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## **CORI Research Analysis**

**Date:** 20 January 2011

**Country:** Turkey

**Ref:** Tur0111.Military

**Issues:** **Military, conscription, ethnic Kurds, discrimination, deployment, draft evasion**

**Query:** a) How are conscript soldiers of Kurdish origin treated within the Turkish army? Compared to other Turkish citizens is there evidence of mistreatment on the basis of their ethnic origin such as harsher punishment or other discrimination; b) Are soldiers of Kurdish origin deployed in the eastern regions/kurdish areas?  
c) How are draft-evaders/deserters of Kurdish origin treated if repatriated?

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**a) How are conscripted soldiers of Kurdish origin treated within the Turkish army? Compared to other Turkish citizens is there evidence of mistreatment on the basis of their ethnic origin such as harsher punishment or other discrimination;**

ABC News reported an Associated Press news item in an August 2010 article, noting the difficulties experienced by ethnic Kurds in the Turkish military,

"For you to be shooting so well, you must be a terrorist," the officer joked, using a common term in Turkey for Kurdish rebels at war with the state. It was an awkward moment for conscript Kenan Kizildag, who recently recalled the remark and his reply: "If I were a terrorist, then I would be in the mountains, not down here." The conversation ended and the two got on fine afterward, according to Kizildag, a 26- year-old construction worker in Istanbul who finished his 15-month military service in 2007.

[ ]

Virtually all Turkish males are required to serve in the armed forces for up to 15 months; some with higher education or time spent overseas can secure much shorter terms. If not quite taboo, the topic of Kurds in the Turkish military is sensitive in an institution where an image of unity is paramount. "It's the Pandora's box," said Umit Cizre, a military expert at Istanbul Sehir University. "Nobody has opened it yet."

Up to one-fifth of Turkey's 72 million people are Kurds, meaning tens of thousands serve in the armed forces at any one time. Their language is barred in schools, parliament and most official settings, and Kurdish politicians are frequent targets of prosecution. Yet most Kurds in the military simply fulfill a rite of passage that opens the way to jobs and social acceptance. Some fight the PKK rebel group that claims to represent them. Some who turn professional rise to a high rank.

[ ]

Several Kurds, all former conscripts, told The Associated Press that they were treated relatively well by the command, but ethnic jokes and slurs were a feature of barracks life that they had to endure, mostly in silence. "Sometimes you hear racist remarks about Kurds being spoken among soldiers.

It is very offensive," said 31-year-old Burhan Ekinci, [ ]. Ekinci served six months in Bingol province, where rebels are active, and he is from Diyarbakir, in the mainly Kurdish southeast of Turkey. He recalled a sergeant who asked him where he was from, and then said he didn't like people from Diyarbakir. He stressed, however, that he did not experience any discrimination at the official level."<sup>1</sup>

ABC News further states,

"While Turkish commanders today praise soldiers of Kurdish origin who perform well, there is an effort to gloss over any tension, according to former soldiers. One said he heard a lecture about how the Kurdish problem was stirred up by foreign agitators intent on dividing Turkey.

Today, at roll calls, conscripts shout their hometown along with name and rank, making it easy to identify whether a soldier is from a Kurdish area or not. Some former soldiers spoke on condition of anonymity because they feared authorities would view their comments as subversive, even though one of them, a Kurdish medic, survived a deadly PKK attack and was commended for treating wounded soldiers. "You'll be fine if they attack. They're not going to kill you," the ex-soldier recalls his comrades saying in jest before the assault.<sup>2</sup>

According to the official website of the PKK a spokesperson of the *Kurdistan Societies Union* reported in April 2010 that,

"the number of suspicious deaths of Kurdish soldiers in the Turkish army has been increasing in recent years and he made a call to Kurdish soldiers to desert from Turkish Armed Forces

[ ]

There was an event which occurred in Karakoçan, targeting Kurdish soldiers: army officers put a hand-grenade, with the pin pulled out, into a soldier's hand and in the resulting explosion many soldiers were killed. To cover this up they said that it was an accident. However, it came to light that the commander himself had done this. We believe that this type of event was certainly consciously performed. \*There are thousands of young people that serve in the military. They are subjected to many kinds of insults during their service. When they show a reaction, they are immediately taken away and murdered. After that, they state that those soldiers committed suicide or that an accident happened. Similar situations have been occurring in the Syrian army. There is a significant increase in such events in recent years."<sup>3</sup>

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<sup>1</sup> ABC News, Kurds Have Conflicted Role in Turkish Military, 6 August 2010, <http://abcnews.go.com/International/wireStory?id=11339688>, accessed 7 January 2011

<sup>2</sup> ABC News, Kurds Have Conflicted Role in Turkish Military, 6 August 2010, <http://abcnews.go.com/International/wireStory?id=11339688>, accessed 7 January 2011

<sup>3</sup> Official website of the PKK, Kurdish soldiers should desert from Armed forces, 22 April 2010, <http://www.pkkonline.com/en/index.php?sys=article&artID=35>, accessed 7 January 2011

Reporting on the death of a Kurdish soldier *ABC News* stated in August 2010,

"The case of 28-year-old Ercan Yesilkaya is murky. The Kurdish conscript allegedly shot himself in the head just before the end of his guard shift at midnight on July 14 at the prison in the central province of Yozgat where he was stationed as a chef. Four cigarette butts were found near the body, a glimpse into his last moments. Investigators found a signed note in his chest pocket: "Nothing and nobody has caused me to kill myself (I am fed up). This happened of my own will."

