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Endogenous Limits of the Right to Conscientious Objection: Does a Conscientious Objector Have the Right to Refuse Even 1-Day Military Service?

by
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Abstract

Can the refusal of 1-day reserve military service be interpreted in a way that expands the right to conscientious objection? The ECHR's most recent judgment on conscientious objection, *Kanath v. Türkiye*, dated March 2024, attempts to answer this question by considering the right to conscientious objection as part of a broad conscientious objection movement. In this study, I will try to address this judgment from a perspective that expands on the ECHR's previous jurisprudence. I will try to understand how the ECHR's recent judgment affects the scope and internal limits of the right. My main question is whether there is right to conscientious objection even in cases where compulsory military service imposes a negligible obligation on the individual in terms of time and content. In other words, can the right to conscientious objection be defended even when the criteria of constitutional and personal importance are not met? I will also try to show how, in this case, not only Article 9, but also the right of access to a court under Article 6 has been violated. This is because, although the low fines and short-term prison sentences imposed by states for non-compliance with compulsory military service indicate that the violation of the obligation is met with a negligible sanction by the state, there is also a strategic approach by states that prevents access to the right to a fair trial. In this article, the right to conscientious objection is not a right of individual over society, but rather a social movement in a society which abolish the dichotomy of society v. individual on the conscientious objection.

Keywords

conscientious objection, strategic litigation, reserve military service, ECHR, freedom of religion and conscience, alternative service

Introduction

In this article, using the concept of the endogenous limits of conscientious objection, I will try to understand why the ECHR has found a violation in an individual application against a 1-day compulsory military service obligation when it could easily have found a lack of constitutional and personal significance in cases where compulsory military service imposes a negligible legal obligation on the individual, by stating that there is a lack on admissibility criteria referring the Art. 35/3/b.

Since I ask whether the right to conscientious objection should be recognized even when compulsory military service does not impose a great burden on the individual in terms of time and obligation in the light of the latest ECHR's judgment on conscientious objection which was delivered on 12 March 2024. In the *Kanatlı v. Türkiye* judgement (*Kanatlı v. Türkiye, 12 March 2024, para.2*), the ECHR made an important comment on the scope of conscientious objection, stating that it also considers reserve services within this scope, and therefore the provision of alternative civilian service should be taken into account even for reserve services. First of all, the events in the case took place in the Turkish Republic of Northern Cyprus (TRNC) and the plaintiff has made military obligations and military court decisions there the subject of his individual application. However, the individual application appears to be against Turkey, both because the TRNC is recognized as a state only by Turkey and because the ECHR considers cases against Turkey based on Turkey's de facto and effective control over the TRNC.[1]

To explain why I say endogenous, I do want to emphasize here that the right to conscientious objection is a right that must be recognized in relation to the conscience of the individual, regardless of the duration, intensity, content, or whether the military obligation, compulsory or not, is carried out in times of war or peace. Rather it has endogenous right even if the obligation lacks constitutional significance. The severity of the sanction imposed by the state in the event of the exercise of the right to conscientious objection, i.e. the lightness of the fine or the shortness of the military service period or the duration of the period of detention imposed as a sanction, does not prevent the recognition of the right to conscientious objection, and that this decision shows us the endogenous nature of the right to conscientious objection. This idea also allows me to explain women (Rimalt 2006: 4; Çaltekin 2023: 131-135) and LGBTIQ+ people who declare their

conscientious objection even though in some countries there is no compulsory military obligation (Çaltekin 2023: 120-127; Elster and Sørensen 2010: 111-115)[II]. In addition, in some cases, countries deliberately set very low fines for army deserters, thus limiting their ability to sue or appeal, and citizens may end up paying a small fine below certain threshold for the adjudication and not being able to pursue it in good conscience. Not only that, but the very act of being fined for not performing military service can also conflict with one's conscientious obligation in monetary terms because as Schlink stated "paying taxes is depersonalized and is not a matter in which the citizen is involved, and the citizen is seen to be involved as an individual with a particular political position, with a specific political conscience. […] There is no place for conscience in these actions. If someone feels differently and takes the view nonetheless that conscience is involved, then that person does not wish to serve as a depersonalized instrument, indeed is not fit to do so, and is therefore not fit to be a registrar, notary, or postman (Schlink 2018: 106)."

The main purpose of this study is to explain how the judgment, which for the first time recognized the endogenous character of the concept of conscientious objection and interpreted it as independent of obligation, has expanded the jurisprudence on conscientious objection. The main purpose of this study is to explain how the judgment, which for the first time recognized the endogenous character of the concept of conscientious objection and interpreted it as independent of obligation, has expanded the jurisprudence on conscientious objection. My main research question is, how does the fact that the sanction of non-fulfilment of only one day of reserve military service, which seems to lack constitutional/personal significance, resulting in a violation, affect the dynamic (Çaltekin 2023: 32-35) and evolving jurisprudence on conscientious objection? Therefore, I will i. first explain the legal problem and the factual background of the judgment, ii. then interpret the judgment in the context of the legal struggle of a broad conscientious objection movement in the context of the ECHR's jurisprudence on conscientious objection. Finally, iii. I will discuss the impact of the judgment in the context of recent developments regarding the right to conscientious objection. In order to show the legal framework of the conscientious objection movement, I will include the United Nations and other international examples in the discussion, which are not limited to the ECHR's jurisprudence. This is because the living instrument doctrine, dynamic interpretation method, state discretion and European public

consensus doctrine, which determine the ECtHR's jurisprudence on conscientious objection, are directly influenced by the UNHRC's decisions and these decisions are referred to in the case-law. I have explained these examples in the context of this article.[III]

Legal and Factual Background

An applicant is a conscientious objector and pacifist activist in Cyprus. He was also representative of the European Bureau for Conscientious Objection (BEOC) in Cyprus which is the federation of the national associations on conscientious objection in 2008 (*Kanatlı v. Türkiye*, 12 March 2024, para.2). In 2009 he was elected to the BEOC Board of Directors.

On 20 December 2005 the applicant's one-year military service in the Turkish Cypriot security forces came to an end and after that he was again called to perform one day of reserve service in military each year. He performed this duty three times in November 2006, October 2007 and finally November 2008, for one day each time.

