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A Socio-Legal Analysis of the Right to  
Conscientious Objection

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**Demet Aslı Çaltekin**

# A Socio-legal Analysis of the Right to Conscientious Objection to Military Service

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Demet Aslı Çaltekin

Thesis submitted for the degree of Doctor of Philosophy

School of Law

Durham University

2017

## **Abstract**

Arguably, existing literature has hitherto offered no socio-legal analysis of conscientious objection in the context of Turkey. Most studies have focused either on the legal or on the sociological aspects of conscientious objection. As such, the impacts of social norms on the legal process remain largely neglected. This research, therefore, offers a socio-legal analysis of conscientious objection, with a particular focus on the domestic law's compatibility with international standards and the impacts of militarism on society. It takes interviews as a method to explore the cultural tools maintaining the compulsory military service. The findings of the research illustrate that the military's influence is the product of Turkey's specific cultural, social, and political structures.

**Key words:** Conscientious objection, civil disobedience, anti-militarism, gender.

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## **List of Abbreviations**

European Convention on Human Rights	ECHR
European Court of Human Rights	ECtHR
Israel Defence Forces	IDF
International Covenant on Civil and Political Rights	ICCPR
Justice and Development Party	AKP
Lesbian, Gay, Bisexual, and Transgender/ Transsexual	LGBTT
National Security Council	NSC
The North Atlantic Treaty Organisation	NATO
Turkish Armed Forces	TAF
United Nations	UN
Universal Declaration of Human Rights	UDHR
War Resister's International	WRI

## **Declaration**

I declare that this thesis has been composed solely by myself and that it has not been submitted, in whole or in part, in any previous application for a degree. Except where states otherwise by reference or acknowledgment, the work presented is entirely my own.

## **Copyright**

The copyright of this thesis rests with the author. No quotation from it should be published without the author's prior written consent and information derived from it should be acknowledged.

## Acknowledgements

I owe a deep debt of gratitude to my first supervisor Ian Leigh for the fastidious attention he showed. He has extraordinarily been supportive over the years and continued to inspire me with many thoughtful insights. His particularly insightful and helpful suggestions enlarged the project and enhanced my understanding. I would also like to extend my thanks to my second supervisor Deirdre MacCann for her support and to Anashri Pillay and Tufyal Choudhury for the comments they offered as part of the annual progress report at Durham University.

I would also like to express my thanks to Majken Jul Sørensen and Jørgen Johansen for inviting me to use their library in Irene Publishing's Writers' Residence in Sweden while developing my interview questions. I cannot imagine more gracious hosts who efficiently provided assistance than them. I also owe my gratitude to all my participants for sharing their experiences with me. Without their generous contribution this research would not have followed on the path it took.

In Durham, where this doctoral research was written between 2013 and 2017, I was privileged to befriend the individuals whose many-faceted skills have been a source of inspiration and cheerful support. All of them contributed to this project in different ways. Some have read and commented on portions of writings whereas others have offered me the comfort of companionship. It would be impossible to name them all, but a few, indeed, cannot escape mention. Vili Grigorova, Semra Akay, Esma Okur, Arin Mizouri, Fahad Alhammadi, Eszter Belteki, Miao Han, Raihana Ferdous. I am also thankful to my friends back home in Turkey for their cheerful support, namely Derya Can Oguz, Sena Selin Batmazoglu, Seda Evrim Altun, Pınar Karaağaç, Burak Yünoğlu, Utku Karacelebi.

I have incurred other debts of various kinds. I was always blessed to find a caring and reassuring support in my family. I cannot imagine more caring sisters than Filiz, Canan, and Hacer. Without their encouragement, I would not have pursued a doctoral degree. I am also grateful to Yazid Haroun for finding ways to make me laugh during stressful times of writing and for being amazingly patient and supportive both academically and emotionally.



I am also grateful to the Turkish Ministry of Education for sponsoring the project.

This work is dedicated to Deniz(s) and Cinar, my little nephews, whose smiles warmed my heart and enabled me to continue working.

# Chapter 1

Beware the adjective “natural.” Beware “trivial.”<sup>1</sup>

## Introduction

### 1.1 Motivations

Militarism is omnipresent; it invades our daily life, our childhood memories, toys, and language. I recall a childhood memory of a friend who was dressing like a soldier and I were travelling from my hometown to Istanbul, giving a military salute to the officer who stopped the bus for a random ID check. I consider this memory as a sign of a normalisation of militarism that granted the military power to interfere in daily life and gain societal consent.

Growing up in a country that normalises the military’s presence in our daily lives encouraged me to question the militarisation of society. As a researcher, I, therefore, started asking why the presence of the military in our daily life is unquestionable. First, I studied, in my Master thesis, the limitations on the right to freedom of expression on the grounds of maintaining national security, so to question the impacts of militarism on individuals’ freedom. My interest to investigate such impacts further led me to investigate the social norms normalising the military’s dominant presence. The first motivation for working on conscientious objection pertains, therefore, to my desire to understand how militarism is normalised.

Conscientious objection allows for a detailed examination of the issues I have been observing after I have developed an inquisitive attitude towards social norms. It has also significant repercussions for gender studies, antimilitarism, criminalisation of dissenters, and freedom of expression. As such, working on conscientious objection allowed me to pursue my interest in investigating how the law influences people’s lives and exploring the sociological consequences of the lack of the legal recognition.

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<sup>1</sup> Cynthia Enloe, *Globalization and Militarism: Feminists Make the Link* (Rowman & Littlefield 2016) 25.

The second rationale for the present research, therefore, is based on my intention to engage both academia and law with the real life.

Even though conscientious objection had gained momentum and some academic studies appeared (see section 1.3,) conscientious objection still cannot be debated in public and academic spheres in Turkey. Discussions on conscientious objection mostly remain within the alternative media because studies on conscientious objection are limited. Further studies are needed to bring the conscientious objection movement to both the academic and the public attention, and open debates on both spheres to raise awareness on the subject, break taboos, and touch on an issue that remains unchallenged. This aim constitutes the third underlying reason behind my interest in choosing this topic.

## **1.2. The Research Aims and Questions**

The present research aims to analyse the right to conscientious objection in the context of the right to freedom of thought, conscience, and religion. It also intends to reveal the problematic aspects of both the international and the domestic laws. In Turkey's case, the research argues that although the domestic law in Turkey is incompatible with the international law that recognises the right to conscientious objection as a human right, opening debates only on the legal dimensions of the right to conscientious objection is insufficient to analyse the military's influence on society. In line with this argument, the research also aims to shed light on the social factors contributing to the lack of the legal recognition of the right to conscientious objection at the national level. Therefore, it aims to examine the right to conscientious objection to the military service in Turkey from a socio-legal perspective.

As it appears, the aim of the research is twofold: to provide a legal analysis of the right to conscientious objection, and to examine the background of the lack of an explicit recognition of the right at the national level. Concerning the first aim, the questions that arise are as follows:

- 1) How does the conscription system contribute to the militarisation of society?
- 2) How do states justify the conscription system and why people follow the law, which obliges them to be involved in killing and dying?

- 3) What is the international law's approach to the right to conscientious objection and the conflict between law and conscience?

In line with Robert Yin's argument that "case studies are the preferred strategy when "how" or "why" questions are being posed,"<sup>2</sup> Part II, which adopts a case study method to examine conscientious objection from a Turkish context, asks the "how" and the "why" questions. Concerning the second aim, the questions that arise are as follows:

- 1) *Why* is the presence of the military in our daily routine unquestionable and *how* is the militarisation of society normalised in the Turkish society?
- 1) *Why* does Turkey insist on the non-recognition of the right to conscientious objection?
- 2) *How* are those pursuing their conscience affected by such non-recognition?

### **1.3. The Original Contribution to Knowledge**

The conscientious objection movement in Turkey has gained momentum, and some academic studies have recently been conducted. It is noteworthy to provide brief information on how these current studies approach the issue and how the present research differs from them. For example, Eda Acara's thesis "A Case Study on the Discourse of Women's Conscientious Objection in Turkey" explores militarism and nationalism, with a particular focus on gender norms. This thesis addresses militarism and nationalism through the lenses of women conscientious objectors.<sup>3</sup> Fatma Oya Aktaş's published a thesis entitled "Being a Conscientious Objector in Turkey: Challenging Hegemonic Masculinity in a Militaristic Nation-State." This thesis approaches conscientious objection as a tool used to resist hegemonic masculinity. It approaches the refusal of the duty of citizenship—the conscription—as a rejection of imposed masculinity and gender stereotypes.<sup>4</sup> Ebru Sevgili's thesis "The Structure-Agency Problem in Sociological Theory and Conscientious Objection" is reserved for three years; therefore, the only information available is the abstract of the thesis. The

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<sup>2</sup> Robert K Yin, *Case Study Research: Design and Methods* (Sage Publications 1994).

<sup>3</sup> Eda Acara, 'A Case Study on the Discourse of Women Conscientious Objectors in Turkey' (Saint Mary's University 2010).

<sup>4</sup> Fatma Oya Aktaş, *Being a Conscientious Objector in Turkey: Challenging Hegemonic Masculinity in a Militaristic Nation-State* (2014).

thesis examines chiefly the philosophical roots of objection.<sup>5</sup> As it appears, these studies do not touch on the legal aspects of conscientious objection.

In the legal arena, Özgür Heval Çınar's books *The Right to Conscientious Objection and Turkey's Obligations under International Human Rights Law*<sup>6</sup> and *Conscientious Objection to Military Service in International Law*<sup>7</sup> provide a detailed analysis of the right to conscientious objection. His works investigate the international standards on the legal recognition of the right to conscientious objection and also offer domestic interpretations of the right to conscientious objection. However, these studies inspect the issue only from the legal perspective and attempt to explain the militarisation of society using secondary sources. As Hadar Aviram observes in her review of Çınar's work:

I found myself, however, wishing for considerably less doctrine and considerably more socio-legal analysis of sources for Turkey's noncompliance. Çınar's discussion of nation building and militarization is based on secondary sources, which was disappointing given that it was the most interesting part of the book.<sup>8</sup>

As it appears, some studies focused on conscientious objection only from the legal perspective whereas others examined gender and militarism and added to the literature a feminist understanding of conscientious objection. In direct opposition to the prevailing conceptualisation of conscientious objection in Turkey, the present research acknowledges "the absence of sociological and anthropological insight in the law and literature field;"<sup>9</sup> therefore, it studies the legal problem by considering its sociological aspects. In line with that, it adopts interviews as a primary data collection method in order to provide empirical evidence to the research questions.

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<sup>5</sup> Ebru Sevgili, 'The Structure-Agency Problem in Sociological Theory and Conscientious Objection' (Hacettepe University 2015).

<sup>6</sup> Özgür Heval Çınar, *The Right to Conscientious Objection to Military Service and Turkey's Obligations under International Human Rights Law* (2014).

<sup>7</sup> Özgür Heval Çınar, *Conscientious Objection to Military Service in International Human Rights Law* (Palgrave Macmillan 2013).

<sup>8</sup> Hadar Aviram, 'Book Review: The Right to Conscientious Objection to Military Service and Turkey's Obligations under International Human Rights Law by Özgür Heval Çınar' <<http://councilforeuropeanstudies.org/critcom/the-right-to-conscientious-objection-to-military-service-and-turkeys-obligations-under-international-human-rights-law/>> accessed 10 October 2016.

<sup>9</sup> Dermot Feenan, 'Foreword: Socio-Legal Studies and the Humanities' (2009) 5 *International Journal of Law in Context* 235, 237.

Since the lack of the socio-legal inquiry in the field motivated this research, it is worth elaborating more on the rationale behind conducting a socio-legal analysis of the right to conscientious objection. As Dermot Feenan argues “one of the defining characteristics of socio-legal studies is to locate law in context.”<sup>10</sup> Similarly, Phil Harris suggests, “empirically, law is a component part of the wider social and political structure, is inextricably related to it in an infinite variety of ways, and can therefore only be properly understood if studied in that context.”<sup>11</sup> Further, in socio-legal studies, “the goal is to analyse the social, political, cultural, and economic forces that shape the formulation of law and the design and function of legal institutions.”<sup>12</sup> Therefore, the present research intends to reveal the social and cultural circumstances influencing the law and contextualise the law on conscientious objection and the compulsory military service within socio-legal studies.

With this aim in mind, the research offers a socio-legal analysis of the reasons behind Turkey’s insistence on not complying with international standards and not recognising the right to conscientious objection. Further, the research approaches problems pertaining to the current legal framework of the country on military service from the experiences of objectors with the militarist system. This is just to provide a detailed analysis of the central research question: *how* does the lack of the legal recognition affect individuals.

To sum up, due to the lack of sociological literature on the military and its impacts on society, this research examines civil-military relations from both legal and sociological perspectives. It adds to the existing literature a socio-legal study on the right to conscientious objection in Turkey by encapsulating the characteristics of the Turkish society and exploring civil-military relations from a sociological viewpoint. It, therefore, scrutinises the legal aspects of the problem by taking into account the sociological background behind the lack of the legal recognition.

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<sup>10</sup> *ibid* 235.

<sup>11</sup> Phil Harris, ‘Curriculum Development in Legal Studies’ (2010) 20 *The Law Teacher* 110, 112.

<sup>12</sup> Robert Kagan, ‘What Socio-Legal Scholars Should Do When There Is Too Much Law to Study’ [1995] *Journal of Law and Society* 140, 143.

## 1.4. Research Design and Methodology

### 1.4.1. Qualitative Case Study

Yin defines a case study as “an empirical inquiry that investigates a contemporary phenomenon (the ‘case’) *in depth* and within its *real-world* context [emphasis added.]”<sup>13</sup> Similarly, Martyn Denscombe argues, “the case study approach works best when the researcher wants to investigate an issue *in depth* and provide an explanation that can cope with the complexity and subtlety of *real life* situation [emphasis added.]”<sup>14</sup> These definitions illustrate two aspects of the case study as a method. Concerning the first one, they highlight that case studies enable the researcher to examine the problem by touching on real-life experiences. Concerning the second one, they focus on the fact that it gives room to investigate the phenomenon in details. Such competency to examine the problem at a micro level constitutes the strength of the case study.

It is worth mentioning that exploring “the subtleties and intricacies of complex social situations”<sup>15</sup> also invites some scepticism about the case study’s findings.<sup>16</sup> One can respond to such concerns in two ways. 1) To *defeat the sceptical* question, which is “how can you generalize from a single case?” Yin focuses on “analytic generalization and the role of theory in seeking to generalize from case studies.”<sup>17</sup> He argues that “the preferred manner of generalizing from case studies and case study evaluations is likely to take the form of making an analytic or conceptual generalization, rather than of reaching for a numeric one.”<sup>18</sup> In a similar vein, it is argued that rather than seeking for statistical generalisations, one should evaluate “to what extent could the findings be transferred to other instances?”<sup>19</sup> 2) Contrary to Yin’s approach, some qualitative researchers respond to such concerns by arguing that “it is not their business to make such generalisations. They argue that the findings from things like

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<sup>13</sup> Robert K Yin, *Case Study Research: Design and Methods* (Fifth edition, SAGE 2014) 16.

<sup>14</sup> Martyn Denscombe, *The Good Research Guide for Small-Scale Social Research Projects* (fourth edition, McGraw-Hill/Open University Press 2010) 62.

<sup>15</sup> *ibid* 60.

<sup>16</sup> *ibid*.

<sup>17</sup> Robert K Yin, ‘Validity and Generalization in Future Case Study Evaluations’ (2013) 19 *Evaluation* 321, 321.

<sup>18</sup> *ibid* 327.

<sup>19</sup> Denscombe (n 14) 301.

case studies are worthwhile in their own right simply as a depiction of the specific, possibly unique, situation.”<sup>20</sup>

The present research takes the position that the primary aim of the qualitative research is not to provide *statistical* generalisations as it examines relatively a small number of conscientious objectors. The case instead seeks to provide an empirical background to the theory. The findings can empirically enhance the theory adopted by the research.<sup>21</sup> The case study can be considered as “the content or ‘map’ of the range of views, experiences, outcomes or other phenomena under study and the factors and circumstances that shape and influence them, that can be inferred to the researched population.”<sup>22</sup>

In the present research, Turkey as the only country that has not recognised the right to conscientious objection among members of the Council of Europe is chosen as a case study for an in-depth examination of conscientious objection. Since the country still adopts the conscription system, challenges to militarism and gendered relations occur particularly by refusing the compulsory military service. Contrary to the narrow understanding of conscientious objection, which reduces objectors’ refusal to a request directed at gaining an exemption from military service, objectors have much broader motivations, which include bringing about a change in the gendered and the militarised society and questioning the militarisation of everyday life. That is to say, conscientious objection becomes a political tool used to challenge the militarisation of society. For this purpose, the research aims to reveal the reasons conducive to objection. In this respect, analysing the conscientious objection movement in Turkey affords empirical evidence and real-life examples of militarism, gender norms, and civil disobedience.

#### **1.4.2. Data Collection**

The present research consists of two parts. The first part provides a theoretical framework. The second part adopts a qualitative case study method.<sup>23</sup> It embraces an

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<sup>20</sup> *ibid.*

<sup>21</sup> Yin, *Case Study Research* (n 13) 40–41.

<sup>22</sup> Jane Ritchie and Jane Lewis (eds), *Qualitative Research Practice: A Guide for Social Science Students and Researchers* (Sage Publications 2003) 267.

<sup>23</sup> See Chapter 8 for case study design.



empirical approach and library-based information. That is to say, the research consists of a mixture of primary and secondary sources.<sup>24</sup>

With regards to the secondary sources, official documents such as legal instruments and case law were examined. For instance, to explore the legal position of the right to conscientious objection, a detailed analysis of a range of legislation and a case-law on the right to freedom of thought, conscience, and religion are provided. Although this research focuses on the European Court of Human Rights' and Human Rights Committee's case-law, Turkey's domestic courts' case-law and the relevant domestic legislation are examined in order to show whether Turkey complies with the international obligations. This secondary evidence is used to argue that there is a common belief in the international society to interpret the right to freedom of thought, conscience, and religion as encompassing the right to conscientious objection.

The secondary source is also based on references to library-based information and different organisation's studies which have been published in this area. An analysis of literature is conducted in order to reflect the general understanding towards conscientious objection and its relation to gender, militarism, and civil disobedience. In other words, the research involves discussions of academic literature on militarism and examines the problems pertaining to the lack of the explicit legal recognition of the right to conscientious objection.

With regards to the primary sources, the research adopts a qualitative case study approach in which interviews are chosen as the primary data collection method. The interviews are proposed to show the *sociological* background of the legal problem that is the main focus of the project. As primary evidence, the interview method for this research is the most appropriate for the following reasons. First, "the aims of qualitative research are generally directed at providing an in-depth and interpreted understanding of the social world, by learning about people's social and material circumstances, their experiences, perspectives and histories."<sup>25</sup> In other words, the importance of qualitative research lies in the researcher's interest in understanding the

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<sup>24</sup> Although legislation and case law are the primary sources of legal studies, in this research the use of "primary" and "secondary" sources differs from legal scholarship. The "primary source" refers to interviews (data collected by the researcher).

<sup>25</sup> Ritchie and Lewis (n 22) 267.

matter by analysing it from the perspective of its actors and also by taking into account the cultural motivations behind their understanding. Second, the real strength of qualitative research is that “it has its own special approach to the collection and analysis of data.”<sup>26</sup> In the present research, semi-structured interviews will be the primary data collection method to analyse the connection between social movements and the law. By adopting an empirical approach, the research investigates the impacts of the law on society from a wider context. That is to say, interviews are intended to contextualise the law from a sociological view of point.

To respond to concerns on the generalisability of small samples as discussed in section 1.4.1, it is worth noting that the contribution of a case study on social theories depends on its potential to elaborate on the social factors behind the matter and how they shape the social behaviour of participants.<sup>27</sup> In the qualitative research, one of the main reasons is not only to understand the particular events, but also examine their impacts on participants’ lives and how participants make sense of such events. The perspective of participants is considered as “part of the reality” that a researcher wants to understand. Furthermore, the qualitative research involves analysing relatively small samples rather than large samples to make sense of the “unique circumstances” of the cases.<sup>28</sup> In this research, although the findings of interviews with conscientious objectors in Turkey cannot be statistically generalised, they provide empirical answers to the main research questions as put forward in section 1.2.

### **1.5. The Overview of the Thesis**

Having explained the thesis’s central aims and questions in the previous sections, the following section will provide an overview of the research.

As shown in section 1.2, this research aims to examine the right to conscientious objection in the context of the right to freedom of thought, conscience, and religion and also explore the social consequences of the lack of legal recognition. To achieve these aims, the thesis is composed of two main parts.

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<sup>26</sup> Martyn Denscombe, *The Good Research Guide: For Small-Scale Social Research Projects* (2nd ed, Open University Press 2003) 267.

<sup>27</sup> Ritchie and Lewis (n 22) 267.

<sup>28</sup> Leonard Bickman and Debra J Rog (eds), *The Sage Handbook of Applied Social Research Methods* (2nd ed, SAGE 2009) 221.

Part I of the thesis sets the theoretical framework of the thesis and consists of four chapters. After this introductory chapter, chapter 2 provides a historical analysis of the development and the militarisation of mass armies in Europe. Particular focus will be paid to the process of militarising minds. It seeks to discover the roots of the problem at the global level.

Chapter 3 examines the phenomenon of resistance to forced recruitment. It approaches conscientious objection as a tool used to challenge the militarisation of society. The primary aim of this chapter is to provide a general background on conscientious objection and its relationship with civil disobedience. In this respect, it begins with a general explanation of how conscientious objection is understood in this research. After providing the general definition of conscientious objection, the chapter examines the motivations of conscientious objectors in depth and discovers the philosophical roots of conscientious objection. Consequently, this chapter intends to answer the question of why are objectors refusing to join the army?

Having examined the refusal of the militarist structures and conscription and provided the sociological background of the issue in the preceding chapters, chapter 4 explores the link between gender and militarism, and chapter 5 analyses how the international legal system addresses conscientious objection. In this respect, chapter 5 examines the legal recognition of conscientious objection under Article 9 of the European Convention on Human Rights (ECHR) and Article 18 of the International Covenant on Civil and Political Rights (ICCPR.) In order to clarify the scope of the right to conscientious objection, this chapter examines the right to religion, thought, and conscience: explores the legal definition of religion, and answers the questions of what counts as a religion and as a manifestation of belief. In other words, it attempts to answer whether the right to religion, conscience, and thought constitutes a legal ground for claiming the right to conscientious objection.

Part II of the thesis examines Turkey as a case study. Turkey, as a state that attributes vital importance to national security, is chosen for an in-depth examination of the civil-military relations and human right violations associated with the non-performing of the military service. The second part consists of three chapters.

Chapter 6 focuses on the role of the Turkish Armed Forces on politics and the everyday life. The chapter scrutinises the institutionalised power of the military and the role of the military in shaping society through soft means. It focuses on the cultural aspects of the military service and also on the social practices, and beliefs, which view the military as a sacred institution. It also studies the role of the army in the political and the educational systems. Precisely, the chapter seeks to examine the roots of the problem at the national level.

Chapter 7 discusses conscientious objection in Turkey from a legal perspective. It explores Turkey's international obligations towards recognising conscientious objection and the current legal obstacles facing conscientious objectors under Turkey's domestic law. The chapter aims to explore the problems arising from the lack of an explicit recognition of the right to conscientious objection. In this context, criminalisation of conscientious objection, arbitrary detention of conscientious objectors, the prohibition of torture, inhuman and degrading treatment, and the right to freedom of expression are the main topics discussed in the chapter. The chapter seeks to find an answer to the question of whether Turkey's domestic law, particularly Article 318 of the Penal Code, which is entitled "alienating people from military service" is compatible with international standards.

Having analysed Turkey's international commitments and the extent to which the domestic law is compatible with the relevant international treaties in chapter 7, chapter 8 investigates the conscientious objection movement in Turkey from a sociological perspective. While the research engages with discussions of the academic literature on the role of the military in politics and its effects on the country's educational system, it is insufficient to analyse the impacts of militarism on the everyday life at the micro level, particularly on those marginalised—women and the objectors. Therefore, the chapter adopts a qualitative approach that uses semi-structured interviews as a data collection method. It draws on the data collected from interviews with conscientious objectors to explain the impacts of law on individuals and examine the military from the perspective of the marginalised.

Finally, chapter 9 presents an overview of the findings of the thesis. This chapter emphasises the contribution of the research. While providing the key aspects of the

literature that have been studied, the chapter also makes recommendations and exposes limitations of the research.

## Chapter 2

### The Rise of Universal Conscription

The sources of present beliefs are past experiences and practices [...] Prior institutions, prior strategies, prior actions delimit current opinions, and stories of yesteryears reveal what bargains have been broken and which kept [...] History also shapes institutions and regimes, and history can reveal the underlying causes for institutional change or stability.<sup>1</sup>

#### 2.1. Introduction

Significant historical events that change societies do not happen in a vacuum. They occur after evaluating to what extent are such societies willing to change. In this sense, historical facts mirror states' policies directed at gaining society's consent. Therefore, to understand the core beliefs influencing the conscription system in general and to unveil the tools used by states to gain society's consent, one must take into account the historical facts behind the emergence of the conscription system. Analysing the rise of conscription also offers some insights into the perspectives and motivations of those opposing conscription.

To examine the birth of the universal conscription and the gradual integration of the military values into society, this chapter focuses on France for it is “the home of the modern conscript army”<sup>2</sup> and a role model for others. As Charles Tilly notes, the rise of the conscription system in France merits examination because the French Revolution brought about a new perspective on citizenship, which restructured citizens' position in relation to the state.<sup>3</sup> Similarly, Margaret Levi, with a particular focus on France, highlights the core concept that any conscription system uses to

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<sup>1</sup> Margaret Levi, *Consent, Dissent, and Patriotism* (Cambridge University Press 1997) 3.

<sup>2</sup> Ute Frevert, *A Nation in Barracks: Modern Germany, Military Conscription and Civil Society* (Berg Publishers 2004) 1.

<sup>3</sup> Charles Tilly, ‘The Emergence of Citizenship in France and Elsewhere’ (1995) 40 *International Review of Social History* 223, 225–227.

justify its presence: the concept of citizen-soldier, which forges the link between the military service and citizenship. She argues,

to study military service in democracies and not include France would be indefensible [...] France was the first of the democracies to transform the very meaning as well as institutions of conscription; by the twentieth century, military obligation was a rite of passage to citizenship for young French males.<sup>4</sup>

As an opening chapter to the dissertation, the chapter sets the grounds for subsequent chapters. Drawing centrally on the birth of the French mass conscription regime, as the key historical illustration, it explains the factors conducive to the rise of conscription, with a particular focus on the notions of citizen-soldier, good citizenship, and national pride. The discussion proceeds as follows: section 2 examines the emergence of the conscription system as a central legal obligation of citizenship, and the instruments applied to convince individuals to accept the idea of “dying and killing” for the nation. Section 3 scrutinises the gradual transformation of the concept of the citizen-army and the gradual decline of the conscription system in Europe.