There is no evidence to suggest his alleged suicide was linked to ethnic tension, but his family became suspicious, and his sister, Nargul, traveled to the prison. "I felt a sense of tension in the atmosphere within the military unit, there seemed to be divisions among ethnic groups. I felt that because Ercan was Kurdish, he may not have been welcome in the group, which was largely Turkish," she said."<sup>4</sup>

A September 2010 article published by *Firat News Agency* notes a case brought to the European Court of Human Rights regarding the death of a Kurdish soldier during military service,

"The family of Kurdish origin Semih Pektas who lost his life with three bullets fired on him during his military service in Ankara and said to have 'committed suicide, took the case to the European Court of Human Rights. The petition presented to the court appealed to indefinite murder of numerous Kurdish soldiers in the recent period.

Semih Pektas started his military service at Mamak 28. Mechanized Infantry Brigade 2. Mechanized Battalion 1. Mechanized Infantry Company Command on 25 May 2009. On 18 September 2009, three gunshots were heard when Pektas went to armoury for his guard duty between 20:00-24:00. When officials found shot on head in the crime scene, officials took him to GATA Medical Faculty Hospital, where he lost his life. The investigation of Turkish army after the event recorded Pektas's death as suicide and found prosecution concerning the case non-essential. The objection of Pektas's family by means of lawyers, however, was refused.

[ ]

The petition stated that Semih Pektas's death must be considered as a suspected death rather than a suicide case as Pektas didn't have any psychological trauma or other sickness before the military service, adding that Pektas didn't get any disorder during the service as well, which should anyway have been treated by TSK (Turkish armed Forces). Emphasizing that Turkish Republic is supposed to protect a soldier's right to live as he is under its own surveillance, supervision and command; the petition remarked the responsibility of the state in this respect.

The petition indicated Pektas's being Kurdish origin as another reason for the death's being considered as a suspect death and stated that a great number of Kurdish origin Turkish citizen have lost their lives in recent periods during the military service without getting involved in an armed conflict, adding that almost all of these deaths are reflected as 'suicide' by military authorities. The petition, which called attention to the 'suspected' soldier deaths since the first months of 2007 within the body of TSK, stated that almost all these soldiers are of Kurdish origin."<sup>5</sup>

In 1999 *Amnesty International* reported deaths of conscripts in suspicious circumstances,

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<sup>4</sup> ABC News, Kurds Have Conflicted Role in Turkish Military, 6 August 2010, <http://abcnews.go.com/International/wireStory?id=11339688>, accessed 7 January 2011

<sup>5</sup> ANF Agency, Suspicious death of Kurdish soldier on ECHR agenda, 23 September 2010, <http://en.firatnews.com/index.php?rupel=article&nuceID=1075>, see also <http://www.kurdish-info.eu/modules.php?name=News&file=article&sid=15459>, accessed 6 January 2011

“Reports of persecution and deaths in suspicious circumstances of young men carrying out their military service in the Turkish army are on the increase, Amnesty International said today, giving rise to concern about ill-treatment in the armed forces.

Many of these reports relate to individuals whose families originate from the predominantly Kurdish southeastern provinces of Turkey.”<sup>6</sup>

The *US Department of State 2009 country report* published in March 2010 notes that those of a certain faith or sexual orientation may be discriminated against by the military,

“In 2007 the Jehovah's Witnesses were officially registered as the "Association for the Support of Jehovah's Witnesses." However, due to their stance as conscientious objectors to military service, they continued to face difficulties. [ ] Two Jehovah's Witnesses were in jail at year's end for refusing to perform mandatory military service.

[ ]

The military periodically dismissed religiously observant Muslims from military service. Such dismissals were based on behavior that military officials believed identified these individuals as Islamic fundamentalists, which they were concerned could indicate disloyalty to the secular state.