He was called upon again in November 2009, since he refused to perform, he was fined approximately 140 euros at the time pursuant to the Mobilization Law, stipulates for fines for those who refused to summon to a call for reserve military service in peacetime. He refused to pay the fine intentionally and he stood by Court of the Security Forces. During the trials, he disclosed that he is conscientious objector and due to his pacifist and anti-militarist opinions, he is consciously refusing reserve military services, he was also prepared for exercising the alternative civil service to replace compulsory military service. He stated that he was a member of the executive committee of the BEOC and he participated in numerous pacifist demonstration for the campaign of the demilitarisation in the two parts of the Cyprus for a peaceful solution. He was objecting the compulsory nature of the military service and claiming that absence of the alternative civil service is not compatible with the ECHR and the Constitution. He also requested examination of the compatibility of the Mobilization Law to the Constitution by the Supreme Court, acting as Constitutional Court when needed. The Supreme Court determined that the provisions of the Mobilization Law align with the Constitution. It clarified that the absence of a law providing an alternative civil

service does not inherently conflict with the constitution. This matter rests with the discretion of the parliamentary as the legislator.

The Cyprus Security Forces Court observed that there is not such a conflict between reserve military service and the individual's personal, religious or any other beliefs and conscious (*Kanatlı v. Türkiye*, 12 March 2024, para.14). According to the Cyprus Security Forces Court, all the arguments of the applicant are politically motivated and hope that increasing number of conscientious objectors may make easier to escape from war. Therefore, the Cyprus Security Forces Court considered that the applicant cannot be defined as a conscientious objector and convicted the applicant approximately 167 Euro which may be converted a ten-day prison sentence if it is not paid. However following question can be asked to the local court: If the absence of a legal regulation on conscientious objection does not create a conflict but a legal gap, then how was it decided that an applicant was not deemed a conscientious objector based on the absence of a regulation? The applicant's appeal was dismissed, and his conviction was confirmed as final decision. The applicant refused to pay the fine and was sentenced to 10 days' imprisonment and he served requested time in prison (*Kanatlı v. Türkiye*, 12 March 2024, para.10-15). The ECHR finds that the applicant was not only responsible for the State's actions but also to exercise the right to conscientious objection the failure to put it in place (*Kanatlı v. Türkiye*, 12 March 2024, para.64) The Court found that there is a violation of article 9, freedom of thought, conscience and religion. Here, although the court cited the lack of an alternative service and the lack of a fair balance between the interests of the conscientious objector and the interests of society as reasons, the court in fact found the government's argument that the claim of conscientious objection was politically motivated to be hollow. (*Kanatlı v. Türkiye*, 12 March 2024, para.67) However balance is not enough for this ground, as Rosenfeld stated the framework (Rosenfeld 2018: 81)

"In the compulsory military service cases, the objector does not have an alternative and society, in general, and those individuals who would be charged with the battlefield tasks otherwise assigned to the objector, in particular, would suffer harm. Where the number of objectors is small – as in many cases involving Jehovah's Witnesses or Quakers – however, the harm to society might be minimal or even non-existent provided that the objector would undertake alternative civil service. Similarly, the added harm or risk to those on the

battlefront might be virtually imperceptible in typical cases involving a handful of objectors among several hundreds of thousands destined for combat."

The main reason why I call it "*endogenous limit*" is exactly related to the point that conscientious objection does not only mean the denial of a responsibility imposed on the individual by the state or added harm which might be imperceptible. Resulting compulsory military service only seen as an obligation imposed by the state, the compulsory military service will be only evaluated by subjecting it to the proportionality test. It will also give the room to prioritize the state's discretionary power if it is not disproportionate on the individual as in the case 1 day military service. Whereas conscientious objection is a right even when compulsory military service, regardless of its content, is itself tolerable, such as for 1 day, and lacks constitutional significance. When conscientious objection is seen as a political choice and a projection of political rights, the content of conscription is determined by the inherent limits of the right to conscientious objection. This is particularly relevant to the claim by the Cyprus Security Forces Court that the applicant's claim before the ECHR that the applicant's application was politically motivated should be declared inadmissible on the grounds that the applicant was a founder and activist of an anti-militarist non-governmental organization which was engaged in activities in this regard. Because the ECHR's dismissal of this claim is closely related to the recognition not only of the right to conscientious objection, but also of the freedom of association of civil society organizations and activists engaged in anti-militarist struggle. Even though the intrinsic limits of a certain right require it to be politically motivated, the ECHR recognizes that the fact that the exercise of a right is politically motivated does not prejudice the content and legal defence of the right. Because conscientious objection is also a politically motivated right by its very nature. As Raz made a linkage between civil disobedience and conscientious objection, it shows the direct nature of the right in itself:

"Civil Disobedience is a politically motivated breach of law designed either to contribute directly to a change of a law or of a public policy or to express one's protest against, and dissociation from, a law or public policy. Conscientious objection is a breach of law for the reason that the agent is morally prohibited to obey it. (Raz 1979:263)"

Since the legal struggle of conscientious objectors overlaps with their struggle to change the law, these two definitions are now intertwined (Çaltekin 2023: 52-54)

How to Connect Further Results to Historical Background on Conscientious Objection? From the Debate on Conscription to the Debate on One-Day Soldiering

Since around the mid-1800s, the term "*conscientious objection*" has been used to describe a refusal, driven by moral conscience, to engage in military duties (OHCHR 2012: 23-59). "*Conscience*"[IV] as an inner sense of individual's morality, from the early 1900s onward "conscientious objection" refers to the refusal to take part in military service, to the extent that the phrase typically implies objection to military duties unless stated otherwise. While the direct acknowledgment of conscientious objection to military service is not explicitly stated in United Nations international instruments, it is generally considered a derived right [V] - a principle derived from the interpretation of the broader right to freedom of thought, conscience, and religion. Conscientious objection, which has traditionally been grounded in the European Convention on Human Rights (ECHR) and the Court's (ECHR) legal interpretations concerning Article 4[VI] and Article 9[VII], has also been scrutinized within the Commission framework before the Court examined the conscientious objection (infra). (Çaltekin 2023: 54-58)

This latest ECHR[VIII] ruling on conscientious objection was also discussed at the 56th session of the United Nations Human Rights Council from June 18 to July 12 2024[IX], and was one of the important thresholds that determined its scope. The reason why this decision constitutes a new lower threshold compared to the previous conscientious objection decisions of the ECHR is that, contrary to the previous jurisprudence, conscientious objection cannot be discussed for a whole period of military service, but only for one day of reserve military service. The main question in this case was: Would 1 day of reserve service provide a certain material threshold for the recognition of the right to conscientious objection, or could the right to conscientious objection be exercised for the whole period of compulsory military service, regardless of the scope and intensity of military service? In doing so, ECHR also paid attention to the nature of the applicant, his relationship with the conscientious objection movement, and the fact that the applicant was a member and leader of the conscientious objection movement as a social and civil movement, similar to the examples of strategic litigation.

The conscientious objection movement, as a social movement, has various facets, which cannot be reduced to a singular struggle for rights, is explained for some as a pacifist opposition to war, for others as a mere opposition to weapons, for others as a mere opposition to certain types of wars, for others as a total rejection of the state, and for others as religious reasons (OHCHR 2012: 34-36; Rosenfeld 2018: 80-83).