## **2.2. The Rise of the Conscription System**

War is more likely to produce large armies comprised of volunteers in view of the psychological impacts of war on citizens who feel more or less obliged to participate in the war efforts. However, as Jacques van Doorn correctly notes, “the mass army is quite rightly seen in relation to the draft.”<sup>5</sup> That is to say, the mass standing armies are the product of the conscription systems. For instance, during the French Revolution, the war against the monarchy encouraged an unprecedented total number of 100,000 volunteers to enlist. This number, however, was not entirely satisfactory for the French authorities in terms of the manpower required to fight enemies.<sup>6</sup> Therefore, they ordered a levy of 300,000 men in February 1793 to build a larger army but then decided to introduce the *levee en masse*—the mass conscription of French citizens in

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<sup>4</sup> Levi (n 1) 12.

<sup>5</sup> Jacques Van Doorn, ‘The Decline of the Mass Army in the West General Reflections’ (1975) 1 *Armed Forces & Society* 147, 149–150.

<sup>6</sup> Harold D Blanton, ‘Conscription in France during the Era of Napoleon’ in Donald J Stoker, Harold D Blanton and Frederick C Schneid (eds), *Conscription in the Napoleonic era: A Revolution in Military Affairs?* (Routledge 2009) 8.

the Revolutionary War. As such, all citizens were obliged to contribute to the war effort, but only those unmarried and aged between 18 and 25 were allocated combat duties to protect the borders.<sup>7</sup> These simple but effective methods to conscript citizens “with an invincible élan” became a leading example for European states.<sup>8</sup>

The defeat of France’s army against Prussians also enforced society’s approval of the idea of having a citizen-army. Such success transformed the citizen-army of France into a role model. Prussia imitated France’s model and created a citizen-army, which gained universal recognition following its success in wars and paved the way for other European countries to adopt the notion of citizen-army.<sup>9</sup> It is important to note that it is beyond the scope of this chapter to examine how and to what extent other countries imitated the French model. Instead, the present chapter briefly discusses the tools used by states to give legitimacy to the conscription system.

The objective of the army as an institution was initially limited to military affairs, but later expanded to include social factors intertwined with everyday situations. For example, due to the disciplined and the organised structure of the armed forces, the employment of conscripts in the civilian sphere became a conventional method used to respond to extraordinary situations such as natural disasters, refugee “crisis”, and other social problems threatening the unity and the social welfare of states. Consequently, the distinction between the civilian and the military spheres became increasingly blurred, and as such, the military was fully integrated into the social life.<sup>10</sup>

In brief, the success of the conscription army during the Napoleonic Wars played an essential role in the legitimisation of the conscription system.<sup>11</sup> The conscription system ensured the rise of manpower, and, therefore, was seen as the most powerful

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<sup>7</sup> Lars Mjoset and Stephen Van Holde, ‘Killing for the State, Dying for the Nation: An Introductory Essay on the Life Cycle of Conscription into Europe’s Armed Forces’ (2002) 20 *Comparative Social Research* 3, 32.

<sup>8</sup> Eliot A Cohen, *Citizens and Soldiers: The Dilemmas of Military Service* (Cornell University Press 1985) 42–43.

<sup>9</sup> Deborah Avant, ‘From Mercenary to Citizen Armies: Explaining Change in the Practice of War’ (2000) 54 *International Organization* 41, 52.

<sup>10</sup> Colin Mellors and John McKean, ‘The Politics of Conscription in Western Europe’ (1984) 7 *West European Politics* 25, 33–34.

<sup>11</sup> Alan Forrest, ‘Conscription as Ideology: Revolutionary France and the Nation in Arms’ (2002) 20 *Comparative Social Research* 95, 96.



state instrument to protect and maintain both the country's internal and external unity.<sup>12</sup> However, serving in the army carries heavy burdens such as the use of lethal weapons, "killing and dying," and obeying orders.<sup>13</sup> As such, in order to justify these burdens, states need motivational concepts. Therefore, the next section focuses on the justification provided for conscription systems.

### **2.3. Justifications of Conscription Systems: The Myths of the Citizen-Soldier and Nation-in-Arms**

The central tenets of modern military establishments were shaped between 1776-1914 when the French Revolution and the First World War took place. Various interpretations of this period shape the public's understanding of conscription. Consequently, the social and the political atmosphere of this period and the impacts of the French Revolution on the mindset of society require analysis to understand the concepts behind the birth of conscription.<sup>14</sup> The present section, therefore, focuses on the relationship between citizenship status and military service, with a particular focus on France—the first country that introduced forced recruitment and justified it under the guise of democratic principles.<sup>15</sup> It attempts to answer the following questions: how were the masses convinced to serve in the army and how such a duty was perceived as a right? To arrive at an answer, the section investigates the emergence of the myths of citizen-soldier and nation-in-arms and their impacts on the legitimisation of conscription in France. These concepts will be examined respectively in this section, and also figure prominently in chapter 6's analysis of the Turkish Armed Forces.

The conscription system not only produces mass armies, but also builds a national consciousness.<sup>16</sup> Historically, conscription during wars was seen as the most efficient system to boost manpower, strengthen the national identity, and enforce the notion of

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<sup>12</sup> Mellors and McKean (n 10) 26.

<sup>13</sup> Frevert (n 2) 2.

<sup>14</sup> Cohen (n 8) 42.

<sup>15</sup> Margaret Levi, 'Consent, Dissent, and Patriotism: A Summary' in Lars Mjoset and Stephen Holde van (eds), *The Comparative Study of Conscription in the Armed Forces: Comparative Social Research, Volume 20*, vol 20 (Emerald Group Publishing Limited 2002) 337.

<sup>16</sup> Suavi Aydın, 'The Militarization of Society: Conscription and National Armies in the Process of Citizen Creation' in Özgür Heval Çınar and Coşkun Üsterci (eds), *Conscientious Objection: Resisting Militarized Society* (Zed Books 2009) 17.

the good citizens.<sup>17</sup> Indeed, the creation of a strong sense of national identity was the most prominent tool and aim of the French armed forces because nationalism simultaneously legitimises the conscription system.<sup>18</sup> In addition to building a national conscientiousness, creating the myths of the citizen soldier and nation-in-arms, as will be demonstrated in the Turkey case in chapter 6, played a significant role in gaining society's approval because myths stem from society-held beliefs, therefore, they are used as tools to legitimise certain institutional practices.<sup>19</sup>

In the France case, the logic behind such myths can be explained by the idea that “a revolutionary war, declared in the name of the people, should be fought by an army which is drawn from the people and devoted to its cause.”<sup>20</sup> In light of this, the revolutionaries aimed to create an army capable of fighting the old regime for citizens' rights. They incited the public to engage in protecting citizens' rights and, therefore, forged the link amongst the nation, army, and citizens.<sup>21</sup> It is also claimed that “the soldiers raised by the *levee en masse* had (a) far higher morale than their mercenary foes because they fought for the rights of man, rather than for fear of their officers.”<sup>22</sup> As it appears, the concept of citizen-soldier arrived following the need for creating an army, which aspires to protect the will of the people to hold power and maintain the nation's wealth. In line with this argument, the “ideal citizen,” who fights for the nation, came into being.<sup>23</sup>

In brief, portraying the duty to join the military as the saviour of common security distinguished the army from other institutions. Also, the myth of nation-in-arms created the concept of the “good citizens.”<sup>24</sup> As a result, the citizenship status is determined by taking into consideration the citizens' willingness to serve in the army

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<sup>17</sup> James Burk, ‘The Decline of Mass Armed Forces and Compulsory Military Service’ (1992) 8 *Defense Analysis* 45, 50.

<sup>18</sup> George Q Flynn, *Conscription and Democracy: The Draft in France, Great Britain, and the United States* (Greenwood Press 2002) 3.

<sup>19</sup> David R Segal, *Recruiting for Uncle Sam: Citizenship and Military Manpower Policy* (University Press of Kansas 1989) 85.

<sup>20</sup> Forrest (n 11) 100.

<sup>21</sup> Avant (n 9) 55.

<sup>22</sup> Cohen (n 8) 42–43.

<sup>23</sup> Meyer Kestnbaum, ‘Citizen-Soldiers, National Service and the Mass Army: The Birth of Conscription in Revolutionary Europe and North America’ (2002) 20 *Comparative Social Research* 117, 123.

<sup>24</sup> Segal (n 19) 85.

and protect the nation.<sup>25</sup> The concept of the nation-in-arms and the responsibility put on citizens to protect the nation were essential elements for the republic during the French Revolution, and all male citizens were seen as potential soldiers<sup>26</sup> (see chapter 6.2.3 for the impact of the Turkish War of Independence on the Turkish Armed Forces' legitimacy and the creation of the good citizens' notion.)

## **2.4. Compulsory Military Service as a Central Legal Obligation of Citizenship**

Indeed, France's example shows how "the idea of a "nation in arms" became an integral part of the myth of the revolution, the identity of the state, and the meaning of citizenship."<sup>27</sup> For instance, prior to the French Revolution, being a soldier was an honorific right, exclusively available to noble citizens. Noblemen were legally protected by the perks of such privileged positions in governmental institutions such as the military.<sup>28</sup> Rising against this non-egalitarian regime, therefore, necessitated the destruction of the "army of the king and the lord." During this period, the citizen army, which "equally" recruits all male citizens constituted the most important aspect of French national life since the Revolution.<sup>29</sup> The justification of the citizen-soldier was founded on the core principles of the Revolution: "liberty, equality, and fraternity." Accordingly, under these principles, all citizens must protect the state's sovereignty at all times. Such representation of the French army became an instrument used to reinforce the Revolution.<sup>30</sup> In other words, armed forces, based on conscription, played a crucial role in expanding the scope of citizenship rights to include the previously excluded classes in the political life. The aim to create a citizenship based on equality before the law was, indeed, only a pretext to include all citizens into the army.<sup>31</sup> Simply, conscription, under this scheme was presented as a right, of which citizens were "unfairly deprived," not as a duty.

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<sup>25</sup> James Burk, 'Citizenship Status and Military Service: The Quest For Inclusion by Minorities and Conscientious Objectors' (1995) 21 *Armed Forces & Society* 503, 504.

<sup>26</sup> Forrest (n 11) 98.

<sup>27</sup> Flynn (n 18) 14.

<sup>28</sup> William Rogers Brubaker, 'The French Revolution and the Invention of Citizenship' (1989) *French Politics and Society* 30, 31.

<sup>29</sup> Margaret Levi (n 15) 342.

<sup>30</sup> Avant (n 9) 55–56.

<sup>31</sup> James Burk, 'National Attachments and the Decline of the Mass Armed Force', *Interim Conference I* (1988) 5.

During the Revolutionary era, the military service was portrayed as a path, which citizens can take to enter the political arena.<sup>32</sup> The idea to allow the previously excluded classes to participate in politics during war by means of joining the army prevailed between the years of 1770 and 1810. This idea had important impacts on France's national agenda. First, it required the reinvention of the national citizenship. Second, it encouraged the authorities to adopt a conscription system, so they could potentially enlist a great number of citizens during wartime. As a result, military service, citizenship, and war became the prominent themes of this era.<sup>33</sup>

The military service was represented as a duty of all fellow citizens, and the state compelled citizens to perform compulsory military service with no alternative or right to refuse.<sup>34</sup> Citizens, therefore, became part of the system and, as such, established nationalistic bonds with the state, which in turn are used to mobilise manpower for the compulsory military service.<sup>35</sup> In other words, conscription not only shaped the relationship between state and citizens, but also kept the previously excluded classes disciplined. In this way, states gained the manpower needed to defend their nation against external threats, while also maintained their internal unity by removing any risk of an uprising.<sup>36</sup>

The Revolution was purposefully directed at determining the framework of citizenship to involve equal rights and the duties of all citizenry. Therefore, the French Revolution was not simply about the invention of the nation-state, but also about the creation of the "modern institution and ideology of national citizenship."<sup>37</sup> This creation made the military service the locus in which young men reflect on their national consciousness. In other words, the conscription system created a strong sense of national identity among young people. As "loyal" defenders of the nation, they vehemently attached themselves to their community. As it appears, the military

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<sup>32</sup> *ibid.*

<sup>33</sup> Kestnbaum (n 23) 120.

<sup>34</sup> *ibid* 136.

<sup>35</sup> *ibid* 137.

<sup>36</sup> Mjoset and Van Holde (n 7) 38.

<sup>37</sup> Brubaker (n 28) 30.

service does not only involve training soldiers in order to prepare them to protect their nation, but also involves national socialisation.<sup>38</sup>

## **2.5. Reforms and the Gradual Decline of Conscription**

Having examined the birth and the growth of armed forces into society, with a particular focus on France, now it is necessary to focus on the gradual decline of conscription. As illustrated above, the conscription system was linked to nation-building, national conscientiousness, and citizenship in France.<sup>39</sup> The “importance of the ‘national spirit’ for fighting wars was reflected in the concept of the ‘Home Front’ during World War I.”<sup>40</sup> In this way, the spirit to fight for the nation was kept alive, and conscription constituted the main source of manpower even after the World Wars. However, during the Cold War, conscription was questioned from a political, an economical, and a moral standpoint.<sup>41</sup> As a result, mass armies were gradually transformed into smaller professional armies.

Broadly, such transformation can be explained by several reasons. First, waging war is no longer at the centre of national affairs because international conflicts are nowadays solved via international agreements. Therefore, the cost of the mass armies during peacetime imposes a huge and unnecessary burden on states. Second, the recent social transformation, which witnessed a growth in individualism, led to questioning the traditional understanding that legitimised conscription.<sup>42</sup> All these socio-political and technological changes reduced the legitimacy of the conscription system.<sup>43</sup>

Governments responded to these changes by reducing the duration of the service.<sup>44</sup> However, such a reform was also questioned because the conscription system must be then cost-effective and combat-effective. First, the recruiting of well-educated men

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<sup>38</sup> Mjoset and Van Holde (n 7) 51.

<sup>39</sup> Rita J Simon and Mohamed Alaa Abdel-Moneim, *A Handbook of Military Conscription and Composition the World Over* (Lexington Books 2011) 18.

<sup>40</sup> *ibid.*

<sup>41</sup> *ibid* 19.

<sup>42</sup> Jean-Philippe Lecomte, ‘The Rise and Death of Conscription: The Case of France’ in Pertti Joenniemi (ed), *The Changing Face of European Conscription* (Ashgate 2006) 72.

<sup>43</sup> *ibid* 73.

<sup>44</sup> *ibid.*

for short periods raised concerns over the system's cost-effectiveness because most of the duration is spent on training and, as such, remains no room for benefiting from the skills these men acquired. Second, although advanced technology brought about new simple and easy weaponry to deploy, the use of these technologies required hiring military technicians on long or at least medium-term contracts.<sup>45</sup>

The development of nuclear weapons also had pivotal impacts on the decline of mass armies, and, as a result, such nuclear weapons have replaced mass armies.<sup>46</sup> Yet, these technological developments were not the only factor for the decline of the mass armies. Another factor was the socio-political changes that brought about the inevitable civilian control of the military. In this regard, the high cost of war and the use of mass weapons were subjected to criticism from moral perspectives. Nationalism was no longer an efficient ideology used to convince people to fight for the state, so entering into war required some moral justifications instead.<sup>47</sup>

As Morris Janowitz suggests, with the growth of individualism, concerns over the functional necessity of the military establishment and whether conscription can be morally justified gained currency. As a result, resistance to the military establishment and the use of nuclear weapons arose. Also, the horrifying impacts of using nuclear weapons against civilians did not simply produce new forms of pacifism but also generated an alternative perception of nationalism. The military service was, therefore, no longer considered as "the hallmark of citizenship."<sup>48</sup>

However, since militaries reflect the values and the historical circumstances of their respective societies, the process of abolishing conscription varies from one society to another.<sup>49</sup> For instance, only four amongst fourteen nations of NATO (the North Atlantic Treaty Organisation) abolished conscription after 1945. Other countries responded to the historical changes by either reducing the duration of the service or amending the conditions, yet insisted on maintaining military service as the main duty

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<sup>45</sup> Mellors and McKean (n 10) 28.

<sup>46</sup> Doorn (n 5) 149.

<sup>47</sup> Morris Janowitz, 'Military Review' 13 <<http://www.abebooks.com/Military-Review-Professional-Journal-Army-November/11487499963/bd>> accessed 4 July 2015.

<sup>48</sup> *ibid* 13–14.

<sup>49</sup> Burk, 'The Decline of Mass Armed Forces and Compulsory Military Service' (n 17) 45.

of citizens.<sup>50</sup> This thesis acknowledges the socioeconomic and the historical differences among societies and examines the conscription system and conscientious objection in the context of Turkey in light of the core concepts discussed above (see Part II.)

## 2.6. Conclusion

The chapter argued that states' historical background determines how the conscription system was adopted in the first place and gradually declined or maintained. For instance, the reason behind forced recruitment in France was the fact that conscription was seen as a crucial tool "for linguistic unity, social integration and democratization."<sup>51</sup> Another reason was that the state introduced the idea that military and nation go hand in hand. Accordingly, it was argued that conscription played important social and political roles with respect to building a patriotic conscientiousness and maintaining the social order.<sup>52</sup>

The chapter examined the emergence of conscription systems and highlighted how the military built the national identity and conscientiousness and how concepts such as citizenship, citizen-soldier, and nation-in-arms were integrated into social relations. It also analysed the societal factors preserving the status quo of conscription and granting militaries a special status in societies, which status renders any form of objection to such *exalted duties* difficult. Therefore, the findings of this chapter also offered insights into the core concepts that not only maintain the conscription system but also impede any form of objection.

When citizens refuse to attend the military or comply with its laws, they become conscientious objectors, and as a result, their social position becomes at risk due to the exalted status that conscription enjoys in societies.<sup>53</sup> Therefore, objectors fight against exclusion and being treated as individuals unworthy of the respect in democratic societies, and also continue to refuse conscription at the same time.<sup>54</sup> With a particular focus on France, reaching the roots of the problem and understanding how

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<sup>50</sup> *ibid* 46.

<sup>51</sup> Flynn (n 18) 221.

<sup>52</sup> Lecomte (n 42) 76.

<sup>53</sup> Burk, 'Citizenship Status and Military Service' (n 25) 512.

<sup>54</sup> *ibid* 511.

states gained individuals' consent will pave the way for a better understanding of objectors' motivations and challenges they face in the context of Turkey.



## Chapter 3

### The Nature of Conscientious Objection

The conscientious objector is a revolutionary. On deciding to disobey the law [s/]he sacrifices his personal interests to the most important cause of working for the betterment of society.<sup>1</sup>

#### 3.1. Introduction

This chapter aims to explore the nature of conscientious objection and its relationship with civil disobedience as the basis for the discussion of Turkey in the proceeding chapters. The analysis is framed centrally on Charles Moskos and Whiteclay Chambers' classification of conscientious objection and John Rawls' definition of civil disobedience as they both offer a comprehensive understanding of such concepts.

Considering conscientious objection as a conflict between the conscience and the law raises the question of whether objection can be considered as an act of civil disobedience. That is to say, drawing the link between conscientious objection and civil disobedience is relevant because as soon as individuals follow their conscience, there will be a conflict between legal orders and the individuals' conscience. When moral and legal obligations conflict together, individuals find themselves in a position impelling them to determine whether their conscience allows them to obey or disobey the law.<sup>2</sup> When they morally decide to disobey orders, dissenters do not aim to destroy the legitimacy of the system. Their act of civil disobedience is a "way of manoeuvring between these conflicting moralities."<sup>3</sup> That is to say, dissenters base their acts on the grounds that political circumstances overlap with their deepest moral convictions. Therefore, the act of disobedience naturally involves conscientious

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<sup>1</sup> Albert Einstein, *The Ultimate Quotable Einstein* (Princeton University Press 2010) 257.

<sup>2</sup> TRS Allan, 'Citizenship and Obligation: Civil Disobedience and Civil Dissent' (1996) 55 *The Cambridge Law Journal* 89, 103.

<sup>3</sup> Michael Walzer, *Obligations; Essays on Disobedience, War, and Citizenship*. (Harvard University Press 1970) 24.

grounds.<sup>4</sup> The fact that both the acts of conscientious objection and civil disobedience encapsulate conscientious foundations raises questions over the determination of the rights and duties of individuals. The issue of to what extent conscientious disobedience can be tolerated is also debated.<sup>5</sup>

The chapter focuses on the conflict between the conscience and the law, and the sociological factors behind the acceptance and refusal of the military service. The chapter aims to discuss different forms of conscientious objection to military service and show the relationship with civil disobedience. To this end, section 2 focuses on the classification of conscientious objection. It provides an analysis of religious-nonreligious conscientious objection, selective-universal conscientious objection, and alternative-absolute conscientious objection. Section 3 examines conscientious objection in light of civil disobedience.

### **3.2. Definition and Classification of Conscientious Objection**

It is important to note that conscientious objection is not limited to an objection to serving in the military. It can also be related to various situations in which people are required to behave in accordance with their conscience.<sup>6</sup> For instance, the conscientious objection might take a form of refusal to performing abortion and providing contraception by healthcare professionals. This research is, however, limited to studying conscientious objection to the military service for the following reasons: since it challenges what is considered the most basic duty of individuals—defending their country, conscientious objection has impacts on the individuals' position vis-à-vis their states.<sup>7</sup> Emily Marcus stresses the unique nature of the conscientious objection to the military service by arguing that conscientious objection to the military service challenges the state's authority to enlist soldiers, and questions

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<sup>4</sup> Hugo Adam Bedau, 'On Civil Disobedience' (1961) 58 *The Journal of Philosophy* 653, 659.

<sup>5</sup> Kimberley Brownlee, 'Conscientious Objection and Civil Disobedience' (Social Science Research Network 2012) 4 <<http://papers.ssrn.com/abstract=2091045>> accessed 12 August 2015.

<sup>6</sup> Marie-France Major, 'Conscientious Objection and International Law: A Human Right' (1992) 24 *Case Western Reserve Journal International Law* 349, 350.

<sup>7</sup> Charles C Moskos and John Whiteclay Chambers II, 'The Secularization of Conscience' in Charles C Moskos and John Whiteclay Chambers II (eds), *The New Conscientious Objection: From Sacred to Secular Resistance* (Oxford University Press 1993) 3.

the militarist structure of society.<sup>8</sup> Similarly, Marie-France Major considers the objection to the military service as “the most dramatic, and perhaps the most complex, form of conscientious objection.”<sup>9</sup> Furthermore, as Michael Walzer indicates, “a commitment to share the benefits and burdens of political life in some equitable fashion—the (occasional) need to kill is surely the most awful of the burdens.”<sup>10</sup>

Recognising that the compulsory military service is a burden on the conscience of those condemning acts of killing raises the question of why protecting conscience is important. First, a conscientiously motivated act is seen as “an individual’s inward conviction of what is morally right and morally wrong, and it is a conviction that is genuinely reached and held after some process of thinking about the subject.”<sup>11</sup> In this regard, conscience occupies a special place in the thinking of those who prioritise their definition of what is right and wrong over the state’s. When someone adopts the belief that killing is morally wrong, performing the compulsory military service, which requires people to take arms against “enemies,” clashes with such a conscientiously-held belief. The link between the compulsory military service and conscience is also articulated as follows: “the moral revulsion of the convinced conscientious objector at the thought of taking human life is great. Military conscription of such men necessarily entails grave interference with conscience.”<sup>12</sup> Similarly, it is argued:

The conscience of the individual is a precious asset for every society. It is part of the socialization process to nurture and encourage the moral conscience of the individual, without which civilization would be meaningless. At the centre of this process is the effort to instil in the individual the conviction that it is immoral in most circumstances to take the life of other persons. Some exceptions to this moral principle are widely recognized, however, including the right to use force in self-defence when no other

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<sup>8</sup> Emily N Marcus, ‘Conscientious Objection as an Emerging Human Right’ (1997) 38 *Virginia Journal of International Law* 507, 512.

<sup>9</sup> Major (n 6) 350.

<sup>10</sup> Walzer (n 3) 121.

<sup>11</sup> *Grondal v Minister of State for Labour and National Service*, (Supreme Court of Western Australia 1953) (unreported), quoted in Russell Wolff, ‘Conscientious Objection: Time for Recognition as a Fundamental Human Right’ 6 *The American Journal of International Law Journal* 67.

<sup>12</sup> Donald A Giannella, ‘Religious Liberty, Nonestablishment, and Doctrinal Development. Part I. The Religious Liberty Guarantee’ (1967) 80 *Harvard Law Review* 1381, 1412–1413. Quoted in Wolff (n 11) 68.

option seems possible. But it is also widely held that no one should deliberately place [themselves] in a position in which [they] will find it necessary to defend [themselves.]<sup>13</sup>

With regards to the definition of conscientious objection, it is difficult to come to a unified definition because people attribute different meanings to this concept and base their objection on various philosophical, moral, political, or religious beliefs. Conscientious objection to military service is defined in its general sense as “refusal to participate in the armed services based upon opposition to war. This opposition may rest upon reasons of religious belief, philosophy, morality or political ideology.”<sup>14</sup> Conscientious objector refers to “a person who refuses either to bear arms or to serve in the military or continue to serve in the military because of religious or moral beliefs that are opposed to killing, or, more recently, are opposed to relying on nuclear weapons for deterrence.”<sup>15</sup>

These definitions do not capture the critique of militarism that is embodied in the act of refusal. They only focus on the non-participation in the army. This thesis adopts a broader approach, which embraces a wide range of issues such as a critique of militarism and gender norms. To provide a sound understanding of conscientious objection, the next issue that has to be brought in mind is the typology of objection. Therefore, the next subsection follows Moskos and Chambers’ typology, which classifies conscientious objection into three categories, namely, private or political objection, universalist or selective objection, and alternativist or absolutist objection. By doing so, it examines various motivations behind the act of conscientious objection and addresses the question of whether—in addition to religious motivations—“moral, ethical, humanitarian, or similar convictions” constitute legitimate grounds for asserting the right to conscientious objection.<sup>16</sup>

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<sup>13</sup> Eide Asbjørn and Mubanga-Chipoya Chama, ‘United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities, Conscientious Objection to Military Service, 1985, E/CN.4/Sub.2/1983/30/Rev.1’ para.22.

<sup>14</sup> Matthew Lippman, ‘Recognition of Conscientious Objection to Military Service as an International Human Right’ (1990) 21 California Western International Law Journal 31, 31.

<sup>15</sup> Moskos and Chambers II (n 7) 5.