[ ]

The law provides that a citizen's freedom to leave the country could be restricted only in the case of a national emergency, civic obligations (e.g., military service), or criminal investigation or prosecution

[ ]

Openly gay men were not allowed to perform military service for "health reasons" due to their sexual orientation; those requesting military exemption for reasons of sexual orientation must undergo an invasive burden of proof. LGBT groups complained that gay men were required to show photos of themselves in overt sexual positions and to undergo thorough medical evaluations to prove their homosexuality to military officials.”<sup>7</sup>

The USDOS further reported that freedom of movement could be legally restricted due to the obligation to perform military service,

“The constitution provides for freedom of movement within the country, foreign travel, emigration, and repatriation; however, at times the government limited these rights in practice. The law provides that a citizen's freedom to leave the country could be restricted only in the case of a national emergency, civic obligations (e.g., military service), or criminal investigation or prosecution.”<sup>8</sup>

## **b) Are soldiers of Kurdish origin deployed in the eastern regions/Kurdish areas?**

*ABC News* reports that as members of the Turkish military, some Kurds, “fight the PKK rebel group that claims to represent them,”<sup>9</sup> further

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<sup>6</sup> Amnesty International, Turkey: Evidence of persecution of conscripts on the increase, 27 August 1999, <http://www.amnesty.org/en/library/asset/EUR44/055/1999/en/f9a85b1a-e048-11dd-b049-c56b318da40f/eur440551999en.html>, accessed 7 January 2011

<sup>7</sup> USDOS, 2009 Human Rights Report: Turkey, 11 March 2010, <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136062.htm>, accessed 10 October 2011

<sup>8</sup> USDOS, 2009 Human Rights Report: Turkey, 11 March 2010, <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136062.htm>, accessed 10 October 2011

<sup>9</sup> ABC News, Kurds Have Conflicted Role in Turkish Military, 6 August 2010, <http://abcnews.go.com/International/wireStory?id=11339688>, accessed 7 January 2011

“Anecdotal evidence suggests the military is comfortable assigning Kurdish soldiers to combat against the PKK — Ekinçi called deployments for ethnic Kurds and Turks alike a “complete lottery” — and indeed Kurdish soldiers are often familiar with the terrain in the rugged east.”<sup>10</sup>

ABC News further reports that a Kurdish soldier served for six months in an eastern region of Turkey where rebels are active,

“Ekinçi served six months in Bingöl province, where rebels are active, and he is from Diyarbakir, in the mainly Kurdish southeast of Turkey.”<sup>11</sup>

**c) How are draft-evaders/deserters of Kurdish origin treated if repatriated?**

Article 1 of *Law No. 1111, Military Law, 1927* states that

“Every male Turkish citizen is obliged to perform his military service in accordance with this law.”<sup>12</sup>

In 2008 *War Resisters International* reported that,

“Law No. 1111 was enacted in 1927 and states that ‘fatherland service’ is compulsory military service, so refusal to perform ‘fatherland service’ is a crime punishable by the military penal code.

Law 1111 was changed in 1992 when Law 3802 came into force on 1 June 1992. Amendments to the law on 19 February 1994 created further changes.”<sup>13</sup>

A July 2010 report in the *Hurriyet Daily News* states Turkish men are required to complete military service according to certain criteria,

“Military service in Turkey is compulsory for all male citizens between 20-41 years of age (with some exceptions such as handicapped or mentally ill and sick people). Women are only allowed to become officers by choosing a career in the military and enrolling in military schools – that is, not as conscripts.

Those men who are 20 years of age but still continue higher education at a university or vocational training program are allowed to postpone their draft until they have completed these programs. The duration of basic military service varies: 15 months for privates (elementary or high school graduates), 12 months for reserve officers (university graduates), and 6 months for short-term privates (those who have earned a university degree but have not been enlisted as reserve officers).

For Turkish citizens who have lived or worked abroad for at least three years, a basic military training of three weeks is offered instead of the full-term military service if they pay a certain fee in foreign currency – roughly 5,100 euros. Also in times when the General Staff assesses

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<sup>10</sup> ABC News, Kurds Have Conflicted Role in Turkish Military, 6 August 2010, <http://abcnews.go.com/International/wireStory?id=11339688>, accessed 7 January 2011

<sup>11</sup> ABC News, Kurds Have Conflicted Role in Turkish Military, 6 August 2010, <http://abcnews.go.com/International/wireStory?id=11339688>, accessed 7 January 2011

<sup>12</sup> Law No. 1111, Military Law[Turkey], 20 March 1927, available from <http://www.unhcr.org/refworld/docid/3ae6b4d020.html>, accessed 7 January 2011

<sup>13</sup> War Resisters International, Country Reports and Updates; Turkey [http://www.wri-irg.org/programmes/world\\_survey/country\\_report/en/Turkey](http://www.wri-irg.org/programmes/world_survey/country_report/en/Turkey), 23 October 2008, accessed 7 January 2011

that the military reserve exceeds the required amount, paid military service of one month basic training is established for local citizens.”<sup>14</sup>

An October 2010 article by the Turkish military and defence industry portal, *TR Defence*, notes that military service may be shortened,

“The term of military service for all conscripts in Turkey may be shortened as Turkey’s national security document is currently being revised and the country no longer views its neighbors as foes, [ ].

There has been ongoing controversy over the introduction of uniform compulsory military service, in which every male citizen would be required to serve for nine months regardless of their level of education. Military service is compulsory for all healthy men in Turkey and the length of service currently depends on one’s level of education as well as the military’s needs.

Currently, university graduates with a four-year degree can serve either six months as a private or a year as a second lieutenant, depending on the need, while those who do not have a four-year bachelor’s degree are obliged to serve for 15 months.