From the Debate on Conscription to the Debate on One-Day Soldiering

Historically speaking, conscription has as long a history as wars and has therefore always been a controversial issue in public opinion (Kennedy 1981: 155-175; Rosenfeld 2018: 75).[X] For example, during World War I in 1916, the No-Conscription Fellowship (Kennedy 1981: 249) campaigned for a 'conscience clause' in the Military Service Act which legally forced men to enlist. One of the main pillars of the anti-war movement is opposition to conscription. As an example of the influence of social movements on politics and law, the struggle against conscription led to social movements called the Permanent Freedom Movement from US foreign policy (Meyer 2021: 95-99).

War Resisters International (WRI), Quaker United Nations Office (QUNO) and International Fellowship of Reconciliation (IFOR) started webinar series on campaigning for conscientious objection to military service which was held on 24 February 2022.[XI] In the webinar series, WRI discussed the struggle for conscientious objection in its context within the anti-war movement, explaining how it was related to a strategic litigation process and how they achieved results with a global impact from Colombia to Korea. They have been defining strategic litigation as the *use of court and judicial processes to create or be part of a strategy to create systemic change*.[XII] Campaigning for conscientious objection is one of the key case study area for the strategic litigation since an individual case to the UN Human Rights Committee which implements International Covenant on Civil and Political Rights[XIII] has been mobilized for the struggle (Çaltekin 2023: 54-55). According to the Çaltekin, "The practical importance of the right to conscience is understood when it allows 'satisfying one's convictions' (2023: 55)". The reason why I mentioned the ECHR and ICCPR examples together in this study is to show a dynamic organizational structure that follows and

references each other when it comes to the conscientious objection as a movement of right to conscience.

Firstly, a clear and strong case from the country which had active military conscription has been strategically chosen without having provision for conscientious objection. Korea was perfect strategic country for this case because there were at least 216 conscientious objectors incarcerated in South Korea as of July 2018. (Amnesty International 2018: 11)[XIV] Another factor is a conscientious objector as an individual complainant who was a pacifist, not a selective or political objector and they also considered the credibility of the objector who had suffered a penalty due to the objection. Their main aim to address the fundamental issue of conscientious objection on whether the ICCPR requires a State to accept conscientious objection. While they have been founding their strategy, the appropriate case then came from the Republic of Korea, which could have an impact from Colombia to the ECHR (Webinar).

Two Jehovah's Witnesses imprisoned for their refusal to undertake the military service while they have exhausted all the domestic remedies including Korean Constitutional and Supreme Courts. Two years later, the Human Rights Committee adopted its groundbreaking decision (*Yeo-Bum Yoon and Myung-Jin Choi v. Republic of Korea*, views, 2007)[XV] which required to recognition of the conscientious objection as part of the freedom of thought, conscience and religion, which is the basis for the groundbreaking judgment by ECHR[XVI] in *Bayatyan v. Armenia*.[XVII] The case of *Yeo-Bum Yoon and Myung-Jin Choi v. Republic of Kore*a is trailblazing because it was the first individual petition to the UN Human Rights Committee by conscientious objectors in a conscripting State that had no legislative provision for protection of conscientious objection and provides for imprisonment for declaration of it (Leigh 2018: 8). This decision shifted the ECHR tendency toward enhancing conscientious objections as well as the reinforcement of the alternative civilian service to military service (*Savda v. Turkey: para.80; Erçep v. Turkey: para.63*).

The main reason for referring to this case is the strategic analysis of the World Without War organisation in Korea, which processed the case. Yongsuk Lee, from the World Without War -Republic of Korea, stated that they targeted both legislative and executive judiciary since the judiciary has the most responsive role and took precedence over the legislative and executive in the legal recognition of the right to conscientious objection.[XVIII] In 2018,

landmark decisions by the Supreme Court and Constitutional Court effectively acknowledged the right to conscientious objection in the country. In 2018, 57 conscientious objectors in prison were even released after the ruling in their favour (Schroeder 2011: 170-174).[XIX] The Constitutional Court also mandated the government to implement a civilian alternative service by the end of 2019.[XX] It is an another evidence to the World Without War organization that they have constructed this case as a strategic litigation for wider impact that they are not only conducting and following the case, but also challenging paradigms of national security (Hwang 2024: 3-4).

Another significance of this case is the application to the United Nations Working Group on Arbitrary Detention, a special procedure that can be invoked not only by the treaty bodies of the United Nations, but also by states regardless of whether they are parties or not. In order to achieve a positive outcome from the court process, it is necessary to activate the working group, which can be invoked regardless of whether the States concerned are parties or not and without the requirement of exhaustion of domestic remedies, and to give the opportunity to examine the issue not only from the point of view of freedom of religion and conscience, but also within the framework of the prohibition of arbitrary arrest and detention. Two complaints were filed in January and April 2018 with the United Nations (UN)Working Group on Arbitrary Detention on behalf of two Jehovah's Witnesses who had each been sentenced to 18 months' incarceration for refusing to service for military due to their religious beliefs (Toomey 2019: 788).

The Working Group asserted that a more progressive approach is needed, one that broadens the understanding of human rights and acknowledges the growing consensus on the societal harm caused by forcing individuals to engage in military service, including training in the use of force, against their personal beliefs (Working Group on Arbitrary Detention Opinion No: 40/2018).[XXI] This is also interesting in the context of the *Kanath v. Türkiye* judgment in Cyprus in terms of the debate on the balancing of societal harm between the interests of the conscientious objector and the interests of society. This is because here the litigants invert societal harm as the harm suffered by society as a result of the failure to recognize the rights of conscientious objectors, rather than the harm suffered by society as a result of the failure of conscientious objectors to fulfil their military service. This is also an interpretation that should be taken into account in the case-law of the ECHR. Because the

ECHR always tries to balance rights by presenting the interests of society and the interests of conscientious objectors as two opposing things, as stating that "*whether he could benefit from the right to conscientious objection failed to strike the proper balance between the general interest of society and that of conscientious objectors"*[XXII]. As Leigh framed that "*Whether or not the language of 'rights-balancing' is used, there is clearly some calibration of interests at stake involved, and in a way that did not seriously arise with older types of conscience claims* (Leigh 2018: 3).

Referring to the Human Rights Committee's jurisprudence and previous resolutions by the Commission on Human Rights and the Human Rights Council, the Working Group concluded that detaining a conscientious objector inherently violates Article 18(1) of the ICCPR.[XXIII] One of the reasons why this case is seen as strategic litigation is that the opinion of the Working Group was presented during the proceedings in the Supreme Court. This resulted in an application that had an impact on the outcome. And finally on 28 June 2018, the Constitutional Court of Korea ruled that Military Service Act of Korea violates the freedom of conscience in the Article 19 of the Korean Constitution since it does not allow for alternative service (Toomey 2019, 800).

