

TURKEY

Osman Murat Ülke - conscientious objector imprisoned for life

'The right to life is also the responsibility not to cause death'

(Osman Murat Ülke)

Osman Murat Ülke is a Turkish conscientious objector to military service. On 1 September 1995 he publicly burned his call-up papers and stated in a press conference *"I am not a draft evader, but a conscientious objector. I neither think to escape nor to go to conscription. I have no reason to escape from conscription because I am in favour of people using their right not to be conscripted without having to hide. I am not a soldier and I never will be... I will never, ever, conduct military service in any way."*

Turkey's system of conscription for military service makes no provision for conscientious objection. Osman Murat Ülke's series of trials is one of the first in Turkey in which a conscript with serious conscientious objections is tried for his refusal to perform military service. There are large numbers of draft evaders in Turkey, avoiding conscription into the war in the south-east. In contrast Osman Murat Ülke is emphatic that he is not a draft evader but a resister.

Amnesty International believes that everyone should have the right to refuse to perform military service for reasons of conscience or profound conviction arising from religious, ethical, moral, humanitarian, philosophical, political or similar motives. Amnesty International considers Osman Murat Ülke to be a prisoner of conscience and is calling for his immediate and unconditional release.

The organization is also calling on the Turkish Government to provide alternative civilian service for conscientious objectors in line with resolutions and recommendations by the United Nations Commission on Human Rights and the Council of Europe.

THE TRIALS AGAINST OSMAN MURAT ÜLKE

More than one year after Osman Murat Ülke had publicly burnt his call-up papers and declared his conscientious objection, he was detained in Izmir on 7 October 1996, and formally arrested on 8 October. On 19 November 1996 he was put on trial at the Military Court of the General Staff in Ankara, charged with "alienating the

public from the institution of military service", under Article 155 of the Turkish Penal Code, in conjunction with Article 58 of the Military Penal Code, by publicly burning his call-up papers and declaring his conscientious objection.

After the hearing, he was formally released, only to be taken by gendarmes from the court to the military prison and from there to the recruitment office to begin his military service. He was taken to his military unit, the 9th Gendarmerie Training Unit in the town of Bilecik, but because he refused to put on a military uniform and to obey military orders, he was transferred on 26 November to the military prison in Eski_ehir, and a trial was opened against him at the Disciplinary Military Court in Eski_ehir for insubordination. In December the Disciplinary Military Court released him, ordering him to return to his unit in Bilecik. He did not go.

The following month, on 28 January 1997, the Military Court of the General Staff in Ankara sentenced Osman Murat Ülke to six months' imprisonment for "alienating the public from the institution of military service" by publicly declaring his conscientious objection to military service and burning his call-up papers in September 1995. In his defence speech he stated that *"having the right to life also means having the responsibility not to cause death. Killing a person is the most obvious way of violating the right to life. Therefore, conscientious objection is not only a right for me, but rather it is my responsibility"*.

He was then asked what had happened since the last hearing and reported that he had not returned to the 9th Gendarmerie Training Unit in Bilecik, as ordered by the military court in Eski_ehir in December. When called a "deserter" by the judge, Osman Murat Ülke replied, *"I am not a deserter, I am a conscientious objector"*. He was arrested again and sent to Bilecik, where he again refused to wear military uniform or to obey military orders and was sent back to the military prison in Eski_ehir.

On 6 March 1997 Eski_ehir Military Court sentenced him to five months' imprisonment for desertion. With remission, he had already served half the sentence. A new trial was instituted against him by Eski_ehir Military Court on 3 April 1997. He was charged with "applying tricks" to avoid military service; desertion; draft evasion and not joining his unit on time. This trial concluded on 23 October 1997 and he was sentenced to 10 months' imprisonment and a fine, having been convicted of "persistent insubordination" for which he received a five months' sentence, and of "desertion", for which he received a further five months' sentence, to be served consecutively. Counting remission, he had already served these terms. An Amnesty

International delegate who had travelled to Turkey to observe the trial was not admitted to the courtroom. Two members of a German war resisters' organization were also denied access to the hearing.

In the meantime, however, Osman Murat Ülke had been released on 29 May and again told to present himself to the recruitment office to join his unit in Bilecik. Again, he did not go. He was again charged with desertion, but he was not reimprisoned until 9 October when he appeared at Eski_ehir Military Court in order to give his defence and was arrested. An Amnesty International delegate travelled to Turkey to observe the trial on 9 October, but was refused access by the military authorities.

Concerning the charges of insubordination and desertion, Osman Murat Ülke told the court: *"...I maintain that the military court has no legal right to try me. I never became a soldier. Therefore, I have won the trial from the start: it will not change my attitude and thus will fail in its purpose."*

On 22 January 1998 Osman Murat Ülke received a further sentence of 10 months for desertion. After this trial he was again sent back to his unit, where he refused to put on uniform or to obey orders and was accordingly sent back to the military prison in Eski_ehir. On 19 March a further trial of continuing disobedience because he did not obey orders when he was sent to his unit in January concluded in a sentence of five months' imprisonment. He was again sent to his unit where he refused to put on uniform or to obey orders. On 4 May he was tried once more and sentenced, this time to seven months' imprisonment, bringing the total of sentences to 43 months. A new series of trials for disobedience and desertion are again in progress against him because he continues to refuse to perform military service. Thus, if Osman Murat Ülke fails to report to "his" military unit in Bilecik he is charged with desertion, and if he refuses to wear military uniform and obey orders he is charged with disobedience. Unless there is a change in the law, or a change of heart on the part of the military and their courts, Osman Murat Ülke will be condemned to endlessly repeated convictions for the same "offences" - effectively life imprisonment.

