

Turkey/military service

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1. Introduction

This situation report, which is intended as an update of the situation report on Turkey/military service of 15 June 2000, contains information of relevance to the examination of asylum applications from nationals eligible for military service in Turkey.

It is based on on-the-spot conversations and findings and on reports from the Netherlands Embassy in Ankara and the Netherlands Consulate-General in Istanbul, which maintain a network of contacts for that purpose. It was also compiled on the basis of specialist literature and other sources. Where no (explicit) sources are mentioned, use was often made of confidential ones. Where a source is indicated, use was also often made of information obtained on a confidential basis.

Chapter 2 deals with basic information on military service. Attention is paid to the composition and size of the armed forces, current laws applicable to conscripts and the place occupied by the army in Turkish society. Chapters 3 and 5 cover formalities relating to enlistment, examination, call up and subsequent postings. In section 4(4) attention is given to the possibility of conscripts being used in combat.

Chapter 6 highlights the legal aspects of refusal to perform military service. Chapter 7 pays attention to conscientious objectors both from an international and Turkish point of view. Chapter 8 discusses in turn the human rights situation *within* the armed forces and human rights violations committed *by* the armed forces. Following an outline of the policy of the UNHCR and other western countries regarding asylum applications from Turkish asylum-seekers who invoke refusal to perform their military service, Chapter 10 concludes with a comprehensive summary.

2. Basic information on military service

2.1 Basic information on the armed forces

The total size of Turkey's armed forces is 609.700 excluding civil staff and the jandarma². The bulk of armed forces staff consists of conscripts. The total number of conscripts – excluding conscripts in the jandarma – amounts to 528.000. For a long time there has been talk within the upper echelons of the army of professionalising the armed forces by means of a sharp reduction in the number of conscripts and the creation of a mainly professional army³. In June 2001 the Parliament adopted a bill on the recruitment of professional officers on the basis of provisional contracts ranging from three to nine years⁴.

Land forces

The biggest armed service is the land forces consisting of 495.000 men of which 462.000 are conscripts⁵. The land forces consist of four armies (*ordu*), i.e. the First Army stationed in Istanbul, the Second Army stationed in the south-east with Malatya as its headquarters, the Third Army stationed in the north-east with Erzincan as its headquarters and the Fourth Army (also known as the Aegean Army) stationed on the west coast with Izmir as its headquarters⁶.

² Figures vary for the numbers of men in the various services of the Turkish armed forces. Unless explicitly stated figures mentioned are taken from *The Military Balance 2000-2001*, The International Institute for Strategic Studies (October 2000), pp. 77 to 79. Other data may be found in *Jane's Sentinel Security Assessment. Eastern Mediterranean. February – July 2001*, Jane's Information Group Inc. (2001) and *White Book Defence.2000*, Ministry of National Defence (2000).

³ Turkish daily Sabah, 22 October 2000.

⁴ Turkish press agency Anatolia, 13 June 2001.

⁵ Turkish military sources indicate 404.000 troops for land forces, including 334.000 conscripts.

⁶ *Jane's Sentinel Security Assessment. Eastern Mediterranean. February – July 2001*, Jane's Information Group Inc (2001) pp. 561 and 563.

Commandos

There are some 50.000 commandos in the land forces. These include conscripts selected on a voluntary basis on account of their good physical qualities and possible skills. The commandos make up about four brigades. The first Commando brigade, which has two units with parachutists, is stationed in Kayseri, the Second in Bolu, the Third in Midyat (Mardin province) and the Fourth or Mountain Commando Brigade in Hakkari ⁷.

Naval forces

The navy, which consists of 54.600 men has 34.500 conscripts at its disposal.

Air force

The air force has 60.100 troops, including 31.500 conscripts.

Coastguard

A small number (1.400) of conscripts are stationed with the coastguard (2.200).

Jandarma

A special position is taken up by the jandarma (218.000 men) ⁸, who take their orders from more than one source. The jandarma fall under the General Staff as regards training and military duties, the land forces as regards arms and equipment and the Ministry of Foreign Affairs as regards any other areas ⁹. More than 90 per cent of jandarma troops consists of conscripts.

As police powers are restricted to towns and cities, the area outside them falls within the competence of the jandarma. The jandarma maintain a network of police posts throughout Turkey. Police duties include both maintaining public order and enquiries into offences. This means that the jandarma are responsible for police duties in 93,5% of Turkish territory ¹⁰.

⁷ *Jane's Sentinel Security Assessment. Eastern Mediterranean. February – July 2001*, Jane's Information Group Inc. (2001) p. 561.

⁸ Also referred to as gendarme or gendarmerie.

⁹ *White Book Defence.2000*, Ministry of National Defence (2000), p. 63.

¹⁰ Website of Turkey's armed forces, www.tsk.mil.tr/jandarma/gorev.html, as at 4 April 2001.

Apart from police duties the jandarma are also responsible for action against smugglers, guarding the outside of prisons and tracking down conscripts on the run.

At provincial level the jandarma too have commando units that are used in the relevant districts and areas "where events exceed the capacity of local units" ¹¹. These commando units, which also include conscripts, are to be distinguished from the special units referred to below.

Special units

During the fight against the PKK which lasted many years in south-eastern Turkey, special police and jandarma teams, referred to as *Özel Harekat Timi* (plural *Özel Harekat Timleri*) or *Özel Tim* (plural *Özel Timler*), were used alongside specially-trained army units. All these units together, between 15.000 and 20.000 troops, are referred to as the "Special Troop Commando" (*Özel Kuvvetler Komutanlığı*), generally known as "Special Warfare" (*Özel Harp*), and are directly linked to the General Staff of the Armed Forces ¹². Regardless of whether they belong to the army, the police or the jandarma, all participating units are usually referred to as *Özel Tim*.

These units have no conscripts, only professional soldiers who are subjected to strict selection after performing their military service. They subsequently undergo arduous training in anti-guerrilla combat of up to 3½ years. The number of applications from volunteers for such teams is considerable because the job enjoys high social status and the salary is relatively high.

¹¹ Website of Turkey's armed forces, www.tsk.mil.tr/jandarma/gorev.html, as at 4 April 2001.

¹² The daily papers *Milliyet* and *Zaman*, 17 May 2001. See also *Weapons transfers and violations of the laws of war in Turkey*, Human Rights Watch (November 1995).

2.2 Relevant legislation

The laws set out below are the principal legal basis regulating military service in Turkey.

Article 72 of the Turkish Constitution stipulates that "Military service is the right and duty of every Turk. The manner in which this service shall be performed, or considered as performed, either in the Armed Forces or in the public service shall be regulated by law.". Article 1 of the Law on Military Service (No 1111) describes the duty for male subjects referred to in the Constitution as follows: "Every male national of the Republic of Turkey is obliged to perform his military service in accordance with this law."

Performance of military service as reserve officers by university graduates is regulated by the Law on Reserve Officers and Reservists (No 1076).

Criminal law applicable to the military is laid down in the Military Criminal Law Code (No 1632) of 22 May 1930, as last amended by the law (No 3970) of 19 May 1994.

As already stated above, every male subject of the Republic of Turkey is obliged to perform military service; alternative service outside the army is not possible¹³. Military service applies to any male of Turkish nationality irrespective of his background or place of residence.

¹³ Except in the case of excess staff, see section 5.2.4.

Under Article 2 of the Law on Military Service the age at which persons are eligible for military service "starts on 1 January of the year in which they reach their 20th birthday until 1 January of the year in which they reach their 41st birthday". There is occasional confusion in non-Turkish publications as to the exact start of the eligible age. Individual years of one's life are calculated differently in Turkish usage ¹⁴. The legal phraseology therefore means that the eligible age starts on 1 January of the year in which a person becomes 19 and ends on 1 January of the year in which he reaches the age of 40. Anyone who has performed his military service remains a reservist until that age has been reached.

Turkish men who reside legally abroad have to perform their military service between 1 January of the year in which they become 19 and the end of the year in which they reach the age of 38. They can therefore defer their call-up date until the age of 38.

Under Article 5 of the Law on Military Service, conscripts currently serve eighteen months. This article gives the Council of Ministers the power to reduce this to 12 or 15 months in accordance with the requirements of the armed forces. In April 2001 the Secretary-General of the General Staff stated that any reduction in the length of military service was out of the question for the time being ¹⁵.

University graduates are governed by alternative rules laid down in the abovementioned Law on Reserve Officers and Reservists (No 1076). Reserve officers are recruited from this group. Where the number of university graduates exceeds the demand of the General Staff for reserve officers, every graduate has a choice of becoming a reserve officer or not. Where demand is greater than or equal to supply there is an obligation to become a reserve officer. Reserve officers serve sixteen months: four months' training and twelve months' service within a unit ¹⁶.

¹⁴ In Dutch usage anyone who celebrates his first birthday is one year old whereas in Turkey he will have started his second year on that day.

¹⁵ Turkish news channel NTV via internet (www.ntvmsnbc.Commission), 19 April 2001 and the daily Zaman, 20 April 2001.

¹⁶ *White Book Defence.2000*, Ministry of National Defence (2000),pp.. 84 and 89.

Graduates who decide not to become reserve officers may perform their military service as privates or non-commissioned officers for a shorter period. This reduced military service (*kisa hizmet*) lasts eight months¹⁷.

2.3 Position of the armed forces and military service in society

The army plays an important role within Turkish society. Since the inception of the Republic the armed forces, which regard themselves as guardians of the principles of Atatürk, have set the groundlines for policy at both domestic and foreign level. On a number of occasions they have also intervened in national politics by military coups¹⁸. A decision for intervention by the armed forces always passes via the National Security Council (*MGK*)¹⁹, whose opinions are usually followed in practice by the government.

The army is also a powerful force in the economy. The army pension fund, always referred to in Turkish by the abbreviation *OYAK*, has massive assets which it has used to form a huge conglomeration of firms in Turkey. For instance, the Renault car manufacturing licence in Turkey is held by the *OYAK*. The *OYAK* enjoys a large number of tax benefits. Retired generals are much sought-after as directors or board members of major companies.

The army forms a protected world of its own within society. Professional soldiers often begin training as boarders at a military high school, continuing at a military academy. Professional soldiers have their own living quarters shielded from the outside world at very low rents with shops, officers clubs and hospitals open to soldiers only. However, these privileges are the sole preserve of professional soldiers²⁰.

¹⁷ *White Book Defence.2000*, Ministry of National Defence (2000), pp. 84 and 89.

¹⁸ See Official General Report on Turkey, 4 May 2001, p. 6.

¹⁹ See Official General Report on Turkey, 4 May 2001, section 2.2.4.

²⁰ The life of a professional soldier is described in great detail by Mehmet Ali Birand in *Shirts of Steel, An Anatomy of the Turkish Armed Forces* (1991), which has barely lost any of its relevance.

The army and military service are held in high regard by a large section of the population. In a survey in March 2001 in which the population was asked to give marks to various public bodies, the army scored 7 while the President scored 7,9 (an office which has risen enormously in the public esteem since Sezer took over) and the government and political parties scored 1,9 and 1,8 respectively ²¹. The army's popularity stems partly from the fact that public opinion is convinced that it is more or less immune from the corruption which is widespread in Turkey. Pupils are taught respect for the army from their first years at elementary school ²².

