

AMNESTY INTERNATIONAL

Public Statement

AI Index: EUR 44/036/2005 (Public)
News Service No: 338
9 December 2005

Turkey: Conscientious objector Mehmet Tarhan is a Prisoner of Conscience and must be released now!

Amnesty International is gravely concerned for the health and safety of conscientious objector Mehmet Tarhan, 27, who is currently serving a four-year sentence in Sivas military prison on two charges of insubordination after refusing to do his military service. During his imprisonment, Mehmet Tarhan has allegedly undergone severe ill-treatment. Furthermore, he is now facing a possible forced physical examination which would amount to cruel, inhuman and degrading treatment, as well as a breach of his right to privacy. Amnesty International considers Mehmet Tarhan to be a prisoner of conscience and calls for his immediate and unconditional release.

Mehmet Tarhan first expressed his conscientious objection to military service on 27 October 2001, when he stated at a press conference in Ankara, "I condemn every kind of violence and believe that joining or condoning violence will only result in new violence and everyone will be responsible for the consequences. I think that wars caused by power-mongering states are first and foremost a violation of the right to life. The violation of the right to life is a crime against humanity and no international convention or law can justify this crime, regardless of any rationale. I therefore declare that I won't be an agent of such crime under any circumstances. I will not serve any military apparatus." Following this declaration, he remained active in his anti-militarist activities. On 27 October 2004 he again publicly declared his conscientious objection. He was first detained in Izmir on 8 April 2005 and brought to a military unit in Tokat after he refused to cooperate with military orders. As a result he was held in the military prison in Sivas from 11 April until 10 June. He was allegedly subjected to severe beatings and death threats by other prisoners during his detention there. When Mehmet Tarhan informed prison authorities of the abuse, no immediate action was taken to ensure his safety and the abuse reportedly continued. After his lawyer learned about the abuse, she raised her concerns for his safety with the prison administration, eventually prompting their intervention.

Conscientious objection is not recognized in Turkish law. A case was opened against Mehmet Tarhan under Article 88 of the Turkish Military Penal Code (TACK) on charges of insubordination. This charge carries a penalty of between three months' and five years' imprisonment. At the hearing on 26 May 2005 observers noted that there were signs of bruising on Mehmet Tarhan's body and that he was unable to walk properly. The case was adjourned and the last hearing took place on 9 June. Observers noted that Mehmet Tarhan appeared physically weak. He had been on hunger strike since 26 May. The military prosecutor agreed to release Mehmet Tarhan on the grounds that he had already spent two months in prison, which is the period of time he would be required to serve if sentenced. However, upon his release, Mehmet Tarhan was called up to serve again, and again refused. He was arrested and held in the Military Prison of Sivas until his trial on 10 August, when he was given a prison sentence of two years for each charge of insubordination (totalling four years).

Amnesty International received reports that on 30 September 2005, a prison officer accompanied by at

least three guards forcibly cut Mehmet Tarhan's hair and shaved his beard against his will while he was held down by at least seven people. The incident reportedly left Mehmet Tarhan in great pain in his neck, hands, left arm and left foot, and unable to turn his head fully. Furthermore observers reported that he had bruises on his limbs. On 1 October 2005, Mehmet Tarhan was reportedly transferred to a military hospital against his will and examined by two military doctors. However, following the examination, which appears to have been cursory (allegedly lasting 10 minutes), he was apparently given a medical report stating that there were no signs of beating on his body and sent back to the military prison. Such an examination would be in clear contravention of the Istanbul Protocol, which stipulates that medical examinations should be thorough and carried out by civilian doctors. Following this incident, Mehmet Tarhan initiated a second hunger strike in protest at the prison authorities' ill-treatment of him, and against the cramped, unhygienic conditions in which he was allegedly being held. According to reports, he was held in a small, dirty cell without windows, and was sometimes held in solitary confinement and denied his rights to make phone calls, receive reading materials and letters or see visitors for up to 15 consecutive days.

Amnesty International believes that the fact that Mehmet Tarhan has been tried and convicted twice for insubordination contravenes Article 14, paragraph 7 of the International Covenant on Civil and Political Rights (ICCPR), to which Turkey is a signatory, which states "No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure". The United Nation's Working Group on Arbitrary Detention, in its Opinion 36/1999 on a similar case of a Turkish conscientious objector, Osman Murat Ulke, found that his repeated objection to military service was "one and the same action entailing the same consequences and, therefore, the offence is the same and not a new one".

In the most recent development in Mehmet Tarhan's case, the Military Court of Appeal overturned on 2 November 2005 the four-year prison sentence imposed on Mehmet Tarhan on 10 August 2005 on two counts of insubordination, and returned the case to the Military Court of Sivas. The initial reasoning for this decision was the fact that the sentence was disproportionately high and therefore unfair. However, in the Court of Appeal's final written decision, the overrule was attributed to the fact that Mehmet Tarhan's homosexuality (the reason he may be regarded as "unfit for military service") had not been established via "proper physical examination procedures".