There were claims that the military would make it compulsory for all conscripts to serve either nine or 12 months, which would effectively lengthen the term of military service for university graduates. The military has been complaining about a shortage of manpower in the Turkish military. According to the military, the current number of conscripts does not meet the needs of the Turkish Armed Forces (TSK).”<sup>15</sup>

In 2008 *War Resisters International* reported that,

“Draft evasion and desertion are punishable under the Law on Military Service and the Turkish Military Penal Code. Turkish law actually makes a distinction between evasion of military registration, evasion of medical examination, evasion of enlistment and desertion.

According to Article 63 of the Penal Code, draft evasion is punishable (in peacetime) by imprisonment of:

- One month for those who report themselves within seven days;
- Three months for those who are arrested within seven days;
- Between three months and one year for those who report themselves within three months;
- Between four months and 18 months for those who are arrested within three months;
- Between four months and two years for those who report themselves after three months;
- Between six months and three years for those who are arrested after three months<sup>18</sup>;
- Up to ten years' imprisonment in the case of aggravating circumstances, such as self-inflicted injuries, using false documents (Articles 79-81 of the Penal Code).

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<sup>14</sup> Hurriyet Daily News, Military service in Turkey, 9 July 2010, <http://www.hurriyetdailynews.com/n.php?n=military-service-in-turkey-2010-07-09>, accessed 7 January 2011

<sup>15</sup> TR Defence, Turkish military service may get shorter, 27 October 2010, <http://www.trdefence.com/2010/10/27/turkish-military-service-may-get-shorter/>, accessed 7 January 2011



Desertion is punishable under Articles 66-68 of the Penal Code with up to three years' imprisonment. Deserters who have fled abroad may be sentenced to up to five years' imprisonment, and up to ten years in case of aggravating circumstances (Article 67)."<sup>16</sup>

*Amnesty International* notes in its 2010 annual report that conscientious objection to military service was forbidden,

"Conscientious objection to military service was not allowed and no civilian alternative was available. Laws allowing the repeated prosecution and conviction of conscientious objectors remained in force.

In December, Enver Aydemir was rearrested in Istanbul for refusing to perform military service. He told his lawyer that he was repeatedly beaten at Maltepe Military Prison. At the end of the year he remained in pre-trial detention on charges of persistent insubordination and desertion.

In November, three soldiers were convicted of beating conscientious objector Mehmet Bal in June 2008 and sentenced to three months and 10 days' imprisonment. All four men had been prisoners in Hasdal Military Prison. Neither the senior officer who allegedly ordered the attack on Mehmet Bal nor any other official at the prison faced prosecution."<sup>17</sup>

A November 2009 submission to the UN Periodic Review on Turkey by *Amnesty International* states that the Turkish Penal Code limits freedom of expression with regard to military service,

"Article 318 of the Penal Code, which criminalizes the alienation of the public from the institution of military service, also represents a direct and illegitimate limitation to the right to freedom of expression. The Article is often used to prosecute conscientious objectors and their supporters when they voice their legitimate opposition to compulsory military service."<sup>18</sup>

In 2008 *War Resisters International* reported that conscientious objectors who attract media attention may receive prison sentences,

"COs may be punished under Article 63 of the Turkish Military Penal Code for avoiding military service. COs who attract media attention or publish articles about their refusal to perform military service may also be punished to between six months' and two years' imprisonment under Article 318 of the Turkish Criminal Code for "alienating the people from the armed forces". In 2004, a new Criminal Code was introduced (Law No 5237). Under the previous Criminal Code, "alienating people from the armed forces" was punishable under Article 155 with a similar term of imprisonment"<sup>19</sup>

A September 2006 report by *Human Rights Watch* notes the impact of article 318 of Turkey's criminal code on freedom of expression,

"Not only does Turkey refuse to recognize the right of conscientious objection, it also restricts the right to freely discuss the issue. Article 318 of the Turkish Criminal Code provides for imprisonment for up to three years for making public statements that undermine the institution of

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<sup>16</sup> War Resisters International, Country Reports and Updates; Turkey [http://www.wri-irg.org/programmes/world\\_survey/country\\_report/en/Turkey](http://www.wri-irg.org/programmes/world_survey/country_report/en/Turkey), 23 October 2008, accessed 7 January 2011

<sup>17</sup> Amnesty International, Amnesty International Report 2010, 2010, p.330, [http://thereport.amnesty.org/sites/default/files/AIR2010\\_EN.pdf](http://thereport.amnesty.org/sites/default/files/AIR2010_EN.pdf), accessed 8 January 2011

<sup>18</sup> Amnesty International, Turkey - Submission to the UN Universal Periodic Review Eighth session of the UPR Working Group of the Human Rights Council May 2010, 9 November 2009, p.3, <http://www.amnesty.org/en/library/info/EUR44/005/2009/en>, accessed 7 January 2011

<sup>19</sup> War Resisters International, Country Reports and Updates; Turkey [http://www.wri-irg.org/programmes/world\\_survey/country\\_report/en/Turkey](http://www.wri-irg.org/programmes/world_survey/country_report/en/Turkey), 23 October 2008, accessed 7 January 2011

military service. The Criminal Code was only passed into law last year and already numerous people have been charged under this article.