The performance of military service is regarded by a large part of the population as a rite of passage "to become a man" ²³. There are parents who will not allow their daughters to marry someone who has not yet performed his military service, and companies often prefer to employ someone who has discharged his military obligations.

²¹ Turkish Daily News, 5 March 2001.

²² Gareth Jenkins, *Context and Circumstance: The Turkish Military and Politics* (IISS 2001), pp. 1 to 20.

²³ Emma Sinclair-Webbs, "Our Bulent is now a commando: Military Service and Manhood in Turkey", in Mai Ghossoub and Emma Sinclair-Webbs (eds.), *Imagined Masculinities: Male Identity and Culture in the Modern Middle East* (2000), pp. 65 to 92.

3. Enlistment and examination

3.1 Enlistment (*ilk yoklama* ²⁴)

There is a draft office (*askerlik şubesi*) in every Turkish town which comes under one of the twenty main draft offices (*askerlik dairesi*) and works closely with the Ministry of the Interior's Directorate for Population and Citizenship Affairs. Every Turkish citizen is required by law to be entered in the population register. A person may be recorded in the population register of his current place of residence but in practice is often entered in the population register of place of birth or origin. Because military service is taken very seriously in Turkey, the administration of conscripts is one of the most efficient registration processes in the country.

Article 17 of the Law on Military Service (No. 1111) reads: "Each year the personal details of persons liable for military service who have reached call-up age, in accordance with their entry in the population register, shall be published by the draft offices by displaying from 1 to 30 April lists at draft offices and offices of heads of villages in the places in which those liable for military service are entered in the population register. Such publication shall count as notification of those liable for military service.

²⁴ The Turkish term *ilk yoklama*, used here to mean "enlistment", literally means "first inspection/call-up". In this case, the candidate's personal details and address are checked, while in the examination (*son yoklama*), literally "final inspection/call-up", the candidate's knowledge, skills and health are examined.

Citizens who have reached call-up age that year but whose name, for whatever reason, is not on the lists displayed at the offices of the heads of village or district or has been incorrectly published are nevertheless required to report to the Directorate of Population Affairs by 15 May ²⁵ in order to have the necessary corrections made." Persons liable for military service are advised of this obligation one month earlier by announcements on state radio and television, the TRT ²⁶. Persons liable for military service do not receive a personal summons for enlistment formalities. Those whose full details are correctly registered do not need to take any steps in order to comply with their duty to enlist.

The purpose of enlistment (*ilk yoklama*) is to determine the number of conscripts for the year together with their personal details and address ²⁷. In practice the military authorities have already known the number of conscripts and their personal details for years. The personal details of all men of call-up age are contained in the computer database of the draft office in the place in which they are registered. The computers are interconnected and are fed information from the central registration system of population registers ²⁸.

Details of addresses are obtained from the head of village or district (*muhtar*) concerned, which is the only body in Turkey to have a more or less complete overview of addresses ²⁹. Many *muhtars* now have computer systems which store addresses. The computers of individual *muhtars* are not linked up. Persons moving house are personally responsible for transferring their registration to the *muhtar* of their new place of residence. The *muhtars* enter the data known to them on the lists they receive from the draft offices and display in their offices, and the potential draftees concerned must complete or correct their own data in the list.

²⁵ Article 17 of the Law on Military Service (No. 1111).

²⁶ Article 4 of the *Askerlik Çağına Girenlerin İlk Yoklama İşlemleri Hakkında Yönetmelik* (Directive on procedures for the registration of persons having reached call-up age), 8 January 1997.

²⁷ Article 3 of the *Askerlik Çağına Girenlerin İlk Yoklama İşlemleri Hakkında Yönetmelik* (Directive on procedures for the registration of persons having reached call-up age), 8 January 1997.

²⁸ The Turkish armed forces presented this system to the press on 20 March 1999. See the Turkish Daily News, 21 March 1999.

²⁹ See Official General Report on Turkey, 4 May 2001, pp. 11 and 12.

Persons of call-up age are usually not issued with passports and cannot have their passports renewed. In a very limited number of cases, with the consent of the military authorities, a passport with a short period of validity is issued. The entry *yapmıştır* (done) or *yapmamıştır* (not done) in the passport indicates whether somebody has completed military service or not.

3.2 Examination (*son yoklama*)

Examinations take place in the period from 1 July to 31 October of the same year as enlistment³⁰. The health, educational level, special skills, language knowledge and profession of the potential draftee are assessed in the examination.

The written summons to the examination occurs at least fifteen days before the appointment. With the summons the potential draftee receives written instructions to report to a draft office on a given date. The summons is sent through the intermediary of the *muhtar*. The *muhtar* must inform the draft office in writing that the summons has been received³¹.

It is legally possible for the *muhtar* to notify a family member, and not the potential draftee himself³². As a rule this only occurs if the draftee is not personally in a position to receive the summons. It is not to be ruled out that, if the *muhtar* cannot deliver summons for examinations, the police or *jandarma* take over certain of the *muhtar's* tasks. Persons liable to military service who come from the same district or village are all called up for examinations on the same day. The *muhtar* is legally bound to report to the draft office together with the summonsed draftees from his area³³.

³⁰ Website of the Directorate for the Recruitment of Conscripts (*Askeri Alma Daire Başkanlığı*) of the Ministry of Defence (<http://www.asal.msb.gov.tr/weberislem3.htm>), as on 28 March 2001.

³¹ Article 24 of the Law on Military Service (No 1111).

³² Article 25 of the Law on Military Service (No 1111).

³³ Article 25 of the Law on Military Service (No 1111).

A medical examination is a formal requirement. In practice, examinations are frequently superficial owing to a shortage of doctors. More thorough examinations are conducted only at the draftee's request or if the examining board has doubts as to his physical or mental condition. In that case, the draftee is often referred to a hospital for closer examination³⁴. It is possible for someone to be examined provisionally and called again for examination the following year. A person can, however, also be definitively declared unfit³⁵. No information is available on rejection rates and reasons for rejections.

After the examination every draftee is issued a random number. The number is based on the service unit (land forces, air force, navy or *jandarma*) for which the selection authorities consider the draftee most suitable on the basis of his knowledge, qualities and skills. The draft office then sends lists with the names and allocated numbers of draftees to the Directorate for the Recruitment of Conscripts, which determines by computer a posting for induction on the basis of the numbers³⁶.

Before attending the examination, draftees must have their personal details entered by the population registrar into their blank military passbook (*askerlik cüzdanı*) created by the provincial departments of the Ministry of Finance (*defterdarlık* or *mal müdürlüğü*). The military passbook has to be taken along to the examination³⁷.

³⁴ Article 28 of the Law on Military Service (No 1111).

³⁵ Article 84 of the Law on Military Service (No 1111).

³⁶ Article 29 to 32 of the Law on Military Service (No 1111).

³⁷ This is indicated in the summons to the examination sent to every draftee.

4. Induction and posting

4.1 Induction (*sevki*)

Anyone found fit for military service following the examination, receives written notification from the draft office that he must pick up his induction papers from the draft office by a given deadline. The papers (*sevki evrakı*) indicate the unit to which he has been posted and which induction centre he has to report to for basic military training. He is required to report to his unit after a fixed maximum travelling period.

Written notification that the documents are ready and waiting at the draft office is usually sent directly to the conscript. As with the summons to the examination, it may be delivered to (close) relatives. Usually lists are also sent to the *muhtars* with instructions to inform the person concerned.

Since not all conscripts are called up at the same time, the interval between the examination results and induction varies. In general induction occurs at most a few months after the examination, and certainly not a few years later. Every year has four batches of new recruits. The first batch must report in February of the year after the year in which the examination took place, the second batch in May, the third in August and the fourth in November. The dates of induction are the 21st to 27th of the month inclusive. The deadlines for call-ups and posting are determined annually in tables published by the Ministry of Defence.

4.2 Basic training

The training of recruits therefore begins four times a year. Initial military training lasts for three months continuously. Basic training is given in special training units. Each of the four Turkish armed services (land forces, air force, navy and *jandarma*) has its own units in which basic training for various weapons (artillery, infantry, etc.) is given. The basic training programme still has a language and literacy course for illiterates and non-Turkish speakers. According to the press centre of the General Staff, 9.450 conscripts attended that course in the period from 8 February 2000 to 1 April 2001 ³⁸.

The place where conscripts are trained is determined by computer using the number generated after the examination on the basis of knowledge, qualities and skills. According to military sources, in this phase – unlike subsequent postings – the preference is to station conscripts in training units not too far from home to save travel costs.

The location for basic training in commando units is also determined by the data on conscripts obtained during the examination. Commandos are generally selected on a voluntary basis for good physical fitness and possible skills, such as an amateur diploma in parachuting. A post as a commando is much sought-after since it guarantees a certain social status and offers better career opportunities after service.

As a rule conscripts are not deployed in combat during basic training.

³⁸ Reported in the Turkish Daily News, 16 May 2001.

4.3 Subsequent postings

Approximately one week before completion of basic training conscripts are informed in writing of the unit to which they are to be posted for follow-up training. Once basic training has ended conscripts return home for a few days for "draft leave" (*dağıtım izni*). Every conscript is then obliged to report to his unit, where he will spend the rest of his military service. This is usually not the same unit as that in which basic training is received.

Every conscript's unit for subsequent posting is determined by computer by the Directorate for the Recruitment of Conscripts in the Ministry of Defence. The following paragraphs describe some of the information stored in the computer system in order to determine subsequent postings.

Specialisation in basic training

The specialisation studied during basic training is an important factor for subsequent postings. For example, conscripts who were trained as infantrymen during basic training will usually be posted to an infantry unit. If they underwent commando training they will also be posted to a commando unit.

Role of place of residence in determining subsequent posting

Another factor taken into account by the computer when determining subsequent postings is the Turkish authorities' age-old basic rule that conscripts are posted to units outside the region (in some cases just outside the province) in which they are recorded in the population register.

There are two reasons for this rule. Firstly, it reduces the risk of conscripts going absent without leave and returning home. Secondly, since the foundation of the Republic the idea has reigned that this is a way for conscripts to become familiar with other parts of their country, which is regarded as useful for nation-building.

The second of those reasons has lost ground in recent years since, as a result of major internal migration flows, many people have left their regions of origin to settle elsewhere in the country. A considerable number of migrants fail to transfer their registration to their new place of residence and often remain registered in their previous place of residence. A second phenomenon which probably contributes to the gradual decline in the use of military service for nation-building is the arrival of media which are available in the farthest reaches of the land – particularly television – which have developed into a very effective means of acquainting citizens with other parts of their country.

In the period before the ceasefire at the end of 1999 during which fighting between the PKK and the Turkish armed forces was at its height, in addition to the rule that conscripts should be posted outside their own region (or province), particular attention was paid, by and large, not to post conscripts from provinces in south-eastern Turkey to units in that region because the Turkish armed forces had widespread doubts as to their loyalty. The cessation of armed conflict at the end of 1999 meant, however, that the practice of avoiding posting conscripts registered in the south-east to units in that area has been dropped.

Previous records

Turkey has a central information system, known as the *Genel Bilgi Toplama Sistemi* (General Information Gathering System), usually abbreviated as GBTS. The system stores various personal data. For instance, it contains information on outstanding arrest warrants, previous arrests, restrictions on travel abroad, possible draft evasion or refusal to perform military service and tax arrears. Sentences which have been served are in principle removed from the system and entered into the nationally accessible Judicial Records (*Adli Sicil*).

