

EBCO welcomes judgement of the European Court of Human Rights (ECHR) in support of a Turkish CO

The Court accepted the complaint of the Turkish conscientious objector Osman Murat Ülke against Turkey stating that Turkey has violated Article 3 of the European Convention on Human Rights ("Prohibition of degrading treatment"). The ECHR awarded the conscientious objector 10.000 EUR for pecuniary damage. The European Bureau for Conscientious Objection in Brussels demands that Turkey will stop further persecution and imprisonment of COs and recognise the right of conscientious objection and establish an alternative service as it is standard in most of the EU member states.

English translation of the press release issued by the ECHR Registrar on 24 January 2006

CHAMBER JUDGMENT ÜLKE v. TURKEY

The European Court of Human Rights has today notified in writing its Chamber judgment [1] in the case of Ülke v. Turkey (application no. 39437/98).

The Court held unanimously that there had been a violation of Article 3 of the European Convention on Human Rights (prohibition of degrading treatment).

Under Article 41 of the Convention (just satisfaction), the Court awarded the applicant 10,000 euros (EUR) for pecuniary damage and EUR 1,000 for costs and expenses. (The judgment is available only in French.)

1. Principal facts

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The applicant, Osman Murat Ülke, is a Turkish national who was born in 1970.

Until 1985 he lived in Germany, where he completed part of his schooling. He then went to Turkey, where he continued his education, eventually going on to university. In 1993 he became an active member of the Association of Opponents of War ("the SKD"), founded in 1992. Until late 1993 he represented the SKD at various international colloquies in a number of different countries. After the SKD's dissolution in November 1993 the Izmir Association of Opponents of War ("the ISKD") was founded and the applicant served as its chairman from 1994 to 1998.

The applicant was called up in August 1995, but refused to do his military service on the ground that he had firm pacifist convictions, and he burned his call-up papers in public at a press conference. On 28 January 1997 the court of the general staff in Ankara sentenced him to six months' imprisonment and a fine. Noting in addition that the applicant was a deserter, the court ordered the military prosecutor attached to the general staff court to enlist him.

On 22 November 1996 the applicant was transferred to the 9th regiment, attached to the Bilecik gendarmerie command. There he refused to wear uniform. Between March 1997 and November 1998 the

applicant was convicted on eight occasions of “persistent disobedience” on account of his refusal to wear military uniform. During that period he was also convicted on two occasions of desertion, because he had failed to rejoin his regiment.

In total, the applicant served 701 days of imprisonment as a result of the above convictions. He is wanted by the security forces for execution of the remainder of his sentence and is at present in hiding. He has dropped all forms of associative and political activity. He has no official address and has broken off all contacts with the administrative authorities. He has been sheltered by the family of his fiancée, with whom he has been unable to contract a legal marriage. He has also been unable to recognise the child born from their union as his son.

2. Procedure and composition of the Court

The application was lodged with the European Commission of Human Rights on 22 January 1997 and transmitted to the European Court of Human Rights on 1 November 1998. It was declared admissible on 1 June 2004.

Judgment was given by a Chamber of seven judges, composed as follows:

Jean-Paul Costa (French), President,
András Baka (Hungarian),
Rıza Türmen (Turkish),
Karel Jungwirth (Czech),
Mindia Ugrekhelidze (Georgian),
Antonella Mularoni (San Marinese),
Elisabet Fura-Sandström (Swedish), judges,

and also Sally Dollé, Section Registrar.

3. Summary of the judgment [2]

Complaints

The applicant complained that he had been prosecuted and convicted on account of his convictions as a pacifist and conscientious objector. He relied on Articles 3 (prohibition of inhuman or degrading treatment), 5 (right to liberty and security), 8 (right to respect for private and family life) and 9 (right to freedom of thought, conscience and religion) of the Convention.

Decision of the Court

Article 3

The Court noted that, despite the large number of times the applicant had been prosecuted and convicted, the punishment had not exempted him from the obligation to do his military service. He had already been sentenced eight times to terms of imprisonment for refusing to wear uniform. On each occasion, on his release from prison after serving his sentence, he had been escorted back to his regiment, where, upon his refusal to perform

military service or put on uniform, he was once again convicted and transferred to prison. Moreover, he had to live the rest of his life with the risk of being sent to prison if he persisted in refusing to perform compulsory military service.

The Court noted in that connection that there was no specific provision in Turkish law governing penalties for those who refused to wear uniform on conscientious or religious grounds. It seemed that the relevant applicable rules were provisions of the military penal code which made any refusal to obey the orders of a superior an offence. That legal framework was evidently not sufficient to provide an appropriate means of dealing with situations arising from the refusal to perform military service on account of one's beliefs. Because of the unsuitable nature of the general legislation applied to his situation the applicant had run, and still ran, the risk of an interminable series of prosecutions and criminal convictions.

The numerous criminal prosecutions against the applicant, the cumulative effects of the criminal convictions which resulted from them and the constant alternation between prosecutions and terms of imprisonment, together with the possibility that he would be liable to prosecution for the rest of his life, had been disproportionate to the aim of ensuring that he did his military service. They were more calculated to repressing the applicant's intellectual personality, inspiring in him feelings of fear, anguish and vulnerability capable of humiliating and debasing him and breaking his resistance and will. The clandestine life amounting almost to "civil death" which the applicant had been compelled to adopt was incompatible with the punishment regime of a democratic society.

Consequently, the Court considered that, taken as a whole and regard being had to its gravity and repetitive nature, the treatment inflicted on the applicant had caused him severe pain and suffering which went beyond the normal element of humiliation inherent in any criminal sentence or detention. In the aggregate, the acts concerned constituted degrading treatment within the meaning of Article 3.

Articles 5, 8 and 9

The Court noted that the facts which the applicant complained of were practically the same as those which underlay the complaints examined in the previous parts of the judgment. It accordingly took the view that it was not necessary to give a separate ruling on the complaints under Articles 5, 8 and 9.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. Since 1 November 1998 it has sat as a full-time Court composed of an equal number of judges to that of the States party to the Convention. The Court examines the admissibility and merits of applications submitted to it. It sits in Chambers of 7 judges or, in exceptional cases, as a Grand Chamber of 17 judges. The Committee of Ministers of the Council of Europe supervises the execution of the Court's judgments. More detailed information about the Court and its activities can be found on its Internet site.