However, the controversy did not end there, because after this publicly visible decision, on October 26, 2020, the Government introduced an alternative civilian service that does not require the carrying of weapons, although it stipulates a maximum of 21 months of compulsory military service, whereas the alternative civilian service is 36 months (Hwang 2024; Toomey 2019: 806-810).[XXIV] Even though the decisions are seen as positive, both the fact that individuals are forced to prove that they are conscientious objectors to an extent that interferes with the right to privacy and the length of civilian service have been a matter of debate (Toomey 2019: 809).

Another approach that is to be mentioned on strategic litigation and conscientious objection is the National Human Rights Commission (NRHC). The NRHC of Korea was established in 2001 and the activists and litigators on conscientious objection in Korea effectively and actively mobilized the NRHC to rectify the discrimination and violation of the rights of the conscientious objectors' prisoners in Korea. Pressing the government, influence on courts, publicizing the conscientious objection, accumulating the number of the convictions in Korea was framing the strategic litigation approach on conscientious

objection as well (Leigh 2018: 8-10). Here Leigh also frames the issue in strategic litigation with relation to culture wars by stating that (Leigh 2018: 3-4):

"[…] where reforms have been strongly but unsuccessfully opposed by religious groups, there may be some suspicion that subsequent conscience claims are somehow a bad faith rejection of the outcome of the democratic process. Arguably, this rests on a misunderstanding of the nature of conscience claims, 10 but the highly-charged atmosphere of the Culture Wars makes such suspicion more understandable than in earlier, more socially homogenous, times. In any event, a converse argument could be made: if statutory conscience exemptions have been granted as a practical necessity in order to secure enactment of a controversial social reform, it could equally be argued to be in bad faith to seek to undermine or re-open those protections through litigation. Neither case is convincing: the correct response is to recognize that there is no estoppel as far the courts are concerned."

This culture wars framework also explains why traditional conflict of rights is not enough. Here is how I can understand the culture wars framework, which frustrates the courts' attempt to balance personal interests on the one hand and social interests on the other, when formulating conscientious objection jurisprudence. As Zucca shows that (Zucca 2018, 138):

"Now, compare objection to same-sex marriage with objection to a military draft. In the latter case, collective conscience is often bitterly split on the morality of intervention. By granting selected exemptions, the state acknowledges that the legitimacy of any war is deeply contested. In the former case, collective conscience is slowly but surely shifting in the direction of recognition of equal status of same-sex partners. This is not to say that there is no bitter disagreement, but it is to say that the law is following a liberal trend."

Using preservation through transformation arguments to explain how conscience claims and culture wars are intertwined, NeJaime and Siegel ask the following analysis to evaluate balancing of the individual rights and societal claims: "We support recognition of religious exemptions from laws of general application where the exemptions do not (1) obstruct the achievement of major social goals or (2) inflict targeted material or dignitary harms on other citizens (Nejaime and Siegel 2018: 200)." So I actually explain the recognition of the right to

conscientious objection in terms of culture wars rather than traditional conflicts of rights, because in this way the balance between the rights of conscientious objectors and the rights of society is resolved not by confronting them but by intertwining them. So if a person's exercise of their right to conscientious objection does not hinder major social goals for society or harm another person, then they are granted an exemption (Zucca 2018: 139-141).

Another advanced example of the conscientious objection movement and its strategic use of legal instruments is held in Colombia (Lee 2015)[XXV]. The Columbian Constitutional Court overturns its past jurisprudence on conscientious objection in which it stated that the right to conscientious objection to military service is not protected under the Colombian Constitution.[XXVI] On 14 October 2009, the Constitutional Court of Colombia gave its ruling on a "demand of unconstitutionality" submitted by some Colombian organisations. The Court ruled that the right to conscientious objection to military service is protected under the Colombian constitution.

Restrepo framed the achievement in the case of conscientious objection to compulsory military service in Columbia as part of the promotion of human rights through legal clinics and their inter-relationship with strategic litigation. As she stated (Betancur-Restrepo 2013: 156):

'One of the consequences of the tendency to take the most controversial cases before the Court is evident in the rise of legal clinics. According to her "These legal clinics cover a range of things, including strategic litigation aimed at achieving concrete changes in the law, and they have become important focal points for the legal promotion and protection of fundamental rights. At the same time, different social movements have increasingly sought to ally themselves with legal clinics in order to present litigation that has the best chance of being heard by the Court.'

As Restrepo stated that between 2007 and 2008, CIVIS, as part of its work in Colombia, decided to support the Collective Action of Conscientious Objectors (ACOOC) (Betancur-Resprepo 2013: 159). This support covered providing training, financial aid, advocacy efforts, follow-up, and establishing connections with other organizations or institutions to strengthen the work of conscientious objectors. In 2008, within the this planned support, CIVIS mobilized a contact between ACOOC, members of the Mennonite Church of

Colombia, and the Public Interest Law Group (G-DIP), a legal clinic at the Universidad de Los Andes in Bogotá, Colombia. The aim was to create collaborative strategies to promote the legal recognition of conscientious objection, especially to prevent objectors from being compelled to complete Obligatory Military Service (OMS).

Following the ruling, the collaboration between G-DIP, CIVIS, and ACOOC persisted, with the groups jointly drafting a bill for Congress on the right to conscientious objection and pushing for advancements in various regulatory initiatives (Betancur-Restrepo 2013: 159-161). Although the process in Colombia is considered a positive one, the latest United Nations OHCHRC report for the 56th Session of the Human Rights Council on the 23 April 2024, also noted the deficiencies of this example. Colombia recognizes the right to conscientious objection, it is for only those internal convictions (*forum internum*) that manifest in external conduct (*forum externum*) (Çaltekin 2023: 35-39). However, according to the Report, the wording in legislation to extend to the use of a firearm or carrying out military service "in all circumstances" which *potentially excludes those whose convictions preclude the use of firearms to kill human beings but not for other purposes or those that do not object to all forms of military service* (OHCHR 2024: parag.18).

From this perspective, it would be possible to say that historically, the conscientious objection movement and its legal achievements are the result of the mobilisation of strategic litigation methods by social movements (Townhead 2021: 2-4).