The data from the GBTS and court records are fed into the computer system which determines subsequent postings. Anyone who has ever been convicted of theft is therefore very unlikely to be placed in a unit responsible for managing an arms depot. Among others, spokesmen for the Turkish human rights organisation IHD and various military sources say they do not believe that a record of past criminal offences, whether or not of a political nature, results in an extra-harsh posting by way of additional punishment.

According to some former officers, conduct or sympathies shown by conscripts during the basic training prior to subsequent posting are not reported by the relevant units to the Ministry of Defence department which decides on the posting. Spokesmen for the IHD also consider it unlikely that conscripts are screened on the basis of ethnic origin or religious or political convictions for the purposes of deciding on subsequent posting. The role played by a past record in influencing a subsequent posting is therefore said to be limited to offences included in the judicial records or GBTS for which convictions or detention orders exist.

Other points

Conscripts who are brothers of conscripts who died in battle – if they do not avail themselves of the possibility of exemption offered to them³⁹ – may choose a posting close to home.

The right connections within the military organisation can secure a conscript a posting in an "easy" unit in a relatively pleasant place.

³⁹ See section 5.2.3.

4.4 Participation in hostilities

The majority of conscripts are trained to be soldiers who can take part in combat either directly or indirectly. About a quarter of conscripts are assigned administrative and logistical tasks, or to a maintenance role, such as painter or gardener, caretaker of a public building or steward in officers' or non-commissioned officers' accommodation. About forty percent of the total number of troops in the jandarma are assigned to administrative and legal tasks.

Hostilities in south-east Turkey

Until the end of 1999 confrontations took place with great regularity between army units and PKK fighters. The Second and – to a limited extent – the Third Army, which are stationed in the south-east and north-east of Turkey, received support in fighting the PKK from commando troops and special units.⁴⁰ The latter two especially entered into actual confrontations with PKK fighters.

According to the Turkish military authorities and international observers, since 2000 the special units have almost completely withdrawn from the south-east. A spokesman for the Turkish human rights organisation, IHD, stated that there was no question of total withdrawal.

At the moment an attempt is being made to reintegrate the members of these special units into civilian society. However, that process is said to be very difficult, partly because it is not always easy to find other work. It is reported that in a number of cases civil service posts are being offered without the obligation of first passing the normal compulsory exam.⁴¹ Moreover, some former Özel Tim members have been taken on by the regular police force.

⁴⁰ See section 2.1.

⁴¹ Daily newspaper Milliyet, 1 February 2001.

From time to time, units of the First or Aegean Armies were also temporarily stationed in the area where fighting with the PKK took place. In addition to reinforcing the troop strength of the Second and Third Armies, this detachment from other armies was also, according to the Turkish military, for the purpose of gaining combat experience. The detachment of units from other armies to the south-east has, according to military observers, almost ceased since the suspension of hostilities. Detachment on an individual basis still takes place from time to time.

On 3 August 1999 Abdullah Öcalan called on the PKK fighters to suspend their armed struggle and retreat to outside the borders of Turkey by 1 September of that year. On that date his brother Osman, member of the PKK governing council, stated that the PKK would indeed lay down their arms immediately and withdraw from Turkey.

The extent to which the PKK fighters heeded Öcalan's summons is clear from figures in a report of May 2000 from the high command of the Turkish army to the effect that of the 5.500 PKK fighters only 500 were still in Turkey. The same report states that in the first five months of the year 2000 the number of confrontations between the army and the guerrillas dropped to 18, whereas the figure reached 3.300 at its highest in 1994 and in 1999 was 488 over the whole year.⁴²

A former general of the jandarma reported in the Turkish periodical "Ulusal Strateji" (National Strategy) that the total number of confrontations for 2000 was 40.⁴³ The US Department of State quoted in its report on the year 2000 the Turkish army's figure of a total of 45 armed confrontations for that year.⁴⁴ In its 2001 annual report Amnesty International also states, "The armed conflict between government forces and the Kurdistan Workers' Party (PKK) effectively came to an end in 1999 and only a few clashes between the Turkish Army and dissident PKK groups were reported."⁴⁵

⁴² Turkish press agency, Anatolia, 25 and 26 May 2000.

⁴³ Quoted in the daily newspaper "Zaman" on 14 February 2001.

⁴⁴ *Country Reports on Human Rights Practices 2000, Turkey*, US Department of State (26 February 2001).

⁴⁵ *Amnesty International Report 2001, Turkey*, Amnesty International (May 2001).

As for 2001, up to the end of June the media reported a total of eight armed confrontations between the army and PKK fighters. In January and March 2001 two armed confrontations reportedly took place in Şirnak ⁴⁶. On 15 April of that year an armed conflict took place in Bingöl in which nine PKK fighters and five soldiers lost their lives. ⁴⁷ In Hakkari and Şirnak too some confrontations took place in April 2001. These resulted in the deaths of four PKK fighters on 26 April. ⁴⁸ In three days of fighting between the army and the PKK at the end of May 2001 a total of twenty PKK fighters and one soldier died ⁴⁹. On 7 June 2001 a confrontation took place in Hakkari in which five PKK fighters died ⁵⁰. In a confrontation in Diyarbakir province on 27 June three PKK fighters were killed ⁵¹. The Minister for Internal Affairs reported on 29 June that in the first five months of 2001 a total of 66 incidents had taken place (including incidents involving "common criminals", Hezbollah and radical leftist groups such as TIKKO) in which the security forces (police, jandarma and army) had been involved ⁵². Observers in south-east Turkey also report that the military presence in towns in the area is much less noticeable than before.

In a resolution adopted by the Parliamentary Assembly of the Council of Europe on 28 June 2001, it was stated in this connection: "...Above all, the Assembly welcomes the return of peace in south-east Turkey, the cease-fire announced by the PKK and the reduction of action by the Turkish armed forces to some occasional security operations..." ⁵³

Because the armed conflict is now almost at an end, the chance of a conscript becoming involved in hostilities in south-east Turkey has become extremely remote. The occasional operations mentioned above are carried out by units made up for the most part of professional soldiers and, for the rest, of commandos, who may or may not be professional.

⁴⁶ Reuters, 11 January 2001 and daily newspaper "Milliyet", 16 March 2001.

⁴⁷ BBC World Service, 15 April 2001 and "Turkish Daily News", 16 April 2001.

⁴⁸ "Turkish Daily News", 27 April 2001.

⁴⁹ Reuters and the Turkish daily newspaper, "Zaman", 24 May 2001.

⁵⁰ Turkish press agency, Anatolia, 7 June 2001 and "Turkish Daily News", 8 June 2001.

⁵¹ Daily newspaper "Cumhuriyet", 28 June 2001.

⁵² Turkish press agency, Anatolia, 29 June 2001.

⁵³ *Resolution on honouring of obligations and commitments by Turkey*, Parliamentary Assembly of the Council of Europe, 28 June 2001.

Hostilities in northern Iraq

In the past, the Turkish army invaded northern Iraq on several occasions in order to fight the PKK in that region also.⁵⁴ In April and May 2000 several thousand soldiers with air support again entered northern Iraq. When they withdrew on 10 May 2000 the military staff reported that 533 PKK fighters had been killed in the action⁵⁵.

In January 2001 Turkish forces again crossed the border into Iraq. Although various newspapers reported on 6 January 2001 that a total of 10 000 troops had entered northern Iraq⁵⁶, according to sources in northern Iraq there were only 700 to 800 soldiers involved. This was confirmed by international observers. According to these sources, the soldiers in question were a few artillery units which supported the PUK for a time in its conflict with the PKK to the north of Qala Diza.

The regular spring offensive conducted in recent years by the Turkish army in northern Iraq was virtually non-existent in 2001. The KDP is said to have turned against the customary spring action by the army against the PKK because it was only cosmetic in nature. In addition, the KDP was enraged by an incident which took place in summer 2000 in which Turkish fighter planes mistakenly attacked innocent citizens and 38 lost their lives.⁵⁷ In March 2001 the Turkish army withdrew for the most part out of northern Iraq, with the exception of its permanent offices and observation posts and one unit which is still said to be stationed in KDP territory. The Turkish military presence in northern Iraq therefore decreased considerably in spring 2001. By mid-June 2001 there were no recent reports of any new presence of Turkish troops in northern Iraq.

Also taking into account the fact that the overwhelming majority of incursions into northern Iraq are, according to international observers and some Kurdish sources, carried out by professional soldiers and a few by commandos, the likelihood of a conscript being sent into action in that region is extremely remote.

⁵⁴ See Official General Report on northern Iraq, 11 April 2001.

⁵⁵ Turkish press agency, Anatolia, 1 April 2000, Associated Press, 3 April 2000 and Reuters, 10 May 2000.

⁵⁶ Associated Press, "Washington Post" and "Hürriyet", 6 January 2001.

⁵⁷ See Official General Report on northern Iraq, 11 April 2001.

5. Deferment, exemption and alternatives to military service

5.1 Deferment

At the time of registration or examination, it is possible to ask for deferment of military service. The request must be backed up by documents from, for example, the employer or the university. Deferment is granted for a period of one year only, whereupon it is possible to extend the period for a further year on production of the requisite documents.

In some cases military service may be deferred for persons following a course of study or training until the end of the year in which they reach the age of 29.⁵⁸ In the case of post-doctoral education, for example, further deferment may be granted until the age of 36 at the latest.⁵⁹

Turkish nationals living abroad with a valid residence and work permit may defer their military service until their thirty-eighth year of age at the latest.⁶⁰ Application for such deferment of military service must be submitted every two years to a Turkish representation in the country of residence.

Persons who have obtained a deferment of their enlistment in military service receive a written statement to that effect from the military registration office. This document may be produced if the occasion arises.

⁵⁸ Article 35c of the Law on Military Service (No 1111).

⁵⁹ Article 35e, f and g of the Law on Military Service (No 1111).

⁶⁰ Article 35e, f and g of the Law on Military Service (No 1111).

5.2 Exemption

5.2.1 Exemption for those with dual nationality

Those who are resident abroad and in addition to Turkish nationality also have the nationality of their country of residence may qualify for exemption from Turkish military service if they produce written proof that they have already completed military service in that country. Exemption on these conditions is possible if the period of military service more or less corresponds to the period of military service in Turkey. This is the case for Germany, Austria, Denmark, Finland, France, Israel, Sweden, Switzerland, Italy and Norway⁶¹. An additional precondition in order to qualify for this arrangement is that the person concerned must have been resident in the country in question before his eighteenth year of age.⁶² For persons resident in one of the countries not included in this list, such as the Netherlands, there is no such possibility.

5.2.2 Exemption by buying out

Turkish nationals abroad

The Turkish Law on Military Service offers Turkish citizens who have been resident abroad for more than three years⁶³ and have a valid residence and work permit the possibility of buying their way out of part of their military service. This period is said to be very strictly adhered to. Those in question may have their military service shortened to basic training of one month in exchange for payment of (the equivalent of) DM 10 000.⁶⁴ The training is given in Burdur in southern Turkey, about 70 kilometres north of Antalya. After basic training, Turkish nationals resident abroad are exempt from subsequent posting.