<sup>16</sup> Marie-France Major, ‘Conscientious Objection to Military Service: The European Commission on Human Rights and the Human Rights Committee’ (2001) 32 California Western International Law Journal 1, 5.

### 3.2.1. Religious-Nonreligious Conscientious Objection

Regarding motivations behind their act, conscientious objectors might be secularly—private or political objection—or religiously motivated.<sup>17</sup> Whereas moral and ethical convictions are accepted as a source of objection in some states, the religious motivations might be the only recognised source of objection to serve in the military in other states.<sup>18</sup> Historically, conscientious objectors at the beginning refused the military service because of their religious belief. In the sixteenth century, the members of Protestant churches, mainly Mennonites, Baptists, and Quakers refused to serve in the army because the Sixth Commandment says “Thou Shalt not kill.”<sup>19</sup> The early religious objectors’ main argument in refusing secular laws rested on the idea of their obedience to the laws of God.<sup>20</sup> Indeed, religious beliefs were at this time the most common ground used for asserting a right to conscientious objection. In this context, while some states required objectors to be affiliated with a specific church such as peace churches, others extended the scope of the protection to include any religious belief that condemned war.<sup>21</sup> Although the new approach, which recognises objection based on *any religious grounds* even if they are not pacifist, is more inclusive, it still refuses to accept non-religious grounds for an objection.<sup>22</sup>

During the 1960s and 1970s, the conscientious objection movement gained a new momentum. International effort on protecting human rights and individual’s dissent against dominant institutions led to the emergence of a *new conscientious objection*.<sup>23</sup> The scope of the conscientious objection has, therefore, expanded to include a wide range of motives that are not limited to religious beliefs.<sup>24</sup> In fact, conscientious

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<sup>17</sup> Moskos and Chambers II (n 7) 5.

<sup>18</sup> Marcus (n 8) 539.

<sup>19</sup> Erik Jan Zürcher, ‘Refusing to Serve by Other Means: Desertion in the Late Ottoman Empire’ in Özgür Heval Çınar and Coşkun Üsterci (eds), *Conscientious Objection: Resisting Militarized Society* (Zed Books 2009) 45.

<sup>20</sup> Ulrich Bröckling, ‘Sand in the Wheels? Conscientious Objection at the Turn of the Twenty-First Century’ in Özgür Heval Çınar and Coşkun Üsterci (eds), *Conscientious Objection: Resisting Militarized Society* (Zed Books 2009) 54.

<sup>21</sup> Lippman (n 14) 37.

<sup>22</sup> Marcus (n 8) 540.

<sup>23</sup> Charles C Moskos and John Whiteclay Chambers II, ‘Conclusion: The Secularization of Conscience Reconsidered’ in Charles C Moskos and John Whiteclay Chambers II (eds), *The New Conscientious Objection: From Sacred to Secular Resistance* (Oxford University Press 1993) 201.

<sup>24</sup> *ibid* 196.

objection embraced different forms of belief, not constrained to a particular religion. As the United Nations Commission on Human Rights states “conscientious objection to military service derives from principles and reasons of conscience, including profound convictions, arising from religious, moral, ethical, humanitarian or *similar* motives [emphasis added.]”<sup>25</sup> In a similar vein, “belief” does not necessarily refer to a religious belief, it can be non-religious according to the United Nations documents.<sup>26</sup> For instance, the United Nations Special Rapporteur Arcot Krishnaswami indicates that both terms “religion” and “belief” cover “agnosticism, free thought, atheism and rationalism.”<sup>27</sup> Belief is an umbrella term that includes religion in its non-traditional meaning.<sup>28</sup> Similarly, Black’s Law Dictionary defines belief as “a conviction of truth of a proposition, existing subjectively in the mind, and induced by argument, persuasion, or proof addressed to the judgement.”<sup>29</sup> This definition captures the various sources of belief; it is not restricted to religious beliefs only. In that sense, how individuals make sense of their existence and interpret events are embedded in their belief system.

To sum up, conscientious objection and freedom of conscience are two sides of the same coin. Conscience allows individuals to think, evaluate, observe, and act in accordance with their values. Individuals’ right to self-determination is also very closely related to the freedom of conscience. It gives individuals the opportunity to develop and manifest their understanding of what is right or wrong. It is an expression of the individual’s uniqueness—personal identity.<sup>30</sup> Therefore, limiting the right to conscientious objection to only religious beliefs, first, poses a challenge to conscientious objectors whose aim, in the case of a clash between their conscience and states’ needs, is to enjoy their right to freedom of thought, conscience, and belief.

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<sup>25</sup> Commission on Human Rights United Nation, ‘Conscientious Objection to Military Service (22 April 1998) E/CN.4/RES/1998/77’.

<sup>26</sup> Natan Lerner, *Religion, Secular Beliefs and Human Rights: 25 Years after the 1981 Declaration* (Martinus Nijhoff 2006) 7.

<sup>27</sup> Arcot Krishnaswami, *Study of Discrimination in the Matter of Religious Rights and Practices* (1960), 1 quoted in *ibid*.

<sup>28</sup> *ibid*.

<sup>29</sup> Black’s Law Dictionary, 6<sup>th</sup> ed. (1990), 155, quoted in *ibid*.

<sup>30</sup> D Christopher Decker and Lucia Fresa, ‘Status of Conscientious Objection under Article 4 of the European Convention on Human Rights, The’ (2000) 33 *New York University Journal of International Law and Politics* 379, 379.

Second, it “neglects the human ability to form personal opinions and interpret their espoused religion in an individualized way.”<sup>31</sup>

### 3.2.2. Selective-Universal Conscientious Objection

The second classification of objection is grounded on to what extent objectors refuse to serve in the army. In this context, objection might be universalistic or selective.<sup>32</sup> While universalistic objectors oppose all kinds of conflicts based on their pacifist views that killing is always wrong, selective objectors refuse to participate in particular wars rather than refusing war in general.<sup>33</sup> In other words, the main difference between selective objectors and absolutists is the scope of their refusal. Whereas selective objectors distinguish between different kinds of military participation and have more specific motivations, absolutists refuse all sorts of military actions.<sup>34</sup>

Generally, selective objectors base their objection on the illegality of using force. Hence, the most prominent ground for their rejection is the concept of a just war, which requires a just cause to wage war (justification for waging war: *ius ad bellum*) and waging this war justly (conduct of war: *ius in bello*).<sup>35</sup> When they base their objection on the just war theory, selective objectors take into consideration whether waging war is the last resort and it is fought justly and proportionality.<sup>36</sup> Therefore, selective conscientious objectors evaluate the morality of the specific war in which they are asked to participate. They base their refusal on the distinction between wars that are “proper arenas for their participation and other wars that [...are] morally bad.”<sup>37</sup>

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<sup>31</sup> Marcus (n 8) 540.

<sup>32</sup> Moskos and Chambers II (n 7) 5.

<sup>33</sup> Marcus (n 8) 541.

<sup>34</sup> Noam Lubell, ‘Selective Conscientious Objection in International Law: Refusing to Participate in a Specific Armed Conflict’ (2002) 20 Netherlands Quarterly of Human Rights 407, 410.

<sup>35</sup> *ibid* 417.

<sup>36</sup> George Clifford, ‘Legalizing Selective Conscientious Objection’ (2011) 3 Public Reason 23.

<sup>37</sup> Walter S Griggs, ‘The Selective Conscientious Objector: A Vietnam Legacy’ (1979) 21 Journal of Church and State 91, 93.

The necessity of including the selective conscientious objection into the scope of the legal recognition of conscientious objection can be explained by two reasons. First, as it is stated, “the ultimate test of a free society is the extent to which individuals are able to carve out their own destiny on the basis of reflective choice. In shaping one’s destiny, a few options are more fundamental than the choice between killing and not killing.”<sup>38</sup> The conscription systems put people, even those who conditionally accept the idea of waging war, in a morally and a physically sensitive position.<sup>39</sup> That is to say, war embraces deeply moral issues such as killing other human beings or taking part in an act that might result in depriving people of their basic needs. As a result, it requires serious thinking even by those who agree to be part of war. Within this framework, the recognition of selective objection means giving those who offer conditional support to states to wage war the freedom to decide whether they can bear the consequences of their participation in war after evaluating its cause, means, and also their moral boundaries.

Second, although selective conscientious objection is mostly a manifestation of a belief forbidding people from participating in “specific” wars such as in those involving the use of illegal weapons,<sup>40</sup> selective objection is not necessarily based on the declaration of an inner belief. Political motivations such as asking for a change in the national policy, particularly in the defence area might constitute a ground for selective refusal. In that case, the right to selective objection, followed by a political statement criticising the government’s political decisions over engaging in war, can be derived from the right to freedom of expression. As Leonard Hammer indicates, “motivation is a matter of personal stimulation, where the individual is provided with an incentive for conducting an action. Such an incentive can be derived from a belief, but not in any necessary manner.”<sup>41</sup> Therefore, selective objectors should be able to express their concerns even if they are not objecting the military service in general but only specific wars. In other words, “considering that the importance of a

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<sup>38</sup> Arnold S Kaufman, ‘The Selective Service System: Actualities and Alternatives’ in James Finn (ed), *A Conflict of Loyalties; The Case For Selective Conscientious Objection* (Pegasus 1968) 262.

<sup>39</sup> CA. Coady, ‘Objecting Morally’ (1997) 1 *The Journal of Ethics* *The Journal of Ethics* 375, 385.

<sup>40</sup> Leonard Hammer, ‘Selective Conscientious Objection and International Human Rights’ (2002) 36 *Israel Law Review* 145, 164.

<sup>41</sup> *ibid* 166.



conscientious belief is not merely its existence but also its application to specific instances, the application also should entail instances of selective conscientious objection.”<sup>42</sup>

However, the right to selective objection is mostly neglected. Any mention of selective objection, either prior or after conscription, can hardly be found in the international and domestic regulations.<sup>43</sup> For the state authorities, the recognition of the right to selective conscientious objection poses a threat against their right to wage wars when required and to compel citizens to participate in the war efforts.<sup>44</sup> It is important to note that since they refuse all actions involving the use of force however the political circumstances may be, absolute objectors do not pose a significant threat to state’s authority compared to selective objectors.<sup>45</sup> On the contrary, selective objectors are questioning the state’s current political decisions on engaging in particular military actions. Hence, this refusal is directed at the state’s authority to resort to specific military actions. In this context, their refusal can be easily considered as a political threat.<sup>46</sup>

Selective conscientious objectors also face great difficulties compared to universalists in terms of proving their sincerity. While universalists are required to prove that they will carry a gun and join the military under no circumstances, selective objectors are obliged to convince the authorities of their motivations, which depend on specific circumstances and differ from time to time. To assess the underlying motivations forbidding individuals to fight, the decision-makers, for instance, are likely to ask objectors whether they would take arms and defend their beloved family in the case of a real and immediate danger. In that case, while absolutists’ self-defense claim is acceptable, it is not obvious whether the positive answer of selective objectors means that they are insincere.<sup>47</sup>

As stated before, the right to selective conscientious objection is neglected at the international arena. There is a lack of an explicit legal recognition of selective

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<sup>42</sup> *ibid* 168.

<sup>43</sup> Clifford (n 36) 22.

<sup>44</sup> Coady (n 39) 386.

<sup>45</sup> Lubell (n 34) 412.

<sup>46</sup> *ibid* 412–413.

<sup>47</sup> *ibid* 413–414.

objection. The only reference to selective objection can be found in the United Nations General Assembly's Resolution 33/165,<sup>48</sup> which "recognizes the right of all persons refuse service in military or police forces which are used to enforce apartheid."<sup>49</sup> Similarly, the 1985 report to the Sub-Commission states that "objection to military service may also be partial, related to the purposes of or means used in armed action."<sup>50</sup> Although these documents do not specifically and explicitly recognise selective objection, they recommend the recognition of selective objection in the cases of gross human rights violations such as apartheid and genocide.<sup>51</sup> Furthermore, Human Rights Committee' General Comment 22 states:

The Covenant does not explicitly refer to a right to conscientious objection, but the Committee believes that such a right can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief.<sup>52</sup>

It can be interpreted that the Human Rights Committee's General Comment to Article 18 recognised the selective conscientious objector's status based on their refusal to use the lethal force. As Hammer indicates, "the term 'lethal' can include selective objections to particular lethal weapons, such as using chemical weapons in warfare, even though the same person might not object to handling a gun or participating in the military, in contrast to a pacifist."<sup>53</sup>

In brief, the recognition of the right to selective conscientious objection is vital for individuals to protect their personal integrity, and to maintain their moral values and act in accordance with them. The compulsory military service puts individuals in a position that requires them to act contrary to their moral beliefs. When soldiers encounter situations forcing them to determine whether their conscience allows them to be part of such situations and that they do not have the right to "say no," they are

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<sup>48</sup> *ibid* 411.

<sup>49</sup> United Nations General Assembly, 'Status of Persons Refusing Service in Military or Police Forces Used to Enforce Apartheid 20 December 1978, A/RES/33/165', para.145 <<http://www.refworld.org/docid/3b00f1ae28.html>> accessed 14 April 2017.

<sup>50</sup> Asbjern and Chama (n 13) para.19.

<sup>51</sup> Lubell (n 34) 411.

<sup>52</sup> United Nations Human Rights Committee, 'CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion), 30 July 1993, CCPR/C/21/Rev.1/Add.4', para.11.

<sup>53</sup> Hammer (n 40) 164–165.

forced to act in a way they consider immoral. On the contrary, recognising the right to selective objection allows room for soldiers to engage in debates, and this reduces the risk of waging immoral wars.<sup>54</sup> In that case, granting the right to selective objection, which is the moral responsibility of states, is an essential step for selective objectors to raise their concerns over the morality of war.<sup>55</sup>

### **3.2.3. Alternative-Absolute Conscientious Objection**

The third classification of conscientious objection is based on to what extent objectors agree to cooperate with the system. In this respect, objectors can be alternativists, who accept performing an alternative civil service in substitution for their military service or absolutists, who refuse to be part of the system regardless of the nature of the alternative service.<sup>56</sup>

Exemption from military service mostly entails an alternative service within conscription systems. However, not all conscientious objectors accept the alternative service because their objections are grounded on different motivations. While some objectors are willing to accept a non-combatant duty within the military service such as medical or administrative tasks, others might oppose to take any part in the military.<sup>57</sup>

When conscientious objection is not recognised as a legal status, objectors' declarations on the nonparticipation in the military service give rise to human rights violations, particularly to repeated prosecutions that may cause the civil death of objectors. In this respect, there is a necessity to bear in mind the question of whether the recognition of conscientious objection with an alternative service could be an alternative solution to endless and repeated prosecutions of conscientious objectors. This question can be answered in two ways.

1) On the one hand, the alternative civilian service might be a solution to repeated prosecutions of alternativist conscientious objectors because the rejection of the

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<sup>54</sup> Clifford (n 36) 32.

<sup>55</sup> *ibid* 35.

<sup>56</sup> Moskos and Chambers II (n 7) 5.

<sup>57</sup> United Nations and Office of the High Commissioner, *Conscientious Objection to Military Service* (United Nations 2012) 65.

military service based on fundamental values forbidding an individual from taking another human beings' life does not always mean the rejection of all social responsibilities. The rejection might only pertain to the use of violence and killing of other human beings in certain circumstances. In these cases, conscientious objectors are not necessarily refusing their national duty in any manner. Therefore, they might be willing to serve in different ways that do not require them to use violence.<sup>58</sup>

Indeed, the alternative civilian service can be considered as an opportunity for conscientious objectors to fulfil their national duties. Furthermore, the alternative service might be seen as necessary “to balance the individual’s interest in exemption from military service against the state’s interest in ensuring that the individual contributes to the national defence and welfare.”<sup>59</sup> In other words, alternativists accept any substitute service, which is civil in nature. Their willingness to accept an alternative service might seem as an indication that they are not escaping from duty, but they are “sincere.”<sup>60</sup> In its decision in *N v Sweden*, the Commission considers the national authorities’ restrictions on exempting total objectors as “understandable” on the grounds that the purpose of the alternative service reduces the risk of “insincere claims,” raised to escape from performing the military service.<sup>61</sup>

2) On the other hand, the alternative civilian service might cause additional problems for absolutists, who refuse to be involved in any alternative services even if they are civilian in nature and to be part of the state authority through the conscription system.<sup>62</sup> For instance, in the case of *N v Sweden*, the applicant in the letter explaining his reasons for not complying with the law states:

The non-armed service of today is a substitute for military service. To accept non-armed service thus implies acceptance of the principle of liability to military service. I do not accept that the State has any “right” to draft me or others for education in the technique of mass murder.<sup>63</sup>

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<sup>58</sup> Lippman (n 14) 36.

<sup>59</sup> *ibid* 39.

<sup>60</sup> Moskos and Chambers II (n 7) 5.

<sup>61</sup> *N v Sweden* App no. 10410/83 (ECtHR, 11 October 1984).

<sup>62</sup> Moskos and Chambers II (n 7) 5.

<sup>63</sup> *N v Sweden* App no. 10410/83 (ECtHR, 11 October 1984).

As it appears, alternative service raises additional problems for absolutists, who refuse to be a part of the military in any way. The traditional approach to conscientious objection assumes that religious conscientious objectors would accept alternative services. Accordingly, insofar as they are not asked to use weapons, they might accept performing an alternative service. This approach ignores the fact that conscientious objectors in peacetime may refuse to be part of the armed forces however the type of service they are requested to perform. Therefore, many conscientious objectors in such a case will also reject the alternative service even when it is civil in nature.<sup>64</sup> That is to say, the alternative civilian service might be a solution for those who object joining the army—based on internal convictions forbidding the taking of weapons—as opposed to those refusing to be part of any militarist structure.

The recognition of conscientious objection with an alternative civilian service also raises concerns—even for those who accept performing civilian service—over administrative issues such as the duration, the type, and the nature of the alternative service and the consequences of disobeying such an alternative service.<sup>65</sup> The implementation of the alternative service varies from one state to another depending on the degree of importance attached to national security and the balance between the protection of national service and individual's freedom of religion, thought, and conscience.

It is necessary to highlight that although implementations differ at the national level, international and regional bodies such as the Council of Europe Parliamentary Assembly and Commission on Human Rights issued a number of recommendations and comments setting fundamental rules on the nature of the alternative service. For instance, Parliamentary Assembly recommends states to adopt “genuine alternative service of a clearly civilian nature, which should be neither deterrent nor punitive in character.”<sup>66</sup> Similarly, the Committee of Ministers in Recommendation R(87)8,<sup>67</sup>

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<sup>64</sup> Michael Noone, ‘Legal Aspects of Conscientious Objection: A Comparative Analysis’ in Charles C Moskos and John Whiteclay Chambers II (eds), *The New Conscientious Objection: From Sacred to Secular Resistance* (Oxford University Press 1993) 186.

<sup>65</sup> *ibid* 187.

<sup>66</sup> Council of Europe: Parliamentary Assembly, ‘Recommendation 1518 (2001): Exercise of the Right of Conscientious Objection to Military Service in Council of Europe Member States’ para.5.iv <<http://www.refworld.org/docid/5107cf8f2.html>> accessed 14 April 2017.

sets rules on the alternative civilian service. Accordingly “alternative service shall not be a punitive nature.”<sup>68</sup> Furthermore, “conscientious objectors performing alternative service shall not have less social and financial rights than persons performing military service.”<sup>69</sup> United Nations High Commissioner also

Reminds states with a system of compulsory military service, where such provision has not already been made, [...] that they provide for conscientious objectors various forms of alternative service which are compatible with the reasons for conscientious objection, of a non-combatant or civilian character, in the public interest and not of a punitive nature.<sup>70</sup>

To sum up, despite the wide range of resolutions and recommendations on the alternative civilian service, each country approaches the alternative civilian service differently. For instance, the alternative service is seen in some cases as a punishment rather than a right, particularly when “it consists in hard work without a meaningful content.”<sup>71</sup> When the application of the alternative service at the national level is incompatible with these basic standards, conscientious objectors continually face repeated punishments because of their persistent refusal. Furthermore, alternative service also constitutes a problem for total objectors, who refuse to be a part of the military in any manner. Objectors who refuse the civil service because they consider it as part of the military service face the risk of repeated prosecution.<sup>72</sup>

To elaborate more on conscientious objection’s wider aspects, which embrace non-religious, selective and absolutist objection as well, one must explore the motivations behind the refusal act itself. In this respect, the following sections inquire into the broader understanding of conscientious objection, which considers the refusal as a tool used to object the militarised and gendered structures of society, not as a personal

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<sup>67</sup> Council of Europe: Committee of Ministers, ‘Recommendation No. R (87) 8 of the Committee of Ministers to Member States Regarding Conscientious Objection to Compulsory Military Service’ <<http://www.refworld.org/docid/5069778e2.html>> accessed 14 April 2017.

<sup>68</sup> *ibid* para.10.

<sup>69</sup> *ibid* para.11.

<sup>70</sup> United Nation (n 25) para.4.

<sup>71</sup> Asbjørn Eide and Mubanga-Chipoya Chama, *Conscientious Objection to Military Service: Report Prepared in Pursuance of Resolutions 14 (XXXIV) and 1982/30 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities*, vol 30 (1985) para.152.

<sup>72</sup> Lippman (n 14) 39.

request for exemption from the compulsory military service. Therefore, the next section examines conscientious objection in the context of civil disobedience.

### **3.3. Conscientious Objection and Civil Disobedience**

The previous section focused on the typology of conscientious objection and provided general definitions of conscientious objection. Drawing on the concept of civil disobedience, this section attempts to examine conscientious objection in a broader sense in order to reveal the motivations behind the refusal acts, which are considered personal, though they have public and political dimensions (see Chapter 8 for a wider discussion on anti-militarism in Turkey.) This section provides a brief definition of civil disobedience (see subsection 3.3.1) and then, focuses on the distinction and similarities between conscientious objection and the act of civil disobedience (see subsection 3.3.2.)

#### **3.3.1. What is Civil Disobedience?**

Civil disobedience covers a broad range of disputed issues. For example, there hitherto is no agreement reached over the questions of whether violence eliminates the civility of acts or whether the authorities should distinguish between ordinary criminals and law-breakers with a conscientious reason. As a result of these disagreements, it is hard to come to a comprehensive definition of civil disobedience; therefore, its scope remains ambiguous.<sup>73</sup> The chapter scrutinises Rawl's definition of civil disobedience and conscientious refusal<sup>74</sup> as a point of departure.

In the *A Theory of Justice*, Rawls defines civil disobedience “as a public, nonviolent, conscientious yet political act contrary to law usually done with the aim of bringing

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<sup>73</sup> Hugo Adam Bedau, ‘Civil Disobedience and Personal Responsibility for Injustice’ in Hugo Adam Bedau (ed), *Civil Disobedience in Focus* (Routledge 1991) 49.

<sup>74</sup> Rawls uses the term of “conscientious refusal” instead of conscientious objection, he defines it as “noncompliance with a more or less direct legal injunction or administrative order.” He further indicates that “unwillingness of a pacifist to serve in the armed forces, or of a soldier to obey an order that he thinks is manifestly contrary to the moral law as it applies to war; the refusal of the Jehovah's Witnesses to salute the flag” constitutes a conscientious refusal. [See, John Rawls, *A Theory of Justice* (Belknap Press of Harvard University Press 1999) 323–324. Hence, the term of “conscientious refusal” is used in a way that includes the conscientious objection to military service as well. In this study, conscientious refusal and conscientious objection will be employed interchangeably.

about a change in the law or policies of the government.”<sup>75</sup> He further points out that “[b]y acting in this way one addresses the *sense of justice of the majority* of the community and declares that in one’s considered opinion the principles of social cooperation among free and equal men are not being respected [emphasis added.]”<sup>76</sup> Each element of civil disobedience that Rawls suggests raises concerns over the definition and the scope of civil disobedience. However, before examining these elements in depth, it is important to analyse Rawls’s focus on the “sense of justice of the majority.”

Rawls’ reference to “the sense of justice of the majority of the community” has been criticised in terms of that it restricts the legitimisation of disobedience. According to Peter Singer, although Rawls does not suggest that the sense of justice is a common denominator among societies, he mainly focuses on those having “a common conception of justice.” In that sense, Rawls’s understanding of justification of civil disobedience is narrow. One should question why disobedience is acceptable only if it is directed at a “particular conception of justice” and why it has to be based on already established societal principles?<sup>77</sup> Rawls has a narrow understanding of civil disobedience in the sense that he excludes claims that are not intended to invoke the “majority’s shared conception of justice.” However, in some specific cases, disobedience may aim at invoking and getting the minority’s support. For instance, vegetarians, who believe that as defenceless beings, animals deserve protection, usually attempt to gain the support of the minority. If Rawls’ elements for a justifiable disobedience were applied, acts of dissent which aim at gaining the support of a small community rather than the majority, would not be qualified as civil disobedient acts.<sup>78</sup>

With regards to the examination of the definition of civil disobedience from Rawls’ perspective, the elements of civil disobedience include the following: 1) civil disobedience shall be a nonviolent act, 2) dissenters shall be willing to accept punishment, 3) civil disobedience is a public act, and 4) civil disobedience is an illegal act. In what follows these elements will be discussed respectively.

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<sup>75</sup> *ibid* 320.

<sup>76</sup> *ibid*.

<sup>77</sup> Peter Singer, ‘Disobedience as a Plea for Reconsideration’ in Hugo Adam Bedau (ed), *Civil Disobedience in Focus* (Routledge 1991) 124–126.

<sup>78</sup> Kent Greenawalt, ‘Justifying Nonviolent Disobedience’ in Hugo Adam Bedau (ed), *Civil Disobedience in Focus* (Routledge 1991) 176–177.



### 3.3.1.1. Nonviolent

According to Rawls, since the act of civil disobedience has conscientious implications, resorting to violence will be contrary to the basic sense of civil disobedience. Furthermore, the non-violent act of disobedience is an indicator of that dissenters respect the law, though they disobey.<sup>79</sup> However, it should be considered that although it is indisputable that disobedience through a non-violent act must be preferred to disobedience through a violent act, there might be occasions that necessarily involve violence to eliminate things that conscientious objectors consider wrong.<sup>80</sup> These occasions and their limits should be determined carefully. Conversely, restricting the definition and the scope of civil disobedience and excluding various acts of disobedience limit the opportunity to monitor such acts.<sup>81</sup>

Using coercive tools, which intimidate and threaten others and force them to behave against their rights and liberties, is not compatible with the act of civil disobedience. Therefore, to achieve their sincere aim, which is bringing about a change in the policy or the law, dissenters must consider negotiating and finding a common ground rather than imposing their truth on policy makers.<sup>82</sup> However, this does not require excluding violence and *any* coercion from the definition of civil disobedience. The requirement of engaging with disobedience act merely by means of *convincing* others marks breaking law as unnecessary and unjust, hence, limits the justification and the range of civil disobedience.<sup>83</sup>

Violence is not limited to physical acts directed at human bodies; violence is beyond such a narrow understanding. First, individuals do not merely have prima facie rights over their bodies. They are also free to make up their mind. Therefore, any acts that physically or physiologically restrict the autonomy of individuals to decide freely is also considered as violence. As a result, it becomes difficult to argue that civil

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<sup>79</sup> Rawls (n 74) 321–322.