In a separate development, in February 1997, the General Staff Military Court in Ankara brought a trial against the authors of "The Human Rights Panorama in Turkey", a compilation of speeches and messages sent to an assembly organised by the Ankara Branch of the Turkish Human Rights Association in 1995, who included Osman Murat Ülke and other executive members of Izmir War Resisters' Association. They were charged under Article 155 of the Turkish Penal Code for

"alienating the public from military service". On 9 December 1997 the General Staff Military Court ruled that the case fell outside its jurisdiction, stating that to demand the right to conscientious objection is not in contravention of Article 155 of the Turkish Penal Code. However, the court claimed that the article in question in the book constituted an insult to the armed forces and that a case should be brought by a criminal court.

TURKEY'S OBLIGATIONS UNDER INTERNATIONAL LAW

The right to refuse to perform military service for reasons of conscience is inherent in the right to freedom of thought, conscience and religion as recognized in Article 18 of the Universal Declaration of Human Rights, Article 18 of the International Covenant on Civil and Political Rights, and Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

However, in defence of its refusal to provide alternative provisions to military service for conscientious objectors, the Turkish government has cited a 1972 decision of the European Commission of Human Rights (No. 5591/72) that "*Article 9, as qualified by Article 4 (3) (b) of the Convention, does not impose on a state the obligation to recognise conscientious objectors and, consequently, not to make special arrangements for the exercise of their right to freedom of conscience and religion as far as it affects their compulsory military service*". The Turkish government argues that "*Article 4 (3) (b) clearly shows by including the words 'in countries where they are recognised' [that] a choice is left to the Contracting Parties whether or not to recognise conscientious objectors and, if so recognised, to provide some substitute service for them... compulsory military service is a kind of legal obligation in Turkey, imposed by the clear provisions of the related law, deriving from the needs of the national security reasons and the interests of public safety in compliance with both the words and spirits of Article 9 (2) of the Convention for the Protection of Human Rights and Fundamental Freedoms.*"

The Turkish government's argument, however, rests on a 1972 ruling by the European Commission which, in Amnesty International's opinion, does not reflect contemporary thinking either at the United Nations or the Council of Europe. If an application based on the right of individual petition were to be made to the European Commission of Human Rights, its assessment would be likely to be based on the 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, which 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" (§1). It recommends that "Alternative service shall not be of a punitive nature. Its duration shall, in comparison to that of military service, remain within reasonable limits" (§10) and that alternative service "shall be in principle civilian and in the public interest" (§9). The 1987 Recommendation also urges that "the governments of members states, insofar as they have not already done so, bring their national law and practice into line" with this basic principle.

The importance which the Council of Europe attaches to the recognition of the right to conscientious objection and the provision of a genuinely civilian alternative service in each of its member states was reflected in the decision of the Council's Steering Committee for Human Rights in October 1997 to convene a Group of Specialists to assist member states with the drafting and implementation of appropriate legislation in this area and to raise public awareness of the issue. The group held its first meeting in Strasbourg in April 1998.

Likewise, in November 1997, both the Council of Europe and the European Union reminded participating states in the Organization for Security and Co-operation in Europe (OSCE), including Turkey, at the OSCE's Human Dimension Implementation Meeting in Warsaw that recognition of the right to conscientious objection to military service is an important part of the Organizations' commitment to upholding freedom of thought, conscience and religion for all people living in the OSCE area. In 1990 the OSCE had made a commitment "to consider introducing, where this has not been done, various forms of alternative service which are compatible with reasons for conscientious objection, such forms of alternative service being in principle of a non-combatant or civilian nature, in the public interest and of a non-punitive nature".

The United Nations Commission on Human Rights also recognized in its Resolution 1989/59 of 8 March 1989, reaffirmed in Resolution 1993/84 of 10 March 1993, "*the right of everyone to have conscientious objections to military service as a legitimate exercise of the right to freedom of thought, conscience and religion as laid down in article 18 of the Universal Declaration of Human Rights as well as article 18 of the International Covenant on Civil and Political Rights*". It furthermore recommended that Member States "*with a system of compulsory military service, where such provision has not already been made...introduce for conscientious objectors various forms of alternative service" (§3) which is "in principle of a non-combatant or civilian character, in the public interest and not of a punitive nature" (§4).*

In its General Comment Number 22 (48) concerning Article 18 of the International Covenant on Civil and Political Rights, adopted by the United Nations Human Rights Committee in July 1993, the Committee concurred with the Commission's view and stated its belief "*...that such a right can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief.*"