The journalist Birgul Ozbaryb has been charged with seven counts of violating article 318 for a series of articles she wrote for the daily newspaper "Ulkede Ozgur GUndem" (Free Agenda in the Nation) on the right of conscientious objection. Simultaneously indicted were the newspaper's editor, Hasan Bayar, and the owner, Ali Gurbuz. Their trial continues at Beyoolu Primary Court No. 2.

These prosecutions were initiated by the Office of the Chief of General Staff. In an astonishing move, a July 2006 law made criticism of military service a terrorist offence. By bringing article 318 within the scope of the Anti-Terror Law, this law increased the existing maximum sentence for such an offence by half, and provided that sentences must be served in F-type special prisons, which apply a harsh regime of small group isolation.

The courts decided that this law should apply retrospectively to Birgul Ozbaryb, and all her prosecutions are to be moved to the Special Criminal Courts which deal with Anti-Terror Law cases.

The Office of the Chief of General Staff also initiated the prosecution brought against journalist Perihan Maoden, who was charged under article 318 for an article she wrote entitled "Conscientious Objection Is A Human Right" in the weekly journal Yeni Aktuel on December 2005. In that article she stated that "service to the fatherland does not necessarily mean picking up a weapon. This service could be done by cleaning in a creche, driving an ambulance or teaching English in a children's home."

The public prosecutor charged her with "prompting, encouraging or spreading propaganda to deter people from accomplishing military service." On July 27, 2006, in a welcome judgment, the Istanbul Primary Court No. 2 acquitted Perihan Maoden on the grounds that the expression of her views was protected by article 26 of the Turkish constitution and article 10 of the European Convention on Human Rights.<sup>20</sup>

The September 2006 report by *Human Rights Watch* notes the application of Turkish criminal law to prosecute conscientious objectors,

"Turkish law punishes conscientious objectors under articles 58 and 87 of the Turkish Military Criminal Code, which provide imprisonment ranging from two months to two years for "undermining national resistance" and "wilfully disobeying an order" respectively. Conscientious objectors may also be punished under article 318 of the Turkish Criminal Code for "alienating the public from the institution of military service," which carries a possible prison term of up to four and a half years.

[ ]

Turkish citizens who have followed their conscience in rejecting military service continue to be subjected to outright persecution by legal and other means.

[ ]

In January 2006 the European Court of Human Rights (ECtHR) ruled that Turkey had violated the convention by repeatedly imposing custodial sentences on Osman Murat Ulke for exercising his right to conscientious objection.

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Following the court decision, official harassment of Osman Murat Ulke and his family has

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<sup>20</sup> Human Rights Watch, Turkey lags behind fellow Council of Europe members on recognition of right to conscientious objection, 12 September 2006, <http://www.hrw.org/en/news/2006/09/12/turkey-lags-behind-fellow-council-europe-members-recognition-right-conscientious-obj>, accessed 7 January 2011



increased. On March 7, 2006, plainclothes police who introduced themselves as gendarmerie officers from Ahyrly, Konya—Osman Murat Ülke's registered place of birth—approached Ülke's father, who suffers from a severe heart condition, and questioned him concerning the whereabouts of Osman Murat Ülke.

They said that they would keep the father's house under observation until such time as they could "capture" Osman Murat Ülke; the house was indeed monitored, apparently by plainclothes policemen, over the following days."<sup>21</sup>

UK daily newspaper, *The Independent* notes in a June 2008 article that it is a crime under Turkish law to speak against the principle of conscript military service,

"[ ] Bulent Ersoy, a transsexual and one of Turkey's most popular singers, is no stranger to controversy. Now she finds herself on trial for trying to turn the public against the country's military.

The charges stem from remarks Ms Ersoy made earlier this year on the hugely popular television show *Popstar Alaturka* that called into question Turkey's deeply ingrained militarism. She suggested that it was not worth sacrificing soldiers' lives in Turkey's conflict with the Kurdish separatist PKK group. "I am not a mother, nor ever will be, but I would not bury my child for someone else's war," Ms Ersoy said.

[ ]

In his indictment, the prosecutor acknowledged that starting a debate was not a crime in a democracy, but stressed that the singer's words amounted to deliberate propaganda against the military. Military service is obligatory for men over the age of 20 and it is a criminal offence to speak against it. [ ] The judge postponed the proceedings until September when Ms Ersoy, who could face at least three years in jail, will be obliged to attend."<sup>22</sup>

In 2008 the Kurdish Human Rights Project reported that the European Court of Human Rights found against Turkey in relation to the imprisonment of a conscientious objector,

"The European Court of Human Rights yesterday found Turkey in violation of Articles 6 and 10 of the European Convention for the protection of Human Rights and Fundamental Freedoms (ECHR) in the KHRP-assisted case of *Yurdatapan v Turkey*.

