approximately 30 are Jehovah's Witnesses (17 Mar. 2010). Forum 18 notes that it is more common for objectors to postpone their service by continuing their education, working abroad, or deserting the army, rather than declaring themselves to be conscientious objectors (17 Mar. 2010).<sup>66</sup> (Immigration and Refugee Board of Canada, 'Turkey: Compulsory military service; procedures followed by government authorities when a person evades conscription, including the type of documents issued and the offices involved; whether draft evaders are permitted to leave the country; consequences of draft evasion and conscientious objection', 21 May 2010, TUR103455.E)

66. Turkish citizens living abroad may apply for a postponement from military service for up to three years at a time until the age of 38. Those living abroad may also apply to serve a shorter term of compulsory service by paying a fee of 5,112 Euros. Turkish citizens who have been living overseas as a student, or on a legal work permit, for more than three years are eligible to shorten their military service term to three weeks, rather than the standard fifteen months. However, citizens living abroad who have not completed military service and who fail to apply for a postponement would be sent to a military training centre upon their return to Turkey and may face charges of draft

evasion. Furthermore, they would be unable to renew their passports whilst overseas and would only be permitted to travel back to Turkey.<sup>11</sup>

67. Turkey does not recognise conscientious objection from military service, and does not grant exemptions from military service on these grounds. A brochure produced by the Turkish Armed Forces in 1999 states that “[i]n our laws there are no provisions on exemption from military service for reasons of conscience. This is because of the pressing need for security, caused by the strategic geographical position of our country and the circumstances we find ourselves in. As long as the factors threatening the internal and external security of Turkey do not change, it is considered to be impossible to introduce the concept of ‘conscientious objection’ into our legislation”.<sup>12</sup>
68. Turkish citizens who refuse to undertake military service as conscientious objectors face criminal prosecution and imprisonment of up to three years under Article 63 of the Turkish Military Penal Code, which prescribes punishment for draft evasion. Those continuing to refuse to serve after being released are often subject to repeated prosecutions and convictions.<sup>13</sup> Conscientious objectors “who attract media attention or publish articles about their refusal to perform military service may also be [imprisoned] under Article 318 of the Turkish Criminal Code for ‘alienating the people from the armed forces’”.<sup>14</sup> In 2006, the European Court of Human Rights ruled that Turkey should “amend its legislation to prevent the ‘civil death’ of conscientious objectors repeatedly prosecuted and convicted for their refusal to carry out military service”. However, Turkey has failed to implement this ruling.<sup>15</sup>
69. Conscientious objectors are also named on a list of conscription evaders and, as a result, face limitations in civil services such as applying for an identification card or opening a bank account.<sup>16</sup> War Resisters International reports that the conscript registration system is one of the most effective in the country, and that the Turkish

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<sup>11</sup> Immigration and Refugee Board of Canada 2010, *TUR103457.E – Compulsory military service for Turkish citizens living abroad*, 26 May, European Country of Origin Information Network website [http://www.ecoi.net/local\\_link/141308/241855\\_en.html](http://www.ecoi.net/local_link/141308/241855_en.html) – Accessed 13 December 2010; ‘Dutch Turkish nationals and Turkish compulsory military service’ 2008, Nederlands Immigratie en Naturalisatiedienst website, 9 July [http://www.ind.nl/en/inbedrijf/actueel/Nederlandse\\_Turken\\_en\\_Turkse\\_dienstplicht.asp](http://www.ind.nl/en/inbedrijf/actueel/Nederlandse_Turken_en_Turkse_dienstplicht.asp) – Accessed 13 December 2010; ‘Conscription in Turkey’ (undated), Middle East Explorer website <http://www.middleeastexplorer.com/Turkey/Conscription-in-Turkey> – Accessed 13 December 2010; UK Home Office 2008, *Operational Guidance Note – Turkey*, 2 October, p.12

<sup>12</sup> War Resisters International 2008, ‘Country Report – Turkey’, 23 October

<sup>13</sup> US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Turkey*, 11 March, Section 2c; ‘European Parliament Resolution on the EU Commission’s 2009 Progress Report on Turkey’ 2010, European Parliament website, 10 February, Section 27