Amnesty International is seriously concerned at the implications of the court's decision, which may lead to Mehmet Tarhan undergoing an intrusive physical examination amounting to cruel, inhuman or degrading treatment. Homosexuality is not the grounds on which he stated his objection to military service. Instead, his objection is on grounds of conscience; he stated at his trial in August 2004, "Because I find it important to lead a humane life and as an indispensable precondition of this I feel that all humans should lead a humane life, I declare once again that I will never take orders and I will never give orders. I believe that discrimination and violence are crimes of humanity and in the name of avoiding committing this crime, I am determined not to be a part of the military which is an apparatus of violence based on hierarchy that imposes such hierarchical constructions over society, I am determined to disobey, and refuse to be transformed into a murder machine by taking a course in dying and killing." Amnesty International is concerned that the Turkish authorities are focusing on Mehmet Tarhan's sexual orientation as a means of avoiding the wider issue of conscientious objection to military service which is not recognized in Turkey. In effect, if Mehmet Tarhan were to "prove" his homosexuality either by providing the Turkish authorities with photographic evidence of himself engaged in sexual activity or by undergoing an anal examination, he would be confirmed as "unfit for military service" and his case dropped. However he remains in prison, and Amnesty International continues to regard him as a prisoner of conscience.

Following the decision of the Military Court of Appeal, the case has been returned to the Military Court of Sivas, which will decide what action to take. Should it choose to follow the suggestion of the Military Court of Appeal, Mehmet Tarhan may be taken to military hospital for a physical examination. This hearing is scheduled to take place on 15 December 2005. Given the injuries that Mehmet Tarhan reportedly received whilst being forcibly shaved of his hair and beard, Amnesty International is extremely concerned for his physical and mental integrity should he undergo a forced anal examination. The Turkish military uses the

Diagnostic and Statistical Manual of Mental Disorders dating from 1968 (DSM II), which defines homosexuality as a psychosexual disorder, and considers that those who have this "condition" are "unfit to serve". In contrast, the medical community uses DSM IV, which dates from 2000 and does not list homosexuality. Amnesty International considers that sexual orientation cannot be determined by physical examination or by viewing photographic evidence of sexual activity. The organization further considers it unethical for a doctor to give an internal examination without the consent of the patient without a compelling reason (e.g. grave danger to the patient or others). Amnesty International would consider any such examination to constitute cruel, inhuman or degrading treatment. In addition, the organization considers that such an examination would constitute a violation of Mehmet Tarhan's right to privacy as guaranteed by Article 17 of the International Covenant on Civil and Political Rights, to which Turkey is a state party.

Mehmet Tarhan reportedly ended his 34-day hunger strike on 2 November 2005 after the meeting of his demands for legal action to be taken against those who forcibly held him down and shaved him, and for equal treatment to that of other prisoners. Following an investigation into the events reported by Mehmet Tarhan at Sivas military prison between 11 May and 10 June 2005, two prison officers have been indicted on charges of misconduct, and two of Mehmet Tarhan's fellow inmates have been indicted on charges of robbery linked to extortion. The case will be heard on 29 December 2005 at Sivas Military Court.

In Turkey it is compulsory for all men between the ages of 19 and 40 to do military service for 15 months. Amnesty International is concerned that the right to conscientious objection is not legally recognized by the authorities, and provisions do not exist for an alternative civilian service for conscientious objectors. International human rights standards recognize the right to conscientious objection. Recommendation No. R (87) 8 of the Committee of Ministers to Member States of the Council of Europe Regarding Conscientious Objection to Compulsory Military Service of 9 April 1987 states that, "Anyone liable to conscription for military service who, for compelling reasons of conscience, refuses to be involved in the use of arms, shall have the right to be released from the obligation to perform such service.... Such persons may be liable to perform alternative service." In recent years in Turkey there have been a small number of conscientious objectors who have publicly stated their refusal to carry out military service. They are usually subject to criminal prosecution.

Amnesty International considers a conscientious objector to be any person who, for reasons of conscience or profound conviction, refuses to perform service in the armed forces or any other direct or indirect participation in wars or armed conflicts. This can include refusal to participate in a war because one disagrees with its aims or the manner in which it is being waged, even if one does not oppose taking part in all wars. Furthermore Amnesty International considers a person to be a prisoner of conscience when they are detained or imprisoned solely because they have been denied or refused their right to register an objection or to perform a genuinely civilian alternative service. They would also be prisoners of conscience if they are imprisoned for leaving the armed forces without authorization for reasons of conscience, if they have taken reasonable steps to secure release from military obligations.

Amnesty International would like to take the opportunity of 9 December 2005, which has been chosen as an international day of action in support of Mehmet Tarhan, to call upon the Turkish authorities to take the following steps in order to uphold their international and domestic legal obligations:

- Release Mehmet Tarhan immediately and unconditionally;
- Ensure that Mehmet Tarhan does not undergo a forced physical examination;
- Recognise that an individual's sexual orientation cannot be determined through photographic "evidence" or physical examination;
- Put an immediate end to the practice of trying any individual for the same crime more than once;
- Recognize the right to conscientious objection;
- Establish an alternative civilian service, which is not discriminatory or of punitive length, for those who object to military service.