On 23 July 1999 Mr Yurdatapan, an opponent of Turkey's harsh laws relating to conscription, distributed leaflets entitled "Freedom of Thought - No. 38" in front of the Istanbul State Security Court. These leaflets contained statements made by Osman Murat Ülke, a conscientious objector, opposing conscription. Mr Ülke was himself prosecuted for making these statements in 1997 and a similar leaflet entitled "Freedom of Thought – No 9" containing his statements had previously been banned by the Turkish general Staff Military Court. Mr Yurdatapan was subsequently tried by a military court for seeking to dissuade persons from serving in the military, sentenced to two months imprisonment and a fine.

The European Court of Human Rights yesterday ruled that the sentence violated Yurdatapan's right to an impartial tribunal (Article 6 ECHR), since he was tried by a military court. It further ruled that his right to free expression (Article 10 ECHR) had also been violated. The Court

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<sup>21</sup> Human Rights Watch, Turkey lags behind fellow Council of Europe members on recognition of right to conscientious objection, 12 September 2006, <http://www.hrw.org/en/news/2006/09/12/turkey-lags-behind-fellow-council-europe-members-recognition-right-conscientious-obj>, accessed 7 January 2011

<sup>22</sup> The Independent, Transsexual singer faces jail after questioning Turkey's military, 19 June 2008, <http://www.independent.co.uk/news/world/europe/transsexual-singer-faces-jail-after-questioning-turkeys-military-850016.html>, accessed 6 January 2011

pointed out that the leaflets distributed by Yurdatapan did not contain any incitement to violence or hate. It found therefore that “the applicant’s conviction and sentence were disproportionate ... [and] not necessary in a democratic society”.

The Court’s findings are the latest in a series of cases relating to conscientious objectors in Turkey. Indeed the circumstances of this case are nearly identical to the recent KHRP-assisted case of *Düzgören v Turkey*. In that case the ECHR found that the fining and imprisonment of journalist Koray Düzgören for distributing similar leaflets outside Ankara State Security Court violated articles 6 and 10 of the Convention.”<sup>23</sup>

In 2008 *War Resisters International* reported that monitoring of draft evasion and desertion is strict and that evaders may be detected after routine checks,

“In recent years, it appears that the Turkish authorities have refrained from harsh punishment of COs, albeit with some exceptions, such as the case of *Halil Savda*. This may have been caused by the fact that previous trials of COs attracted considerable (international) attention and the Turkish authorities may wish to avoid further attention for the issue of conscientious objection.

However, as long as there are no legal provisions for their right to conscientious objection, the legal position of COs remains vulnerable and they may still be subject to criminal prosecution.

Monitoring of draft evasion and desertion is strict. The registration of conscripts is, in fact, one of the most effective government registrations in Turkey. Draft evaders and deserters may be arrested after routine checks such as traffic control. They are not able to leave Turkey, as the fact that they are evading military service would be visible to any customs and immigration officer or police officer. In addition, police and *gendarma* authorities are responsible for finding draft evaders and deserters and may conduct house searches and arrest them.

There are no detailed figures available on the scale of prosecution of draft evaders and deserters, but military courts are believed to deal with approx. 60,000 cases per year that are connected to draft evasion. About half of these cases reportedly deal with cases of conscripts going absent for less than a week, mostly conscripts who do not report themselves back in time after a period of leave.”<sup>24</sup>

In 2005 *War Resisters International* reported that they have received “regular” reports of Kurdish conscripts receiving discriminatory treatment,

“There have been regular reports of Kurdish conscripts in particular being subjected to discriminatory treatment, especially when they are suspected of having separatist sympathies.

For years, the Turkish armed forces have been involved in heavy fighting with the PKK in South Eastern Turkey. In 1999 a ceasefire was agreed between the Turkish government and the PKK, but the situation has remained tense ever since. All conscripts may be sent to serve in South Eastern Turkey as postings of conscripts are usually decided at random by computer. There is a sizeable group of conscripts of Kurdish origin who refuse to perform military service

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<sup>23</sup> Kurdish Human Rights Project, Turkey found in Violation of Rights to Free Expression and Fair Trial at ECtHR, 9 January 2008, <http://www.khrp.org/latest-news/344-turkey-found-in-violation-of-rights-to-free-expression-and-fair-trial-at-ecthr.html>, accessed 7 January 2011

<sup>24</sup> War Resisters International, Country Reports and Updates; Turkey [http://www.wri-irg.org/programmes/world\\_survey/country\\_report/en/Turkey](http://www.wri-irg.org/programmes/world_survey/country_report/en/Turkey), 23 October 2008, accessed 7 January 2011

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>25</sup>

A July 2010 report by *IFEX* notes the launch of a criminal investigation into a Kurdish politician for statements made in connection to military service,

“The Batman province prosecutor has launched an investigation into the Peace and Democracy Party's deputy chair, Bengi Yildiz, on charges of "alienating the public from military service". The actions against Yildiz were initiated after he called on citizens to refuse to perform military service, saying, "Do not send your children to the military."