For the 56th session of the Human Rights Council of the United Nations, Report of the Office of the United Nations High Commissioner for Human Rights on Conscientious Objection has been released on 23 April 2024. (OHCHR 2024: Paraf.18) The Report summarises recognition of the right to conscientious objection to military service in domestic law, the application procedures, genuine alternatives to military service, the promotion of conscientious objection to military service and the processing and recognition of the refugee status of conscientious objectors (Musalo 2007: 71).[XXVII] The Human Rights Committee recommended that States parties to the ICCPR adopt laws enshrining the right to conscientious objection to military service (OHCHR 2024: parag.9). Not only HRC of the UN, but also the Committee of Ministers of the Council of Europe has recommended legislative amendments to recognize the right to conscientious objection.

Different motivations in conscientious objection lead to various distinctions such as those who want to exercise their right to conscientious objection on religious grounds, those who are conscientious objectors because they are against a certain type of war, and those who are conscientious objectors because they are against all wars (Moskos and Chambers 1993: 4). This distinction is important for some peculiar context. For instance, in some States, protection by conscientious objection has only been recognized to some forms of thought, conscience or religion, but not others. One example is Uzbekistan, which limited the right to members of registered religious organizations (OHCHR 2024: parag.17).

There are different conscientious objectors such as noncombatant conscientious objectors are objectors who are willing to serve in the military but without bearing arms; therefore, they can serve in the branch of the military services directly dedicated to life saving, such as medical units (OHCHR 2024: parag.5). Absolutist conscientious objectors refuse to cooperate with the authorities in any way and they absolutely reject the authority of the state. Another type of conscientious objectors are alternativists who are agree to participate alternative civilian service but not military duty due to their anti-militarist approach. In this context, the ECHR's recent *Kanatlı v. Türkiye*[XXVIII] decision shows that although the conscientious objector was part of a social movement as an anti-war, anti-militarist conscientious objector, he continued his struggle by making his right to alternative civil service a legal demand.

Gwyn Harries-Jenkins framed conscientious objections similar to strategic litigation process as from the individual conscience to social movement (Harries-Jenkins 1993: 67). Therefore, we are facing a movement that goes beyond the demand for individual rights and cannot be explained with traditional conflict of rights of people over society. In explaining the position of alternative conscientious objectors as a social movement, Harries-Jenkins goes back to 1916 in England and illustrates the organised struggle of alternative conscientious objectors based on the pamphlet prepared by the social movement at that time:

'In the United Kingdom the basis of the individual objection of these alternativists was very clearly expressed in a 1916 leaflet outlining the position of the conscientious objector: "We cannot undertake [such] duties under a military oath which necessitates obedience to all orders and makes us part of the military machine.' (Harries-Jenkins 1993: 71).

In this context, I try to draw the axis of continuities in the legal course of conscientious objection by analysing the decision of *Kanatlı v. Türkiye*[XXIX]. The ruling alone does not constitute the final stage of a conscientious objector's struggle; it shows that a dynamic and expanding struggle for rights, which has been going on for years in the mechanisms of the UN, CoE and the ECHR, is qualitative and directed towards the material essence of the right, even to the extent of one day of military service.

How Is the Kanatlı v. Türkiye Decision the Result of Continuity in the ECHR's Conscientious Objection Jurisprudence?

Since 1966 (*Grandath v. Federal Republic of Germany* 12 Dec. 1966, Reports),[XXX] the Commission's legal decisions have affirmed that the recognition of conscientious objection is left to the discretion of individual Member States. Contracting State is free to decide whether to recognise such a right on the grounds that conscientious objectors are not entitled to exemption from military service. The Commission deemed the case inadmissible, primarily citing Article 4 § 3(b) of the Convention, which exempts "any service of a military character" from the prohibition of forced or compulsory labour and allows for the provision of substitute service for conscientious objectors in countries where they are recognized. This provision clearly indicated that States had the discretion to recognize conscientious objectors and, if recognized, to offer alternative service. Article 9 of the Convention, as specified by Article 4 § 3(b), did not impose an obligation on States to recognize conscientious objectors or to acknowledge their right to freedom of conscience and religion regarding compulsory military service.[XXXI]

After the establishment of the Court, two pioneering decisions in this regard were *Ülke v. Turkey* and *Bayatyan v. Armenia*[XXXII]. In respect of the *Ülke v. Turkey* decision, the Court held that due to the nature of the obligatory military service, the applicant risked an infinite number of prosecution and conviction (Çaltekin 2023: 71). Therefore, there had been a violation of Article 3 of the Convention (prohibition of inhuman and degrading treatment), on the grounds that the legal framework in force did not provide an adequate measure for a person's refusal to perform military service on grounds of his or her beliefs. However, in this decision it is still lacked to recognize and justify such a right, but the significance of the case

was the violation of Article 3 in the context of the treatment to which the person was subjected after declaring his or her conscientious objection.

After all, the *Bayatyan v. Armenia*[XXXIII] decision was a groundbreaking judgment on conscientious objection. Although the Third Section of the ECHR held by a majority that the Convention did not recognize such a right, upon appeal, the Grand Chamber overturned the previous ruling with living instrument doctrine, with one judge dissent opinion, and concluded that there had been a breach of Article 9 of the Convention. It acknowledged that it was diverging from the established case law of the ECHR, which had associated Article 9 with Article 4 § 3 (b) of the Convention, asserting that the latter granted Contracting Parties the discretion to recognize the right to conscientious objection.[XXXIV] This decision was also used in the conscientious objection cases of *Serdar Delice and Enver Aydemir* before the Turkish Courts (Çaltekin 2023: 67-70). However, it did not lead to a legal regulation in Turkey. Moreover another groundbreaking decision which have paved the new ways on conscientious objections is concluded on 12 March 2024 by the Second Section of the ECHR. *Kanatlı v. Türkiye*[XXXV] Here, I will try to understand the continuity between the legal process of conscientious objection and this decision, and how this decision, although not paid much attention to, develops dynamic interpretation and living mechanism doctrines in the context of reserve military service.