<sup>80</sup> Joseph Raz, *The Authority of Law: Essays on Law and Morality* (Clarendon Press; Oxford University Press 1979) 267.

<sup>81</sup> Walzer (n 3) 25.

<sup>82</sup> Kimberley Brownlee, 'Features of a Paradigm Case of Civil Disobedience' (2004) 10 *Res Publica: A Journal of Legal and Social Philosophy* 337, 347.

<sup>83</sup> John Morreall, 'The Justifiability of Violent Civil Disobedience' in Hugo Adam Bedau (ed), *Civil Disobedience in Focus* (Routledge 1991) 136.

disobedience does not involve violence.<sup>84</sup> Second, higher moral convictions might justify an act of disobedience that violates prima facie rights as they are not absolute rights. For instance, in the case of destroying draft files to express that war is immoral, the “government’s right not to have its records damaged has been superseded.”<sup>85</sup> Third, in some cases, harms caused by non-violent acts might be more serious than violent acts’ consequences. Therefore, violence cannot be completely excluded from the concept of civil disobedience.<sup>86</sup>

### **3.3.1.2. Punishment**

According to Rawls, one of the signs of sincerity is the willingness to “pay a certain price to convince others that our actions have, in our carefully considered view, a sufficient moral basis in the political convictions of the community.”<sup>87</sup> When they commit the act of disobedience, dissenters usually recognise the punishment that follows and accept it because they respect the law. By submitting themselves to this punishment, they do not only express their sincerity, but also attract public attention.<sup>88</sup> According to those who argue that acceptance of punishment is a vital element in justifying the act of disobedience, “it is unjust to discriminate either in favour of civil disobedience or against him simply because his act was done knowingly and deliberately.”<sup>89</sup> Submission to punishment can be considered as a sign of honesty, which makes it easy to persuade the public. It might also eliminate possible consequences of the refusal act such as “frustration, resentment, and insecurity people feel when their interests are jeopardised.”<sup>90</sup>

However, the voluntary acceptance of facing the legal consequences of their disobedience is not applicable to all acts of civil disobedience. In some cases, the effectiveness of dissent might require an act, which is committed in secrecy. For instance, if dissenters, who help fugitive slaves to escape, accept punishment and act

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<sup>84</sup> *ibid* 132–134.

<sup>85</sup> *ibid* 139.

<sup>86</sup> Raz (n 80) 267.

<sup>87</sup> Rawls (n 74) 322.

<sup>88</sup> Carl Cohen, ‘Civil Disobedience and the Law’ (1966) 21 Rutgers Law Review 1, 6.

<sup>89</sup> *ibid* 7.

<sup>90</sup> Greenawalt (n 78) 187.

openly, they might jeopardise any future attempts to help others.<sup>91</sup> Similarly, it is also argued that although Rawls sees the voluntary acceptance of punishment as a sign of sincerity, and in this sense, dissenters are required to make it clear that they are not “mere criminals,” acceptance of punishment is not the only sign of sincerity. For instance, moral lawbreakers might seek asylum after committing an act of civil disobedience, yet they actively protest abroad to manifest that the law requires reforms. They can use media and other tools to raise public awareness of “faults” inherent in the system. In this case, it is not clear why their unwillingness to accept the punishment stipulated by a law that dissenters found repressive would damage their sincerity.<sup>92</sup>

To sum up, whether to treat a moral lawbreaker different from other lawbreakers is a matter of dispute. Some argue that since it is unjust to distinguish between a moral lawbreaker and a mere lawbreaker when the former breaks the law, they must be punished like all lawbreakers however their motivations.<sup>93</sup> However, as Ronald Dworkin addresses, this understanding which stems from the belief that disobedient acts “*morally* justified, but [...] it cannot be *legally* justified,”<sup>94</sup> puts civil disobedience in a similar status with lawlessness. The argument in favour of imposing the same punishment and treatment on moral lawbreakers is weak in the sense that although it is impossible to tolerate all disobedience, it cannot be asserted that society “will collapse if it tolerates some.”<sup>95</sup>

### **3.3.1.3. Public and fair notice**

According to Rawls, “civil disobedience is a public act. Not only is it addressed to public principles, it is done in public. It is engaged in openly fair notice; it is not covert or secretive.”<sup>96</sup> In some situations, the act of civil disobedience must be committed in public to achieve its aim. This is the case when the act is aimed at asking the government to change its policies or laws. Therefore, making the

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<sup>91</sup> *ibid* 186.

<sup>92</sup> Brian Smart and Hugo Adam Bedau, ‘Defining Civil Disobedience’, *Civil Disobedience in Focus* (Routledge 1991) 207.

<sup>93</sup> Cohen (n 88) 6–7.

<sup>94</sup> Ronald Dworkin, *Taking Rights Seriously* (Duckworth 1977) 206.

<sup>95</sup> *ibid*.

<sup>96</sup> Rawls (n 74) 321.

government aware of the act might require notifying the government in advance. When the act itself pertains to public matters, such as calling for a change in policies, publicity is an essential element of this act.<sup>97</sup> However, one needs to take into consideration that publicity does not necessarily require revealing the identity of the dissenter. The publicity of the act and its motivations is adequate to fulfil the aim.<sup>98</sup> Furthermore, it should be noted that the requirement of fair notice is not applicable to all forms of disobedience. There are some circumstances in which fair notice might have adverse impacts on the act; in which case, publicity of motivations after the committed act will suffice.<sup>99</sup>

#### **3.3.1.4. Civil Disobedience as an Illegal Act**

According to Rawls “civilly disobedient act is indeed thought to be contrary to law, at least in the sense that those engaged in it are not simply presenting a test case for a constitutional decision; they are prepared to oppose the statute even if it should be upheld.”<sup>100</sup> It is worth analysing the question of whether acts of dissident can be considered as acts of civil disobedience when the legality of the norms is questioned before the higher court. With regard to the unconstitutionality claims, for instance, there is a debate over whether the act is illegal if the court rules that the law is not compatible with the Constitution.<sup>101</sup> For instance, William Taylor, General Counsel for the United States Commission on Civil Rights, suggests:

If a violation [of law] is committed under a claim of legal right with the intention of seeking redress in the courts, it can hardly be termed civil disobedience. In fact, under our judicial system, it is frequently necessary to violate the law to vindicate one’s legal rights. If the person challenging a law as unconstitutional cannot show that he has violated it, the courts may say that the case is a hypothetical one which is not ripe for decision.<sup>102</sup>

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<sup>97</sup> Bedau (n 4) 655–656.

<sup>98</sup> Raz (n 80) 265.

<sup>99</sup> Smart (n 92) 206–207.

<sup>100</sup> Rawls (n 74) 320–321.

<sup>101</sup> *ibid* 321.

<sup>102</sup> Mark Rudolph MacGuigan, ‘Democracy and Civil Disobedience’ (1971) 49 *Canadian Bar Review* 254–255.

Carl Cohen similarly argues that “when the challenge to the constitutionality (or constitutional applicability) of a law is unsuccessful, there is disobedience but not legal justification. Where such a challenge is successful, there is legal justification, but no disobedience.”<sup>103</sup> This understanding underestimates the circumstances and the motivations of dissenters during the act of civil disobedience.<sup>104</sup> In some cases, dissenters might object the law because the law contradicts their fundamental and constitutional rights. Even though dissenters are challenging the government, their acts are not directed at determining the legitimacy of the policy or the law. Determining whether the law is legal or not remains as of yet at the hands of authorities. Therefore, no matter whether the dissenters’ acts are within the scope of the constitutional rights, their acts still need to be considered as acts of civil disobedience.<sup>105</sup>

To sum up, as Dworkin suggests, since it infringes basic principles such as justice and fairness, “the doubtful law” leads individuals to question it. In that case, individuals may follow their conscience until the decision is reached and even after the higher court has upheld the law. The reasons for that are: first, the fact that compelling individuals to obey the law—because the law must be obeyed until the higher court has overruled the law—reduces their chances to challenge such law on moral grounds. Second, courts might reconsider their case-law. There will be irreversible damage to the conscientious individuals’ moral values if such individuals are forced to obey the law while they are awaiting the verdict or if the “court overrules itself.”<sup>106</sup> That is to say, until the court abolishes the law that dissenters disobey—under the current legislation—their act is considered illegal and has legal consequences. They still commit the unlawful act without knowing if the law will be abolished or not. The possibility of abolishing the law should not affect the nature of the act.

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<sup>103</sup> Cohen (n 88) 8.

<sup>104</sup> MacGuigan (n 102) 225.

<sup>105</sup> Bedau (n 4) 655.

<sup>106</sup> Dworkin (n 94) 211–214.

### 3.3.2. Is Conscientious Objection an Act of Civil Disobedience?

Similarities and differences between conscientious objection and civil disobedience give rise to the question of whether it is “possible to establish a political relationship between conscientious objection and civil disobedience.”<sup>107</sup> Raz defines civil disobedience as “*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 a public policy [emphasis added.]*”<sup>108</sup> He further defines conscientious objection as a “breach of law for the reason that the agent is *morally prohibited to obey* it, either because of its general character [...] or because it extends to certain cases which should not be covered by it [emphasis added.]”<sup>109</sup> Therefore, according to Joseph Raz, civil disobedience, as a political act, is directed at achieving a political result, and as a private act, conscientious objection has no such aim since objectors only “wish to avoid committing moral wrong by obeying a morally bad law.”<sup>110</sup> In the same vein, Rawls distinguishes between civil disobedience and conscientious refusal and perceives civil disobedience in a narrow sense.<sup>111</sup> He defines conscientious refusal as “noncompliance with a more or less direct legal injunction or administrative order.”<sup>112</sup> In this narrow sense, unlike civil disobedience, conscientious refusal is not necessarily grounded on the majority’s understanding of justice. Refusal might be based on motivations other than political such as religious or moral.<sup>113</sup>

Conscientious beliefs are defined as a reflection of “an individual’s inward conviction of what is morally right or morally wrong, and it is a conviction that is genuinely reached and held after some process of thinking about the subject.”<sup>114</sup> In parallel with this definition, any objection based on conscientious grounds is perceived as it only

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<sup>107</sup> Nilgun Toker Kılınç, ‘The Morals and Politics of Conscientious Objection, Civil Disobedience and Anti-Militarism’ in Özgür Heval Çınar and Coşkun Üsterci (eds), *Conscientious objection: Resisting Militarized Society* (Zed Books 2009) 69.

<sup>108</sup> Raz (n 80) 263.

<sup>109</sup> *ibid.*

<sup>110</sup> *ibid* 264.

<sup>111</sup> Rawls (n 74) 323.

<sup>112</sup> *ibid.*

<sup>113</sup> *ibid* 324.

<sup>114</sup> Major (n 6) 350.

aims to “preserving one’s selfhood, moral integrity and subjective value.”<sup>115</sup> Therefore, conscience is attributed a subjective and personal meaning in which it is assumed that objectors decide not to fulfil the obligation of the law only when it has detrimental effects on their personal and moral integrity.<sup>116</sup>

Personal motivations behind conscientious objection do not change the fact that most dissenters form their opinions after having recognised their best way to live. Dissenters’ desire to find a political and a social environment in which they can live in accordance with their personal motivations cannot be ignored. That is to say, although conscience is a result of individual’s inner convictions, it does not mean it cannot gain a meaningful place within the public space. Walzer perceives conscience in a broader sense “as a form of moral knowledge that we share not with God, but with other men- our fellow citizens, for example, or our comrades or brethren in some movement, party, or sect.”<sup>117</sup> Therefore, he considers the “description of conscience as ‘merely personal’ inadequate.”<sup>118</sup> He states:

Men who continually worry about that their objection is a piece of self-indulgence, or who ask over and over and over again whether they are “really helping the Movement,” or “working effectively to stop the war,” [...] are obviously not acting on the basis of a “merely personal” code.<sup>119</sup>

This passage illustrates that conscientious objectors, as will be shown in the Turkish case in chapter 8, might base their refusal on moral principles which might be applicable to a great number of individuals. In this sense, objectors do not only disobey the law to avoid committing an act against their moral convictions, but also challenge the system.<sup>120</sup> Accordingly, when objectors challenge the state, they do not “make their claims on the basis of ‘merely personal’ codes, but on the basis of shared principles and mutual engagements.”<sup>121</sup> Therefore, in the cases where conscientious objectors consider their objection as part of a movement and locate their argument

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<sup>115</sup> Toker Kılınç (n 107) 61.

<sup>116</sup> *ibid* 62.

<sup>117</sup> Walzer (n 3) 131.

<sup>118</sup> *ibid* 130.

<sup>119</sup> *ibid*.

<sup>120</sup> Avi Sagi and Ron Shapira, ‘Civil Disobedience and Conscientious Objection’ (2002) 36 *Israel Law Review* 181, 184.

<sup>121</sup> Walzer (n 3) 131.

within a discussion of war, militarism, patriarchy, etc., categorising their objection as a “merely” private act would have detrimental impacts on the legitimacy of their wider demands that go beyond gaining a personal exemption from military service. Such categorisation would also limit the scope of the right to conscientious objection.

Finally, both terms, as Kimberley Brownlee points out, are associated with meaningful values. Like civil disobedience, conscientious objection raises noteworthy demands of “personal convictions,” which are protected by the law in just societies. Both acts involve a serious and a sincere refusal of what people consider wrong. In certain situations, conscientious objection might be considered as an act of civil disobedience.<sup>122</sup> To illustrate, conscientious objection might be the product of moral convictions, which focus on the wrongness of engaging in any war-making process or being involved in any part of such law regardless of whether it recognises a right to conscientious objection or not. Objectors may also refuse to apply for the conscientious objector status too because they believe that appealing to such a demand means accepting the state’s authority to enact laws on a war-making process. Therefore, they refuse to co-operate with these laws in any way or even ask for an exemption.<sup>123</sup> In that case, a deliberate refusal of regulations, particularly regulations pertaining to the military conscription, is a form of civil disobedience.<sup>124</sup>

To conclude, a conscientiously motivated act is seen, as it remains, a personal act. However, most of the conscientious declarations are read in public in order to engage in open debates and encourage public participation. Objectors’ public declarations open a discussion about militarism; hence, conscientious objection to military service takes the form of a collective act rather than an individual one.<sup>125</sup> When the objection rests on ideas as criticising the state, fighting against its militarist implementations,

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<sup>122</sup> Brownlee (n 5) 12.

<sup>123</sup> For instance, Mehmet Tarhan, an LGBT activist and objector, in Turkey, rejected exemption from military service based on regulations on LGBT’s and the military service. In his conscientious objection declaration, he stated that ‘the report that classifies me as ‘unfit’ (or ‘rotten’) because I am gay and affords me the ‘right’ to exemption from military service is nothing more than a sign of the rottenness of the state itself.’ (See, ‘The Case of Conscientious Objector Mehmet Tarhan’ <<http://www.wri-irg.org/node/1585>> accessed 21 October 2015.) When objectors, who based their refusal on their sexual identity, refuse to apply for an exemption in a society that prohibits LGBT’s from military service based on the understanding that homosexuality is a disease, their act takes a form of a collective act.

<sup>124</sup> Carl Cohen, ‘Conscientious Objection’ (1968) 78 *Ethics* 269, 271–272.

<sup>125</sup> Toker Kılınç (n 107) 69.



and questioning the social structure, conscientious objection should be considered also as a political act, not only a moral or a personal act.<sup>126</sup>

### 3.4. Conclusion

This chapter argued that conscientious objection can be informed by ethical, religious, and political beliefs. Objection, no matter on which it is based, can take forms of refusal to serve in the military and even a refusal to pay taxes that are transferred to the military. Despite the fact that “conscientious objectors are not homogenous groups,” they still have a “common denominator,” which is “a refusal to cooperate on some level with a war machine that is built on dying and killing.”<sup>127</sup> In other words, although objectors have personal motivations, objection to the military service transcends a personal demand for exemption. The conscientious objection movement takes a form of opposition to the militarisation of society.

In brief, since the research embraces a broad definition of conscientious objection that considers objection as a tool used to question the militarist structures of society, the chapter focused on the differences and the similarities between civil disobedience and conscientious objection in order to clarify whether conscientious objection to the military service is an act of civil disobedience. It forged the link between civil disobedience and conscientious objection by arguing that conscientious objection is not limited to refusing a duty and demand for a personal exemption and that while conscientious objectors refuse the militarisation of society, they aim to bring about change.

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<sup>126</sup> *ibid* 70.

<sup>127</sup> Hülya Üçpınar, ‘The Criminality of Conscientious Objection in Turkey and Its Consequences’ in Özgür Heval Çınar and Coşkun Üsterçi (eds), *Conscientious objection: Resisting Militarized Society* (Zed Books 2009) 242.

## Chapter 4

### Gender and Militarism

Soldiers are not born; rather they are made, through training, institutional expectations, psychological conditioning, and a variety of material and ideological rewards.<sup>1</sup>

#### 4.1. Introduction

The previous chapter adopted a broad understanding, which considers conscientious objection not only as an individual act, but also as a tool used against militarism. Taking such an approach to conscientious objection allows understanding the conscientious objectors' demilitarisation attempts in Turkey (see Part II, particularly chapter 8.) This chapter leads the discussion of chapter 3 further and analyses the reasons impelling individuals to object. To understand the main principles to which objectors adhere when justifying their objection, it examines militarism in relation to gender by utilising Cynthia Enloe's analytical toolbox to understand militarism. Enloe's approach to militarism is useful to understand the factors strengthening and normalising militarism. Enloe's analytical toolbox also affords a picture of how this research's participants read militarism (see chapter 8.)

Enloe does not only focus on *the military* as an institution but also on *militarism* as an ideology. Additionally, she includes *militarisation* to her "analytical toolbox" because studying the military only as an institution affords a narrow picture of how militarism operates. She adopts militarisation as a conceptual tool in order to find answers to questions that arise in the course of her study: "why did that person—or that political or that agency—in effort to achieve national security, become more dependent on militaristic strategies?"<sup>2</sup> She finally adds to her toolbox *a feminist curiosity*, so to

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<sup>1</sup> Sandra Whitworth, *Men, Militarism, and UN Peacekeeping: A Gendered Analysis* (Lynne Rienner Publishers 2004) 86.

<sup>2</sup> Cynthia Enloe, *Globalization and Militarism: Feminists Make the Link* (Rowman & Littlefield 2016) 68.

question what is considered as “natural” and “trivial.”<sup>3</sup> By adopting Enloe’s analytical toolbox while reading militarism through gender lenses, this chapter examines the impacts of militarism on society and how militarism shapes culture and vice versa. As explained in chapter 8.3.4.1, developing a feminist curiosity in understanding militarism is useful because it enables the research to explore the participants’ motivations and question what has been considered “normal” with regards to militarism and gender.

The discussion proceeds as follows: section 2 presents five ways of conceptualising militarism. Section 3 argues that the military is not only a war-machine, but also an institution influencing society at large; therefore, the military’s workings require analysis from a sociological perspective. Then, it introduces gender as a key analytical tool by arguing that gender plays a role in the militarisation of society, and that militarisation is not limited to the military.

## **4.2. What is Militarism?**

Before introducing gender as a key analytical tool, some definitions of militarism will briefly be discussed in what follows. Anna Stavrianakis and Jan Selby<sup>4</sup> examined various ways to conceptualise militarism. First, they argue that Alfred Vagts makes sense of militarism from ideological perspectives and defines it as “complex of feelings which rank military institutions and ways above the ways of civilian life, carrying military mentality and modes of acting and decision into the civilian sphere.”<sup>5</sup> This perspective defines militarism as an ideology that “glorifies war, military institutions and the prevalence of martial values in society.”<sup>6</sup> However, the meaning and repercussions of militarism cannot be reduced to the glorification of war. Wars are declared for various reasons rather than the straightforward glorification of war and the military.<sup>7</sup> Furthermore, although the effects of war on militarism cannot be underestimated, militarism cannot be understood only with reference to war. It is

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<sup>3</sup> *ibid* 25.

<sup>4</sup> Anna Stavrianakis and Jan Selby, ‘Militarism and International Relations in the Twenty-First Century’ in Anna Stavrianakis and Jan Selby (eds), *Militarism and International Relations: Political economy, Security, Theory* (Routledge 2013) 12–14.

<sup>5</sup> Alfred Vagts, *A History of Militarism: Civilian and Military* (Meridian Books 1959) 17. cited in Stavrianakis and Selby (n 4).

<sup>6</sup> Stavrianakis and Selby (n 4) 12.

<sup>7</sup> *ibid*.

“much broader than war, comprising an underlying system of institutions, practices, values, and cultures.”<sup>8</sup>

Second, Asbjørn Eide and Marek Thee define militarism as “the inclination to rely on military means of coercion for the handling of conflicts.”<sup>9</sup> In this sense, the second understanding of militarism is based on the idea that states behave in a way that prioritises the use of force in their policies. This behavioural reading of militarism, contrary to the ideological understanding, does not consider the glorification of martial values as the cause of war, yet it reduces militarism to the use of force or violence and underestimates other tools strengthening militarism. Therefore, such conceptualisation of militarism is problematic as it focuses on the consequences (states attempt to solve problems by using force) and excludes political and sociological factors.<sup>10</sup>

Third, another reading of militarism focuses on the mushrooming of weapons, arm bases, and the growth in military expenditure.<sup>11</sup> However, this reading neglects the invisible and the most powerful tools of militarism.

Fourth, some suggest that conceptualising militarism means examining the influence of the military over politics. Such an approach, often known as the “civil-military relations approach,” focuses on the distinction between the military and politics and the necessity of “keeping the military ‘above’ or ‘out of’ politics.”<sup>12</sup> This institutional conceptualisation of militarism is also limited. The military, as illustrated in the Turkish context in chapter 6.2.3, can be influential and powerful without even taking “power.” Focusing on military coups and cases in which the military takes “power” is insufficient to understand militarism.<sup>13</sup>

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<sup>8</sup> Laura Sjoberg and Sandra Via, ‘Introduction’ in Laura Sjoberg and Sandra Via (eds), *Gender, War, and Militarism: Feminist Perspectives* (ABC-CLIO 2010) 7.

<sup>9</sup> Asbjørn Eide and Marek Thee, *Problems of Contemporary Militarism* (Croom Helm 1980)

<sup>9</sup>. As cited in Stavrianakis and Selby (n 4) 12.

<sup>10</sup> Stavrianakis and Selby (n 4) 12.

<sup>11</sup> *ibid.*

<sup>12</sup> *ibid.* 13.

<sup>13</sup> *ibid.*

Due to the limited approaches demonstrated above, this chapter adopts the fifth conceptualisation of militarism: the sociological approach.<sup>14</sup> To understand militarism from a sociological perspective, which draws on the integration of militarism into society, Michael Mann defines militarism as “a set of attitudes and *social practices* which regard war and the preparation for war as a normal and desirable social activity [emphasis added.]”<sup>15</sup> Similarly, Martin Shaw adopts a sociological approach to militarism. He argues:

The core meaning of ‘militarism’ should be specified not in terms of how military practices are regarded, but how they influence social relations in general. Militarism develops not just when ideas of war are strong, but when military relations widely affect social relations and practices. Hence I have proposed (Shaw, 1991: 9-15) that militarism denotes the penetration of social relations in general by military relations; in militarisation, militarism is extended, in demilitarisation, it contracts.<sup>16</sup>

Except Shaw’s definition, the above-mentioned definitions of militarism do not adopt an antimilitarist understanding. As opposed to such definitions, this research aims to make sense of militarism by drawing on demilitarisation attempts, instead of defining militarism. In a similar vein, Kjell Skjelsbaek touches on the difficulties of providing a unitary definition of militarism and argues that militarism is shaped within specific time and space. Therefore, instead of providing a definition of militarism, Skjelsbaek, considers it as *a set of diseases*, and tries to understand the symptoms.<sup>17</sup> In line with this approach, this research argues that understanding the motivations behind the conscientious objectors’ refusal and also hearing their voices shed light on the symptoms. As a result, this research adopts a sociological perspective to provide a comprehensive understanding of the conscientious objectors’ demilitarisation

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<sup>14</sup> See chapter 8 for a sociological analysis of militarism in Turkey.

<sup>15</sup> Michael Mann, ‘The Roots and Contradictions of Modern Militarism’ (1987) 162 *New Left Review* 35 <<http://newleftreview.org/I/162/michael-mann-the-roots-and-contradictions-of-modern-militarism>> accessed 20 March 2017.

<sup>16</sup> Martin Shaw, ‘Twenty-First Century Militarism: A Historical-Sociological Framework’ in Anna Stavrianakis and Jan Selby (eds), *Militarism and International Relations: Political Economy, Security, Theory* (Routledge 2013).

<sup>17</sup> Kjell Skjelsbaek, ‘Militarism, its Dimensions and Corollaries: An Attempt at Conceptual Clarification’ (1979) 16 *Journal of Peace Research* 213, 213–214.

attempts.<sup>18</sup>

It is also worthy of clarification that the present research does not use militarism and militarisation interchangeably. Militarisation, as Enloe argues, “is a process that is happening at so many levels.” More broadly, she defines militarisation as “step-by-step social, political, and psychological process by which any person, any group, or any society absorbs the ideas and resultant practices of militarism.”<sup>19</sup> Considering militarisation as a process helps to reveal the tools used to normalise militarism.

### **4.3. Militarism and Gender Roles**

The military is not only limited to use of force; it affects society in many ways. In addition to its prominent function, which is the use of force, the military may also have additional functions such as providing humanitarian aid, offering assistance in disasters, taking part in peacekeeping operations, and getting involved in global affairs. As such, militaries are visible in the everyday life. To secure its social visibility and to function as a social entity, the military needs manpower. As John Hockey argues, despite the wide range of advanced technologies available to militaries, manpower is still seen as an effective factor conducive to destroying the “enemy.” Also, “ensuring that troops accomplish this organizational objective effectively requires an ongoing socialization process.”<sup>20</sup> In other words, as social organisations, the armed forces hold a dominant position in societies. The tools available to the military are employed in a way to sustain such position. It is necessary to take into consideration that these tools, as well as the military and the military culture, are the product of people. They emerged as a result of negotiations

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<sup>18</sup> On that account, it is of a paramount importance to conduct interviews to investigate the normalisation of militarism. Hearing the voices of objectors, their narratives, their daily life experiences, and their critical mind will shed light on the multi-layered aspects of the militarisation process, see chapter 8 for analysis of interviews.