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0025+0+DOC+XML+V0//EN> – Accessed 13 December 2010; UK Home Office 2008, *Operational Guidance Note – Turkey*, 2 October, p.12; UK Home Office 2010, *Country of Origin Information Report – Turkey*, August, p.46; War Resisters International 2008, ‘Country Report – Turkey’, 23 October; Department of Foreign Affairs and Trade 2006, *DFAT Report 571 – RRT Information Request: TUR30990*, 7 December

<sup>14</sup> War Resisters International 2008, ‘Country Report – Turkey’, 23 October; ‘Turkey lags behind fellow Council of Europe members on recognition of right to conscientious objection’ 2006, Human Rights Watch, 13 September, [http://hrw.org/english/docs/2006/09/13/turkey14533\\_txt.htm](http://hrw.org/english/docs/2006/09/13/turkey14533_txt.htm) – Accessed 13 July 2007

<sup>15</sup> ‘Amnesty International – Urgent Action: Further Information on UA: 175/10: New Risk For Turkish Conscientious Objector’ 2010, Amnesty International website, 1 September

<sup>16</sup> Oral, D. 2010, ‘Refusing to line-up: Conscientious Objection in Turkey’, *Studentische Untersuchungen der Politikwissenschaften & Soziologie*, Vol. 2, No. 2, Humboldt University Berlin website, July, p.108 <http://www2.hu-berlin.de/stups/sites/default/files/sommer-2010/didem-oral-refusing-line-conscientious-objection-turkey.pdf> – Accessed 13 December 2010

authorities strictly monitor draft evaders and deserters. Draft evaders and deserters are unable to legally depart Turkey as they would be identified by immigration officers, and may be arrested by police officers during routine traffic checks. Police and security forces also conduct house searches for draft evaders and deserters.<sup>17</sup>

70. As of May 2013, Turkey has not amended its laws to grant an exemption from military service for conscientious objection. This is despite adverse court rulings by European Courts that led to anticipation in November 2011 that the Turkish government would amend legislation to allow for conscientious objection. The proposed legislation did not eventuate and Turkey still refuses to recognise the right to conscientious objection.
71. According to a May 2013 *Amnesty International* report Turkey still does not have provisions in its laws to grant an exemption to military service on the basis of conscientious objection.<sup>18</sup> The report noted that Turkey had failed to implement a 2006 European Court of Human Rights judgment that ‘required the authorities to change the law to prevent the repeated prosecution and imprisonment of conscientious objectors for their refusal to perform military service.’<sup>19</sup>
72. A November 2011 *Associated Press* article quoted Sadullah Ergin, the Turkish Justice Minister, as stating to reporters that the right to conscientious objection ‘will be assessed, discussed and brought to parliament if deemed applicable’.<sup>20</sup> According to the article the review was prompted by adverse findings made in European Courts against Turkey. In December 2011 *Turkish Weekly*<sup>21</sup> reported that the Turkish Prime Minister, Recep Tayyip Erdogan, had told a party meeting on 22 November that the issue had been ‘shelved’.<sup>22</sup>
73. In 2009, the IRBC quoted an executive assistant at the Turkish Education Office at the Consulate of the Republic of Turkey in New York as stating that undergraduate university students studying in Turkey or abroad may obtain a four year deferment up to a maximum of seven years or until they are 29 years old.<sup>23</sup> According to the executive assistant, Master’s and Post Doctorate (PhD) students may obtain a deferment for three or five years respectively, until they reach the age of 35 years.<sup>24</sup>

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<sup>17</sup> War Resisters International 2008, ‘Country Report – Turkey’, 23 October

<sup>18</sup> Amnesty International 2013, *Right to conscientious objection still not guaranteed in Europe*, 14 May <<http://www.amnesty.org/en/library/asset/EUR01/012/2013/en/104f4a74-ebc4-44f1-9136-2b83f75e620e/eur010122013en.pdf>> Accessed 28 May 2013

<sup>19</sup> Amnesty International 2013, *Right to conscientious objection still not guaranteed in Europe*, 14 May <<http://www.amnesty.org/en/library/asset/EUR01/012/2013/en/104f4a74-ebc4-44f1-9136-2b83f75e620e/eur010122013en.pdf>> Accessed 28 May 2013

<sup>20</sup> ‘Turkey considers allowing conscientious objection to military service’ 2011, *Associated Press*, 16 November, *The Guardian* <<http://www.guardian.co.uk/world/2011/nov/15/turkey-conscientious-objection-military-service>> Accessed 28 May 2013