This judgment is not only related to conscientious objection, but also more deeper understanding of pacifism since the applicant has not only claimed that he had reasons to refuse the military service on the ground that religion or any other reason, but also, he is activist on the pacifism and anti-militarist movement in Cyprus (OHCHR 2017: parag.57; OHCHR 2019: parag.9).[XXXVI]

It is also important to emphasize how this amount constitutes an abuse of the right in countries that are reluctant to recognize the right to conscientious objection. As will be explained in detail below, countries that do not recognize the right to conscientious objection impose fines on conscientious objectors whom they regard as draft dodgers. However, since these fines are not very high and only aim to reinforce compulsory military service, appeals and applications are rejected on the grounds that the amount of the fine is low and lacks constitutional and personal significance. The United Nations Human Rights Committee (OHCHR 2024: parag.18) has criticized the high fines in countries that do not recognize

conscientious objection, but the problems of access to justice and the right to a fair trial in countries where these fines are low have therefore been ignored. I can also evaluate the ECHR's judgment from some other perspectives. Although conscientious objection is always analysed in the context of Articles 9 and 14, the penal function of the fines and the Article 6 analysis are left incomplete. I would also like to draw attention to this here because the only example in conscientious objection jurisprudence of a violation of Article 6, the right to a fair trial, is *Savda v. Turkey* (para.102-111).[XXXVII] However the reason of the violation of Article 6 is because conscientious objectors, as civilians, had to appear before a court composed exclusively of soldiers. This violation of Article 6 therefore concerns only the independence and impartiality of the military courts and not the restriction of the right of access to a court. However, the *Kanatlı v. Türkiye* judgment and the subsequent individual application decisions of the Turkish Constitutional Court show that the right of access to a court is violated when courts impose a fine or imprisonment below a certain threshold. To prove it empirically, I should draw the attention to the case of *Öztürk v. Germany*[XXXVIII], which is one of the important cases of the criteria set by the ECHR on the right to a fair trial[XXXIX], the ECHR deemed imprisonment in the event of non-payment of a low fine as necessary for the criminal nature of the sanction and opened the protection of Article 6. "The fact that an offence is not punishable by imprisonment is not in itself decisive, since the relative lack of seriousness of the penalty at stake cannot divest an offence of its inherently criminal character (ECHR 2014: parag.10)". Therefore, a problem I encounter in both *Kanatlı v. Türkiye* and in the individual applications before the Turkish Constitutional Court is the nature of the sanction of a low fine or a short period of detention in custody, which hinders access to remedies and the right to a fair trial.

Since the applicant was sentenced to 10 days of prison sentence, which is below a certain threshold, they have the potential to conceal the negative consequences of the failure to recognize the right to conscientious objection. Because both the amount of the fine and the amount of imprisonment are low, it becomes impossible to appeal and to say that the violation is of personal and constitutional importance for the applicant. This is where the importance of the *Kanatlı v. Türkiye* judgment lies, because not only does it show that the essence of the right is violated even in cases where fines and imprisonment do not reach a certain threshold, but it also proves that even one day of reserve service, regardless of the

intensity of compulsory military service, is sufficient for the threshold itself when it comes to some rights. This is why the *Kanatlı v. Türkiye* decision is important, because despite the amount of the fine and the brevity of the detention, the application was not found to lack constitutional and personal significance, thus paving the way for a possible Article 6 application.

How Did the Turkish Constitutional Court Miss the Opportunity to Evaluate the Essence of the Right to Conscientious Objection?

This decision is important as it is the first interpretation of whether reserve military service performed after military service in the peacetime in accordance with the Mobilisation Law of Cyprus is also covered by the right to conscientious objection. The Court of Cyprus must deal with situations where the applicant asserts his right to conscientious objection in the context of reserve officer service and not in the context of compulsory military service. In this connection, it notes the Government's submission that such service, which lasted only one day (but which could be spread over a total of thirty days a year), could not, in the applicant's case to the argument that it does not involve any military activity attracts. Accordingly, the nature of the service in question is a matter for the Court is significantly different from the service it must examine in the context of compulsory military service. The Court observes that the reserve military service shall also be considered forms part of military service.

Kanatlı v. Türkiye has implications beyond the expansion of the scope of the right to conscientious objection, as military service is interpreted to include reserve services. Firstly, the Court reminded that the absence of alternative civilian service in the cases against Turkey was not necessary in a democratic society, and then interpreted this scope by extending it to reserve military service and found a violation.

Another long-term impact of this decision will be in Turkey, going beyond Cyprus. Turkey is a country where the right to conscientious objection is not recognised, but there is no constitutional obstacle to its recognition.[XL] The violation judgements of the ECHR on conscientious objection are being followed, but the Turkish Constitutional Court has not yet

decided on the conscientious objection files before it. The chilling effect of this decision, shall be seen on the individual applications before the Turkish Constitutional Court.

One of the most recent implications of the recent judgement of the ECHR expanding the scope of alternative civilian service in the field of conscientious objection can be evaluated in the context of the recent decision of the Turkish Constitutional Court on this issue. The Constitutional Court of Turkey has not yet made a decision on compulsory military service on the axis of fundamental rights and freedoms.

The trace of this decision latest decision is crucial in terms of showing both how the ECHR judgement was circumvented when necessary and how a practical problem arose that was not considered in the report of the United Nations Human Rights Committee. The applicant, lawyer *Gökhan Soysal*[XLI], is a conscientious objector. The applicant, an anti-war anti-militarist who declared his conscientious objection in the form of forum externum, was issued an administrative fine for not performing his compulsory military service. The applicant filed a lawsuit for the cancellation of the payment order, but his requests were rejected and finally his bank accounts were blocked. The applicant submitted his declaration of conscientious objection to the Turkish Constitutional Court and his application to the Constitutional Court on the basis of freedom of religion and conscience and the right not to be discriminated against was rejected on the grounds that the fine in question did not result in a constitutionally significant diminution of the applicant's right to property. However, the application of a lawyer[XLII] who had been subjected to disciplinary sanctions for exercising his right to conscientious objection was found to lack constitutional and personal significance as the monetary amount of the disciplinary sanction was quite low at the time of writing, and the Turkish Constitutional Court did not use the opportunity to make an assessment on the merits of the right to conscientious objection.[XLIII] At this point, an analysis based only on the amount of the fine provides an escape manoeuvre for the courts by preventing the entry into the merits of the right. At the time of writing, the Turkish Constitutional Court has not ruled on the merits of any of the pending conscientious objection applications before it.

Conclusion

The main reason why I am trying to analyse this decision is that I think it is a precedent for showing the progress made by movements demanding the right to conscientious objection at both the global and local level. Because in this way, it becomes possible to see beyond the doctrine of the state's discretionary power or the discussion of compulsory military service as a limitation of the individual in terms of time and space. It is also important to note that the ECHR did not disregard the state's claim that the applicant was politically engaged and motivated, saying that this did not destroy the essence of the right. Apart from this, I conclude that the judgment is also instructive in that it recognizes that the issue is a matter of ethical and conscientious debate, even if it lasts for a day (Connection e.V. 2024a: 6; 2024b: 16-21).[XLIV]

This judgment is important not only for enforcement of the ECHR's judgments but also for the fulfilment of the standards of the Committee of Ministers of the Council of Europe, which is why it is addressed to a country that has ignored to provide structural remedies for violation judgments on the right to conscientious objection.