⁶¹ Website of the Directorate for the Admission of Conscripts (*Askeri Alma Daire Başkanlığı*) of the Ministry of Defence (www.asal.msb.gov.tr/webersikcasorulan.htm), as at 28 March 2001.

⁶² Website of the Directorate for the Admission of Conscripts (*Askeri Alma Daire Başkanlığı*) of the Ministry of Defence (www.asal.msb.gov.tr/webersikcasorulan.htm), as at 28 March 2001.

⁶³ See *White Book Defence.2000*, Ministry of National Defence (2000), p. 90. Other sources also mention a period of six months.

⁶⁴ Added Article 1 of the Law on Military Service (No 1111).

Provisional arrangement in 1999

On 2 November 1999 the Turkish parliament adopted a provisional law which, as a complement to the rules on buying out mentioned above, stated that certain persons liable for military service could buy their way out of their service, even if they did not live abroad.⁶⁵

On the basis of this one-off arrangement, valid only for conscripts born before 1 January 1973, the latter could apply for exemption within six months of entry into force of the provisional law by paying an amount equivalent to DM 15.000. The funds which the Turkish State receives from this provisional arrangement are devoted to reconstruction of the region affected by the earthquake of 17 August 1999.

Those eligible for this arrangement have to undergo basic training of one month. Conscripts who were forty years of age or older on 31 December 1999 could be exempted from both basic training and further military service in exchange for payment of DM 20.000. Those concerned had until 4 May 2000 to apply. Only those who had not yet begun their period of military service were eligible for this arrangement.

Upwards of 70.000 candidates applied for the buying-out arrangement. Among these were also a number of Kurdish activists who said they were making use of the arrangement as a pragmatic solution so that they could continue with their activities for the Kurdish cause without having to concern themselves with the risks attached to evasion of military service.

⁶⁵ Law on the addition of a provisional article to the Law on Military Service (No 4459) of 12 November 1999.

The sum owed could be paid in instalments. The first instalment of DM 5000 had to be paid on submission of the application, the second instalment had to be paid before 4 June 2000 and the third before 4 September of that year.⁶⁶ The deadlines for the second and third payments were twice extended by decision of the Council of Ministers. The very last deadline, after which the General Staff stated there would be no further extension, expired on 7 May 2001.⁶⁷ Those who had not paid after that date were regarded as deserters because completion of their basic training meant that they had technically embarked on their military service.⁶⁸

Also in the period before 1999 similar provisional arrangements had been in force on a few occasions. For example, in 1992 there was an arrangement valid for five months.⁶⁹

5.2.3 Exemption on account of a brother's service

Where a conscript has died in battle, the next brother in the family who is eligible for military service may be exempted on request.

5.2.4 Alternative service in the event of overmanning

In cases where the number of those eligible for military service exceeds the needs of the armed forces, certain university-educated professional groups such as doctors and teachers have the option of completing their service by exercising their profession in the service of a government body. However, they do first have to complete basic training of one month and ten days.⁷⁰

⁶⁶ Article 7 of the Decision of the Council of ministers on the Application of Provisional Article 37 of the Law on Military Service (No 99/13584 RG) of 14 November 1999.

⁶⁷ Turkish press agency, Anatolia, 18 October 2000 and daily newspaper "Milliyet", 7 February 2001.

⁶⁸ For a description of the term "deserter", see section 6.3.

⁶⁹ Provisional Article 32 of the Law on Military Service (No 1111).

⁷⁰ *White Book Defence.2000*, Ministry of National Defence (2000), p. 101.

6. Evasion of military service (*asker kaçakçılığı*)

In addition to deferment and exemption, it sometimes happens that conscripts try to evade their military service illegally. From a legal point of view ⁷¹, a distinction is made between evasion of registration/examination (*saklı/yoklama kaçakçılığı*), evasion of enlistment (*bakaya*) and desertion (*fırar*). ⁷²

There are no exact figures on the number of people who have hitherto in some way evaded military service. An estimate which is often heard is of around 350 000. ⁷³ No hard facts are known about the breakdown of the areas of origin of those who evade military service and the reasons for their evasion. However, there are indications that the main reasons include fear of the harsh regime within the armed forces, fear of becoming involved in armed conflicts and also problems of conscience. Refusal on grounds of conscientious objection (*vicdani ret*) may from a legal point of view fall under any of the three above categories.

Some Kurdish organisations have told us that, since the cessation of hostilities between the armed forces and the PKK at the end of 1999 ⁷⁴, a number of conscripts (including persons of Kurdish origin) who had until then evaded military service, had registered for military service after all. According to spokesmen for these organisations, the reason was that military service was now safer on account of the improved security situation.

⁷¹ In accordance with the definitions in Article 12 of the Law on Military Service (No 1111).

⁷² In the Official General Report on Turkey and military service of June 2000 this threefold division is reflected in the terms "evasion of military service", "refusal of military service" and "desertion".

⁷³ Also found in the daily newspaper, "Radikal", 18 May 2000.

⁷⁴ See section 4.4.

6.1 Evasion of registration/examination (*saklı/yoklama kaçakçılığı*)

Evasion of registration

Article 17 of the Law on Military Service (No 1111), states that persons who do not comply in time with their registration obligations⁷⁵ are considered, pursuant to Article 83 of the same Law, to have evaded registration (*ilk yoklama kaçağı*). In Article 12 of the Law on Military Service these individuals are defined by the Turkish word *saklı*.

It is stated in Article 83 that those who fail to ensure that they are properly registered before 30 June of the year in which registration is due to take place will be subject to an administrative penalty in the form of a fine, provided that they register before 31 October of that year.

If registration has still not taken place when the persons registered in that year have to come forward to enlist⁷⁶, this is classified as an offence, which is described in Article 63 of the Military Criminal Law Code. The penalties provided for in that article are as follows.

For those who report voluntarily:

- within seven days: a maximum prison sentence of month;
- after more than seven days but within three months: a prison sentence of three months to one year;
- after three months: a prison sentence of four months to two years.

For those who are detained:

- within seven days: a maximum prison sentence of three months;
- after more than seven days but within three months: a prison sentence of four to eighteen months;
- after three months: a severe prison sentence of six months to three years.⁷⁷

⁷⁵ See section 3.1 above.

⁷⁶ Normally February of the year in which registration is due to take place.

⁷⁷ A severe prison sentence is harsher in several respects than an ordinary prison sentence. For example, at least one tenth of the sentence in daytime must be spent in solitary (Article 8 of the Turkish Criminal Law Code).

The sentence takes no account of any time spent abroad by the offender.

In practice, evasion of registration is mainly a hypothetical issue, as it is virtually unheard of for people not to be entered in the register of the population. Those in question are therefore people who up to that time have not "existed" for the Turkish State.

Evasion of examination

Those eligible for military service who have complied with their registration obligations but do not appear at the right time for examination are considered to be evading examination (*yoklama kaçağı*).⁷⁸ Those who do not appear for examination generally receive a reminder from the military registration office after about three months. If they still report or are arrested before the call-up date for those who underwent examination in the same year, in accordance with Articles 84 and 85 of the Law on Military Service (No 1111), they are subject to an administrative penalty in the form of a fine. The persons concerned will then undergo examination and the matter is thereby closed.

Those who report or are arrested after that date are sent directly to a military unit and tried on the basis of Article 63 of the Military Criminal Law Code. Especially if there are indications of mental or physical deficiencies, an examination may still take place in the military unit.

The severity of the sentences imposed in the various situations is identical to those described above for persons who evade registration. Here, too, the sentence takes no account of any time spent abroad by the offender.

⁷⁸ Article 12 of the Law on Military Service (No 1111).

6.2 Evasion of enlistment (*bakaya*)

Evasion of enlistment (*bakaya*) occurs when a conscript who has come forward for examination does not report in time to the military registration office to be informed about his posting, or, after being informed of the place of enlistment, still fails to come forward for enlistment.⁷⁹ It is not possible for someone who has missed the previous examination to be regarded as having evaded enlistment (*bakaya*). Such a person will, until he is detained or comes forward of his own free will, always have the status of someone who is evading examination (*yoklama kaçağı*).

Conscripts who are guilty of evading enlistment are, when they give themselves up or are detained, immediately handed over to the military investigative authorities.⁸⁰ Like those who evade registration or examination, they are sentenced on the basis of Article 63 of the Military Criminal Law Code, where the penalties are the same as for evasion of registration/examination. Here, too, the sentence takes no account of any time spent abroad by the offender.

Fraudulent evasion of military service

Those who attempt fraudulently to evade military service may be punished on the basis of Articles 79 to 81 of the Military Criminal Law Code. These articles cover offences such as self-mutilation, name changes, sending someone else to the medical examination, sending someone else into military service, using another person's identity card, making false statements and other forms of deception with the aim of not having to complete military service.

For self-mutilation the penalty is one to five years in prison. This may be increased to seven years if the self-mutilation really renders the person unfit for military service. In cases of deception the maximum penalty is a ten-year severe prison sentence, which may be limited in less severe cases to a normal prison sentence of a maximum of five years.

⁷⁹ Article 12 of the Law on Military Service (No 1111).

⁸⁰ Article 89 of the Law on Military Service (No 1111).

6.3 Desertion (*firar*)

The term "desertion" (*firar*) is used for absence without leave from the military unit for longer than six days after enlistment.⁸¹ Conscripts guilty of this offence are, when they give themselves up or are detained, immediately handed over to the military investigative authorities.⁸²

Punishment is on the basis of Articles 66 to 68 of the Military Criminal Law Code. Soldiers who are absent from their unit without leave for longer than six days or who remain absent after leave (including leave on medical grounds) for longer than six days without a valid reason may be liable to a prison sentence of at least one year and at most three years.

In the case of deserters who without permission remove weapons, munitions, means of transport, animals or military equipment, are guilty of a repeat offence or desert at a time of mobilisation, the period of immunity from prosecution is halved to three days.

Different sentences apply to deserters who have fled abroad. Soldiers who without permission cross their country's border and do not report back to their unit within three days may be liable to a prison sentence of three to five years. At times of mobilisation the period within which a deserter who has fled abroad must report back to his unit is shortened to one day.

Where a deserter who has fled abroad removes without permission weapons, munitions, means of transport, animals or military equipment, or is guilty of a repeat offence or deserts at a time of mobilisation, a prison sentence of five to ten years is imposed.

When an officer or career soldier commits one of the above offences, the maximum penalty is imposed.

⁸¹ Article 12 of the Law on Military Service (No 1111).

⁸² Article 97 of the Law on Military Service (No 1111).

Deserters who are arrested before the maximum periods mentioned above have elapsed are liable to a prison sentence of a maximum of three months. Those who give themselves up receive a shorter prison sentence. Deserters who give themselves up within six weeks (or at times of mobilisation within one week) have their sentences halved.⁸³

6.4 Tracing, trial and enforcement of criminal procedure

Tracing

Those who evade military service are registered with the military staff⁸⁴ and in the national information system, GBTS.⁸⁵ Hence, in routine checks, border checks and cases of arrest throughout the country it can be ascertained whether a person is wanted for evasion of military service. At local level too there are lists of people who have evaded military service. Periodically these lists are sent by the Directorate for the Admission of Conscripts at the Ministry of Defence to the local military registration offices. As a rule the lists are sent after a certain delay to give the conscripts the possibility of giving themselves up.