<sup>21</sup> The *Journal of Turkish Weekly* is an English language news source founded in 2004. It publishes articles written by its staff as well as from other news sources. See <<http://www.turkishweekly.net/about-us.asp>>

<sup>22</sup> Tokyay, M 2011, ‘Government Shelves Reform of Policy on Conscientious Objectors’, *The Journal of Turkish Weekly*, 28 May <<http://www.turkishweekly.net/news/127359/>> Accessed 28 May 2013

<sup>23</sup> Immigration and Refugee Board of Canada 2009, *TUR103064.E*, 24 February, UNHCR Refworld website <<http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&docid=4a7040a0c&skip=0&coi=TUR&query=si=military%20service&searchin=title&display=10&sort=date>> Accessed 12 July 2012

<sup>24</sup> Immigration and Refugee Board of Canada 2009, *TUR103064.E*, 24 February, UNHCR Refworld website <<http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&docid=4a7040a0c&skip=0&coi=TUR&query=si=military%20service&searchin=title&display=10&sort=date>> Accessed 12 July 2012

<sup>24</sup> Immigration and Refugee Board of Canada 2009, *TUR103064.E*, 24 February, UNHCR Refworld website <<http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&docid=4a7040a0c&skip=0&coi=TUR&query=si=military%20service&searchin=title&display=10&sort=date>> Accessed 12 July 2012

74. A different IRB response published on 23 February 2009 cites a phone interview with an executive assistant at the Turkish Education Office at the Consulate of the Republic of Turkey in New York where the executive assistant stated ‘male Turkish post-secondary students must submit proof of academic registration to a Turkish military service office in order to obtain a deferment of military service.’ A consular official at the Embassy of the Republic of Turkey in Ottawa cited in the same IRB response stated that ‘Military authorities maintain records on the registration status of eligible recruits who have deferred their military service.’<sup>25</sup>
75. A 2001 Netherlands Directorate for Movements of Persons, Migration and Consular Affairs report on military service in Turkey cited in the 23 February IRB response notes that Students must re-apply for permission to defer military service every year.<sup>26</sup> The same Dutch report notes that requests for deferment of military service by students ‘must be backed up by documents from ... the university.’<sup>27</sup>
76. There are no exemptions to military service on religious grounds. In its 2011 *July-December 2010 International Religious Freedom Report*, the US Department of State noted that the Turkish Government does not recognise conscientious objection to military service and ‘those who opposed mandatory military service on religious grounds faced civil court and prison sentences.’<sup>28</sup> Further, reports were found of conscientious objectors arrested for refusing to serve in the military on religious grounds. For example, according to the Immigration and Refugee Board of Canada (IRBC) a conscientious objector was arrested in December 2009 for refusing to serve due to his religion. According to the report, he was reportedly beaten while in military prison and forcibly dressed in military uniform.<sup>29</sup>
77. *Law No. 1111, Military Law 1927* sets out legal grounds for exemption from compulsory military service, including when there is a surplus of drafted soldiers and if an individual’s level of physical capability is not suitable for military service:

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si=military%20service&searchin=title&display=10&sort=date> Accessed 12 July 2012; War Resisters International 2008, *Country Report – Turkey*, 23 October [http://www.wri-irg.org/programmes/world\\_survey/reports/Turkey](http://www.wri-irg.org/programmes/world_survey/reports/Turkey) Accessed 13 July 2010

<sup>25</sup> Immigration and Refugee Board of Canada 2009, *TUR103063.E Documentation that male students need for deferment from military service; documentation required for students to travel abroad; whether a Canadian student visa would entitle the student to continue deferment of military service for academic purposes*, 23 February <<http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=category&category=COI&publisher=IRBC&type=&coi=TUR&docid=4a70409e23&skip=0>> Accessed 29 May 2013

<sup>26</sup> Immigration and Refugee Board of Canada 2009, *TUR103063.E Documentation that male students need for deferment from military service; documentation required for students to travel abroad; whether a Canadian student visa would entitle the student to continue deferment of military service for academic purposes*, 23 February, Refworld <<http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=category&category=COI&publisher=IRBC&type=&coi=TUR&docid=4a70409e23&skip=0>> Accessed 29 May 2013

<sup>27</sup> Immigration and Refugee Board of Canada 2009, *TUR103063.E Documentation that male students need for deferment from military service; documentation required for students to travel abroad; whether a Canadian student visa would entitle the student to continue deferment of military service for academic purposes*, 23 February <<http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=category&category=COI&publisher=IRBC&type=&coi=TUR&docid=4a70409e23&skip=0>> Accessed 29 May 2013