In analysing this decision, I can list the following three elements that develop my perspective on conscientious objection: i. The main issue regarding conscientious objection is not only the conflict of rights and the prioritization of individual interests over social ones, but also the evaluation of it as a social movement on the axis of conscience claims; ii. The non-recognition of the right to conscientious objection, which imposes a one-day military service and negligible obligation, and the filing of politically motivated applications do not affect the endogenous limits of the right and the importance should be given to the weight of the conscientious right, not the weight of the obligation by states; iii. In cases where the sanction for breach of the obligation does not reach a certain threshold due to low fines and short periods of detention, the violation of Article 6 in terms of access to court should be taken into account as well as Article 9. In reaching these three conclusions, I have used both the ECHR judgments, the UNHRC judgments, which are also used in these judgments, and two strategically well-structured examples, the South Korea and Columbia judgments, as examples. In the light of all these developments, the right to conscientious objection should be constructed as a right beyond a conflict between the individual and society, but

endogenous rights independent from obligations, discretionary power of the States and whether the conscription is reserved or core service.

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I "By way of introduction, the Court found that the facts alleged by the applicant - not established by the parties - fell within Turkey's "jurisdiction" for the purposes of Article 1 of the Convention and that the respondent State was therefore under an obligation (*Cyprus v. Turkey* [GC], no. 25781/94, § 77, ECHR 2001-IV, *Djavit An v. Turkey*, no. 20652/92, §§ 18-23, ECHR 2003-III and *Boyacı v. Turkey* (n.k.), no. 36966/04, § 31, 23 September 2014)." *Kanatlı v. Türkiye*, Application No 18382/15, Merits and Just Satisfaction, 12 March 2024, parag.25. See also effective control doctrine: *Demopoulos et al. v. Turkey*, Application Nos 46113/99; 3843/02; 13751/02; 13466/03; 10200/04; 14163/04; 19993/04; 21819/04, Merits, 01 March 2010, parag.17, 27, 28.; *Loizidou v. Turkey*, Application No 15318/89, Merits and Just Satisfaction parag.56.) Therefore all the domestic law in this decision is referring the domestic law in TRNC unless otherwise stated.

II Elster and Sørensen draw attention why very little importance has been to the women conscientious objectors. They concluded that women conscientious objectors posits *militarism as a contrast to feminist values and a contradiction to women's interests in society.* They also refuted the idea that military service brings emancipation for women because it gave women access to high positions. Women's Conscientious Objection as a Strategy Against Militarism, 16 April 2010, Ellen Elster and Majken Jul Sørensen, War Resisters' International, https://wri-irg.org/en/story/2010/womens-conscientious-objection-strategy-against-militarism (Last Accessed 20 March 2025)

III For instance ECHR's decision in *Erçep v. Turkey* (2011) shows the impact of UNHRC's earlier views on conscientious objection. *Erçep v. Turkey*, Application No. 43965/04, Merits and Just Satisfaction, 22 Nov. 2011.

IV Concise Oxford English Dictionary Main Edition Twelfth Edition Oxford Languages, term "conscience"

VCCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion), https://www.refworld.org/legal/general/hrc/1993/en/13375, (Last Accessed 01 Jan. 2025)

VI Article 4: Freedom from slavery and forced labour

VII Article 9: Freedom of thought, conscience and religion

VIII *Kanatlı v. Türkiye*, Application No 18382/15, Merits and Just Satisfaction, 12 March 2024.

IX OHCHR 2024: Report of the Office of the United Nations High Commissioner for Human Rights, Conscientious objection to military service, Dated 23 April 2024, Paragraph 18.
https://documents.un.org/doc/undoc/gen/g24/058/67/pdf/g2405867.pdf (Last accessed 01 Dec. 2024)

X Around 16,000 men refused to take up arms or fight during the First World War for any number of religious, moral, ethical or political reasons: https://www.iwm.org.uk/history/voices-of-the-first-world-war-conscientious-objection and Voices of the First World War: Conscientious Objection: https://www.iwm.org.uk/history/voices-of-the-first-world-war-conscientious-objection (Last accessed: 20 Dec. 2024).

XI Campaigning for CO: Strategic Litigation, English Version 23 January 2022, https://www.youtube.com/watch?v=XdCOo4c8llM , Last accessed 01 September 2024.

XII Campaigning for CO: Strategic Litigation, English Version 23 January 2022, https://www.youtube.com/watch?v=XdCOo4c8llM , Last accessed 01 September 2024.

XIII As stated in the article 18/1 of the ICCPR "Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching."

XIV The Amnesty International Opinion shows us also Jehova's Witnesses. According to them, more than 19,300 conscientious objectors have been imprisoned in South Korea over the last 60 years.

XV This is not the only case of UNHRC's views has an affect on ECHR. *Atasoy and Sarkut v. Turkey,* Communications Nos. 1853/2008 and 1854/2008 by UNHRC is also importance since UNHRC found violation of article 18 against Turkey and the judgment has an influence on the cases before ECHR such as Teliatnikov v. Lithuania Application No . 51914/19, Mertis and Just Satisfaction, 07 Sep. 2022, para.45.

XVI Despite of the fact that the UNHRC's views do not have a binding authority over the ECHR, it functioned as persuasive authority as I can show *Bayatyan v. Armenia* judgment of the ECHR, paragraphs 63, 85, 87.