<sup>19</sup> Cynthia Enloe, *Globalization and Militarism: Feminists Make the Link* (Rowman & Littlefield 2007) 11.

<sup>20</sup> John Hockey, ‘No More Heroes : Masculinity in the Infantry’, *Military Masculinities: Identity and the State* 15.

and ongoing processes. Therefore, militaries need to be analysed from a sociocultural context.<sup>21</sup>

Gender concepts such as “feminist curiosity” and “hegemonic masculinity” are central to analysing the military from a sociological perspective for two reasons. First, gender plays a vital role in creating, maintaining, and strengthening militarism by shaping institutions, culture, and social practices.<sup>22</sup> Second, as Enloe argues, “one of the hallmarks of a simplistic, uncritical (thus unreliable) analysis of any military is to imagine that military recruiters and their superiors do not think about masculinities.”<sup>23</sup> Based on these arguments, this chapter examines gender’s role in the normalisation of militarism by applying the concept of feminist curiosity (see section 4.3.1,) and studies the relationship between masculinity and militarism by applying the concept of hegemonic masculinity (see section 4.3.2.)

#### **4.3.1. Gender’s Role in Normalisation of Militarism**

The military adopts different values and has different priorities compared to the civilian institutions. This is mostly due to one of the military’s functions, which is the use of force. Since such function puts soldiers’ life into risk, the military attributed a different, a dominantly “honourable” meaning to death to counter any criticism (see chapter 6 for an analysis of martyrdom.)<sup>24</sup> At this point, constructing myths and discourses come into play. As Rachel Woodward and Trish Winter state, “discourses are fundamental because they give meaning to a material reality, they make things ‘real’. Discursive practices bring the Army into being; they are how we imagine the Army into existence.”<sup>25</sup> That is to say, although the military is visible and such visibility is embodied in the presence of soldiers, weapons, and troops, the meaning

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<sup>21</sup> Rachel Woodward and Trish Winter, *Sexing the Soldier: The Politics of Gender and the Contemporary British Army* (Routledge 2007) 2.

<sup>22</sup> *ibid* 3.

<sup>23</sup> Cynthia Enloe, ‘The Recruiter and the Sceptic: A Critical Feminist Approach to Military Studies’ (2015) 1 *Critical Military Studies* 3, 7.

<sup>24</sup> Marcia Kovitz, ‘The Roots of Military Masculinity’ in Paul Higate (ed), *Military Masculinities: Identity and the State* (Praeger) 9.

<sup>25</sup> Woodward and Winter (n 21) 100.

attributed to them and to the “rationale” for their existence is shaped by “discursive practices,” only via which the military gains society’s support.<sup>26</sup>

Similarly, convincing the youth “to die and kill,” and legitimising war depend on to what extent these practices are normalised in everyday life. Such normalisation is achieved primarily via the call for emotions using nationalistic ideas, so the youth voluntarily become involved in defending the nation against threats and also be part of the national defence through the military service.<sup>27</sup> This section examines the role gender plays in building these emotional ties and myths and normalising militarism.

It is essential to define gender before examining how politicians convince people to be part of this hierarchy using gender as a tool. The concept of gender is theorised in various ways. This research adopts a poststructuralist definition of gender. As such, gender is defined as “a social category based around sex differences.”<sup>28</sup> Drawing on the argument that “people function as social beings,” Woodward and Winter define gender as “multiple and diverse ways in which social relations (how we relate to each other) and identity (what we feel ourselves to be) are formed and sustained around sex differences.”<sup>29</sup> In this sense, gender is not a natural and a biological fact. People’s roles under the concept of gender are determined and shaped by expectations, social norms, political views, and so on.<sup>30</sup> In other words, gender is a “*social practice* that constantly refers to bodies and what bodies do, it is not social practice reduced to the body [...] Gender exists precisely to the extent that biology does not determine the social [emphasis added.]”<sup>31</sup> Further, gender is seen as “social characteristics only *presumed* to be related to perceived membership in the biological categories of male and female.”<sup>32</sup>

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<sup>26</sup> *ibid.*

<sup>27</sup> Victoria M Basham, ‘Gender, Race, Militarism and Remembrance: The Everyday Geopolitics of the Poppy’ [2015] *Gender, Place & Culture* 1, 1.

<sup>28</sup> Woodward and Winter (n 21) 1.

<sup>29</sup> *ibid.*

<sup>30</sup> Ana Carden-Coyne, ‘Introduction: Gender and Conflict since 1914: Historical and Interdisciplinary Perspectives’ in Ana Carden-Coyne (ed), *Gender and conflict since 1914: historical and interdisciplinary perspectives* (Palgrave Macmillan 2012) 3.

<sup>31</sup> RW Connell, *Masculinities* (2nd ed, University of California Press 2005) 71–72.

<sup>32</sup> Laura Sjoberg and Sandra Via, *Gender, War, and Militarism: Feminist Perspectives* (ABC-CLIO 2010) 3.



Similarly, Cynthia Cockburn argues that gender is socially constructed. When she examines antimilitarism in light of feminism, she raises a striking question: “what kind of feminism is this?”<sup>33</sup> She suggests that it is a social constructionist form of feminism. It argues that gender is not biologically but socially constructed. It refuses the idea that women are the weaker sex—the protected in opposition to the protectors—men. It focuses on the practices that subordinate women. Therefore, what anti-war feminists advocate is that the need to adopt a feminist perspective, which includes “a critique of the meanings and operation of *power*.”<sup>34</sup> To elaborate more on this point, Cockburn suggests:

If we think of the war system as having a cyclical or spiralling life, as a continuum over time, proceeding from the discourse of militarist ideology through material investment in militarization, aggressive policy-making, outbreaks of war, short firefights, prolonged stalemates, ceasefires, demobilization, periods of provisional peace, anxieties about security, rearmament and so on, and if we look closely at the social relations in which individuals and groups enact these various steps, that is where it is possible to see gender relations at work, pushing the wheel around.<sup>35</sup>

By considering gender as a cause of war, feminist activists aim at bringing about a change in the gender relations to eliminate militarism and war. Unless the root of the problem is well understood, the “gender regime that emerges from war is likely in the short run to disturb the peace with continuing violence and to maintain militarism and war-readiness in the long run.”<sup>36</sup>

In a nutshell, a gender reading makes the invisible aspects of militarism visible and challenges what is considered as “normal” and “unquestionable.” It is worth noting that this study forges the link between gender and antimilitarism not because of so-called peaceful nature of women but because militarism maintains its power via gendered cultural understandings and myths.

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<sup>33</sup> Cynthia Cockburn, ‘Gender Relations as Causal in Militarization and War’(2010) 12 International Feminist Journal of Politics 139, 143.

<sup>34</sup> *ibid* 143–144.

<sup>35</sup> *ibid* 149–150.

<sup>36</sup> Cynthia Cockburn, ‘War and Security, Women and Gender: An Overview of the Issues’ (2013) 21 Gender & Development 433, 445.

#### 4.3.1.1. The Protected versus the Protector

The dichotomy of “manliness” versus “womanliness” is also shaped by social norms. The former conceptualises men as naturally violent, and the latter conceptualises women as naturally peaceful.<sup>37</sup> It is vital to take into consideration the fact that during conflicts, the protection of national security has been prioritised over human rights, particularly gender equality. For this reason, women’s endeavour for peace is also a struggle for gender equality and demilitarisation of society. However, this does not necessarily mean that women’s demand for peace is a result of their “peaceful nature.” Assuming that there is a connection between all women and pacifism only contributes to bolstering stereotypes such as women are more caring than men.<sup>38</sup>

Within gendered and militarised societies, individuals encounter the dichotomy of “manliness” versus “womanliness” at an early age through childhood games, toys, and images, and advertisement on social and mainstream media.<sup>39</sup> Aysegul Altinay exemplifies the situation with a school song from Turkey, which almost all children are expected to learn. The song runs as follows:

Little ‘Ayse’ Little ‘Ayse’,  
Tell me what are you doing  
I am taking care of my baby,  
I am singing lullabies to it.  
Little ‘soldier’, little ‘soldier’,  
Tell me what you are doing,  
I am taking care of my rifle  
I am attaching a bayonet to it.<sup>40</sup>

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<sup>37</sup> Carden-Coyne (n 30) 3.

<sup>38</sup> Galia Golan, ‘Militarization and Gender: The Israeli Experience’ (1997) 20 *Women’s Studies International Forum* 581, 584.

<sup>39</sup> Cockburn (n 36) 439.

<sup>40</sup> Ayşe Gül Altinay, ‘Refusing to Identify as Obedient Wives, Sacrificing Mothers and Proud Warriors’ in Özgür Heval Çınar and Coşkun Üsterci (eds), *Conscientious Objection: Resisting Militarized Society* (Zed Books 2009) 92.

This song is an example of how norms about the social role of women and men (in this case, women are responsible for taking care of kids while men are occupied with protecting them) are normalised in everyday life. These gendered practices make a close connection between militarism and masculinity in a way that it renders this relationship “normal” and, therefore, “unquestionable.” However, “this relationship is only ‘natural’ because it has become naturalized, the outcome of consistent efforts made to sustain that connection.”<sup>41</sup>

Consequently, portraying women as “the protected” and men as “the protectors” and viewing the relationship between them as “normal” enhances militarism. As a result of perceiving individuals through such a dichotomy, it becomes possible to be qualified to speak out for others and gain “public superiority” and make the rest, whose natural habitat is seen as a domestic sphere, to perceive themselves as weak and accept to be silenced.<sup>42</sup> This is one of the reasons why assumptions such as men are genetically fighter and women are naturally peaceful become unquestionably accepted.

#### **4.3.1.2. The Militarisation of Women**

As Enloe argues, examining “the military” and “militarism” is insufficient to understand the concepts of “national” and “security.” To understand these concepts, one must take women’s position and struggle into consideration in more depth.<sup>43</sup> Before exploring women’s experiences with militarism, it is worth clarifying that although the number of women in the military has been increasing, particularly in the US, militaries in most countries are still male-dominated institutions. Furthermore, even in countries that both women and men are subjected to compulsory military service, women are not allowed to perform combat duties as opposed to men. Even when they are included in the military, women face discrimination and sexual harassment. Although it is important to consider women’s experiences in male-dominated institutions, this lies beyond the scope of this research.

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<sup>41</sup> Woodward and Winter (n 21) 103.

<sup>42</sup> Enloe, *Globalization and Militarism* (n 19) 60–61.

<sup>43</sup> *ibid* 54–55.

With regards to the militarisation of women, militarism has a wider implementation scale. It is the product of an on-going process. Militarism does not only have vital impacts on society's expectations of men; it needs women's cooperation—either as a mother, wives, or worker—to normalise the militarisation process and make both men and women believe that they have certain responsibilities to fulfil and roles to play.<sup>44</sup> For instance, Bibbings explores how women contributed to the war effort during WWI by taking over men's jobs, so these men could join the army instead, how women acted as nurses, and how those unable to take an active duty encouraged men to join.<sup>45</sup> These insights show that the military needs “women who will act and think as patriarchy expects women to act and think”<sup>46</sup> so it maintains its masculinised structure. In other words, militarisation not only needs men to play their roles and meet society's expectations but also women who are assigned specific roles to influence the process of masculinity and militarism. In Britain, for example, there were a number of British women during WWI delivering a white feather to civilian men as a sign of cowardice. This indicates that states need women to convince men to enlist.<sup>47</sup> It is worth clarifying that although women's contribution to the war effort was not an official policy of the British government as women acted independently like any other women who opposed the war, the idea of delivering a white feather was the product of the war propaganda. This approach can also be seen in war posters as shown in figure 1 below.

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<sup>44</sup> Cockburn (n 36) 437.

<sup>45</sup> Lois Bibbings, *Telling Tales about Men: Conceptions of Conscientious Objectors to Military Service during the First World War* (Manchester University Press 2011) 54.

<sup>46</sup> Cynthia Enloe, *Does Khaki Become You?: The Militarization of Women's Lives* (Pandora 1988) 220.

<sup>47</sup> Cynthia Enloe, 'Where Are the Women in Military Conscientious Objection? Some Feminist Clues' in Özgür Heval Çınar and Coşkun Üsterçi (eds), *Conscientious Objection: Resisting Militarized Society* (Zed Books 2009) 81–82.



Figure 1 Women of Britan say- "GO!" by E.Kealey<sup>48</sup>

Such insights on the role women play in the militarisation process demonstrate that women are not entirely excluded from the military. In this regards, one must question the roles women play and still do as mothers, wives, and girlfriends of soldiers. For instance, one of the prominent tools used to maintain manpower and citizens' spirit to fight for the nation is condemning "unpatriotic motherhood" and glorifying "patriotic motherhood." Such practices involve "obedience to the state and the willingness sacrifice of sons to the army."<sup>49</sup> Based on this understanding, the patriotic mother is expected to ease her pain with the "honour" of sacrificing the son's life for the sake of the nation. Therefore, there is a close connection between the soldier and the patriotic mother in a sense that they share common characteristics such as the unquestioning of obedience, being subjected to orders and hierarchy, having the will to sacrifice one's life.<sup>50</sup> This connection indicates that the construction of women as the "weaker sex" by overemphasising their biological differences in relation to men is followed by the

<sup>48</sup> Rosalind Ormiston, *First World War Posters* (Flame Tree Publishing 2013) 45.

<sup>49</sup> Susan Zeiger, 'She Didn't Raise Her Boy to Be a Slacker: Motherhood, Conscription, and the Culture of the First World War' (1996) 22 *Feminist Studies* 6, 7–8.

<sup>50</sup> *ibid* 27.

construction of the mother-son ties. As a result, soldiers view the military service as a way to protect their mothers from threats.

#### **4.3.2. Militarism and the Construction of “Manhood”**

This section explores the close relationship between militarism and the construction of “manhood,” and provides insights into the gendered dimensions of the military service. To forge the link between masculinity and militarism, one must define masculinity. Masculinity is mostly defined via what it is not, rather than what it is. Femininity constitutes the negative side of this binary opposition. In highly militarised societies, men are expected to distance themselves from anything labelled as feminine. These social expectations of men regarding their identity and manhood compel them to identify themselves with the military and get involved in combat duties.<sup>51</sup> This is precisely because they fear being labelled as feminine, and, as a result, lose respect and occupy a politically weak position.<sup>52</sup>

Indeed, gender norms are omnipresent. It is through them people make sense of the world.<sup>53</sup> They are the underlying cause for unequal power relations because they naturalise both privileging masculinity over femininity and devaluing what is labelled as feminine.<sup>54</sup> Sexual differences are exaggerated and used in a way to privilege what is labelled as masculine. As such, “individuals experience their own gender—after sufficient repetitions and institutional disciplines—as both natural to society and personal to themselves.”<sup>55</sup> That is to say, [gender] masculinity is considered “as a social construction, not as a biological given; it is a set of practices that one constantly engages in or must perform; it is fluid, not fixed.”<sup>56</sup>

Also, there is a hierarchical chain amongst different types of masculinities. That is to say, not all masculinities are enjoying the same “privileges” or suffer the same

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<sup>51</sup> Enloe, *Does Khaki Become You?* (n 46) 13–14.

<sup>52</sup> Enloe, *Globalization and Militarism* (n 19) 52.

<sup>53</sup> V Spike Peterson, ‘Gendered Identities, Ideologies and Practices in the Context of War and Militarism’, *Gender, War and Militarism* 18.

<sup>54</sup> *ibid.*

<sup>55</sup> Carver Terrell, ‘Men and Masculinities in International Relations Research’ (2014) 21 *Brown Journal of World Affairs* 113, 114.

<sup>56</sup> Nancy E. Dowd, Nancy Levit and Ann C. McGinley, ‘Feminist Legal Theory Meets Masculinities Theory’ in Frank Rudy Cooper and McGinley Ann C. (eds), *Masculinities and Law: A Multidimensional Approach* (New York University Press 2011) 231.

“pain.”<sup>57</sup> RW Connell’s hegemonic masculinities concept refers to this hierarchy and subordination among different kinds of masculinities. Connell argues:

Hegemony is likely to be established only if there is some correspondence between cultural ideal and institutional power, collective if not individual. So the top levels of business, the military and government provide a fairly convincing corporate display of masculinity, still very little shaken by feminist women or dissenting men.<sup>58</sup>

This passage illustrates that the socially accepted masculine norms dominate and also occupy a position at the top of the hierarchy, promoted by institutions such as militaries; therefore, the role of institutions in producing hegemony cannot be overlooked. As Claire Duncanson argues, “militaries are important sites for the investigation of hegemonic masculinities.”<sup>59</sup> It remains essential to note that the reason why militaries are seen as masculine institutions is not only based on the fact that they are male-dominated organisations but also on that they are sites in which individuals construct and perform masculine identities.<sup>60</sup> Everything related to the military carries masculine connotations such as the materials inside the military (the heavy boots and masculine uniforms) and aspects of the military culture (having the physical strength and accepting military discipline, so to be granted the status of “the protectors.”)

In a nutshell, male conscription systems sustain their “effectiveness” through the strong relationship between military service and masculinity. The military’s male-dominated structure even in the era of volunteering is yet another example showing the relationship between military service and masculinity.<sup>61</sup> Therefore, as Connell argues, “a strategy for demilitarization and peace must include a strategy of change in masculinities.”<sup>62</sup> In this respect, this research approaches militarism through the eyes of those wanting a change in masculinities and rejecting the performance of gendered

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<sup>57</sup> *ibid* 210.

<sup>58</sup> Connell (n 31) 77.

<sup>59</sup> Claire Duncanson, ‘Hegemonic Masculinity and the Possibility of Change in Gender Relations’ (2015) 18 *Men and Masculinities* 231, 232.

<sup>60</sup> Orna Sasson-Levy, ‘Military, Masculinity, and Citizenship: Tensions and Contradictions in the Experience of Blue-Collar Soldiers’ (2003) 10 *Identities* 319, 323.

<sup>61</sup> Seungsook Moon, ‘Trouble with Conscription, Entertaining Soldiers Popular Culture and the Politics of Militarized Masculinity in South Korea’ (2005) 8 *Men and Masculinities* 64, 65.

<sup>62</sup> Duncanson (n 59) 232.

roles. It inevitably asks the men-questions, with a particular focus on what does rejecting the compulsory military service, which is considered as an “opportunity” to manifest one’s manhood, mean in a highly militarised society? (See 8.3.4.2.)

#### 4.3.2.1. Militarising Bodies

Gender plays a major role in the process of transforming ordinary people into soldiers. Although patriarchal and hierarchical gender relations are not identical, and historical events influence the development of such relations, social expectations of men in most societies are similar. They include “competitiveness, combativeness, physical strength and assertiveness, courage, and ambition.”<sup>63</sup> In line with this, being a hero and ready to “die and kill” are features, exclusively seen as required to become a “real” man. In this respect, the military service, in which a soldier must meet the social expectations, is seen as a sign of manhood. As Spike Peterson puts it: “most men attempt to comply, often at high personal cost. Because the edifice of masculinity is a mythic construction, the pressure to ‘prove’ one’s manhood is relentless.”<sup>64</sup>

As it appears, becoming a soldier and accepting combat duties in the military are considered vital steps for constructing one’s manhood. However, what is missing in this perception is the fact that becoming a soldier also means becoming part of the hierarchical structure that renders soldiers “obedient and almost totally dependent.”<sup>65</sup> Michael Foucault’s “docile body,” though used to examine the seventeenth century’s soldiering of the body, is a useful concept for understanding the modern world’s projects, directed at disciplining the body. Foucault’s analysis of the ideal soldier of the early seventeenth century explores how the body became an “object and target of power.”<sup>66</sup> He points out that “the soldier was someone who could be recognized from afar; he bore certain signs: the natural signs of his strength and his courage, the marks, too, of his pride; his body was the blazon of his strength and valour.”<sup>67</sup> <sup>68</sup> Foucault

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<sup>63</sup> Cockburn (n 36) 438.

<sup>64</sup> Peterson (n 53) 23–27.

<sup>65</sup> Enloe, *Does Khaki Become You?* (n 46) 12–13.

<sup>66</sup> Michel Foucault, *Discipline and Punish: The Birth of the Prison* (Pantheon Books 1977) 136.

<sup>67</sup> *ibid* 135.

<sup>68</sup> Sport is another arena for masculine and disciplined body. For further detail see Michael L Butterworth, *Sport and Militarism: Contemporary Global Perspectives* (Taylor & Francis



explores the relationship between discipline and “discovering the art of the human body.”<sup>69</sup> He argues:

Discipline produces subjected and practised bodies, ‘docile’ bodies [...] it dissociates power from the body; on the one hand, it turns it into an ‘aptitude’, a ‘capacity’, which it seeks to increase; on the other hand, it reverses the course of the energy, the power that might result from it, and turns it into a relation of strict subjection.<sup>70</sup>

Within the military, the basic training activities focus on testing the soldiers’ physical strength as it is considered one of the prominent signs of masculinity. However, basic training activities are considered inadequate to test the endurance of soldiers. What follows is testing the mental strength of soldiers by making them wear heavy boots and uniforms to determine to what extent they can tolerate pain. Thus, the soldier’s mind is trained to be “strong” to deal with difficulties via physical hardship that toughens the body.<sup>71</sup> That is to say, having a healthy body needs to be complemented by the willingness to shape and discipline it.<sup>72</sup> Along with such a transformation of their bodies into masculine and proud bodies, soldiers can easily be distinguished from the bodies of other citizens. As such, soldier’s bodies occupy the centre of public attention and become the nation’s symbol.<sup>73</sup> However, it remains important to take into consideration that “most of the people in the world who are militarized are not themselves in uniform. Most militarised people are civilians.”<sup>74</sup>

#### **4.3.2.2. “Heroic” Soldiers versus “Cowardly” Conscientious Objectors**

Indeed, not all men reach the same level at the hierarchy chain though masculinity allows men to be at the top of the hierarchical chain as opposed to women. The dichotomy of women as “the protected” versus men as “the protector” may reveal itself amongst men as the dichotomy of “heroic” soldiers versus “cowardly”

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2017); Jennifer Hargreaves and Eric Anderson, *Routledge Handbook of Sport, Gender and Sexuality* (Routledge 2014).

<sup>69</sup> Foucault (n 66) 137.

<sup>70</sup> *ibid* 138.

<sup>71</sup> Hockey (n 20) 16.

<sup>72</sup> Orna Sasson-Levy, ‘Individual Bodies, Collective State Interests: The Case of Israeli Combat Soldiers’ (2008) 10 *Men and Masculinities* 296, 303.

<sup>73</sup> *ibid* 317.

<sup>74</sup> Enloe, *Globalization and Militarism* (n 19) 4.

conscientious objectors. Bibbings's insights on war propaganda during WWI afford a better understanding of how manhood was portrayed in the war context and how heroism was used as a tool to gain the youth's enthusiasm to be part of the policy that is not only based on dying, but also on killing, which is often forgotten. She argues that 1) nationalist elements during wartime were involved in the recruitment policy, 2) media and recruitment posters played a vital role in presenting the becoming of a soldier as an opportunity to become a hero and a man who saves his country, and 3) the military service is portrayed not only as a duty, but also as an opportunity for men to become "heroes."<sup>75</sup>

Wartime policies use binary oppositions to define the elements of society; therefore, the story of conscientious objectors is portrayed in contrast with heroic soldiers. This binary opposition of "heroic soldiers" versus "lazy conscientious objectors" gives rise to the masculine men versus feminine men/unmen dichotomy.<sup>76</sup> Portraying war "as a matter of 'duty', 'honour', 'patriotism', a defence of 'freedom' [...] then resistance for many men (and women) becomes a matter of cowardice and dishonour."<sup>77</sup> Consequently, conscientious objectors faced hatred and experienced violence from those adhering to the view that breaking the objectors' will and forcing them to enlist is a patriotic duty.<sup>78</sup> Conscientious objectors not only face difficulties and gender discriminations when criticising militarism, but also struggle for recognition and respect.

#### **4.4. Conclusion**

This chapter offered insights into the relationship between gender and militarism in order to understand the compulsory military service (see chapter 6.3) and conscientious objection in the context of Turkey (see chapter 8.3.) In other words, this chapter sets the ground for a broader discussion of conscientious objection that draws on gender critiques and includes women's conscientious objection even in countries adopting only male conscription system (see Part II.)

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<sup>75</sup> Lois Bibbings, 'Images of Manliness: The Portrayal of Soldiers and Conscientious Objectors in the Great War' (2003) 12 *Social & Legal Studies* 335, 339.

<sup>76</sup> *ibid* 337.

<sup>77</sup> Joane Nagel, 'Masculinity and Nationalism: Gender and Sexuality in the Making of Nations' (1998) 21 *Ethnic and Racial Studies* 242, 259.

<sup>78</sup> Bibbings (n 45) 69.

The chapter put forward a twofold argument. First, it argued that masculinities and femininities are institutionally and socially constructed in order to reinforce militarism and maintain the status quo. Social expectations of men and women have significant impacts on their understanding of national security and the military. The idea of being a heroic man incites men to take the role of “the protectors.” Therefore, the chapter explored the role of heroism in the masculinisation process and argued that the dichotomy of heroic soldiers versus cowardly conscientious objectors impedes any criticism of the military.

Second, it argued that the gendered understanding within the military has impacts on the construction of gender stereotypes within the entire society, particularly in highly militarised societies where becoming a soldier is considered the highest virtue.<sup>79</sup> When becoming a soldier is seen as a sign of becoming a “real” man and when women are allocated certain roles such as being “supportive partner or patriotic mother of a soldier,” these gendered norms are no longer intrinsic to the army only but also become integrated into society. Therefore, militarisation does not only involve soldiers, but also women and society at large.

To conclude, as Enloe argues “women and men each can become militarized, though usually they are militarized in rather different ways because militaristic ideas are so deeply imbued with gendered assumptions and values.”<sup>80</sup> In other words, the process of militarism affects both men and women’s daily life in different ways. While men are expected to be ready at all time to defend their countries, women are also assigned certain roles to play such as being patriotic mothers, loyal & grateful wives, and getting involved in campaigns compelling men to enlist. Therefore, any antimilitarist movement inevitably involves gender critique.

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<sup>79</sup> Duncanson (n 59) 232.

<sup>80</sup> Enloe, *Globalization and Militarism* (n 19) 11.

## Chapter 5

### Conscientious Objection and the International Law

#### 5.1. Introduction

This chapter analyses the legal status of conscientious objection at the international and the regional level. It focuses on the conflict between the conscience and the law, which raises controversial questions over the responsibility of states in accommodating different forms of moral beliefs.