The business of actually tracing people who have evaded military service then takes place at the level of the local military registration office where they are registered. Where there are indications that the individual in question is in another district, the investigation is extended to that district. The governor of the district in which the relevant military registration office is located generally receives a letter from the military registration office with a request to arrest the conscript and deliver him to that office.

Tracing people who have evaded military service is one of the tasks of the jandarma under the authority of the district governor. In practice, the process of tracing conscripts on the run is carried out by jandarma officials who come and find out from the muhtar and close family members where the individual in question is to be found. According to sources, including *muhtars* of many villages, when an individual is said to have left, as a rule no subsequent inquiries are made.

⁸³ Article 73 of the Military Criminal Law Code.

⁸⁴ Turkish Daily News, 21 March 1999.

⁸⁵ See section 3.3.

Trial

Sources within the military justice system tell us that of all cases brought before military courts around 45% concern evasion of military service in one form or another. Cases of that kind were formerly dealt with by the full military court, but for a few years now have been chiefly heard by a judge sitting alone.

Trials of those who evade conscription – with the exception of cases named in section 6.1 where matters are settled by an administrative fine – take place before military courts.

The circumstances of the trial are different for "ordinary" conscripts and for conscripts serving as reserve officers. Those serving as reserve officers are handed over to their unit after trial.

"Ordinary" conscripts go first after being arrested or giving themselves up to their military unit and are there judged at a later time. If they are arrested, the arresting body transfers them within a maximum of 48 hours to their military unit.⁸⁶ If the persons concerned are not being prosecuted for (political) offences other than evasion of registration/examination or enlistment or for desertion, the danger of abuse, intimidation, mistreatment or torture during the interrogation or the 48-hour-maximum detention is very slight. It happens regularly that persons who have evaded registration/examination or enlistment are set free by the arresting body after interrogation and summoned to appear within a few days at their military registration office.

⁸⁶ In cases of desertion this maximum period is laid down in the General Staff Order PER. 4085-1-84/PLS(2) of 21 August 1984, as published in Ismet Polatcan, *Notlu – Açıklamalı – İçtihatlı Türk Silahlı Kuvvetleri İç Hizmet Kanunu ve Yönetmeliği, Askeri Ceza Kanunu, Disiplin Mahkemeleri Kanunu* (Law on the Turkish rules of procedure of the armed forces, the Military Criminal Law Code and the Law on Disciplinary Courts with notes, declarations and case law (Istanbul 1989), pp. 401-402), which is still in force.

In cases of evasion of registration/examination or enlistment, but also of desertion, military judges in general impose minimum sentences. As described above, the sentences for desertion are higher than those for evasion of registration/examination or enlistment.

As a general rule, normal prison sentences of less than one year can be commuted into a fine.⁸⁷ In an individual case the judge determines in his judgment whether or not the prison sentence will be commuted into a fine.

Prison sentences for evasion of registration/examination or enlistment or for desertion are generally commuted into fines which must be paid after the end of military service.⁸⁸ Severe prison sentences handed down for evasion lasting longer than three months without giving oneself up⁸⁹ may not, however, be commuted into fines.⁹⁰ From the legal point of view, suspended sentences may not be imposed for evasion of registration/examination or enlistment or for desertion.⁹¹

Any sentence which may be passed does not imply a dispensation from further military service. It may therefore happen that repeat offenders are sentenced again because of a further attempt to evade military service. In the case of repeat offences it is less likely that a fine will be imposed.

Ethnic origin plays no role in determining the sentence for evasion of military service.

⁸⁷ Article 4 of the Law on Enforcement of Sentences, (No 647).

⁸⁸ *Request for information on the situation of draft evaders (and deserters) in Turkey.* Izmir Savaş Karşıtları Derneği (1999).

⁸⁹ Article 63 of the Military Criminal Law Code. See also section 6.1.

⁹⁰ Article 4 of the Law on Enforcement of Sentences, (No 647).

⁹¹ Article 47 of the Military Criminal Law Code.

Enforcement

The enforcement of final judgments in cases relating to evasion of military service (including desertion) takes place in military prisons if the sentence is six months or less and in normal prisons if the sentence is more than six months. As a rule, the sentence is first enforced and then the conscript completes (the remainder of) his military service.⁹² In the case of desertion (*firar*) enforcement of the judgment may be deferred at the suggestion of the officers of the relevant military division until after military service has been completed.⁹³

Amnesty law

In December 2000 a general amnesty law was adopted.⁹⁴ In addition to many other offences, those of "evasion of registration", "evasion of examination", "fraudulent evasion of military service" and "desertion" (Articles 63 to 68 inclusive and 70 to 75 inclusive of the Military Criminal Law Code (No 1632)) are covered by that law, provided the offences took place before 23 April 1999. In the case of those against whom proceedings had already begun and who were on the run, there is the additional requirement that they must have given themselves up before 22 January 2001. We have at present no knowledge of decisions in cases in which people who had been on the run gave themselves up after that date.

Hitherto there are no known cases of persons wanted for evasion of military service who have applied to be covered by the amnesty law. It is therefore not clear what the practical effect of the amnesty law is in such cases. Only case law would be able to give a definitive answer to the question whether the date of the offence – which in accordance with this law must be prior to 23 April 1999 – is to be regarded as the beginning of the evasion of military service or if the deciding factor here is the date of reporting to the military authorities. If the latter is the case, then the law will have no practical effect for the evasion of military service.

⁹² Article 39 of the Military Criminal Law Code.

⁹³ Article 246 of the Law on the Establishment and Procedures of the Military Courts, (No 353).

⁹⁴ See General Official Report on Turkey of 4 May 2001, pp. 86 et seq.

6.5 Loss of nationality

Apart from the (prison) sentences mentioned earlier in this chapter, conscripts who evade military service by residing abroad may lose their Turkish nationality if they cannot adduce any valid reasons for evasion. This may be done by decision of the Council of Minister on the basis of Turkish nationality legislation. Article 25 of the Law on Turkish Nationality (No 403) states that: "The Council of Ministers may decide to deprive the following of citizenship:Those who are resident abroad and do not respond favourably within three months to call-up for military service by the competent authorities...". The same article stipulates that such a Council of Ministers' decision may be taken only on the recommendation of the Ministry of Defence.

If a person has not completed his military service and there is a suspicion that he is abroad, inquiries are made first at his last known address and of family members. Thereafter – if his place of residence is known – the Turkish representation in his country of residence is informed by the military registration office. The Turkish representation will inform the person concerned that he must return to Turkey within three months and report to the military authorities or else lose his nationality.

If the person does not subsequently come forward, his name is published on a list of those evading military service in the "Resmi Gazete" (Official Journal). This is followed by a final reminder. Then a definitive list is drawn up of candidates to be stripped of their nationality which is sent by the Ministry of Defence to the Ministry of the Interior. A list is prepared in the Directorate-General for Nationality and Population and this is sent to the Prime Minister. He brings the list to the Council of Ministers, which takes the final decision. That decision is only a formality. Within sixty days an appeal may be made against the decision to the highest administrative judge (Danıştay).

The procedure for withdrawal of nationality often takes three to four years. Also, the Ministry of Defence often waits before setting the procedure in train. According to military sources in Turkey, this is in order to see whether the person concerned will come forward after all.

The names of those who have lost their Turkish nationality are published in the Turkish Official Journal, the *Resmi Gazete*. Information published in that journal in the past shows that over the years thousands of Turks have lost their nationality. When there has been a loss of nationality no further criminal prosecution takes place for evasion of military service. As the individual concerned is no longer a Turkish national, he is regarded as a foreigner and no longer subject to the military service obligation.

Legally, Turkish nationality can be regained, even if the individual concerned is not currently resident in Turkey.⁹⁵ An application to regain Turkish nationality may be granted if the individual completes military service. In that case criminal proceedings for evasion of military service must still be initiated. However, in practice, it is hardly possible to regain Turkish nationality. Certain Turkish lawyers who regularly deal with this subject told us that they know of no cases in which an individual has been successful in the attempt to regain his nationality.

⁹⁵ Article 8 of the Law on Turkish Nationality.

7. Refusal of military service as a matter of principle on grounds of conscience (*vicdani ret*)

In certain cases objections of conscience on grounds of principle are the reason for avoidance of registration/examination, enlistment or desertion. Individuals in such cases do not merely evade military service but expressly refuse it.

Conscripts in Turkey who have such conscientious objection and who therefore refuse to perform military service do not in general wish to be associated with the large group thought to consist of around 350.000 draft evaders in Turkey. A publication put out in Turkey by conscientious objectors stated the following: "A person refusing military service on grounds of conscientious objection (*vicdani retçi*) is not a draft evader (*asker kaçağı*). One of the most important differences distinguishing refusal of military service on grounds of conscientious objection from evasion of military service – which is very widespread in this country and may also be viewed as an indication of an internal reaction against the army and military service – is that an individual refusing to perform military service on grounds of conscientious objection openly states his refusal in public. This kind of statement is what we call a "statement refusing military service on grounds of conscientious objection" ⁹⁶.

According to a spokesman for the *İstanbul Antimilitarist İnisiyatifi* (Istanbul Antimilitarist Initiative, abbreviated to İAMİ), there are at present several dozen people who have made such statements.

The concept of "refusal of military service on grounds of conscientious objection" first appeared in Turkey around ten years ago. Since 1995 organised associations of military service objectors have been in existence. The two most important are the *İzmir Savaş Karşıtları Derneği* (Izmir Anti-War Association, abbreviation ISKD) and the aforementioned İAMİ. The associations have a few dozen members. The secretary of the ISKD is Turkey's best-known military service objector, Osman Murat Ülke ⁹⁷.

⁹⁶ *Vicdani Ret Dosyası* (Dossier on refused of military service on grounds of conscientious objection),), İzmirli Savaş Karşıtları (18-02-1998) as given on the internet site www.savaskarsitlari.org as at 25 May 2001.

⁹⁷ For his story, see General Official Report on Turkey and military service of 15 June 2000. There has been no change in his situation since then.

No details are known of the number of persons refusing military service on conscientious objection grounds who are not members of one of the associations. There are a considerable number, according to spokesmen for the Kurdish organisations.

No precise data are available on distribution over the areas of origin of military service objectors on grounds of principle. From the cases which have come to public notice in Turkey individuals of both Turkish and Kurdish origin are involved.

Although no data on the motives for military service refusal on grounds of principle are available either, there are nevertheless some indications on this point. It emerges from the press statements made by persons who have openly refused to perform their military service in Turkey ⁹⁸ that they have an aversion to killing, war and the military apparatus in general. In particular among those refusing to do military service who are of Kurdish origin, a lack of affinity with the Turkish State would appear to be a reason for not wishing to do service in the Turkish army. This may be reinforced by first-hand experiences regarding human rights violations committed by the armed forces in combating the PKK ⁹⁹.

⁹⁸ A number of these statements may be found on the website www.savaskarsitlari.org.

⁹⁹ This is articulated e.g. in a statement of refusal of military service handed in by a number of individuals on 1 December 2001 in Germany to the Turkish Consulate in Hanover. See the periodical *Rundbrief KDV im Krieg*, January 2001.

7.1 International context

In international fora the right to refuse military service on grounds of conscientious objection has been acknowledged on various occasions ¹⁰⁰.