Under Article 318 of the Turkish Criminal Code, Yildiz could face between six months and two years in prison for "discouraging people from performing military service". Yildiz made the statement after a 19 June 2010 attack by the militant Kurdistan Workers Party (PKK) on a gendarmerie outpost in Semdinli, close to the Iraqi border in southeastern Turkey.

In a press release issued on 20 June in Batman, Yildez said, "There will be funerals. There will also be funerals for Kurdish children. Do not send your children to the military after this. Our children will die and we will go to prison. Spread the word to everybody." Yildiz emphasized that the right to conscientious objection is recognized by international agreements.

As reported by "Hürriyet" newspaper, the prosecutor also plans to launch an investigation of the Turkish politician on allegations of violating the Law on Meetings and Demonstrations and disseminating "propaganda for an illegal organization".

The Turkish courts have previously punished statements regarding the topic of conscientious objection. People who publicly support conscientious objection are tried in military courts. Turkey is one of two Council of Europe member countries that do not recognize the right to conscientious objection.”<sup>26</sup>

An article published in October 2010 by the *Turkish Weekly* notes the options available to young Turkish men wishing to avoid military service,

“Currently, all Turkish men over the age of 20 are eligible for mandatory military service and the army includes some 450,000 conscripts. Under a paid military system, a man who pays approximately 10,000 Turkish Liras would be required to undergo just one month of basic military training.

The military is cold to this option, saying it would result in a lack of manpower. The debate is leaving many young men unsure how to plan for the rest of their lives. “I don't know what to do. Should I dodge the military service in December, and wait until at least April? What are the chances of legislation passing soon by Parliament for paid military service?” asked one young musician, [ ].

Currently, there are several options or possibilities for conscripts: A university graduate may do his military service as a reserve officer, with the rank of third lieutenant, for 12 months. Or he may do it for six months, as a foot soldier. Members of “valuable” professions, including medical doctors, carry out their military service as reserve officers, while non- university

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<sup>25</sup> War Resisters International, The Right to Conscientious Objection in Europe: a review of the current situation: Turkey, 21 June 2005, <http://www.wri-irg.org/node/1597>, accessed 7 January 2011

<sup>26</sup> IFEX, Kurdish politician under investigation for issuing call to refuse military service, 2 July 2010, [http://www.ifex.org/turkey/2010/07/02/bengi\\_yildiz\\_charged/](http://www.ifex.org/turkey/2010/07/02/bengi_yildiz_charged/), accessed 7 January 2011

graduates generally serve five months as foot soldiers, starting out as privates and ending at a rank no higher than corporal or sergeant.

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Military service is, of course, a risky business. Thousands of troops have been killed, mostly in southeastern and eastern Turkey, while fighting terrorists from the outlawed Kurdistan Workers' Party, or PKK. Hundreds of soldiers die each year in accidents, during maneuvers and elsewhere, or as a result of suicides."<sup>27</sup>

A July 2008 report by *AFP* cited by the Kurdish Institute of Paris notes an investigation into a network of doctors and middlemen who provide false medical reports declaring draft evaders unfit for military service,

"A military court Thursday sentenced the ex-chairman of Turkey's main Kurdish party to one year in prison for using false documents to evade the compulsory draft, Anatolia news agency reported. Nurettin Demirtas, 35, was arrested in December as part of a nationwide probe into a network of doctors and middlemen who provide false medical reports declaring draft evaders unfit for military service.

[ ]

The military court in Ankara ruled Thursday that a 2006 medical report that diagnosed Demirtas with lung tuberculosis was false, Anatolia reported. An earlier medical examination had declared him fit for military service. He was drafted in April, immediately after he was released by the court pending trial. He will now serve his jail sentence after completing his 15-month military service."<sup>28</sup>

*Amnesty International* reports in a November 2009 article that three Turkish soldiers were convicted of harming a conscientious objector,

"A military court in Istanbul sentenced the soldiers to three months and 10 days' imprisonment on 13 November for the "intentional wounding" of Mehmet Bal in June 2008.

Mehmet Bal was arrested for evading military service on 8 June and detained at Hasdal Military Prison in Istanbul. His lawyers told Amnesty International that the next day, a senior military officer took Mehmet Bal into a prison ward and ordered military prisoners to "do what is necessary to remind him of prison rules". Prisoners in the cell then kicked Mehmet Bal and beat his face and body with a plank of wood.

After the attack, Mehmet Bal was taken to Gumussuyu Military Hospital for treatment. He was then sent back to Hasdal Military Prison on 10 June, reportedly without having fully recovered from his injuries. Mehmet Bal was eventually released on 24 June and found not guilty of the charges against him in December 2008.

[ ]

No charges have been brought against the military officer who allegedly instructed the prisoners to beat Mehmet Bal, nor against any other official at the prison.