Those following their conscience evaluate to what extent their personal and moral convictions allow them to obey the law. Once they have decided that the duty to obey overlaps with their moral convictions, they commit the act of civil disobedience. When the law forces people to act against their conscience such as compelling pacifists to join the military, it is hard to assess people's moral convictions used to justify their acts of civil disobedience. This is the reason why responses to such a conflict are not well established.<sup>1</sup> That is to say, approaches to such a conflict between the conscience and the law differ from one state to another. For this reason, how the international law addresses such a conflict requires a detailed examination.

The recent developments show that there is an increased tendency towards recognising the right to conscientious objection at the international level, yet conscientious objectors are still exposed to human rights violations such as discrimination and imprisonment because of their objection. Some states still ignore the fact that all individuals should be entitled to take responsibility for their own beliefs and should not be forced to act against their convictions.<sup>2</sup> As Matthew Lippman indicates, “conscientious objection is a blatant omission from the list of

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<sup>1</sup> Kent Greenawalt, ‘Justifying Nonviolent Disobedience’ in Hugo Adam Bedau (ed), *Civil Disobedience in Focus* (Routledge 1991) 174.

<sup>2</sup> Marie-France Major, ‘Conscientious Objection to Military Service: The European Commission on Human Rights and the Human Rights Committee’ (2001) 32 *California Western International Law Journal* 1, 2.

internationally mandated human rights.”<sup>3</sup> In other words, while (refined) jurisprudence of the European Court of Human Rights (ECtHR) indicates that the right to freedom of religion, thought, and conscience covers the right to conscientious objection, some states oblige their citizens to perform the military service. This creates a conflict between states’ interest in securing their territories and the right to religion, thought, and conscience of its citizens. Therefore, the right to conscientious objection remains controversial.<sup>4</sup>

Conscientious objection has been an issue of dispute between states and individuals.<sup>5</sup> Since conscientious objectors challenge the duty to protect the homeland against all kinds of threats, the issue of granting the right to conscientious objection remains the main challenge for states.<sup>6</sup> Conscientious objection has not gained global protection. As a result, while the right to conscientious objection is recognised in the international documents and jurisdictions, it has been applied differently in different states.<sup>7</sup> Since the implementation of this right may vary depending on how states interpret human rights, determination of the scope of such a right involves some difficulties. The question of whether all beliefs constitute a legitimate ground for refusing the military service remains unanswered.<sup>8</sup> Due to the lack of an explicit recognition and a global protection, conscientious objection becomes problematic even in countries recognising the right. As Jeroen Temperman indicates, fair and

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<sup>3</sup> Matthew Lippman, ‘Recognition of Conscientious Objection to Military Service as an International Human Right, The’ (1990) 21 California Western International Law Journal 31, 65.

<sup>4</sup> Howard Gilbert, ‘The Slow Development of the Right to Conscientious Objection to Military Service under the European Convention on Human Rights’ [2001] European Human Rights Law Review 554, 1.

<sup>5</sup> David John Harris and others, *Law of the European Convention on Human Rights* (2nd edn, Oxford University Press 2009) 432.

<sup>6</sup> Charles C Moskos and John Whiteclay Chambers II, ‘The Secularization of Conscience’ in Charles C Moskos and John Whiteclay Chambers II (eds), *The New Conscientious Objection: From Sacred to Secular Resistance* (Oxford University Press 1993) 3.

<sup>7</sup> For further information about different implementations of states Emily N Marcus, ‘Conscientious Objection as an Emerging Human Right’ (1997) 38 Virginia Journal of International Law 507, 531.

<sup>8</sup> Leonard M Hammer, *The International Human Right to Freedom of Conscience: Some Suggestions for Its Development and Application*. (Ashgate 2001) 207–208.

equal recognition of the right to conscientious objection is not an easy task. It requires a number of human rights issues to be considered.<sup>9</sup>

The chapter examines the legal recognition of conscientious objection under the European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR) in relation to the issues aforementioned. To be able to touch on these issues, the discussion highlights the problems associated with the fact that states recognising the right to conscientious objection adopt different standards and procedures. The discussion is organised as follows: section 2 focuses on the legal analysis of the right to conscientious objection in ECHR. First, it examines the right to conscientious objection and claims that it stems from the right to religion, thought and conscience (see section 5.2.1). In line with this, it addresses the definitional problems to answer the question of what kind of belief system is entitled to the protection of Article 9 of the Convention. Second, although the chapter adopts the right to freedom of thought, conscience, and religion as a main legal ground for the recognition of the right to conscientious objection, to show the obstacles faced by objectors, section 2 examines conscientious objection in the light of Article 10: the right to freedom of expression (see section 5.2.2,) and Article 14: the protection from discrimination (see section 5.2.3.) Section 3 focuses on the right to conscientious objection in the United Nations Human Rights Law.

## **5.2. The Right to Conscientious Objection and the European Human Rights Law**

Although the relevant international instruments do not explicitly recognise the right to conscientious objection in the international society, the right to freedom of thought, conscience, and religion is commonly interpreted as encompassing the right to conscientious objection. For instance, Christopher Decker and Lucia Fresa define conscientious objection as a “manifestation of freedom of conscience, i.e., freedom to think and act according to one’s own conscience, as well as freedom not to be psychologically forced in the formation and the declaration of one’s thoughts.”<sup>10</sup> Additionally, conscientious objection for the Office of the High Commissioner for

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<sup>9</sup> Jeroen Temperman, *State-Religion Relationships and Human Rights Law: Towards a Right to Religiously Neutral Governance* (Martinus Nijhoff Publishers 2010) 211.

<sup>10</sup> D Christopher Decker and Lucia Fresa, ‘Status of Conscientious Objection under Article 4 of the European Convention on Human Rights, The’ (2000) 33 *New York University Journal of International Law and Politics* 379, 379.

Human Rights derives from “principles and reasons of conscience, including profound convictions, arising from religious, moral, ethical, humanitarian or other motives.”<sup>11</sup> Many recommendations of the Council of Europe also recognise the freedom of thought and conscience and demonstrate that the right to conscientious objection derives from this basic human right. For instance, Recommendation No.R (87)8 of the Committee of Ministers of the Council of Europe states that “anyone liable to conscription for military service who, for compelling reasons of conscience, refuses to be involved in the use of arms, shall have the right to be released from the obligation to perform such service.”<sup>12</sup> Similarly, Recommendation 1518 of the Council of Europe Parliamentary Assembly notes that “the right of conscientious objection is a fundamental aspect of the right to freedom of thought, conscience and religion enshrined in the Universal Declaration of Human Rights and the European Convention on Human Rights.”<sup>13</sup>

In view of such definitions, which focus on objectors’ conscientious and religious motivations, this thesis explores Article 9 of the ECHR as a legitimate ground for conscientious objection. What is clear from such definitions is that the convictions held by objectors in forming their self-identity as individuals are comparable to such beliefs protected under Article 9 of the Convention. Therefore, the reason for adopting Article 9 of the Convention as the primary right of conscientious objectors is, as Decker and Fresa express, “Article 9 seems to be the most obvious article to deal with conscientious objection because it addresses freedom of thought, conscience, and religion.”<sup>14</sup> Furthermore, what makes Article 9 of the Convention a more appropriate right to claim the right to conscientious objection to military service is that unlike other articles—particularly Article 10 of the Convention—national

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<sup>11</sup> United Nation Economic and Social Council, Report of the Office of the High Commissioner for Human Rights, Civil and Political Rights, Including the Question of Conscientious Objection to Military Service, U.N. Doc. E/CN.4/2004/55 (Feb.16 2004) para. 38(c) cited in: K Musalo, ‘Conscientious Objection as a Basis for Refugee Status: Protection for the Fundamental Right of Freedom of Thought, Conscience and Religion’ (2007) 26 Refugee Survey Quarterly 69, 69.

<sup>12</sup> Council of Europe: Committee of Ministers, ‘Recommendation No. R (87) 8 of the Committee of Ministers to Member States Regarding Conscientious Objection to Compulsory Military Service’ para.1 <<http://www.refworld.org/docid/5069778e2.html>> accessed 14 April 2017.

<sup>13</sup> Council of Europe: Parliamentary Assembly, ‘Recommendation 1518 (2001): Exercise of the Right of Conscientious Objection to Military Service in Council of Europe Member States’ para.2 <<http://www.refworld.org/docid/5107cf8f2.html>> accessed 14 April 2017.

<sup>14</sup> Decker and Fresa (n 10) 381.

security is not considered as a legitimate ground for restricting the right to freedom of thought, conscience, and religion.

### **5.2.1. The Right to Conscientious Objection and Article 9 of the European Convention on Human Rights**

This section focuses on the application of Article 9 of the Convention to cases emerged from the conflict between individuals' deepest convictions and the law that obliges them to act against their convictions.<sup>15</sup> It examines the scope of Article 9 and attempts to answer the following questions: “do these three concepts—thought, conscience and religion—refer to separate freedoms or to different facets of the same freedom? Does freedom of conscience embrace freedom of thought and religion?”<sup>16</sup>

Article 9 of the Convention protects the right to freedom of thought, conscience, and religion. It reads as follows:

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his [her] religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.<sup>17</sup>

The freedom to comply with the requirements of religion invites a few worries. The first concern pertains to the sincerity of individuals who want to obtain exemption from a legal responsibility based on their religious belief, which prohibits fulfilling such legal responsibilities. That is to say, exemption claims grounded on religious beliefs pose a dilemma: individuals' right not be “compelled to act contrary to their deepest convictions” and state's interest in testing sincerity of conscientious objection in order to distinguish between genuine acts and others intended to avoid legal

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<sup>15</sup> Rex Ahdar and Ian Leigh, *Religious Freedom in the Liberal State* (Oxford University Press 2005) 156.

<sup>16</sup> Kevin Boyle and Juliet Sheen, *Freedom of Religion and Belief: A World Report* (Psychology Press 1997) 40.

<sup>17</sup> European Convention on Human Rights, 3 September 1953, Article 9.



responsibilities.<sup>18</sup> With regards to such concern, the Court held that Article 9 of the Convention “denotes view that attain a certain level of cogency, seriousness, cohesion and importance.”<sup>19</sup> Therefore, in order to ensure protection under Article 9, any claimed belief must meet a minimum threshold. In the cases meeting a minimum threshold, the state may not “determine whether religious beliefs [...] are legitimate”<sup>20</sup> However, the questions of how sincere objectors should be and how the authorities can measure their sincerity remain controversial.<sup>21</sup>

The second concern is related to defining religion. Many religions include responsibilities and some kinds of prohibitions, which might put believers into conflict with the legal obligations that contradict the believer’s inner convictions. In this sense, defining religion also means determining the legal framework of exemptions. However, international courts refrain from defining religion. As a result, conflicts between the legal obligations and the religious prohibitions “become more frequent.”<sup>22</sup>

The protection of Article 9 of the Convention covers religious beliefs—not only the long-established ones but also new forms of beliefs—and a wide range of philosophical beliefs. Therefore, providing protection to a broad range of beliefs inevitably requires a flexible and a workable definition of religion.<sup>23</sup> Such a definition determines which legal regulations are applicable to cases demanding exemption from military service. In other words, defining religion in legal terms is essential for regulating people’s relations that assign a different meaning to religion and answer

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<sup>18</sup> Ian Leigh and Hans Born, *Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel*. (OSCE Office for Democratic Institutions and Human Rights (ODIHR) 2008) 75.

<sup>19</sup> *Campbell and Cosans v the United Kingdom* App nos.7511/76; 7743/76 (ECtHR, 25 February 1982) at [36].

<sup>20</sup> *Hasan and Chaush v Bulgaria* App no. 30985/96 (ECtHR 26 October 2000) cited in Harris and others (n 5) 427.

<sup>21</sup> One way of testing exemption claims is the “subjective-functional approach.” Within this approach, the questions that are bound to arise include: “does the claimant himself or herself *subjectively* believe in the things or persons at the centre of their faiths?” and “does the belief system *function* as a religion in the individual’s life?” (See Ahdar and Leigh (n 15) 115.) See also *United States v Seeger and Welsh v United States* cases, in which the Court applied subjective-functional approach in order to determine applicants’ exemption claims. In these cases, the main issue was “to decide whether the beliefs professed by a registrant are sincerely held and whether they are, in his own scheme of things, religious” (see 380 U.S. 163, 164).

<sup>22</sup> *ibid* 125.

<sup>23</sup> Harris and others (n 5) 426–427.

the question of what kinds of manifestations are entitled to protection. In a nutshell, in order to be able to recognise individuals' right based on their religions, one must clarify what constitutes a religion.<sup>24</sup> Therefore, before examining exemption from military service based on Article 9 of the Convention, the legal definition of religion is worth examining. It is important to consider that a legal definition does not include all aspects of beliefs that are labelled as religious. In this regard, the main aim of defining religion is to clarify the function of religion in legal responsibilities, which may afford exemption—for instance from military service—or a legal benefit—for instance a charitable status.<sup>25</sup> For the purpose of this chapter, the legal significance of the religion will be examined in the context of exemption from military service.

Definition of religion cannot be found in the international documents, but there are attempts made by the domestic courts to define religion.<sup>26</sup> For this reason, although the main focus of the chapter is on the ECtHR's case-law, it is helpful to examine how domestic courts define religion. For instance, the High Court of Australia focuses on the legal consequences of religion and adopts that "the relevant inquiry is to ascertain what is meant by religion as an area of legal freedom or immunity and that inquiry looks to those essential indicia of religion which attract that freedom or immunity. It is in truth an inquiry into legal policy."<sup>27</sup> Religion for the US Supreme Court also

Has reference to one's views of [their] relations to [their] Creator, and to the obligations they impose of reverence for [their] beings and character, and of obedience to his will. It is often confounded with the cultus or form of worship of a particular sect, but is distinguishable from the latter.<sup>28</sup>

According to the Canadian Supreme Court in *Rv. Big M Drug Mart Ltd*:

The essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest belief by worship and practice or

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<sup>24</sup> Ahdar and Leigh (n 15) 111.

<sup>25</sup> *ibid* 114.

<sup>26</sup> Natan Lerner, *Religion, Secular Beliefs and Human Rights: 25 Years after the 1981 Declaration* (Martinus Nijhoff 2006) 6.

<sup>27</sup> Cited in Ahdar and Leigh (n 15) 114.

<sup>28</sup> Cited in Lerner (n 26) 6.

by teaching and dissemination. But the concept means more than that. Freedom can primarily be characterized by the absence of coercion or constraint. If a person is compelled by the state or the will of another to a course of action or inaction, which he would not otherwise have chosen, he is not acting of his own volition and he cannot be said to be truly free.<sup>29</sup>

This passage, which clarifies what freedom of religion is, illustrates the impacts of coercion on the essence of freedom. Applying this definition to conscientious objection case shows that compulsory military service is a clear example of state's coercion on individuals whose conscience requires them not to join the army and take arms. In this sense, having the freedom of not to be compelled to take arms, the right to conscientious objection has an important role in preserving personal convictions. However, forcing people to join the military service not only prohibits individuals from acting in accordance with their conscience or religion, but also obligates them to *act* against their beliefs. Therefore, the right to conscientious objection serves a very important purpose: assigning the right to behave in accordance with one's religious dictates.<sup>30</sup>

To elaborate on the question of whether conscientious objection is entitled protection under the right to religion, conscience, and thought, the next subsection examines the components of Article 9 of the Convention.

#### **5.2.1.1. Forum Internum**

There are some controversial issues that have to be considered in relation to Article 9.1, which protects the right to religion, conscience, and belief, and Article 9.2, which clarifies the limitations of this right. First, Article 9.1 of the Convention has two different dimensions. On the one hand, the Article provides the right to freedom of thought, conscience and religion, which constitutes the internal aspects of the right. On the other hand, it recognises the right "to manifest a religion or belief in worship, teaching, practice and observance," which constitutes the external aspects of

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<sup>29</sup> Cited in Ahdar and Leigh (n 15) 99.

<sup>30</sup> Russell Wolff, 'Conscientious Objection: Time for Recognition as a Fundamental Human Right' 6 The American Journal of International Law Journal 68.

the right.<sup>31</sup> That is to say, although the formulation of Article 9 of the Convention seems clear, it requires a distinction between the passive aspects of the right to freedom of thought, conscience, and religion and the active aspects of the right to manifest religion or belief. It is worth clarifying that the active aspects of the right do not necessarily require performing a positive act. It also includes the rejection of performing a positive act. For instance, in the case of refusing to take an active part in the army, even though individuals refuse to *participate* in military service, this objection is still an expression or a manifestation of religion or belief.<sup>32</sup>

Second, Article 9.1 recognises that *everyone* has the right to freedom of thought, conscience, and religion. However, this Article is applied in a very restricted manner which considers the right to be merely relating to forum internum—the inner belief of the individual.<sup>33</sup> In the international arena, the internal aspects of the right to freedom of conscience are protected with no derogation or limitation.<sup>34</sup> However, problems arise when individuals *behave* in accordance with their conscience, asserting the external aspects of the right to conscience.<sup>35</sup> In other words, while forum internum is interpreted in a broad sense that does not give rise to any conflict between individuals and states, conflicts arise when individuals manifest their conscience.<sup>36</sup>

The narrow interpretation of the right to forum internum is misleading. For instance, while they appear that they merely affect forum externum, state actions as intended to repress a particular belief could affect the forum internum. The main problem here is that, until the dissenting opinion in the case of *Eweida and Others v the UK*,<sup>37</sup> judicial bodies avoided considering how limitation on the manifestation of conscience affect

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<sup>31</sup> Peter Cumper, 'The Public Manifestation of Religion or Belief: Challenges for a Multi-Faith Society in the Twenty-First Century' in Andrew Lewis and Richard O'Dair (eds), *Law and Religion* (Oxford University Press 2001) 313.

<sup>32</sup> Malcolm D Evans, *Religious Liberty and International Law in Europe* (Cambridge University Press 2008) 284.

<sup>33</sup> Malcolm D Evans, 'Freedom of Religion and the European Convention on Human Rights: Approaches, Trends and Tensions' in Peter Cane, Carolyn Evans and Zoë Robinson (eds), *Law and Religion in Theoretical and Historical Context Law and Religion in Theoretical and Historical Context* (Cambridge University Press 2008) 292.

<sup>34</sup> Hammer (n 8) 72.

<sup>35</sup> Evans, 'Freedom of Religion and the European Convention on Human Rights' (n 33) 292.

<sup>36</sup> Hammer (n 8) 72–73.

<sup>37</sup> *Eweida and Others v the UK* App nos. 48420/10, 59842/10, 51671/10 and 36516/10 (ECtHR 27 May 2013).

the forum internum.<sup>38</sup> That is to say, although forum internum has been granted repeated recognition by the Strasbourg organs, such recognition in practice is not put into effect. For instance, the forum internum constitutes the inviolable part of the right to thought, conscience, and religion, and does not allow any limitations. However, the cases before the European institutions that require individuals to act against their beliefs were not considered as a violation of forum internum. Rather, these cases were examined under other articles such as prohibition of discrimination.<sup>39</sup> However, in the case of *Eweida and Others v the UK*, in joint partly dissenting opinion of Judges Vucinic and De Gaetano related to Ladele, it is stated:

We are of the view that once that a *genuine* and *serious* case of conscientious objection is established, the State is obliged to respect the individual's freedom of conscience both positively (by taking reasonable and appropriate measures to protect the rights of the conscientious objector) and negatively (by refraining from actions which punish the objector or discriminate against him or her).<sup>40</sup>

The judges also stated the following:

No one should be forced to act against one's conscience or be penalised for refusing to act against one's conscience. Although freedom of religion and freedom of conscience are dealt with under the same Article of the Convention, there is a fundamental difference between the two [...] Even Article 9 hints at this fundamental difference: whereas the word 'conscience' features in 9 § 1, it is conspicuously absent in 9 § 2. Conscience—by which is meant moral conscience—is what enjoins a person at the appropriate moment to do good and to avoid evil. In essence, it is a judgment of reason whereby a physical person recognises the moral quality of a concrete act that he is going to perform, is in the process of performing, or has already completed. This rational judgment on what is good and what is evil, although it may be nurtured by religious beliefs, is not necessarily so, and people with no particular religious beliefs or affiliations make such judgments constantly in their daily lives.<sup>41</sup>

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<sup>38</sup> Hammer (n 8) 73. For further discussion see Carolyn Evans, *Freedom of Religion under the European Convention on Human Rights* (Oxford University Press 2003) 76.

<sup>39</sup> Paul M Taylor, *Freedom of Religion: UN and European Human Rights Law and Practice* (Cambridge University Press 2005) 119.

<sup>40</sup> *Eweida and Others v the UK* App nos. 48420/10, 59842/10, 51671/10 and 36516/10. (ECtHR 27 May 2013) at Partially Dissenting Opinion of Judges Vucinic and De Gaetand [3].

<sup>41</sup> *ibid* at [2].

This passage shows that the dissenting judges attached a great importance to conscience in this specific case rather than to religion. Furthermore, by pointing out the “conspicuous absence” of conscience from the scope of Article 9.2, the judges considered conscience as an absolute right, which cannot be exposed to the limitations of Article 9.2.<sup>42</sup> To elaborate, as Carolyn Evans indicates, when individuals are forced to act against their conscience because they fear being penalised for their refusal, this has impacts on forum internum.<sup>43</sup> As Paul Taylor points out, Carolyn Evans suggests forum internum should be interpreted in an inclusive way. In a review of European cases<sup>44</sup> concerning the legal obligations requiring individuals to act against their beliefs, she states:<sup>45</sup>

In neither case did the action of the State go so far that it made impossible (or even particularly difficult) for the individuals to maintain their internal beliefs, but in each case the State required the individuals to act in a way that they felt was in direct contradiction to the requirements of those beliefs. They were in effect being asked to recant, by their behaviour, their religion. This conflict between the behaviour required of them and their beliefs was such that it arguably interfered with the internal as well as the external realm.<sup>46</sup>

Furthermore, Ian Leigh and Andrew Ahdar draw attention to the fact that limitations on the manifestation of belief—external aspects of belief—might create a misperception that individuals are free to choose what they want to believe, yet cannot act accordingly. Therefore, these limitations on the external freedom, which prevents people to “accompany their belief by deeds,” might have undermining effects on the internal freedom as well.<sup>47</sup>

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<sup>42</sup> Ian Leigh and Andrew Hambler, ‘Religious Symbols, Conscience, and the Rights of Others’ (2014) 3 Oxford Journal of Law and Religion 2, 7.

<sup>43</sup> Taylor (n 39) 205–206.

<sup>44</sup> *Darby v Sweden* App no. 11581/85 (ECtHR, 23 October 1990); *Valsamis v Greece* App no. 21787/93 (ECtHR, 18 December 1996); *Efstathiou v Greece* App no. 24095/94 (ECtHR, 18 December 1996).

<sup>45</sup> Taylor (n 39) 116–117.

<sup>46</sup> Cited in *ibid.*

<sup>47</sup> Ahdar and Leigh (n 15) 125–126.

### 5.2.1.2. Forum Externum

The wording of Article 9.1 raises many concerns because it states that “this right includes [...] the right to manifest [their] *religion or belief*, in worship, teaching, practice and observance [emphasis added.]”<sup>48</sup> There is no reference to the manifestation of conscience in the Article; it only provides the right to manifest religion and beliefs. As Malcom Evans asks, “does the use of term ‘belief’ extend the freedom of manifestation beyond the scope of religion and apply it to other patterns of ‘thought and conscience’ referred to in the opening affirmation of the right?”<sup>49</sup> In other words, the questions that have to be taken into account here are whether there is a right to manifest non-religious beliefs and when conscientious objectors follow their conscience, do they still have the right to manifest their belief?

While Article 9.1 of the Convention regulates the right to thought, conscience and religion, Article 9.2 mentions explicitly the manifestation of religion or belief, but not thought and conscience. This raises the question of whether the difference between the wordings of Articles 9.1 and 9.2 means that the manifestation of the right to conscience and thought is excluded from the ambit of Article 9. This has been a matter of dispute amongst scholars. According to Peter Edge, it is hard to claim that excluding thought and conscience from the qualifying Article 9.2 is important. He also argues, “these separate terms are indicative, rather than definitive, of some element common to all the beliefs protected by the Article 9.”<sup>50</sup> Contrary to Edge’s position, the difference in the wording of Article 9 of the Convention might be perceived as it means that the Article excludes manifestation of thought and conscience from the scope of the protection.<sup>51</sup> According to this view, Article 9 of the Convention protects not only the right to thought, conscience and religion, but also the right to manifest religion or belief. However, other expressions as thought and conscience, which do not constitute a manifestation in the context of Article 9 of the

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<sup>48</sup> European Convention on Human Rights, 3 September 1953, Article 9(1).

<sup>49</sup> Malcolm D. Evans, ‘Human Rights, Religious Liberty, and the Universality Debate’ in Richard O’Dair and Andrew Lewis (eds), *Law and religion* (Oxford University Press 2001) 214.

<sup>50</sup> Peter W Edge, ‘Current Problems in Article 9 of the European Convention on Human Rights’ [1996] *The Juridical Review* 42, 43.

<sup>51</sup> Taylor (n 39) 204.

Convention, are protected under Article 10 of the Convention.<sup>52</sup> In other words, the term manifestation used in and protected under Article 9 of the Convention encompasses expressions merely related to religion or belief.<sup>53</sup>

Malcom Evans reserves the term manifestation to the right to religion. Accordingly, religious beliefs can be expressed and manifested, but thought and conscience can only be expressed and are protected under Article 10. Therefore, Article 9.2 is not applicable. However, it must be considered that Article 9 of the ECHR is based on Article 18 of the Universal Declaration of Human Rights (UDHR).<sup>54</sup> The main reason for relying on UDHR was to be consistent with definitions and principles of the UN Human Rights Law. Similarly, it is argued that first, in the UDHR, the terms thought and conscience were used with religion in order to include non-religious beliefs within the scope of protection as well. Second, freedom of thought and conscience and freedom of religion are complementing each other and, therefore, deserve the same protection. That is to say, the omission of thought and conscience from Article 9.2 of the Convention does not mean the exclusion of thought and conscience from the protection of Article 9.2.<sup>55</sup>

Yet, it is noteworthy to consider the fact that although the distinction between Article 9.1 and Article 9.2 should not be interpreted in a way that limits the effectiveness of the Convention, excluding manifestation of conscience from the scope of the Article raises some difficulties, particularly about what the term belief covers—what kind of belief gives rise to the manifestation of a right under the Convention.<sup>56</sup> In this regard, the next question that has to be considered here is what form of belief gives rise to the right to freedom of manifest under Article 9 of the Convention.

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<sup>52</sup> Evans, *Religious Liberty and International Law in Europe* (n 32) 284–285.

<sup>53</sup> Cumper (n 31) 320.