<sup>28</sup> US Department of State 2010, *July-December 2010 International Religious Freedom Report*, 13 September, p. 3 <<http://www.state.gov/documents/organization/171727.pdf>> Accessed 15 September 2011

<sup>29</sup> Immigration and Refugee Board of Canada 2010, *TUR103445.E*, 21 May, UNHCR Refworld website <<http://www.unhcr.org/refworld/publisher,IRBC,,TUR,4e43d1a62,0.html>> Accessed 16 July 2012

Article 10 (Amendment 20/11/1984 – 3081/1)

2. (Amendment: 21/5/1992 – 3802/2 ) All of those who are to render their military service in that year [i.e. without conscription being postponed] shall be subject to basic military training in accordance with the existing call-up system. If in a call-up term the number of the soldiers being transferred to the training centres in each draft period is higher than the requirement specified by the Office of the Chief of General Staff, the surplus number of soldiers to be conscripted shall be considered to have fulfilled their military service, following their military training, by paying half the Turkish lira equivalent of the fixed foreign exchange fee for exemption from military service at the Turkish Central Bank's foreign currency buying rate for 1st January of that year, or by working in a public institution or organization, if so desired.

7. (Amendment: 16/4/1987 – 3358/6) During mobilization or war, the provisions in this article, relating to the sums payable for exemption from military service or performing military service by working in a public institution or organization shall not be applied.

8. According to the Turkish Armed Forces Health Aptitude Regulation, those whose [level of] physical capability is not suitable for military service shall be exempted from military service.  
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94. Two reports were found that indicate there may be an option to defer military service by two years following university graduation;<sup>31</sup> other sources, however, state that university students can postpone military service until they receive their degree.<sup>32</sup> The Turkish military law appears to allow graduates to postpone their military service for one or two years in certain circumstances.<sup>33</sup>

95. A January 2012 news article published in *Turkish Review*<sup>34</sup> lists the deferment options for military service in Turkey, one of which allows 'faculty graduates' to 'postpone their military service for two years following their year of graduation'.<sup>35</sup> The same report states that students at tertiary institutions must register for military service in the year of their graduation:

Those who are eligible to become reserve officers – by virtue of having completed a four-year degree at a faculty, academy or institution of higher education – will have

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<sup>30</sup> *Law No. 1111, Military Law 1927*, Article 10 Sections 2, 7 & 8, UNHCR Refworld website <<http://www.unhcr.org/refworld/docid/3ae6b4d020.html>> Accessed 16 July 2012

<sup>31</sup> Acar, ME 2012, '20Q&20A: Military service in Turkey', *Turkish Review*, 10 January <[http://www.turkishreview.org/tr/newsDetail\\_getNewsById.action?newsId=223504](http://www.turkishreview.org/tr/newsDetail_getNewsById.action?newsId=223504)> Accessed 29 August 2014; 'Turkey to Open Military Officer Careers to University Graduates' 2012, *Turkish News*, 10 May <<http://www.turkishnews.com/en/content/2012/05/10/turkey-to-open-military-officer-careers-to-university-graduates-bloomberg/>> Accessed 29 August 2014

<sup>32</sup> 'Compulsory military service shortened to 12 months as of Jan. 1' 2013, *Today's Zaman*, 22 October <<http://www.todayszaman.com/news-329432-compulsory-military-service-shortened-to-12-months-as-of-jan-1.html>> Accessed 29 August 2014 ; 'Students over 29 must prove military service before registration' 2012, *Today's Zaman*, 28 May <[http://www.todayszaman.com/newsDetail\\_getNewsById.action?newsId=281705](http://www.todayszaman.com/newsDetail_getNewsById.action?newsId=281705)> Accessed 5 June 2013 <CX308665>; Permanent Mission of the Republic of Turkey to the Organization for Security and Cooperation in Europe 2014, *Questionnaire on the Code of Conduct on Politico-Military Aspects of Security*, 9 May, p.11 <<http://www.osce.org/fsc/119850?download=true>> Accessed 2 September 2014

<sup>33</sup> *Law No. 1111, Military Law 1927*(Turkey), Arts 35-36, Annex Section F, UNHCR Refworld <<http://www.unhcr.org/refworld/docid/3ae6b4d020.html>> Accessed 28 August 2014