[xvii] *Bayatyan v. Armenia* Application No 23459/03, Merits and Just Satisfaction, 7 July 2011.
[xviii] Campaigning for CO: Strategic Litigation, English Version, https://www.youtube.com/watch?v=XdCOo4c8llM 23 January 2022, between seconds 16'-33' , Last accessed 30 Aug. 2024. They have been supported by the various human rights lawyers who are giving free arguments on behalf of Jehova's Witnesses Conscientious Objectors to the courts while the main goal is to recognition of the right to conscientious objection as well as the improvement on the conditions of the objectors in prison, including publicizing the issue in Korea. They had three constitutional petitions were made in 2004 and 2011 were not recognized and the latest in 2018, the right to conscientious objection is finally recognized by the Constitutional Court and Supreme Court.
[xix] https://www.washingtonpost.com/world/asia_pacific/south-korea-releases-58-conscientious-objectors-after-landmark-ruling-on-military-service/2018/11/30/9980686a-f4a2-11e8-80d0-f7e1948d55f4_story.html[last accessed 20 Dec. 2024]
[xx] South Korea: Drop charges against first conscientious objector to refuse alternative service, Amnesty International, 22 August 2022, https://www.amnesty.org/en/latest/news/2022/08/south-korea-conscientious-objector-military-service-hye-min-kim/, visited 01 September 2024.
[xxi] The choice of applying to the Working Group was important because the United Nations Human Rights Committee's decision recognizing conscientious objection as a right under Article 18 of the International Covenant on Civil and Political Rights was not binding on the Republic of Korea. The Court was also told that there was no rule of customary international law recognizing the right to conscientious objection. When the Working Group was applied, court proceedings were ongoing in Korea: Working Group on Arbitrary Detention, Opinion No 40/2018 concerning Jeong-in Shin and Seung-hyeon Baek (Republic of Korea), 20 August 2018, A/HRC/WGAD/2018/4
https://documents.un.org/doc/undoc/gen/g18/277/36/pdf/g1827736.pdf
[xxii] *Erçep v. Turkey* Application No 43965/04, Merits and Just Satisfaction, 22 Nov. 2011; *Savda v. Turkey* Application No 23459/03, Merits and Just Satisfaction, 07 July 2011; *Adyan et al. v. Armenia Application No 75604/11, Merits and Just Satisfaction, 12 Jan. 2018*; *Teliatnikov v. Lithuania Application No . 51914/19, Mertis and Just Satisfaction, 07 Sep. 2022*; *Kanatlı v. Türkiye* Application No 18382/15, Merits and Just Satisfaction, 12 March 2024.
[xxiii] Working Group on Arbitrary Detention, Opinion No 40/2018 concerning Jeong-in Shin and Seung-hyeon Baek (Republic of Korea), 20 August 2018, A/HRC/WGAD/2018/40.
[xxiv] Ihntaek Hwang, Fairness or Failure? The Punitive Nature of South Korea's Alternative Service, BYU Law: International Center for Law and Religion Studies, 18 November 2024, https://talkabout.iclrs.org/2024/11/18/punitive-nature-of-south-koreas-alternative-service/
[Last accessed: 20.12.2024)
[xxv] SunJu Lee, Conscientious objection in Colombia and South Korea, https://thirdwaycafe.com/conscientious-objection-in-colombia-and-south-korea/
[xxvi] After the favourable strategic litigation process that Korea received from the Human Rights Committee, the judicial impact was seen in the Colombian Constitutional Court.
[xxvii] On 10 July 2024, the War Resisters' International also organized a webinar on the OHCHR report on the right to conscientious objection to military service in which I participated and expressed my comments and criticisms to the report that I have thought there was a gap between practice and theory to the writer of the report. See also: Report of the Office of the High Commissioner for Human Rights, Civil and Political Rights, Including the Question of Conscientious Objection to Military Service, supra, note 1, at para. 38(h).
[xxviii] *Kanatlı v. Türkiye* Application No 18382/15, Merits and Just Satisfaction, 12 March 2024.
[xxix] *Kanatlı v. Türkiye* Application No 18382/15, Merits and Just Satisfaction, 12 March 2024
[xxx] *Albert Grandath v. the Federal Republic of Germany*, Report of the Commission, Application No 2299/64, 12 December 1966, No. https://hudoc.echr.coe.int/eng?i=001-73650 , Last accessed 01 Sep. 2024.
[xxxi] Same approach followed in the decisions such as *X. v. Germany* (no. 7705/76), *N. v. Sweden* (no. 10410/83), *Peters v. the Netherlands*.
[xxxii] *Bayatyan v. Armenia* Application No 23459/03, Merits and Just Satisfaction, 7 July 2011.
[xxxiii] *Bayatyan v. Armenia* Application No 23459/03, Merits and Just Satisfaction, 7 July 2011.
[xxxiv] After Bayatyan decision, the Court ruled other decisions precluding that there have been violations on article 9, article 3 and article 6/1 referred to conscientious objections: *Feti Demirtaş v. Turkey* Application No 5260/07, Merits and Just Satisfaction 12 January 2017; *Buldu et al. v. Turkey* Application No 14017/08, Merits and Just Satisfaction 03 June 2014; *Savda v. Turkey* Application No 42730/05, Merits and Just Satisfaction 12 June 2012; *Tarhan v. Turkey* Application No 9078/06, Merits and Just Satisfaction 17 July 2012.
[xxxv] Before analysing, it should be noted that the claimant is a citizen of the Turkish Republic of Northern

Cyprus, and the incident took place in Cyprus. However, due to the effective control of the Republic of Turkey in the Northern Cyprus and the fact that it is not recognised as a state, the applications are filed against Turkey and the violation decision is rendered against Turkey. *Kanatlı v. Türkiye*, Application No 18382/15, Merits and Just Satisfaction, 12 March 2024.

[xxxvi] The lack of recognition of conscientious objection in the Turkish-controlled Turkish Republic of Northern Cyprus has already been pointed out by both the Special Rapporteur on freedom of religion and belief and the United Nations General Assembly.

[xxxvii] *Savda v. Turkey* Application No 42730/05, Merits and Just Satisfaction 12 June 2012; Tarhan v. Turkey Application No 9078/06, Merits and Just Satisfaction 17 July 2012**,**

[xxxviii] *Öztürk v. Germany* Application No 8544/79 , Merits and Just Satisfaction 21 Feb. 1984, parag.53.

[xxxix] Deriving from the Engel criteria of Case of *Engel et al. v. the Netherlands* Application nos 5100/71; 5101/71; 5102/71; 5354/72; 5370/72, Merits and Just Satisfaction 8 June 1976.

[xl] Although Article 72 of the Turkish Constitution does not prevent the right to conscientious objection from being interpreted and recognized in line with international standards and obligations, the Military Service Law No. 1111 of 21 June 1927 states that "*Military service is compulsory for every male citizen of the Republic of Turkey."* Another norm on conscription in Turkish law is the *Article 318/1 of the Turkish Penal Code*. This norm regulates the offense of *"alienating the public from military service"* and *Article 72 of the Constitution*, which regulates national service, states that *"National service is the right and duty of every Turk. The manner in which this service is to be performed or deemed to have been performed in the Armed Forces or in the public sector shall be regulated by law."* This provision narrows the scope of the provision granting initiative and discretion to the state.

[xli] I personally followed and obtained this file from the applicant-lawyer.

[xlii] Turkish Constitutional Court's Inadmissibility Decision, Application No: 2022/52753, 10/6/2024,

[xliii] Moreover, on June 13, 2024, the Committee of Ministers of the Council of Europe issued its latest interim decision on the Ülke Group cases monitored in Turkey concerning the right to conscientious objection, rejecting Turkey's arguments that Turkey also implements paid military service in response to conscription: Interim Resolution CM/ResDH(2024)126 Execution of the judgments of the European Court of Human Rights
https://search.coe.int/cm/eng#{%22CoEIdentifier%22:[%220900001680b05d3e%22],%22sort%22:[%22CoEValidationDate%20Descending%22]}

[xliv] In terms of strategic litigation, the positive and progressive effects of the judgment can be seen in the fact that Connection e.V., *the international conscientious objection solidarity movement*, included the *Kanatlı v. Türkiye* judgment in its submission to the 142nd session of the United Nations Human Rights Committee and the 49th Universal Periodic Review, subsequently September and October 2024.

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