<sup>54</sup> Article 18 of the UDHR reads as follows: Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

<sup>55</sup> Taylor (n 39) 205–206.

<sup>56</sup> Evans, *Religious Liberty and International Law in Europe* (n 32) 286.



### 5.2.1.3. What is “practice” in Article 9.1?

In Article 9.1, the manifestation of religion or belief is recognised in the form of “practice, worship, teaching, or observance.” Under this article, it is not clear if conscientious objection falls within the ambit of Article 9.1 of the Convention. Since refusing military service leads to a conflict between states and individuals, it is worth clarifying whether refusing military service constitutes practising as a protected form of manifestation of belief under Article 9 of the Convention. In other words, although conscientious objection has been widely recognised, the scope of the right is still controversial. There has been a lack of consistent case law on the scope of the right to conscientious objection. In order to achieve a clear understanding of the right, it is necessary to clarify what kind of belief actually falls within the scope of the right to freedom of religion.<sup>57</sup> This requires an investigation into the question of what the term practice means.

There is a wide range of activities that might be considered as practice. In the case of *Arrowsmith v the UK*, the European Commission dealt with this issue in a manner which excludes a range of eligible manifestations.<sup>58</sup> In this case, the applicant as a pacifist was convicted because of the leaflets she distributed to troops. The leaflets urged soldiers not to serve in Northern Ireland. The applicant alleged that her conviction violated her right to manifest her pacifist belief under Article 9 of the Convention.<sup>59</sup> In this regard, whether pacifism was a belief and whether distributing pacifist leaflets was a manifestation as guaranteed in Article 9(2) of the Convention were the issues that had to be dealt with.<sup>60</sup> For the first issue, the Commission accepted that pacifism is protected under Article 9 of the Convention. Therefore, the Commission in the case of *Arrowsmith v the UK* ruled:

The Commission is of the opinion that pacifism as a philosophy [...] falls within the ambit of the right to freedom of thought and conscience. The attitude of pacifism may therefore be seen as a belief (“conviction”) protected by Article 9(1) It remains to be determined whether or not the distribution by the applicant of the leaflets here in

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<sup>57</sup> Gilbert (n 4) 1.

<sup>58</sup> Taylor (n 39) 210.

<sup>59</sup> *Arrowsmith v the United Kingdom* App no. 7050/75 (European Commission on Human Rights, 5 December 1978) at [2].

<sup>60</sup> Evans, *Religious Liberty and International Law in Europe* (n 32) 289.

question was also protected by Article 9 (1) as being the manifestation of her pacifist beliefs.<sup>61</sup>

For the second issue, the Commission stated:

The term “practice” as employed in Article 9(1) does not cover each act which is *motivated or influenced* by a religion or a belief.

When the actions of individuals do not actually express the belief concerned they cannot be considered to be as such protected by Article 9(1), even when they are motivated or influenced by it [emphasis added].<sup>62</sup>

In the case of *Arrowsmith v United Kingdom*, the Commission applied the definitional balancing to limit the scope of protection provided by Article 9. The Commission rejected claims because, in the Commission’s view, they were not based on practices deemed to be *mandatory* by religion.<sup>63</sup> Although, the Commission certainly indicated that each act that is *motivated* by religion or belief does not constitute practice, it did not clarify which acts are to be considered as practice to gain protection under Article 9 of the Convention.<sup>64</sup> Thus, the Arrowsmith test is not clear. It does not give a clear understanding about which acts are covered by the term practice. Actions that are merely influenced by religion or belief are excluded from the scope of the protection provided by Article 9. In this regard, for an act to be considered as practice under Article 9, it requires a direct link between belief and actions.<sup>65</sup>

For an act to be regarded as a manifestation of belief, the Arrowsmith test requires actions to be religiously *compelled* rather than religiously *motivated*. However, this distinction necessitates courts to investigate which acts are the *requirements* of the applicants’ belief. If the court interprets the requirements of applicants’ beliefs differently, applicants might be found insincere or as having a lack of proper understanding of their belief.<sup>66</sup> Furthermore, in order to gain protection under Article 9.2, applicants are forced to prove that their action “is mandated by the religion or

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<sup>61</sup> *Arrowsmith v the United Kingdom* 7050/75 (European Commission on Human Rights, 5 December 1978) at [69].

<sup>62</sup> *ibid* at [71].

<sup>63</sup> Leigh and Hamblen (n 42) 10.

<sup>64</sup> Evans, *Freedom of Religion under the European Convention on Human Rights* (n 38) 113.

<sup>65</sup> *ibid* 115.

<sup>66</sup> Ahdar and Leigh (n 15) 164.

belief system espoused.”<sup>67</sup> However, there is inadequate evidence to conclude that the text of Article 9 limits manifestations of religion merely to acts considered as *duties*.<sup>68</sup> The requirement of being compelled to act in a specific way rather than being motivated limits the applicability of Article 9. It restricts the freedom of religion in the definitional stage. Claims regarding religious rights are rejected without even assessing if the interference is “necessary in a democratic society” as provided in Article 9(2) of the Convention.<sup>69</sup>

While the Court’s approach in *Arrowsmith*’s case might prevent the “bogus or trivial beliefs” to be granted legal exemptions, it also enables the Court to determine whether a practice is mandated by religion.<sup>70</sup> Similarly, in the case of *Valsamis v Greece*,<sup>71</sup> the daughter of the applicant “was asked to take part in the celebration of the National Day.”<sup>72</sup> The applicant asserted that “pacifism is a fundamental tenet of their religion and forbids any conduct or practice associated with war or violence, even indirectly.”<sup>73</sup> Although she informed the school administration that “her religious beliefs forbade her joining in the commemoration of a war,”<sup>74</sup> she was suspended from school because she failed to attend the celebration.<sup>75</sup> The applicant emphasised that Article 9 “guaranteed her right to the negative freedom not to manifest, by gestures of support, any convictions or opinions contrary to her own.”<sup>76</sup> However, the Court concluded that<sup>77</sup> “the obligation to take part in the school parade was not such as to offend her parents’ religious convictions.”<sup>78</sup> In its *Valsamis* judgement, the

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<sup>67</sup> Leigh and Hambler (n 42) 10.

<sup>68</sup> Ahdar and Leigh (n 15) 165.

<sup>69</sup> Ian Leigh, ‘Religious Freedom in the UK after the Human Rights Act 1998.’, *Freedom of religion under Bills of Rights*. (University of Adelaide Press 2012) 243  
<<http://dro.dur.ac.uk/8719/1/8719.pdf>> accessed 19 May 2017.

<sup>70</sup> Harris and others (n 5) 433.

<sup>71</sup> *Valsamis v Greece* App no. 21787/93 (ECtHR, 18 December 1996).

<sup>72</sup> *ibid* at [8].

<sup>73</sup> *ibid* at [6].

<sup>74</sup> *ibid* at [9].

<sup>75</sup> *ibid* at [10].

<sup>76</sup> *ibid* at [34].

<sup>77</sup> However in dissenting opinion the Judge states that; “Victoria Valsamis stated that the parade she did not participate in had a character and symbolism that were clearly contrary to her neutralist, pacifist, and thus religious, beliefs. We are of the opinion that the Court has to accept that and we find no basis for seeing Victoria’s participation in this parade as necessary in a democratic society, even if this public event clearly was for most people an expression of national values and unity.”

<sup>78</sup> *ibid* at [37].

Court refused the claims due to its “own assessment” of the parade as a celebration of peace rather than war.<sup>79</sup> The Court made a “dangerous mistake” because it “in effect substituted its judgment for the conscience of the person involved, defining what was ‘reasonable’ for them to believe.”<sup>80</sup>

With regards to the *Arrowsmith v United Kingdom* case, it is evident that the Strasbourg organs when dealing with the issue of what counts as religion or belief, they adopted a broad approach, but when deciding if the act counts as a manifestation, they adopt a limited approach.<sup>81</sup> However, the dissenting opinion of Mr. Opsahl should be taken into account. He stated in his dissenting opinion:

An act cannot be interfered with merely because it has been declared unlawful [...] Art. 9 must, in principle, be applicable to a great many acts which are not, on their face, necessarily manifesting the underlying or motivating belief, if that is what they genuinely do.<sup>82</sup>

The Court also took a different approach in the case of *Eweida and Ors v the United Kingdom*.<sup>83</sup> In the present case, the applicants alleged that they had suffered religious discrimination at work, the government based its arguments on the case law of the Court. Accordingly, it is stated that “behaviour which was motivated or inspired by religion or belief, but which was not an act of practice of a religion in a generally recognised form, fell outside the protection of Article 9.”<sup>84</sup> However, according to the Court:

In order to count as a “manifestation” within the meaning of Article 9, the act in question must be *intimately* linked to the religion or belief. An example would be an act of worship or devotion which forms part of the practice of a religion or belief in a generally recognised form. However, the manifestation of religion or belief is not limited to such acts; the existence of *a sufficiently close and direct nexus* between the act and the underlying belief must be determined on the facts of each case. In

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<sup>79</sup> Ahdar and Leigh (n 15) 164.

<sup>80</sup> Harris and others (n 5) 433.

<sup>81</sup> Evans, ‘Freedom of Religion and the European Convention on Human Rights’ (n 33) 295.

<sup>82</sup> Separate opinion of Mr Opsahl in *Arrowsmith v the United Kingdom* App no. 7050/75 (European Commission on Human Rights, 5 December 1978) at [2].

<sup>83</sup> *Eweida and Others v the UK* App nos. 48420/10, 59842/10, 51671/10 and 36516/10 (ECtHR 27 May 2013).

<sup>84</sup> *ibid* at [58].

particular, there is no requirement on the applicant to establish that he or she acted in fulfilment of a duty mandated by the religion in question [emphasis added.]<sup>85</sup>

Furthermore, in joint partly dissenting opinion of Judges Bratza and David Thór Björgvinsson in *Eweida and Others v the UK* case it is stated:

The “manifestation” of religion or belief within the meaning of Article 9 is not limited to acts of worship or devotion which form part of the practice of a religion or belief “in a generally recognised form”. Provided a sufficiently close and direct nexus between the act and the underlying belief exists, there is no obligation on an applicant to establish that he or she acted in fulfilment of a duty mandated by the religion.<sup>86</sup>

It can be seen that the Court weakened the impacts of the definitional balancing approach on limiting the effectiveness of Article 9. Therefore, in the case of *Eweida and Others v the United Kingdom*, the Court interpreted the definitional approach in a clearer and an explicit way. The necessity test, which requires individuals to prove that their act is mandated by religion or belief in order to gain protection as guaranteed in Article 9 of the Convention, was overruled. Furthermore, by requiring “a sufficiently close and direct nexus between the act and the underlying belief,” the Court clarified that the main requirement in order to gain protection under Article 9 is that belief is to be “cogent and important.”<sup>87</sup>

In the same vein, in its judgement on the case of *Jakowski v Poland*, the Court did not apply the definitional filter. Instead, it adopted a broader interpretation of Article 9 of the Convention.<sup>88</sup> In the present case, the applicant, a prisoner, informed the prison authorities about his religious precepts and, therefore, requested a meat-free diet.<sup>89</sup> However, his request was refused on the grounds that preparing “vegetarian meals in prison would have put too much strain on the authorities.”<sup>90</sup> The applicant asserted that refusing his religious precepts and meat-free diet requirements breached his right to manifest his religion.<sup>91</sup> The Court recalled its *Cha’are shalom ve tsedek* judgement

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<sup>85</sup> *ibid* at [82].

<sup>86</sup> *ibid* in Partly Dissenting Opinion of Judges Bratza and David Thór Björgvinsson.

<sup>87</sup> Leigh and Hamblen (n 42) 11.

<sup>88</sup> *ibid* 10.

<sup>89</sup> *Jakowski v Poland* App no. 18429/06 (ECtHR, 7 December 2010) at [7].

<sup>90</sup> *ibid* at [30].

<sup>91</sup> *ibid* at [27].

in which it held that “observing dietary rules can be considered a direct expression of beliefs in practice in the sense of Article 9,”<sup>92</sup> then concluded that “the applicant’s decision to adhere to a vegetarian diet can be regarded as motivated or inspired by a religion and was not unreasonable.”<sup>93</sup> Therefore, “the refusal to provide him with meat-free meals amounted to an interference with his rights guaranteed by Article 9 of the Convention.”<sup>94</sup> Furthermore, in the case of *Bayatyan v Armenia*, while assessing whether conscientious objection falls within the ambit of Article 9, the Court focused on *motivations*, which are based on sincerely held beliefs, rather than investigating whether the act was the *requirement* of such belief.<sup>95</sup>

To conclude, the manifestation of religion or belief is recognised in the form of practice, worship, teaching, or observance in Article 9 of the ECHR. Although the wording of the Article refers to manifestation in relation to worship and observance, and limits manifestation to religion or belief, the manifestation of conscientious belief can be considered as a form of practice and, as such, gains protection under both articles.<sup>96</sup> In order to gain protection under Article 9, one does not necessarily have to believe in a “Supreme Being.” The European jurisprudence makes it clear that the Article protects all forms of belief including atheism and agnosticism.<sup>97</sup> In other words, the protection of Article 9 of the Convention is not limited to religious beliefs. Article 9 also protects a wide range of philosophical beliefs. However, it should be remembered that a belief must “attain a certain level of cogency, seriousness, cohesion and importance.”<sup>98</sup>

In light of the above analysis of what counts as practice, one can claim that refusing to join the military service is recognised as a manifestation of belief. Although conscientious objection raises controversial issues under the international instruments

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<sup>92</sup> *ibid* at [45].

<sup>93</sup> *ibid* at [45].

<sup>94</sup> *ibid* at [46].

<sup>95</sup> Leigh and Hamblen (n 42) 10–11.

<sup>96</sup> Hammer (n 8) 121.

<sup>97</sup> Edge (n 50) 42.

<sup>98</sup> *Campbell and Cosans v the United Kingdom* App no. 7511/76; 7743/76 (ECtHR, 25 February 1982).

and case law, pacifism was acknowledged as a valid and a secular belief. It is seen as legitimate grounds for asserting the right to conscientious objection.<sup>99</sup>

#### **5.2.1.4. Case-law of the European Court of Human Rights and Conscientious Objection**

The previous sections focused on analysing the components of Article 9 of the ECHR as legitimate grounds for conscientious objection. This section will provide an analysis of the case-law of the ECtHR concerning conscientious objection and examine the shift from the traditional approach to conscientious objection.

##### **5.2.1.4.1. Traditional Approach to Conscientious Objection**

Historically, the case-law of the ECtHR has focused on the right to conscientious objection claims in a way that the international law does not provide such a right. Therefore, they particularly concluded in numerous cases that there is no right to conscientious objection.<sup>100</sup> In other words, the ECtHR preferred to examine the cases regarding religious claims under other relevant articles instead of Article 9 of the Convention. Consequently, the jurisprudence of the Court regarding Article 9 has been underdeveloped. It has been suggested that avoidance of applying Article 9 to religious claims resulted in “slow development of the right to conscientious objection.”<sup>101</sup>

The Court was focusing merely on the wording of Article 9 of the Convention, which has no explicit reference to the right to conscientious objection. Claiming that the only reference to conscientious objection can be found in Article 4.3.b,<sup>102</sup> the Court referred to forced labour when evaluating the conscientious objection claims despite that it has no connection with the right to thought, conscience, and religion. Considering Article 4, the Court reached the conclusion that the recognition of an alternative service is only an option, not an obligation. During such period, applications requesting recognition as conscientious objectors were confronted with

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<sup>99</sup> Hammer (n 8) 123–124.

<sup>100</sup> Taylor (n 39) 148.

<sup>101</sup> Harris and others (n 5) 432–433.

<sup>102</sup> Article 4 (3) (b) excludes “any service of a military character or, in case of conscientious objectors in countries where they are recognized, service exacted instead of compulsory military service” from the scope of forced labour.

this distorted interpretation of Article 4.3.b and, as such, were deprived of any protection under Article 9.<sup>103</sup> Some analysis of the cases would be helpful to understand the shift from the traditional interpretation of the right to freedom of thought, conscience, and religion to the growing recognition of the right to conscientious objection in the international law.

For instance, when a Jehovah Witness refused to comply with the military orders following his beliefs in the case of *Grandrath v Germany*,<sup>104</sup> the European Commission did not consider the issue under Article 9 but under Article 4.3.b. The applicant alleged that the criminal proceedings launched against him—because of his refusal to perform the military service—interfered with his right to freedom of conscience and religion under Article 9 of the ECHR.<sup>105</sup> However, according to the Commission:

While Article 9 guarantees the right to freedom of thought, conscience and religion in general; Article 4 of the Convention contains a provision which expressly deals with the question of compulsory service exacted in the place of military service in the case of conscientious objectors.<sup>106</sup>

Although the applicant alleged a violation of Article 9 of the Convention, the Commission did not consider the case under Article 9 and instead observed that “it is expressly recognized that civilian service may be imposed on conscientious objectors as a substitute for military service, it must be concluded that objections of conscience do not, under the Convention, entitle a person to exemption from such service.”<sup>107</sup>

Similarly, in the case of *Bayatyan v Armenia*,<sup>108</sup> the applicant alleged that “his conviction for refusal to serve in the army had unlawfully interfered with his right to freedom of thought, conscience and religion.”<sup>109</sup> The Court considered the claims in the context of Article 4.3 instead of Article 9 of the ECHR. The Court referred to the

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<sup>103</sup> Petr Muzny, ‘Bayatyan v Armenia: The Grand Chamber Renders a Grand Judgment’ (2012) 12 Human Rights Law Review 135, 137.

<sup>104</sup> *Grandrath v Germany* App no. 229964/10 (European Commission, 12 October 1966).

<sup>105</sup> *ibid* at [9].

<sup>106</sup> *ibid* at [32].

<sup>107</sup> *ibid* at [32].

<sup>108</sup> *Bayatyan v Armenia* App no. 23459/03 (ECtHR, 27 October 2009).

<sup>109</sup> *ibid* at [3].



existing case-law regarding the right to the conscientious objection claims.<sup>110</sup> For instance, first it referred to the case of *X v Austria*<sup>111</sup> in which the Commission took into consideration Article 4.3.b of the Convention while dealing with the disputed matter. According to the Commission, the terms of “in countries where they are recognised” in Article 4.3.b gave the High Contracting Parties a choice to recognise the right to conscientious objection. Thus, Article 9 of the Convention was qualified by Article 4.3.b and did not obligate states to recognise the right to conscientious objection.<sup>112</sup> Second, it referred to the case of *Ulke v Turkey* and reminded that Ulke’s “multiple consecutive convictions for his repeated refusals to wear military uniform on the grounds of conscience,” was not examined under Article 9 of the Convention considered.<sup>113</sup> Instead, the Court based its decision on Article 3 of the Convention and concluded that “these multiple convictions were considered to amount to degrading treatment as they caused the applicant severe pain and suffering which went beyond the normal element of humiliation inherent in any criminal sentence or detention.”<sup>114</sup> Having referred to these arguments raised in the case of *Ulke v Turkey*, the Court reached the conclusion in the case of *Bayatyan v Armenia* that “Article 9 does not guarantee the right to conscientious objection.”<sup>115</sup>

In the case of *Ulke v Turkey*,<sup>116</sup> the applicant as a pacifist and a conscientious objector alleged that “he had been prosecuted and convicted on account of his beliefs”<sup>117 118</sup>

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<sup>110</sup> *ibid* at [55].

<sup>111</sup> *X v Austria* App no. 5591/72 (European Commission, 2 April 1973).

<sup>112</sup> *ibid* cited in *Bayatyan v Armenia* App no. 23459/03 (ECtHR, 27 October 2009) at [56].

<sup>113</sup> *Ulke v Turkey* App no. 39437/98 (ECtHR, 24 April 2004) at [53-54] cited in *Bayatyan v Armenia* App no. 23459/03 (ECtHR, 27 October 2009) at [59].

<sup>114</sup> *Ulke v Turkey* App no. 39437/98 (ECtHR, 24 April 2004) [63-64] cited in *Bayatyan v Armenia* App no. 23459/03 (ECtHR, 27 October 2009) at [59].

<sup>115</sup> *ibid* at [60].

<sup>116</sup> *Ulke v Turkey* App no. 39437/98 (ECtHR, 24 April 2004).

<sup>117</sup> *ibid* at [48].

<sup>118</sup> “When Osman Murat Ulke was called up for military service he refused to join the army. He publicly burnt the call-up papers in 1995. A year later he was arrested and charged under Article 155 of the Penal Code and Article 58 of the Military Penal Code. In a decision of 28 January 1997, the General Staff Court in Ankara sentenced him to six months’ imprisonment. Meanwhile, Osman Murat Ulke had been transferred on 22 November 1996 to the Bilecik gendarmerie command. Because of his refusal to wear a military uniform, he was detained, and he also refused to wear the prison uniform. On 26 November 1996, the military prosecutor charged him with ‘persistent disobedience’ under Article 87 of the Military Penal Code. He was convicted again and sentenced to five months’ imprisonment. When released on 27 December 1996, he did not rejoin his regiment. He was arrested and detained pending trial and charged with desertion and ‘persistent disobedience’. He received a sentence of ten

Although the applicant relied on Article 3 and 9,<sup>119</sup> the Court did not examine the case within the framework of Article 9 of the Convention. The Court relied on Article 3 of the ECHR, which states that “no one shall be subjected to torture or to inhuman or degrading treatment or punishment,” while concluding that convictions on the grounds of refusing to wear the military uniform were a kind of humiliation.<sup>120</sup> The Court gave attention to the risk of repeated imprisonments and, therefore, highlighted that the applicant was already sentenced eight times for refusing to wear the uniform; after each release from prison, he was sent to his regiment again, and once again convicted and transferred to prison.<sup>121</sup> The Court was also aware of the lack of provisions in the Turkish law and that “applicant ran and still runs the risk of an interminable series of prosecutions and criminal convictions,”<sup>122</sup> which “are disproportionate to the aim of ensuring that he performs the military service.”<sup>123</sup> The Court also illustrated its argument on the repeated prosecutions as follows:

They are aimed more at repressing the applicant’s intellectual personality, inspiring in him feelings of fear, anguish and vulnerability capable of humiliating and debasing him and breaking his resistance and will. The clandestine life, amounting almost to “civil death”, which the applicant has been compelled to adopt is incompatible with the punishment regime of a democratic society.<sup>124</sup>

The Court considered the repeated prosecutions of the applicant to be conflicting with his intellectual thoughts. By doing so, the Court connected thoughts of the applicant with his belief and ruled that the endless “circle of military prison-military court-military unit” violated this connection.<sup>125</sup> However, it is important to bear in mind that the Court did not refer to the principle of *ne bis in idem*. Furthermore, the conscientious objector’s prosecutions, resulted from the conflict between the

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months’ imprisonment and a fine in October 1997 spending 701 days in imprisonment as a result of eight separate convictions.” Kevin Boyle, ‘Conscientious Objection in International Law and The Osman Murat Ulke Case’, *Conscientious Objection: Resisting Militarized Society* (Zed Books 2009) 213.

<sup>119</sup> *Ulke v Turkey* App no. 39437/98 (ECtHR, 24 April 2004) at [48].

<sup>120</sup> *ibid* at [59].

<sup>121</sup> *ibid* at [60].

<sup>122</sup> *ibid* at [61].

<sup>123</sup> *ibid* at [62].

<sup>124</sup> *ibid* at [62].

<sup>125</sup> Özgür Heval Çınar, *Conscientious Objection to Military Service in International Human Rights Law* (Palgrave Macmillan 2013) 124.

applicant' conscience and the law, were not examined under the freedom of conscience, thought, or religion.<sup>126</sup> As Rachel Brett and Laurel Townhead state, "unfortunately, the Court declined to address the question of whether forcing Ulke performing military service had been a legitimate aim for the state to pursue given his conscientious objection."<sup>127</sup>

To conclude, since the recognition of the right to conscientious objection would have meant the recognition of new rights and obligations, the Convention was not interpreted in a broad sense.<sup>128</sup> Instead, the Court adhered to the wording of the Convention without considering the travaux préparatoires and the logic behind the text. Thus, until the decision of the Grand Chamber in the case of *Bayatyan v Armenia*, the Court relied on Articles 4.3 and 3 of the Convention instead of Article 9 when assessing claims regarding violations against objectors. The Court determined that countries had contravened the Convention because they had not taken the necessary steps to prevent the inhuman treatments and the endless prosecutions of objectors. However, the Court avoided reaching a conclusion taking into account Article 9.

#### **5.2.1.4.2. Reconsidering the Traditional Approach**

The Grand Chamber, in Bayatyan's case,<sup>129</sup> considered whether it was necessary to change the Court's approach on the conscientious objection claims. While considering the fact that the Court should not change its precedence without a good reason, the Grand Chamber also stated that the Convention must be interpreted in a way that promotes the effectiveness of rights protected under the Convention.<sup>130</sup> The Grand Chamber also drew attention to the fact that Article 9 of the Convention has never been applied to conscientious objection claims. Accordingly, as a consequence of interpretation of the issue in the context of Article 4.3, "conscientious objectors were excluded from the scope of protection of Article 9, which could not be read as

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<sup>126</sup> Osman Can, 'Conscientious Objection and the Turkish Constitution' in Özgür Heval Çınar and Coşkun Üsterçi (eds), *Conscientious Objection: Resisting Militarized Society* (Zed Books 2009) 229.

<sup>127</sup> Rachel Brett and Laurel Townhead, 'Conscientious Objection to Military Service' [2011] *Strategic Visions for human Rights: Essays in Honour of Professor Kevin Boyle* 91, 96.

<sup>128</sup> Muzny (n 103) 137–138.

<sup>129</sup> *Bayatyan v Armenia* Grand Chamber App no. 23459/03 (ECtHR, 7 July 2011).

<sup>130</sup> *ibid* at [98].

guaranteeing freedom from prosecution for refusal to serve in the army.”<sup>131</sup> The Grand Chamber concluded:

In line with the ‘living instrument’ approach, the Court, therefore, takes the view that it is not possible to confirm the case-law established by the Commission, and that Article 9 should no longer be read in conjunction with Article 4 § 3 (b). Consequently, the applicant’s complaint is to be assessed solely under Article 9.<sup>132</sup>

In the present case, the Grand Chamber stated:

Article 9 does not explicitly refer to a right to conscientious objection. However, it considers that opposition to military service, where it is motivated by a serious and insurmountable conflict between the obligation to serve in the army and a person’s conscience or his deeply and genuinely held religious or other beliefs, constitutes a conviction or belief of sufficient cogency, seriousness, cohesion and importance to attract the guarantees of Article 9.<sup>133</sup>

The Court ruled that Bayatyan’s objection was grounded on seriously and genuinely held beliefs given that the applicant was a Jehovah’s Witnesses, “a religious group whose beliefs include the conviction that service, even unarmed, within the military is to be opposed.”<sup>134</sup> Therefore, it found there was a violation of Article 9.