<sup>34</sup> *Turkish Review* is a bimonthly English language magazine published by Feza Gazetecilik A.S., focusing on Turkish politics, foreign policy, culture and history. <<http://issuu.com/turkishreview>> <[http://www.turkishreview.org/constantHtmlModuleAction\\_getHtmlModule.action?sectionId=75](http://www.turkishreview.org/constantHtmlModuleAction_getHtmlModule.action?sectionId=75)>

<sup>35</sup> Acar, ME 2012, '20Q&20A: Military service in Turkey', *Turkish Review*, 10 January <[http://www.turkishreview.org/tr/newsDetail\\_getNewsById.action?newsId=223504](http://www.turkishreview.org/tr/newsDetail_getNewsById.action?newsId=223504)> Accessed 29 August 2014

committed the offense of draft evasion if they fail to report for medical examination at one of the military recruitment offices within the country or a Turkish consulate overseas by Oct. 31 in the year of their graduation – the final date for registration.<sup>36</sup>

96. Similarly, *Bloomberg Businessweek*<sup>37</sup> reported in May 2012 that higher education students can defer their military service while enrolled until the age of 29, but also ‘have the option of delaying enrollment in the military for as long as two years if they complete university’.<sup>38</sup>

97. Reports from 2012 to 2014 state, without providing further detail, that students can defer their military service until they receive their degree. *Today’s Zaman*<sup>39</sup> reported in October 2013 that ‘if a man is enrolled in an institution of higher learning, he is allowed to defer his service until he receives his degree’.<sup>40</sup> The same news agency reported in May 2012 that:

Those engaged in higher education or vocational training programs prior to their military drafting are permitted to delay service until they have completed their studies or reach a certain age.<sup>41</sup>

98. In May 2014 the Permanent Mission of the Republic of Turkey to the Organization for Security and Cooperation in Europe (OSCE) wrote that:

Turkish Military Service Code (Law No: 1111) permits students to complete their high education (in the universities or institutes for L.L.M. or Ph.D. programs), before they are conscripted provided that they preserve their student status and are not older than 35.<sup>42</sup>

99. Turkey’s *Law No. 1111, Military Law 1927* lists the circumstances in which individuals may postpone their military service until the following year. Only one English translation of this law was located, which was translated and published in 1997. It is unknown whether there have been amendments of this law to change these provisions since 1997. Article 35 of *Law No. 1111, Military Law 1927* allows a deferment of military service for:

Those who are understood to be studying in a military school, or middle school, or high school, or higher educational institution where attendance is mandatory by laws and regulations or in a university or a vocational school or in a private foreign school or

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<sup>36</sup> Acar, ME 2012, ‘20Q&20A: Military service in Turkey’, *Turkish Review*, 10 January <[http://www.turkishreview.org/tr/newsDetail\\_getNewsById.action?newsId=223504](http://www.turkishreview.org/tr/newsDetail_getNewsById.action?newsId=223504)> Accessed 29 August 2014

<sup>37</sup> *Bloomberg Businessweek* is a US-based business magazine founded in 1929 and published internationally. <[http://www.bloombergmedia.com/content/uploads/sites/2/2013/11/NMA\\_press\\_release.pdf](http://www.bloombergmedia.com/content/uploads/sites/2/2013/11/NMA_press_release.pdf)>

<sup>38</sup> Peker, E & Meric, AB 2012, ‘Turkey to Open Military Officer Careers to University Graduates’, *Bloomberg Businessweek*, 9 May <<http://www.businessweek.com/news/2012-05-09/turkey-to-open-military-officer-careers-to-university-graduates>> Accessed 29 August 2014

<sup>39</sup> *Today’s Zaman* is an English language daily newspaper published in Turkey by Feza Gazetecilik A.S. The news agency focuses on Turkish and international news, politics, economics and arts and sport. <<http://www.todayszaman.com/about-us>> <<http://www.todayszaman.com/news-281449-minister-taner-yildiz-nuclear-energy-sine-qua-non-for-turkey.html>>

<sup>40</sup> ‘Compulsory military service shortened to 12 months as of Jan. 1’ 2013, *Today’s Zaman*, 22 October <<http://www.todayszaman.com/news-329432-compulsory-military-service-shortened-to-12-months-as-of-jan-1.html>> Accessed 29 August 2014