In 1993 the United Nations Commission on Human Rights adopted a Resolution placing refusal of military service on grounds of conscientious objection within the context of freedom of expression, conviction and religious belief, as set out in Article 18 of the Universal Declaration of Human Rights and Article 18 of the International Covenant on Civil and Political Rights. In the Resolution, all countries were called upon to acknowledge that right. In 1995 and 1998 the Commission reinforced its 1993 resolution and appeal with new Resolutions, 1995/83 and 1998/77.

In 1989, 1993 and 1994 the European Parliament adopted Resolutions recognising the right to refuse military service on grounds of conscientious objection, which included the recommendation that this right should be incorporated in the European Convention on Human Rights and stated the Parliament's view that Member States should recognise it in their legal systems.

In its 1990 Copenhagen document, the OSCE called upon the Member States to provide for an alternative form of service in their legislation. This appeal is repeated in the Code of Conduct on Politico-Military Aspects of Security adopted at the Budapest summit in 1994.

¹⁰⁰ For a more extensive description, see *Out of the margins: the right to conscientious objection to military service in Europe*, Amnesty International (15 April 1997), *Exercise of the right of conscientious objection to military service in Council of Europe member states – Report (doc 8809 revised)*, Committee on Legal Affairs and Human Rights, Council of Europe (4 May 2001) and *Vicdani Reg Dosyası* (Dossier on refusal of military service on grounds of conscientious objection), İzmirli Savaş Karşıtları (18 February 1998) as published on the internet site www.savaskarsitlari.org as of 25 May 2001.

In 1987 the Council of Ministers of the Council of Europe made a recommendation to all Member States to recognise the right to refusal of military service on grounds of conscientious objection. Turkey, together with a number of other countries, tabled a reservation on this recommendation. In Recommendation 1518 (2001), which was adopted at the spring session of the Parliamentary Assembly of the Council of Europe from 21 to 23 May 2001 in Istanbul, the right to refuse military service on grounds of conscientious objection is identified as a constituent of the right to freedom of expression, the Member States are called upon to recognise conscientious objection and to incorporate the right to alternative military service in their legislation; and the recommendation is made to include this right in the European Convention for the Protection of Human Rights and Fundamental Freedoms.

7.2 Recognition of conscientious objection in Turkey

Turkey – a member of the UN, the OSCE and the Council of Europe, and a candidate for accession to the EU – does not recognise refusal of military service on grounds of conscientious objection and the associated right to alternative service. The armed forces repeatedly expressed this point of view in a brochure on human rights and democracy published by them in April 1999.

Under the heading "Conscientious objection and military service", this brochure states that "In our laws there is no provision for exemption from military service on grounds of "conscientious objection". This follows from the pressing need for security arising from, on the one hand, the strategic situation of our country and [on the other hand] the circumstances in which we find ourselves. While the factors in question posing these internal and external threats to Turkey remain unchanged, the adoption of the concept of 'conscientious objection' in our legislation is considered impossible" ¹⁰¹. A spokesman for the Turkish human rights organisation IHD put it as follows: "In Turkish society, refusal of military service on grounds of conscientious objection is seen as a 'luxury'".

¹⁰¹ Brochure quoted by the Turkish press agency, Anatolia, 22 April 1999.

Nor are conscientious objection taken into consideration in any way in the distribution of military personnel among the various sections of the army. It is not possible, for example, to choose not to bear arms during the period of military service and to be assigned to administrative duties. An exception to this is said to be the case of Jehovah's witnesses ¹⁰².

7.3 Criminal prosecution

Since refusal of military service on grounds of conscientious objection is not recognised in Turkey as such, the conscientious objector refusing military service is viewed by military criminal law as a straightforward case of draft evasion. The person concerned is accordingly sentenced as described above, in precisely the same way as all other draft evaders, under Article 63 of the Military Criminal Law Code. The individual conscript's motives for non-compliance with the military service obligation are not taken into consideration in sentencing, so that refusal for reasons of principle attracts neither a heavier nor a lighter penalty.

Apart from being convicted for evading military service, conscientious objectors may in some cases also be convicted under Article 155 of the Turkish Criminal Law Code, for "issuing publications, making verbal statements or making a speech, either at a public meeting or in a place where people are assembled, aimed at dissociating the people from military service...". Article 155 lays down a minimum custodial sentence of two months and a maximum custodial sentence of two years plus a fine. In three cases in which the judicial decision is known, unconditional custodial sentences of two months and six months plus a fine were imposed; in the other, an unconditional sentence of three months imprisonment was imposed. This was commuted to a fine ¹⁰³. For persons with military status – including conscripts – the legal definition of this offence is widened to encompass "the breaking of national resistance" specified in Article 58 of the Military Criminal Law Code. This does not otherwise affect the sentence, as Article 58 lays down that the offence is punishable under the aforementioned Article 155.

¹⁰² See section 8.1.2.

¹⁰³ Şanar Yurdatapan et al (ed), *Düşünceye Özgürlük – 2000* (Freedom of expression – 2000) (2000), pp. 159 and 173, and *Vicdani Ret Dosyası* (Dossier on refusal of military service on grounds of conscientious objection), İzmirli Savaş Karşıtları (18 February 1998), as found on Internet site www.savaskarsitlari.org, situation as at 25 May 2001.

This Article is applied not only to conscripts but also to members of the public who call on people to refuse to perform military service. Since 1993, both conscripts and members of the public charged under this Article have almost always been tried by military courts. There is known to be just one case from 1999 in which proceedings were brought before an ordinary criminal court.¹⁰⁴

According to sources within the military jurisdiction, the number of cases is below ten a year.

Convictions pursuant to this Article in the cases known to date involve persons who either declare their refusal to perform military service publicly under considerable media attention or who call on others to do so, or writers or those who issue publications propagating such a course of action. The overwhelming majority of those convicted in the cases so far known to have been brought under Article 155 of the Military Criminal Law Code are people who have quite deliberately sought confrontation with the authorities in order to focus attention on the issue of refusal to perform military service on grounds of conscientious objection and invite prosecution.

In 2000 there was one case in which proceedings brought under Article 155 did not lead to conviction despite the fact that the three suspects had attracted media attention by publicly calling for people to refuse to perform military service. They were acquitted by the military criminal court on 5 December 2000. On 15 May 1999, at the Istanbul office of the human rights organisation IHD, the suspects had read out and signed a press statement calling on people to refuse to perform military service. The reason for their acquittal was that their actions did not constitute the offence referred to in the Article in question¹⁰⁵. Three people who on 15 May 2000 stated before the press that they were refusing to perform military service were not prosecuted. An ISKD spokesman stated that this might have been due to the fact that the authorities wanted as far as possible to avoid attracting public attention to the question of refusal to perform military service on grounds of conscientious objection.

¹⁰⁴ This figure originates from the website of the Turkish Central Judicial Records (www.adli-sicil.gov.tr). Figures for subsequent years are not yet available.

¹⁰⁵ Yeni Gündem daily newspaper, 7 December 2000.

In one of the four cases currently before the courts concerning the book *Düşünceye Özgürlük – 2000* (Freedom of expression – 2000) ¹⁰⁶ a number of the book's publishers were tried in the military court for contravening Article 155 of the Criminal Law Code by including in the book the content of several publications previously regarded as contravening this Article ¹⁰⁷. The sixteen publishers of the book brought to court in this case include well-known figures in Turkish society such as the singer Şanar Yurdatapan, the instigator of the book, and the chairmen of the human rights organisations IHD, TIHV and Mazlum-Der. On 23 May 2001 the case was adjourned until 29 June, on which date it was adjourned until 7 September 2001.

¹⁰⁶ See General Official Report on Turkey dated 4 May 2001, p. 52.

¹⁰⁷ For the publications see Şanar Yurdatapan et al (ed) *Düşünceye Özgürlük – 2000* (Freedom of expression – 2000) (2000), pp. 124, 159, 173, 227 and 239.

8. Human rights

The armed forces are very unforthcoming as regards their internal affairs, and that includes the human rights situation in the army. For example, the Parliamentary Committee of Inquiry on Human Rights announced in May 2001 that it had received no cooperation from the jandarma in its investigation into the raid on prisons in December 2000 ¹⁰⁸. This tight-lipped attitude is confirmed by interviews with serving and former military personnel that are included in a publication on this question in 2001 ¹⁰⁹.

Consequently, only a very limited amount of information about this subject is available. Sources consulted are often willing to provide information only on the basis of complete confidentiality. Many of the details given below have therefore been gathered on the basis of confidentiality.

In recent years there was a criminal case involving a book dealing, inter alia, with the human rights situation in the armed forces. The book, entitled *Mehmedin Kitabi* (The Book of the Common Soldier), was written by author and journalist Nadire Mater ¹¹⁰. She was prosecuted under Article 159 of the Criminal Law Code, which deals inter alia with insults to the armed forces. On 2 October the case resulted in acquittal, which was confirmed in May 2001 by the ninth chamber of the Court of Appeal (Yargıtay) ¹¹¹. The book has been freely available again since the acquittal and, according to reports, should be translated into German sometime in 2001.

8.1 Human rights violations in the armed forces

According to former officers, awareness of the importance of human rights, which in Turkey are becoming the increasingly prominent focus of public interest and which are attracting growing media attention, is slowly pervading the armed forces also. In their opinion, the armed forces feel obliged to play their part in improving human rights and have organised various courses on the subject for their personnel.

¹⁰⁸ Radikal, daily newspaper, 25 May 2001.

¹⁰⁹ Gareth Jenkins, *Context and Circumstance: The Turkish Military and Politics* (IISS 2001), pp. 29-30.

¹¹⁰ See also General Official Report on Turkey dated 4 May 2001, p 52.

¹¹¹ Turkish daily newspaper Yeni Evrensel, 29 May 2001.

8.1.1 Ill-treatment

The Turkish army operates a harsh regime. Non-commissioned officers and lieutenants in particular occasionally beat conscripts as a means of disciplining them. The use of insults – again by NCOs and lieutenants – to conscripts is a fairly regular occurrence¹¹². Such methods are allegedly used mainly to deal with cases of indiscipline, e.g. not following orders, smoking while on guard duty, etc.

Military sources in Turkey confirm that such disciplinary methods are often overlooked or result merely in an informal verbal reprimand for the perpetrator. It is said that many conscripts would rather receive a beating than a formal disciplinary punishment¹¹³. This is because a conscript's period of service is extended by one day for every day that he spends in detention as punishment.

However, more serious offences committed by commanders, occasional instances of which, according to the IHD, cannot be ruled out, result in disciplinary or criminal law measures for the perpetrators and can also damage the career prospects of a professional soldier. There are several known cases in which conscripts have initiated court action after their military service because of ill-treatment. The outcome of these cases is not yet known.

"Ordinary" crime also occurs in the army. From time to time there are also conflicts between conscripts and commanders or among conscripts themselves. Conscripts are sometimes in debt to one another because of gambling. These conflicts occasionally involve violence.

8.1.2 Discrimination

Harassment and discrimination by fellow soldiers or non-commissioned officers occur, depending in particular on the local commander. However, it is not possible to say that any single group suffers systematic discrimination. According to Turkish human rights organisations and former officers, most of the problems occur as a result of conflicts among soldiers.