[ ]

Conscientious objectors are frequently ill-treated in Turkish military custody after being arrested and detained for their refusal to perform military service."<sup>29</sup>

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<sup>27</sup> Turkish Weekly, Mandatory Military Service Up for Debate in Turkey, 16 October 2010,

<http://www.turkishweekly.net/news/108624/mandatory-military-service-up-for-debate-in-turkey.html> , accessed 7 January 2011

<sup>28</sup> Kurdish Institute of Paris, Kurdish Politician Jailed For Evading Military Service: Report, 24 July 2008,

<http://www.institutkurde.org/en/info/latest/kurdish-politician-jailed-for-evading-military-service-report-1443.html>, accessed 7 January 2011

<sup>29</sup> Amnesty International, Soldiers convicted for ill-treatment of conscientious objector in Turkey, 19 November 2009,

<http://www.amnesty.org/en/news-and-updates/news/soldiers-convicted-ill-treatment-conscientious-objector-turkey-20091119>, accessed 8 January 2011

*Amnesty International* reports in an August 2010 briefing the detention of an individual charged with desertion,

"Inan S. was arrested at his house in Istanbul, on 5 August after giving his address to officials in order to renew his identity card. He was arrested on the basis of an outstanding arrest warrant for 'desertion' from military service. He is currently held in Kasimpasa Military Prison in Istanbul.

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In the next days, Inan S. is expected to be transferred to Izmir, in order to appear in front of the Izmir Aegean Armed Forces Command Court on the charge of "desertion". The prosecution comes despite Inan S. stating to the military authorities that he is a conscientious objector.

Inan S. began his military service in June 2001. In September that year, he left the military unit in Izmir he was stationed in and did not return. Since 2001, he has been convicted at least three times of 'desertion' and served time in military prison. Inan S. reported that while serving one prison sentence for desertion at the Sirinyer Military Prison in Izmir he was repeatedly severely beaten by prison guards. He has an outstanding sentence of 35 months from three previous convictions for 'desertion'.<sup>30</sup>

*Amnesty International* reports in a June 2010 briefing on the trial of a conscientious objector,

"Conscientious objector Enver Aydemir was released from military custody on 8 June following a report from the Gülhane Military Medical Academy in Ankara declaring him to be "unsuitable for military service".

Enver Aydemir had been in custody since 24 December 2009. On 29 March 2010 he was convicted by a military court of "desertion" due to his refusal in 2007 to perform military service. His trial on four counts of "persistent insubordination", also due to his refusal to perform military service was continuing.

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On 1 June during a trial hearing on one of the charges of "persistent insubordination" at

Eskişehir Military Court, Enver Aydemir was sent to the Gülhane Military Medical Academy in

Ankara in order for psychiatric tests to be carried out on him. Enver Aydemir's lawyer told Amnesty International that Enver Aydemir refused to wear military clothing while being held at the hospital and that he refused to undergo psychiatric tests.

Despite this the Gülhane Military Medical Academy issued a report stating that Enver Aydemir has an "anti-social personality disorder" and is "unfit for military service". Amnesty International has long held concerns that such reports are issued not on the basis of any psychological condition but due to the individual's insistence on their status as a conscientious objector. In the past conscientious objectors Halil Savda and more recently Mehmet Bal were both issued with such reports after being repeatedly prosecuted for their refusal to perform military service.

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Amnesty International is concerned that there is a continuing pattern of alleged ill-treatment of conscientious objectors in military custody. Both Halil Savda and Mehmet Bal alleged that they were ill-treated in military custody. In the case of Mehmet Bal, prisoners who carried out ill-treatment were convicted by a military court. However, prison officials were not brought to justice

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<sup>30</sup> Amnesty International, Conscientious Objector Detained, 12 August 2010, <http://www.amnesty.org/en/library/info/EUR44/018/2010/en> , accessed 8 January 2011

in either case. Allegations made by Enver Aydemir that he was beaten with truncheons while in detention at Maltepe military prison in Istanbul in December 2009 have not been promptly investigated by the authorities.”<sup>31</sup>

The *Amnesty International* report of June 2010 further notes that some conscientious objectors have been repeatedly prosecuted,

“The repeated prosecution of Enver Aydemir is another example of Turkey’s continued practice of repeatedly prosecuting conscientious objectors. In addition to the criminal charges Enver

Aydemir was also issued with three separate disciplinary punishments while at Eskişehir military

prison due to his refusal to wear military clothing as required by the prison authorities.

[ ]

Amnesty International has also followed with concern the prosecution of 19 activists following their arrest on 6 January 2010 at a street protest in Ankara in support of Enver Aydemir. The prosecution was brought under Article 215 of the Penal Code which criminalizes “praising a crime or a criminal” and Article 318 of the Penal Code which criminalizes “alienating the public from the institution of military service”.<sup>32</sup>

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<sup>31</sup> Amnesty International, Turkey: Conscientious objection is a human right not a personality disorder, 10 June 2010, <http://www.amnesty.org/en/library/info/EUR44/013/2010/en> , accessed 8 January 2011

<sup>32</sup> Amnesty International, Turkey: Conscientious objection is a human right not a personality disorder, 10 June 2010, <http://www.amnesty.org/en/library/info/EUR44/013/2010/en> , accessed 8 January 2011