<sup>41</sup> ‘Students over 29 must prove military service before registration’ 2012, *Today’s Zaman*, 28 May <[http://www.todayszaman.com/newsDetail\\_getNewsById.action?newsId=281705](http://www.todayszaman.com/newsDetail_getNewsById.action?newsId=281705)> Accessed 5 June 2013 <CX308665>

<sup>42</sup> Permanent Mission of the Republic of Turkey to the Organization for Security and Cooperation in Europe 2014, *Questionnaire on the Code of Conduct on Politico-Military Aspects of Security*, 9 May, p.11 <<http://www.osce.org/fsc/119850?download=true>> Accessed 2 September 2014

school abroad whose equivalence to the schools stated above has been approved by the Ministry of National Education.<sup>43</sup>

100. The article stipulates that postponement for the above individuals ‘shall continue until they reach the age of 29 at the latest... Provided that the said students continue their studies regularly’.<sup>44</sup> Graduates of higher education who have completed their course in the field of science and have brought about ‘an innovation or development at [the] global level’ can postpone their military service until the age of 36.<sup>45</sup> Article 36 allows for graduates of higher education to postpone their military service for one year ‘if he wishes to continue his education’.<sup>46</sup> Additionally, Article 36 allows high school graduates who have failed to enter tertiary education in their year of graduation a two year postponement if they make a request to defer.<sup>47</sup>

101. Limited information was found indicating whether enrolment in a course is sufficient to defer to military service or if attendance is necessary.<sup>48</sup>

102. In a 2009 report, the Immigration and Refugee Board of Canada cited conversations with staff at the Consulate of the Republic of Turkey in New York and the Embassy of the Republic of Turkey in Ottawa on the topic of military service. The report notes that in order to defer military service, ‘Students must renew their deferment every year’.<sup>49</sup> Further:

Every year in August or September, Bachelor’s students must submit proof of registration at the educational institution they attend to their corresponding military service office... Bachelor’s students who fail are allowed to repeat a maximum of two academic years, but if they fail a third time they will not be able to register at their university or defer their military service any longer... Similarly, Master’s students must submit proof of academic registration in August or September, but they must do so only once for a two-year period of study (and a second time if they continue their study for a third year).

...A problem will arise only if a student is unable to register for a subsequent term: at this point, the university will contact the military office and the student’s deferment of military service will not be renewed.<sup>50</sup>

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<sup>43</sup> Law No. 1111, Military Law 1927(Turkey), Art 35, Annex Section F, UNHCR Refworld <<http://www.unhcr.org/refworld/docid/3ae6b4d020.html>> Accessed 28 August 2014

<sup>44</sup> Law No. 1111, Military Law 1927(Turkey), Art 35, Annex Section F, UNHCR Refworld <<http://www.unhcr.org/refworld/docid/3ae6b4d020.html>> Accessed 28 August 2014

<sup>45</sup> Law No. 1111, Military Law 1927(Turkey), Art 35, Annex Section F, UNHCR Refworld <<http://www.unhcr.org/refworld/docid/3ae6b4d020.html>> Accessed 28 August 2014

<sup>46</sup> Law No. 1111, Military Law 1927(Turkey), Art 36, Annex Section F, UNHCR Refworld <<http://www.unhcr.org/refworld/docid/3ae6b4d020.html>> Accessed 28 August 2014

<sup>47</sup> Law No. 1111, Military Law 1927(Turkey), Art 36, Annex Section F, UNHCR Refworld <<http://www.unhcr.org/refworld/docid/3ae6b4d020.html>> Accessed 28 August 2014

<sup>48</sup> Searches were conducted of Turkish and international news media, major human rights reports, major foreign government reports, think tanks, peer-reviewed journals, tribunal resources, DIBP resources and general internet searches.