¹¹² See also Gareth Jenkins, *Context and Circumstance: The Turkish Military and politics* (IISS 2001), p. 28, and Mehmet Ali Birand, *Shirts of Steel. An Anatomy of the Turkish Armed Forces* (1991), pp. 118-122.

¹¹³ See also Ali Birand, *Shirts of Steel. An Anatomy of the Turkish Armed Forces* (1991), p. 119.

Kurds

Systematic discrimination against Kurdish conscripts can be ruled out ¹¹⁴. At the level of the unit in which conscripts serve, the situation is very often dependent on the individual commander. In the armed forces the focus is not so much on the question of whether or not a particular person is a Kurd, but much more on whether a person has any separatist sympathies.

With people from the provinces of south-east Turkey, separatist sympathies are in practice more likely to be assumed. A person's place of birth is stated on his identity card, and his origin is often betrayed by his appearance or accent. The suspicion with which conscripts from south-east Turkey are regarded by their commanders or fellow conscripts seems to have lessened recently as a result of the cessation of hostilities in this region at the end of 1999. However, if an individual commander feels any antipathy towards Kurds, discriminatory behaviour cannot be ruled out.

Left-wing activists

Since the collapse of the Soviet Union, the attitude of the military towards left-wing activists has relaxed. Since 1997, the military high command no longer defines communism as an inherent domestic threat in its national plan for defence strategy. Internal threats are now expected to come from fundamentalism, separatism and organised crime ¹¹⁵.

There is therefore no systematic discrimination against conscripts who are known to be left-wing activists. Again, much depends on the commander of the respective unit. The commander of a unit "in the field" is not always aware of the fact that his men include left-wing activists. If a conscript has at any time been convicted of a crime or detained in connection with an offence related to such activity, in many cases only senior officers will be aware of the fact. If a conscript has not been convicted or detained, separatist sympathies can be deduced only from the behaviour of the individual conscript in his unit.

¹¹⁴ Compare the general consideration of the Kurdish question in General Official Report on Turkey of 4 May 2001, section 3.4.1.

¹¹⁵ Gareth Jenkins, *Context and Circumstance: The Turkish Military and Politics* (IISS 2001), p. 46 et seq.

Moreover, military sources in Turkey have confirmed that there are also officers with left-wing attitudes. The number of professional soldiers discharged for suspected leftist sympathies is very low.

Persons who have evaded military service

Individuals who have previously evaded military service may on occasion be subjected to harassment and discrimination. Here too, systematic discrimination can be ruled out, and much depends on the individual unit commander.

The above applies equally to persons who stayed abroad while evading military service, including asylum seekers who have exhausted all remedies and those repatriated. The latter have their past record checked when entering Turkey. If it is established that a person has evaded registration/examination or failed to report or has deserted, he is subjected to questioning and transferred to the military authorities within 48 hours at the latest. Persons who have evaded registration/examination or failed to report are regularly released after questioning and instructed to report to their military registration office within a few days.

The direct superiors of the conscript concerned are not always aware that the latter has previously evaded military service. However, such facts are known to the most senior officers within the unit. In many cases, deserters are not returned to the unit from which they escaped but are posted to another unit in the same army.

Christians

Like all nationals of Islamic origin, every Christian who has reached call-up age is obliged to perform his military service. As opposed to what is sometimes claimed, various Christian conscripts have confirmed that Christians in the Turkish military also bear arms. Christian conscripts can also become non-commissioned officers¹¹⁶ Apart from occasional harassment, which depends entirely on fellow soldiers and the commander, Christian conscripts in the army encounter no discrimination. Forced circumcision of Christians have not occurred for some years now.

¹¹⁶ One of the conscripts interviewed in Nadire Mater, *Mehmedin Kitabı* (The Book of the Common Soldier) (fourth edition 1999), pp. 27 et seq., is an example .

The international Christian organisation Open Doors and the Christian press agency Compass Direct announced that a career soldier was discharged from the army in 1997 because he had converted to Christianity the year before. He appealed to the European Court of Human Rights ¹¹⁷.

Jehovah's Witnesses

By comparison with the past, Jehovah's Witnesses face hardly any problems during their military service. According to a spokesman for the movement, the fact that Jehovah's Witnesses are not allowed to bear arms by virtue of their religious convictions has been generally accepted in recent years. They are usually given administrative work or fatigue duties. Harassment or discrimination occurs in individual cases, however.

Devout Muslims

Particularly after the signing of the National Security Council memorandum by the then Refah Prime Minister Necmettin Erbakan ¹¹⁸, a number of career soldiers suspected of Islamic fundamentalist sympathies were discharged or retired early from the armed forces in order to reduce Islamic influence there ¹¹⁹. According to spokesmen of the Turkish human rights organisation AS-DER, which inter alia is active on behalf of dismissed military personnel, the numbers are as follows: 306 in 1997, 186 in 1998, 91 in 1999 and 62 in 2000, giving a total of 635 persons for the four years.

Some of the dismissed officers have in the meantime taken their case to the European Court of Human Rights in Strasbourg, since there is no body in Turkey where the dismissals can be contested. There are no legal remedies against appointments and promotions by the Askeri Şura (Military Council).

¹¹⁷ *Open Doors*, No. 372 (December 2000) and a Compass Direct article in Turkish included in the Christian Turkish periodical *Gerçeğe Doğru* (Onwards to the Truth), 4th volume, number 16 (May to June 2001).

¹¹⁸ See General Official Report on Turkey, pp. 7 and 8.

¹¹⁹ See also General Official Report on Turkey dated 4 May 2001, pp. 61 and 62. The topic is also dealt with in detail in the monograph devoted to this subject by Rahmi Erdem, *Mahzun Madalya* (The mournful medal) (1998).

Conscripts who are devout Muslims are seen by the high command as much less of a danger than career soldiers who are deeply religious. According to some officers who are strict Muslims, this is because people like to see that "the lower ranks" are religious, as this engenders higher respect for authority. The same spokesmen allege that conscripts educated at an İmam Hatip Lisesi (High School for Prayer-leaders and Clerics) are often assigned to accounting tasks on account of their reliability.

The possibility for conscripts to perform their ritual prayer is entirely dependent on the unit commander. In some cases it is forbidden, in others a room is even allocated. The same applies as regards fasting during the month of Ramadan. In any case, the fact is that religious obligations are never allowed to thwart the performance of duties.

Homosexuals

Homosexual conscripts who state that they indulge in passive sexual acts are declared unfit for military service. For this purpose a psychological examination is performed and, in some cases, even an anal examination, or a photograph of a passive sexual act is demanded. The person is then questioned by a military board, which takes the final decision on rejection ¹²⁰. Homosexuals who indulge only in active sexual acts are not rejected for service.

There are also known to be cases of homosexuals with passive sexual contacts, who conceal their proclivities and thus nevertheless perform their military service. Whether they are discriminated against if their proclivities come to light depends entirely on the unit commander.

¹²⁰ Website of Lambda (Turkish organisation for homosexuals) at www.lambdaistanbul.org, situation as at 15 March 2001.

8.1.3 Deaths

In August 1999 Amnesty International stated that there was an increasing number of reports concerning young men who had died in suspicious circumstances during their military service in the Turkish army. In the same document, Amnesty announced that in most of these cases the persons were of Kurdish origin ¹²¹.

From 1996 up to and including 2000, the newspaper Özgür Gündem and its successors, Özgür Bakış and Yeni Gündem, together with Özgür Politika, a paper published in Germany – all four of which are linked to the PKK – published reports regarding deaths in the Turkish army. According to the reports in these newspapers, the military authorities had given "suicide" as the cause of death in most cases, and "accident" in some. In many cases there were doubts regarding the cause of death. There are also reports of conscripts who commit suicide while on leave or after their discharge. From 1996 to 2000 these newspapers also reported dozens of such deaths in and connected with the army.

On 21 June 2000 the IHD published a document stating that "in recent years many people whose children have died in suspicious circumstances during military service have turned to our organisation. Although many of these deaths are stated to be "suicides", in the opinion of our organisation they are suspicious deaths." Thirteen cases are then summarised ¹²².

¹²¹ *Public Statement. Turkey. Evidence of persecution of conscripts on the increase*, Amnesty International (27 August 1999).

¹²² *Askerde ölümler ve vicdani red hakkı* (Deaths in the army and the right to refuse to perform military service on grounds of conscientious objection). İnsan Hakları Derneği (21 June 2000).

An analysis of the deaths mentioned in the above media ¹²³ and by the IHD shows that slightly more than half of the victims come from provinces with a predominantly Kurdish population. In nearly a quarter of the cases, the place of origin is not mentioned, and the remaining conscripts are referred to as originating from places outside the region where the population is mainly Kurdish.

Several former officers have stated that in the army people sometimes take their own lives. According to an IHD spokesman, there are also indications that conflicts between conscripts are sometimes settled with a service weapon.

In 2001, spokesmen from the Turkish human rights organisation IHD declared that they had been notified of no new deaths in that year. In 2001, as far as is known, the media reported only one death in the army, that of Barış Özçiftçi, a resident of Istanbul, who according to the military authorities was killed by a stray bullet ¹²⁴.

Süleyman Aksoy and Savaş Çiçek

There are two cases of asylum seekers who had been repatriated from the Netherlands dying during their military service. The men were Süleyman Aksoy and Savaş Çiçek, who began their military service after returning to Turkey in 1999. In both cases the military authorities gave the cause of death as suicide, the same given in the official documents of the Turkish authorities.

¹²³ Collected in *Türk Silahlı Kuvvetleri içinde gerçekleşen intiharlar ya da şüpheli ölümler* (Incidences of suicide or suspicious deaths in the Turkish armed forces), İzmir Savaş Karşıtları Derneği (May 2001), *Türkiye 'de Ordu ve İnsan Hakları İhlalleri. TSK ve uygulamalarına ilişkin 1998 yılı panoraması* (The army and human rights violations in Turkey. An overview of the Turkish armed forces and their practices in 1998), Studiecentrum Turkije (Amsterdam, July 1999) pp. 45-51, *Askerde ölümler ve vicdani red hakkı* (Deaths in the army and the right to refuse to perform military service on grounds of conscientious objection), İnsan Hakları Derneği (21 June 2000), *Conscientious objection in Turkey*, Studiecentrum Turkije and X minus Y solidarity fund (May 2000), pp. 36-41, and the daily newspaper *Yeni Gündem*,) July 2000.

¹²⁴ *Yeni Gündem*, 9 February 2001.

In the Aksoy case the Ministry of Foreign Affairs issued six individual official reports. The individual official report of 19 October 1999 gave the conclusion of the Turkish authorities. The Çiçek case was the subject of three individual official reports, including the official report containing the conclusions of the Turkish authorities on 13 June 2001.

8.2 Human rights violations by the armed forces

In some cases, conscripts may, without necessarily playing an active role themselves, form part of units that commit human rights violations. Until recently, this was the case particularly in the fighting in south-east Turkey. In fact, this conflict was not condemned by the international community as contrary to the fundamental principles of human conduct or deemed to contravene the fundamental rules that apply during an armed conflict.

Jandarma

In the areas where the jandarma are authorised to investigate crimes, they still commit abuses and torture, in particular during the first few days after a person is taken into custody ¹²⁵ During the storming of the prisons in December 2000 and the subsequent transfer of prisoners to F-type prisons ¹²⁶ the jandarma were guilty of abuses, torture and use of excessive force. Conscripts were also used during the storming of the prisons.