<sup>49</sup> Immigration and Refugee Board of Canada 2009, *Turkey: Whether enrolling in a four-year academic program at a university automatically grants a deferment of military service for the four-year period, even if an individual fails his courses or does not attend classes; whether the university issues a declaration stating that an individual will be a student at the university upon receiving tuition payment, even if he has failed the previous academic year*, TUR103064.E, 24 February <<http://www.refworld.org/docid/4a7040a0c.html>> Accessed 28 August 2014

<sup>50</sup> Immigration and Refugee Board of Canada 2009, *Turkey: Whether enrolling in a four-year academic program at a university automatically grants a deferment of military service for the four-year period, even if an*

103. According to Article 36 of Turkey's *Law No. 1111, Military Law 1927*, students who have deferred their military service for one year and have 'graduated or severed their links with their schools for various reasons' must be reported to the military service branch by their education institution within two months.<sup>51</sup> Article 35 states that students who have not completed their course by the age of 29, or have failed their course for two consecutive years, or have enrolled in a new course after graduating 'shall not be left to the following year, but shall be made soldiers immediately'.<sup>52</sup>

### *Kurdish Conscripts*

78. Amnesty International reported in 1999 that traditionally, military conscripts were deliberately sent to fight away from their home region. Many Kurds migrated from the southeast to urban areas in the west of the country and, as a result, a Kurdish conscript from the west may have been sent to fight against Kurds in the southeast.<sup>53</sup> In 2005, War Resisters International reported that many postings of conscripts are now determined by random computer selection and, therefore, all conscripts may be sent to fight against Kurds in the southeast.<sup>54</sup>
79. Furthermore, conscripts may be required to serve in the 'gendarmerie', a rural police force that has been active in the suppression of Kurds in the southeast. In 2002, a paper on asylum seekers from Turkey claimed that approximately 38 percent of all conscripts were serving in the gendarmerie.<sup>55</sup> Nevertheless, in 2008 it was reported in *DefenseNews* that "by the end of next year no conscript soldiers will be involved in anti-terrorism operations in units on both sides of Turkey's border with Iraq, where the military is fighting the outlawed Kurdistan Workers Party (PKK)".<sup>56</sup>
80. Amnesty International reports that "[i]t is not uncommon for Turkish citizens of Kurdish origin to be reluctant or unwilling to do their military service because they do not wish to participate in the conflict in the southeast of Turkey. A number of such individuals have gone so far as to leave Turkey in order to avoid conscription into the armed forces".<sup>57</sup> Similarly, War Resisters International claims that "[t]here is a sizeable group of conscripts of Kurdish origin who refuse to perform military service because they do not want to fight against their own people. Many Kurdish draft evaders have, in fact, left Turkey and applied for asylum abroad".<sup>58</sup>

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*individual fails his courses or does not attend classes; whether the university issues a declaration stating that an individual will be a student at the university upon receiving tuition payment, even if he has failed the previous academic year*, TUR103064.E, 24 February <<http://www.refworld.org/docid/4a7040a0c.html>> Accessed 28 August 2014

<sup>51</sup> *Law No. 1111, Military Law 1927*(Turkey), Art 36, Annex Section F, UNHCR Refworld <<http://www.unhcr.org/refworld/docid/3ae6b4d020.html>> Accessed 28 August 2014

<sup>52</sup> *Law No. 1111, Military Law 1927*, Annex Section F, UNHCR Refworld <<http://www.unhcr.org/refworld/docid/3ae6b4d020.html>> Accessed 28 August 2014

<sup>53</sup> 'Evidence of persecution of conscripts on the increase' 1999, Amnesty International website, 27 August, <http://web.amnesty.org/library/Index/ENGEUR440551999?open&of=ENG-2EU> – Accessed 18 July 2007 –

<sup>54</sup> UK Home Office 2007, *Country of Origin Information Report – Turkey*, 12 March, p.42 –

<sup>55</sup> McDowall, D. 2002, 'Asylum Seekers from Turkey II', Asylum Aid, European Country of Origin Information Network website, November, pp.71-73 [http://www.ecoi.net/file\\_upload/ds497\\_02652tur.doc](http://www.ecoi.net/file_upload/ds497_02652tur.doc) – Accessed 10 December 2010; 'Evidence of persecution of conscripts on the increase' 1999, Amnesty International website, 27 August, <http://web.amnesty.org/library/Index/ENGEUR440551999?open&of=ENG-2EU> – Accessed 18 July 2007 –

<sup>56</sup> War Resisters International 2008, 'Country Report – Turkey', 23 October –

<sup>57</sup> 'Evidence of persecution of conscripts on the increase' 1999, Amnesty International website, 27 August, <http://web.amnesty.org/library/Index/ENGEUR440551999?open&of=ENG-2EU> – Accessed 18 July 2007 –

<sup>58</sup> UK Home Office 2007, *Country of Origin Information Report – Turkey*, 12 March, p.42 –