Conscripts are not forced by their superiors to use excessive force or to commit abuses. One of the conscripts who took part in the attacks on the prisons in December 2000 has reported that those conscripts in his unit who had not used excessive force were praised by their commander afterwards.

The number of house searches carried out by the jandarma in the area where the state of emergency is in force ¹²⁷, which involved use of excessive force on several occasions, has fallen considerably since PKK fighters withdrew from Turkey ¹²⁸.

¹²⁵ See also General Official Report on Turkey dated 4 May 2001, pp. 87 to 93.

¹²⁶ See also General Official Report on Turkey dated 4 May 2001, pp. 82 to 86.

¹²⁷ Re the state of emergency, see General Official Report on Turkey dated 4 May 2001, section 2.4.5.

¹²⁸ See section 4.4.

As the body charged with maintaining public order in its area of jurisdiction, the jandarma are also responsible from time to time for restricting freedom of association and of assembly.

HADEP attributes the disappearance of two of its officials in January 2001¹²⁹ to the jandarma since they were last seen entering a jandarma post. The party suspects the involvement of the JITEM, the jandarma's intelligence service. There are no conscripts serving in the latter as far as is known.

Land forces and special units

Following the cessation of hostilities against the PKK at the end of 1999, the involvement in human rights violations of regular army units – and thereby the involvement of conscripts in the Turkish armed forces – fell sharply. The same applies to the special units (Özel Tim), which withdrew from the south-east almost entirely¹³⁰. The army is hardly involved at all in abuses, torture and other forms of excessive force in the conduct of investigations and the maintenance of public order, as these are tasks are in principle carried out by the jandarma.

In the past, both the military and the jandarma have been involved in evacuating villages in south-east Turkey, many of which were burned to the ground in the process¹³¹. Since the beginning of 2000 no more villages have been evacuated.¹³²

¹²⁹ See General Official Report on Turkey dated 4 May 2001, p. 94.

¹³⁰ See section 4.4.

¹³¹ Described in, inter alia, Joost Jongeren, et al., *Het verwoeste land. Berichten van de oorlog in Turks-Koerdistan* (The devastated country. Reports of the war in Turkish Kurdistan) (1997).

¹³² Although there is a single known case in 2000 of people returning spontaneously and being sent away again from their village after a few days. See General Official Report on Turkey dated 4 May 2001, p. 115.

According to observers in south-east Turkey, including several officials of Kurdish organisations, the attitude and the conduct of military personnel and jandarma officials towards the population have become noticeably softer and friendlier since the cessation of hostilities at the end of 1999. In an internal publication of the General Staff entitled İç güvenlikle halkla ilişkiler ve halkın kazanılması. Davranış ilkeleri rehberi (Relations with the population and enlisting their support in the maintenance of internal security. Guide with principles of conduct), which a journalist managed to obtain before publishing part of its contents in a book about the army, the General Staff calls on the military to establish contacts with the population, to behave in an exemplary fashion and to be friendly¹³³ Besides this publication there are also other indications that point to a charm offensive by the armed forces.

¹³³ Rahmi Erdem, *Mahzun Madalya* (The mournful medal) (1998) pp. 243 to 246.

9. Policy of the UNHCR and other western countries

9.1 UNHCR

In response to the question concerning the position of conscientious objectors in Turkey, the UNHCR stated that "UNHCR...is of the opinion that there may be room for granting refugee status on grounds of conscientious objection for some Turkish asylum seekers"¹³⁴. In this regard the UNHCR referred to the paragraphs on conscientious objection in the UNHCR handbook (paragraphs 167 to 174).

The UNHCR adds "It is UNHCR's position that, even if the military action in which the asylum seeker is required to participate is generally conducted within the limits prescribed by the laws of war, s/he may be regarded as a conscientious objector and, hence, qualify as a refugee, if s/he can establish that his/her moral, religious or political objections to participating in such action are so genuine, serious and profound, that it would be morally wrong to require him/her to participate in such action. One case that may fall under this description is that of a member of an ethnic minority who, in a situation of internal conflict, may be required to participate in military action against his/her own ethnic community".

Lastly, it is noted "The genuineness of a person's political, religious or moral convictions or of his/her reasons of conscience for objecting to performing military service, will of course need to be established by a thorough investigation of his/her personality and background".

No information was obtained from the UNHCR with regard to its position on the repatriation of rejected conscientious objectors. The UNHCR is expected to produce a new background paper on Turkey at the end of 2001.

¹³⁴ Letter from UNHCR (Geneva) dated 15 June 2001.

9.2 Other western countries

The policies of the five European countries which together with the Netherlands had the highest influx of asylum seekers in 2000 are described below.

Belgium

Since the end of April 2001, after the formulation of a new policy on the issue, decision-making on asylum questions in which conscientious objection plays a role has resumed. Asylum seekers from Turkey whose application is based on this ground may be recognised as refugees if their conscientious objection is plausible, of decisive importance and, at the same time, has forced their departure. Since the end of April 2001 rejected asylum seekers who have refused to perform military service have been expelled to Turkey.

Germany

In the general view of German courts, the threat of punishment for evading military service is not seen as political persecution under German law, even where Kurds are concerned. Rejected asylum seekers – including those whose application is based on conscientious objection – are expelled.

France

France pursues no special policy regarding asylum seekers who plead conscientious objection. Those who have exhausted all remedies and are rejected are expelled.

United Kingdom

In the United Kingdom the person concerned may be granted refugee status if he has been tortured or ill-treated in the army or if he a "genuine conscientious objector". Rejected asylum seekers who have refused to perform military service are expelled.

Switzerland

In Switzerland there is no specific policy aimed at conscientious objectors from Turkey. Under Swiss policy, the mere fact that a person has refused to perform military service is insufficient for recognition as a refugee. Switzerland expels persons who are liable for military service and who have exhausted all remedies.

10. Summary

The Turkish armed forces (excluding the jandarma) number 609.700 men, including a total of 528.000 conscripts. Of the 218.000 men of the jandarma, some 90% are conscripts. Conscripts form part of the army, air force and navy and of the jandarma, which has military as well as police tasks. Conscripts are also to be found among the commandos. The special units (Özel Tim) consist entirely of regular personnel.

Every male citizen is required to perform 18 months' military service. University graduates perform their military service as reserve officers for sixteen months or as ordinary conscripts for eight months.

The armed forces occupy an important position in Turkish society and are held in high regard by a large part of the population, as is conscription. In the Turkish context military service is also seen as part of the process of "becoming a man".

With regard to conscription, some formalities can be distinguished, namely registration/examination, enlistment/basic training and subsequent posting. Registration entails verification of the personal particulars as known to the authorities. Conscripts whose particulars are correctly registered are not required to do anything. The examination covers education, skills, physical qualities and includes a check for possible medical defects. For this purpose the conscript must appear in person after receiving the requisite notification to do so from the military registration office via the muhtar. The place to report for basic training is stated in the call-up papers, which the conscript must collect himself at the military registration office. The conscript receives a three-month posting based on his knowledge and skills, etc.. As a rule, he takes no part in combat during this period. Basic training is followed by several days' leave, after which the conscript reports for subsequent posting, usually to a different location than for basic training.

The place of subsequent posting depends on the basic training undergone, the place of registration and possible criminal record. As a rule, conscripts are posted to units that have the specialisation for which they were trained. It has been a long-standing rule for conscripts to be posted preferably to units outside the region (sometimes only outside the province) where they are registered, although this practice has gradually lost significance in recent years on account of, inter alia, internal migration. In the period leading up to the ceasefire at the end of 1999, during which time the conflict between the PKK and the Turkish armed forces was waged with full intensity, extra care was taken, in addition to applying the above rule, to ensure that conscripts from provinces in south-eastern Turkey were not posted to units in that region on account of the fairly general uncertainty felt in the Turkish armed forces regarding their loyalty. The cessation of the armed struggle at the end of 1999 meant that this practice, which was aimed at preventing persons from the south-east from being posted to units in that region, has been gradually abandoned.

A criminal record plays a role in the place of subsequent posting to the extent that a person with such a record is not usually deployed in sensitive posts.

As armed confrontations in south-eastern Turkey have virtually ceased since the end of 1999, the possibility of a conscript being deployed in combat there is extremely slight, especially since the sporadic military operations that still take place are carried out mainly by regular troops. The same applies as regards the possibility of a conscript being deployed in northern Iraq, as no actions have been fought there either by Turkish units since the beginning of 2001. Here too, the forces deployed consist mainly of regular troops.

Persons in higher education can obtain a deferment of call-up for military service by presenting documents from the educational establishment. Deferment is granted for one year each time. Turks liable for military service who are legally resident abroad can obtain a deferment for two years at a time at the Turkish representation in the country in question. In many cases, persons with both Turkish and another nationality who have done military service in another country may be exempted from military service in Turkey. Persons legally residing abroad can buy their way out of military service by paying DM 10 000, although they are required to undergo a month's basic training. After the earthquake of August 1999, a very similar regulation came into force temporarily for all persons in Turkey eligible for military service who were born before 1973.

As regards evasion of military service, Turkish law distinguishes between evasion of registration/examination, evasion of enlistment and desertion. The first two offences carry prison sentences of up to three years, which are often commuted to a fine. The maximum penalty for desertion is heavier, although often fines are also imposed for this offence. Persons who evade military service and who are abroad may lose their nationality. The procedures to this end usually take several years. Once a person has been deprived of his citizenship, he is not open to further prosecution for evading military service. Once military service has been completed, citizenship may legally-speaking be reacquired. In practice, however, this rarely happens.

The right to conscientious objection or to perform alternative service does not exist in Turkey, despite Turkish membership of various international fora which expressly recognise this right. Persons refusing to perform military service on grounds of conscience are therefore viewed as routine cases of evasion of military service and punished accordingly. From the legal viewpoint, a conscientious objector may fall into any of the categories of evasion. A conscientious objector who attracts media attention or publishes articles calling on people to refuse to serve faces additional punishment on the grounds of "alienating the people from the armed forces". While there have so far been a few convictions involving both members of the public and servicemen, there have also been acquittals and cases which were not prosecuted.

The armed forces are very unforthcoming as regards internal affairs, including human rights. Consequently, information can often only be obtained confidentially. The armed forces operate a harsh regime. Disciplinary measures used occasionally include physical violence and insults, which in many cases are tolerated. Discrimination against conscripts, which occurs from time to time, depends entirely on the individual unit commander. The army high command cannot be said to discriminate systematically against any single group. In many cases the problems stem from conflicts between conscripts themselves.

In recent years the pro-PKK press in particular has reported a number of deaths in the army. In 2000 the IHD stated that it regarded such deaths, which are usually branded as suicides by the military authorities, as suspicious. As far as is known, a single article concerning a death in the army has been published in 2001. No new cases have been reported to the IHD in 2001.

Occasionally, conscripts – particularly in the jandarma – may be directly or indirectly involved in human rights violations. The cessation of hostilities in south-eastern Turkey at the end of 1999 has reduced the risk of such involvement for conscripts to virtually nil. In the past two years, a positive development can be observed in the military's attitude towards the local population as a result of the charm offensive launched by the army.

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