As the Grand Chamber states, the reason for such a ground-breaking shift in the case law of the Court can be explained by “the fact that almost all the member States which ever had or still have compulsory military service introduced laws at various points recognising and implementing the right to conscientious objection, some of them even before becoming members of the Council of Europe.”<sup>135</sup>

As it appears, what is striking about the Grand Chamber’s Bayatyan decision is that the Grand Chamber officially reversed the case-law of the Commission and, for the first time, applied Article 9 of the ECHR to evaluate the conscientious objection

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<sup>131</sup> *ibid* at [99].

<sup>132</sup> *ibid* at [109].

<sup>133</sup> *ibid* at [110].

<sup>134</sup> *ibid* at [111].

<sup>135</sup> *ibid* at [46].

claims.<sup>136</sup> The Court adopted a similar approach in its later decisions on several cases such as *Ercep v Turkey*, *Demirtas v Turkey*, *Tarhan v Turkey*, and *Savda v Turkey*.

In the case of *Ercep v Turkey*,<sup>137</sup> the applicant was a Jehovah Witnesses. The Court reiterated its Bayatyan decision and stated that since there was no alternative service provided, the applicant had no choice, but to object. As a result, the applicant was exposed to repeated prosecutions and imprisonments, which amount to civil death of the applicant.<sup>138</sup> Given the fact that the applicant did not refuse to perform civilian service, instead he asked for an opportunity to do so, the Court has no doubt that the applicant refused to serve because of his sincerely and genuinely held beliefs.<sup>139</sup> The Court ruled that the current compulsory military service places a heavy burden on citizens. The current system not only deprives citizens of the right to conscientious objection, but also imposes criminal sanctions on them.<sup>140</sup> Therefore, the Court concluded that there was no balance between such a system and general interests of conscientious objectors, and there was a violation of Article 9.<sup>141</sup>

In the case of *Demirtas v Turkey*,<sup>142</sup> the Court also highlighted that the applicant, a Jehovah witnesses, asked for exemption not because he aimed to achieve a personal benefit but because he held sincere religious beliefs against performing the military service. By asking for an alternative service, the applicant clearly illustrated that he was ready to share the burden with other citizens. However, the applicant was imprisoned because there was no alternative service provided. The Court was of opinion that the state failed to strike a balance between society's general interest and objectors. Therefore, the restrictions on the right to religion breach Article 9.

In the case of *Tarhan v Turkey*,<sup>143</sup> the applicant referred to Ulke's case and asserted that he was subjected to repeated prosecutions and convictions due to the lack of legal protection. He also argued that there is still a risk of prosecutions.<sup>144</sup> The Court

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<sup>136</sup> Muzny (n 103) 140.

<sup>137</sup> *Ercep v Turkey* App no. 43965/04 (ECtHR, 22 November 2011).

<sup>138</sup> *ibid* at [58].

<sup>139</sup> *ibid* at [61].

<sup>140</sup> *ibid* at [63].

<sup>141</sup> *ibid* at [64,65].

<sup>142</sup> *Feti Demirtas v Turkey* App no. 5260/07 (ECtHR, 17 January 2012).

<sup>143</sup> *Tarhan v Turkey* App no. 9078/06 (ECtHR, 17 July 2012).

<sup>144</sup> *ibid* at [34].

considered the fact that in addition to the current conviction, the applicant was previously convicted twice because of his objection.<sup>145</sup> The Court also noted that the Turkish state referred to the right and the duty of states to protect “territorial integrity, national security, and the rights of others,” but failed to explain why, how, and to what extent such a right and a duty prevents states from recognising the right to conscientious objection.<sup>146</sup>

Regarding the lack of procedures to assess the applicant’s status as an objector, the Court reiterated the cases of Bayatyan, Ercep, and Demirtas in which all the applicants were Jehovah Witnesses. In these cases, the Court had no doubt about the sincerity of applicants because they were members of a religious group that forbids serving in the army.<sup>147</sup> The Court differentiated between these three cases and the current case because the applicant did not assert any religious beliefs supporting his objection. The question that needed to be considered here was to what extent Tarhan’s objection to military service fell within the ambit of Article 9.<sup>148</sup>

In a nutshell, what is striking about Tarhan’s case is the lack of procedures that could assess such a question as the authorities only penalised the applicant and did not assess his claims about gaining the conscientious objector status.<sup>149</sup> Considering the above-mentioned circumstances, the Court emphasised that the authorities have a *positive obligation* to protect the applicant’s rights under Article 9 of the Convention and assess whether he is eligible for the conscientious objector status. In this sense, the lack of an alternative service and effective procedures to determine the status of the applicant breached Article 9 of the Convention.<sup>150</sup> As it appears, the Court did not assess Tarhan’s objection status, but focused on the states’ positive obligation, viz. providing the necessary procedures to determine whether the applicants’ conscience and belief fell within the scope of Article 9.

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<sup>145</sup> *ibid* at [36].

<sup>146</sup> *ibid* at [56].

<sup>147</sup> *ibid* at [57].

<sup>148</sup> *ibid* at [58].

<sup>149</sup> *ibid* at [59].

<sup>150</sup> *ibid* at [61].

In the case of *Savda v Turkey*,<sup>151</sup> the applicant claimed that the criminal sanctions imposed against him owing to his refusal constituted a violation of Articles 9 and 10 of the Convention. The Court focused on similar issues as the Tarhan case, notably the absence of an alternative service and a procedure to examine the status of objectors. The Court held:

A system which provided for no alternative service or any effective and accessible procedure by which the person concerned was able to have examined the question of 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. It followed that the relevant authorities had failed to comply with their obligation under Article 9 of the Convention.<sup>152</sup>

### **5.2.2. The Right to Conscientious Objection and Article 14 of the Convention**

The previous section analysed the conscientious objection claims under Article 9 of the Convention and argued that the right to religion, conscience, and thought constitutes a legal ground for objectors. In what follows, the right to conscientious objection will be examined in relation to Article 14 of the Convention, which forbids discrimination.<sup>153</sup> Article 14 of the Convention is relevant to conscientious objection cases for several reasons. First, as discussed in chapter 3.2.1, the recognition of non-religious conscientious objection has been a matter of dispute. This section analyses the international law on discrimination towards non-religious objectors. Second, as discussed in chapter 3.3.1.2, the debate over whether conscientious objectors are entitled to a different treatment than other law breakers is still on-going. This section attempts to illustrate the European Court's approach to the difficulties faced by conscientious objectors following their criminal records. Therefore, it aims to answer the question of whether failing to distinguish conscientious objectors from other law-breakers violates Article 14 of the ECHR.

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<sup>151</sup> *Savda v Turkey* App no. 42730/05 (ECtHR, 12 June 2012).

<sup>152</sup> European Courts of Human Rights, 'Refusal to Grant Conscientious Objector Status is not Necessary in a Democratic Society. Press Release, ECHR 250 (2012)' <[http://www.ebcobeoc.org/sites/ebcobeoc.org/files/attachments/PR\\_Chamber%20II%20judgment%20Savda%20v.%20Turkey%2012.06.2012.pdf](http://www.ebcobeoc.org/sites/ebcobeoc.org/files/attachments/PR_Chamber%20II%20judgment%20Savda%20v.%20Turkey%2012.06.2012.pdf)> accessed 19 September 2017.

<sup>153</sup> Article 14 of the Convention reads as follows: The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

### **5.2.2.1. Discrimination between Religious and Non-religious Conscientious Objectors**

International documents specifically prohibit any discrimination against conscientious objectors. For instance, the United Nations Human Rights Council asserts in Resolution 24/17 that “states, in their law and in practice, must not discriminate against conscientious objectors in relation to their terms or conditions of service, or any economic, social, cultural, civil or political rights.”<sup>154</sup> The Human Rights Committee also states in General Comment No. 22 that “there shall be no discrimination against conscientious objectors because they have failed to perform military service.”<sup>155</sup>

Furthermore, in order to provide equal protection to religious claims, states shall make religious privileges available to other beliefs as well unless they have “reasonable and objective” justifications.<sup>156</sup> The UN Human Rights Commission Resolution 1998/77<sup>157</sup>, also, states that “conscientious objection to military service derives from principles and reasons of conscience, including profound convictions, arising from religious, ethical, humanitarian or similar motives,”<sup>158</sup> and also calls upon states to take “into account of the requirement not to discriminate amongst conscientious objectors on the basis of their particular beliefs.”<sup>159</sup> Similarly, Human Rights Committee in General Comment 22 states that “when this right is recognized by law or practice, there shall be no differentiation among conscientious objectors on the basis of the nature of their particular beliefs.”<sup>160</sup> Thus, “moral, ethical, philosophical and humanitarian, as well as religious, values must be protected with a right to conscientious objection”<sup>161</sup> in an equal way.

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<sup>154</sup> United Nations Human Rights Council, ‘Conscientious Objection to Military Service: Resolution 24/17 (8 October 2013) A/HRC/RES/24/17’ para.12.

<sup>155</sup> United Nations Human Rights Committee, ‘CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion), 30 July 1993, CCPR/C/21/Rev.1/Add.4’, para.11.

<sup>156</sup> Temperman (n 9) 204.

<sup>157</sup> United Nation Commission on Human Rights, ‘Conscientious Objection to Military Service: Resolution 1998/77 (22 April 1998) E/CN.4/RES/1998/77’.

<sup>158</sup> *ibid.*

<sup>159</sup> *ibid* at [3].

<sup>160</sup> United Nations Human Rights Committee (n 155) para.11.

<sup>161</sup> Wolff (n 30) 70.



In *Kokkinakis v Greece*,<sup>162</sup> the Court highlighted the importance of having the right to freedom of religion, conscience, and thought in a democratic society. The Court also indicated that the protection of Article 9 is not limited to religious motives. According to the Court:

As enshrined in Article 9 (art. 9), freedom of thought, conscience and religion is one of the foundations of a ‘democratic society’ within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned.<sup>163</sup>

As this passage illustrates, the protection of Article 9 is not restricted to the recognition of a particular religion. In the case of a conscientious objection based on the right to freedom of thought, conscience, and religion, it is clear that although well-known religious groups namely Jehovah’s Witnesses and Quakers are granted exemption from military service, conscientious objection is not exclusively limited to those religiously motivated groups.<sup>164</sup> Despite the differences in their motivations behind their refusal, both Quakers (refusing to serve in the army based on their membership to a religious group that condemns war) and individuals (refusing to serve in the army based on personal motives) have a common denominator for their refusal, which is the “horror of war.”<sup>165</sup> Both religious and ethical objectors condemn the use of force and oppose war in general. While religious objectors base their decision on “Supreme Being’s command,” ethical objectors rely on the idea that “love of humanity” does not allow the use of violence against human beings. Therefore, differentiating between religious objectors and ethical objectors is “unreasonable.”<sup>166</sup>

As David Cohen and Robert Greenspan indicate, “nothing is more repugnant to a sense of fairness than the rejection of the claim of a conscientious objector because he

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<sup>162</sup> *Kokkinakis v Greece* App no. 14307/88 (ECtHR, 25 May 1993).

<sup>163</sup> *ibid* at [31].

<sup>164</sup> Leigh and Born (n 18) 74.

<sup>165</sup> David M Cohen and Robert Greenspan, ‘Conscientious Objection, Democratic Theory, and the Constitution’ (1967) 29 *University of Pittsburgh Law Review* 389, 403.

<sup>166</sup> Peter J Donnici, ‘Government Encouragement of Religious Ideology: A Study of the Current Conscientious Objector Exemption from Military Service’ (1964) 13 *Journal of Public Law* 16, 39.

does not believe in a transcendent reality.”<sup>167</sup> Conscience is not necessarily a result of a religious belief. Many individuals behave in accordance with their conscience rather than following their religious dictates. Therefore, the conscientious objection status might be granted based on convictions that are not religiously held, but “possess a reverence for human life; a belief in the transcendence of love and global brotherhood; a conviction in a principle of goodness; or a steadfast belief that human life is sacred and should not be humanly terminated.”<sup>168</sup>

In addition to the discrimination between non-religious conscientious objectors and religious objectors, there has been a disagreement on the question of why traditional religious groups obtain exemption more easily than minority religious groups. Whereas members of minority religions<sup>169</sup> might have difficulties to explain their motives to the Convention institutions within the European Convention system, the motives of members affiliated with dominant religions<sup>170</sup> are accepted without a burden of proof.<sup>171</sup> In the case of *N v Sweden* for instance,<sup>172</sup> the applicant sought total exemption from the military service owing to his pacifist views. In his letter to the Government explaining his reason for not complying with the military order, the applicant asked “why is it that total resistance is only accepted if you adhere to the Jehovah’s Witnesses?” The applicant before the Commission alleged that “while members of Jehovah’s Witnesses are exempted from military service and thus not sentenced,”<sup>173</sup> his conviction of evasion breached Article 14 of the Convention in conjunction with Article 9. The Commission favoured that the complaint of discrimination fell within the ambit of the right to freedom of religion. However, the only issue on which the Commission decided was whether differentiating between Jehovah’s Witnesses and the applicant in granting total exemption from military service, has an “objective and reasonable justification under Article 14 of the Convention.”<sup>174</sup> In this regard, the Commission noted that membership of Jehovah’s Witnesses requires a “comprehensive set of rules of behavior” which includes the

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<sup>167</sup> Cohen and Greenspan (n 165) 403.

<sup>168</sup> Wolff (n 30) 69–70.

<sup>169</sup> See *X v United Kingdom* App no. 7291/75 (1977) and *X v Federal Republic of Germany* App no. 445/70 (1970).

<sup>170</sup> See *Chappell v United Kingdom* App no. 12587/86 (1987).

<sup>171</sup> Ahdar and Leigh (n 15) 124.

<sup>172</sup> *N v Sweden* App no. 10410/83 (European Commission, 11 October 1984).

<sup>173</sup> *ibid.*

<sup>174</sup> *ibid.*

refusal of military service and alternative service. Furthermore, being a member of Jehovah's Witnesses "constitutes strong evidence that the objections to compulsory service are based on genuine religious convictions. No comparable evidence exists in regard to individuals who object to compulsory service without being members of a community with similar characteristics."<sup>175</sup> The Commission, therefore, ruled the following:

Membership of such a religious sect as Jehovah's Witnesses is an objective fact which creates a high degree of probability that exemption is not granted to persons who simply wish to escape service, since it is unlikely that a person would join such a sect only for the purpose of not having to perform military or substitute service. The same high probability would not exist if exemption was also granted to individuals claiming to have objections of conscience to such service or to members of various pacifist groups or organisations.<sup>176</sup>

In conclusion, the right to conscientious objection was granted alone in the beginning to those refusing military service because of their religious belief. Furthermore, some countries require members to be affiliated with a certain church.<sup>177</sup> Narrowing the definition of conscientious objection and limiting the right to conscientious objection alone to those who are members of specific religious organisations have problematic aspects. It "neglects the human ability to form personal opinions and interpret their espoused religion in an individualized way."<sup>178</sup> Indeed, by the end of the nineteenth century, being a member of well-established religions was not the only condition for obtaining exemption from military service. In fact, conscience was also considered as a legitimate ground for claiming the right to conscientious objection. As such, non-religious objectors, particularly anti-militarists and political objectors began to claim the right to conscientious objection.<sup>179</sup> As a result of both international organisations' efforts and individuals' complaints, the concept of conscientious objection was broadened. Countries started to recognise the right of those who based their objection

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<sup>175</sup> *ibid.*

<sup>176</sup> *ibid.*

<sup>177</sup> D. Weissbrodt, 'The United Nations Commission on Human Rights Confirms Conscientious Objection to Military Service as a Human Right' 53.

<sup>178</sup> Marcus (n 7) 540.

<sup>179</sup> Ulrich Bröckling, 'Sand in the Wheels? Conscientious Objection at the Turn of the Twenty-First Century' in Özgür Heval Çınar and Coşkun Üsterci (eds), *Conscientious Objection: Resisting Militarized Society* (Zed Books 2009) 53.

on sincere ethical grounds to refuse military service. Furthermore, a few countries broadened the definition of conscientious objection to include refusals based on beliefs such as the use of nuclear weapons is illegal.<sup>180</sup>

#### 5.2.2.2. A Different Treatment to Conscientious Objectors?

As the Human Rights Committee states, “convicted conscientious objectors bear the stigma of a criminal record.”<sup>181</sup> As a result, these objectors do not fully enjoy their social and economic rights.<sup>182</sup> In the case of *Thlimmenos v Greece*,<sup>183</sup> the European Court (Grand Chamber) considered the issue of whether the failure to differentiate between conscientious objectors and other law-breakers constitutes discrimination. The applicant was a Jehovah’s Witness, convicted of insubordination for refusing to wear the military uniform, and as such sentenced to four years imprisonment.<sup>184</sup> After several years, he passed a public examination, which allows candidates to become chartered accountants. Despite his success, the Executive Board of the Greek Institute of Chartered Accountants refused his application because he was previously convicted of a serious crime.<sup>185</sup> The applicant alleged that the Greek law excludes all persons convicted of a serious crime from becoming a chartered accountant without making any distinction between conscientious lawbreakers and others convicted of serious crimes.<sup>186</sup> According to the applicant, excluding individuals from the profession because they refused to join the military service based on their religious beliefs has no useful purpose. The nature of the offence and the motive of offenders

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<sup>180</sup> D. Weissbrodt (n 177) 53–54.

<sup>181</sup> United Nations Human Rights Committee, ‘Consideration of Reports Submitted by States Parties under Article 40 of the Covenant : Concluding Observations of the Human Rights Committee : Republic of Korea (28 November 2006) CCPR/C/KOR/CO/3’ para.17.

<sup>182</sup> In the case of Atasoy and Sarkut, in which one of the applicants, “Mr Sarkut, due to an order sent by military officials to his employer in November 2008, has lost his employment as a teacher.” (para8.1.) “The university was advised not to re-employ the author unless he provided a document from the Military Recruitment Office. In the event that the university did re-employ him, it would be accused of having committed a crime under, inter alia, articles 91, 92 and 93 of Military Law No. 1111” (para 2.6.) “The Committee notes the authors’ claim that their rights under Article 18, paragraph 1, of the Covenant have been violated, due to the absence in the State party of an alternative to compulsory military service, as a result of which, they have been criminally prosecuted due to their failure to perform military service, with Mr. Sarkut having lost his employment.” Para.10.2.

<sup>183</sup> *Thlimmenos v Greece* App no. 34369/97 (ECtHR, 6 April 2000)

<sup>184</sup> *ibid* at [7].

<sup>185</sup> *ibid* at [8].

<sup>186</sup> *ibid* at [33].

should be taken into account. The government, the applicant claims, failed to consider the differences between individuals refusing military service because of their right to freedom of religion and others who committed serious crimes.<sup>187</sup> Accordingly, the Court stated:

The Court has so far considered that the right under Article 14 not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is violated when States treat differently persons in analogous situations without providing an objective and reasonable justification (see the Inze judgment cited above, p. 18, § 41). The Court considers that this is not the only facet of the prohibition of discrimination in Article 14. The right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different.<sup>188</sup>

It can be seen that by accepting the applicant's allegations, the Court revised its approach towards the principle of equality. It interpreted the equality principle in a broader sense. Accordingly, in addition to an identical treatment when necessary, the principle of equality requires a difference in treatment. Therefore, giving the same treatment to persons who experience different situations is now considered as violating the right not to be discriminated against.<sup>189</sup> In other words, the breath-taking feature of this judgement is that identical treatment is now considered as a violation of state's responsibility to provide a different treatment for those who have special circumstances. Thlimmenos judgment, clear enough to be considered as a principle, indicates that the prohibition of discrimination requires states, if it is necessary, to differentiate.<sup>190</sup> In conclusion, this kind of criminal convictions could be characterised as a matter of conscience. Therefore, individuals convicted on the grounds of their conscience should be able to claim exemption from the general rule which excludes those convicted of serious crimes from gaining certain benefits.<sup>191</sup>

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<sup>187</sup> *ibid* at [34].

<sup>188</sup> *ibid* at [44].

<sup>189</sup> Javier Martínez-Torrón, 'European Court of Human Rights and Religion' in Richard O'Dair and Andrew Lewis (eds), *Law and Religion* (Oxford University Press 2001) 194.

<sup>190</sup> Frédéric Edel, *The Prohibition of Discrimination under the European Convention on Human Rights* (Council of Europe Publishing 2010) 64–66.

<sup>191</sup> Martínez-Torrón (n 189) 194–195.

### 5.2.3. Conscientious Objection and Article 10 of the Convention

This section aims to evaluate the right to conscientious objection in relation to Article 10 of the Convention, which reads as follows:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.<sup>192</sup>

Although the right to manifest religion and belief is protected under Article 9.2 of the Convention, Article 10 of the Convention is also relevant to conscientious objection cases for several reasons. First, conscientious objectors' declarations mostly criticise sensitive issues such as the government's right to go to war and maintain national security. Unlike Article 9.2, Article 10.2 considers national security as a legitimate ground for restricting the right to freedom of expression. Second, as such declarations could lead to prosecutions in some legal frameworks (see Turkey's case in chapter 7.3) to gain protection against arbitrary detentions, conscientious objectors and their supporters should fully enjoy the right to freedom of expression and the right to manifest religion and belief. That is to say, the right to freedom of expression intersects with the right to religion, thought, and conscience, particularly in situations which involve declaring objections to military service and criticising the use of force. Following such reasons, this subsection examines the right to conscientious objection in the context of the right to freedom of expression.

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<sup>192</sup> European Convention on Human Rights, 3 September 1953, Article 10.

Before entering the discussion, it is worth clarifying that the limitations on the right to freedom of expression in military issues have a wide range of effects on both military personnel who criticise the conditions of serving in the military, and civilians who criticise the military and the government's policy on military matters. In this regard, military discipline and maintaining the national security might constitute the legitimate limitations on the free speech.<sup>193</sup> However, freedom of expression of the armed forces' members will not feature in this thesis. The section focuses on the restrictions on civilian's critics of the military.<sup>194</sup>

Decker and Fresa define conscientious objection as a “manifestation of freedom of conscience, i.e., freedom *to think and act* according to one's own conscience, as well as freedom not to be psychologically forced in the formation and the declaration of one's thoughts [emphasis added.]”<sup>195</sup> This definition illustrates that the right to freedom of expression is of vital importance to exercising the right to conscientious objection. Given the publicity of their act, conscientious objectors and their supporters, those who criticise the government's policy on military matters, in most cases cannot behave in accordance with their conscience without the protection of the right to freedom of expression. They need protection against arbitrary detention and the risk of prosecutions in order to declare the motivations behind their refusal, convince the decision bodies, or raise public awareness on matters against their beliefs and thoughts.

It is also necessary to protect activities pertaining to public matters such as peaceful demonstrations and activists' public speeches, so to give society members an opportunity to enter into free public debates. Interferences with the nonviolent activities that aim at raising awareness on public matters in most cases<sup>196</sup> violate Article 10 of the Convention.<sup>197</sup> Criminalising the support for the conscientious objector, which is mostly resulted in the closure of NGOs that support anti-war activities, contradicts Article 10 of the Convention.

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<sup>193</sup> Leigh and Born (n 18) 58.

<sup>194</sup> For soldier's critic of military see *Engel and others v the Netherlands* App no. 5100/71; 5101/71; 5102/71; 5354/72; 5370/72 (ECtHR 8 June 1976).

<sup>195</sup> Decker and Fresa (n 10) 379.

<sup>196</sup> See *Acik and others v Turkey* App no. 31451/03 (ECtHR 13 January 2009).

<sup>197</sup> Dirk Voorhoof and Hannes Cannie, 'Freedom of Expression and Information in a Democratic Society: The Added but Fragile Value of the European Convention on Human Rights' (2010) 72 *International Communication Gazette* 407, 413.

With regards to restrictions on the right to freedom of expression, one of the main aims of these restriction clauses is to prevent “the irresponsible and dangerous use of democracy.”<sup>198</sup> In this sense, restrictions on the enjoyment of the right are not limitless. Any restrictions on the freedom of expression must be compatible with the “triple test” of Article 10.2 of the Convention. Therefore, restrictions must “have a legitimate aim,” be “prescribed by law,” and be “necessary in a democratic society.”<sup>199</sup>

It is well established that the right to freedom of expression is a qualified right and there are certain restrictions on its implementations. Under Article 10 of the Convention, national security as one of the legitimate aims restricts free speech. The complexity of the right to freedom of expression mostly reveals itself in the conflict between protecting national security and enabling free speech.<sup>200</sup> The ECtHR, in most of the cases regarding freedom of expression and national security in Turkey, held that “although the language used had a hostile tone and described the Turkish population in a negative way, it did not constitute incitement to violence.”<sup>201</sup> In two prominent cases, *Savda v Turkey* and *Ergin v Turkey* with regards to conscientious objectors and their right to freedom of expression, the European Court interpreted Article 10.2 in a restricted manner. For instance, in *Savda v Turkey*, the Istanbul Criminal Court of First Instance convicted and sentenced in 2008 Savda to five months imprisonment under Article 318 of Turkish Penal Code for alienating people from military service.<sup>202</sup> Although the applicant claimed that the criminal sanctions against him violate Article 9 and 10 of the Convention, the Court decided to examine his claims only under Article 10.<sup>203</sup> In the present case, following the European Court’s request, the Turkish state provided the Court with information on how the Turkish domestic courts apply Article 318 of the Criminal Code.

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<sup>198</sup> Jean-François Flauss, ‘The European Court of Human Rights and the Freedom of Expression’ (2009) 84 Indiana Law Journal 810.

<sup>199</sup> Dirk Voorhoof, ‘Freedom of Expression under the European Human Rights System - From Sunday Times (No 1) v. U.K. (1979) to Hachette Filipacchi Associates (Ici Paris) v. France (2009)’ (2009) 2 Inter-American and European Human Rights Journal 3, 5.

<sup>200</sup> Campbell Public Affairs Institute (ed), *National Security and Open Government: Striking the Right Balance* (1 ed, Maxwell School of Syracuse University 2003) 4–5.

<sup>201</sup> *Okcuoglu v Turkey* App no. 24246/94 (ECtHR, 8 July 1999) at [48] see also *Incal v Turkey* App no. 41/1997/825/1031 (ECtHR 9 June 1998); *Surek and Ozdemir v Turkey* App nos. 23927/94, 24277/94 (ECtHR, 8 July 1999).

<sup>202</sup> *ibid* at [8].

<sup>203</sup> *ibid* at [15].



The information provided suggests that Istanbul Criminal Court of First Instance in May 2013 acquitted the applicant on the grounds that although his statements contained a strong criticism, they were not directed at inciting violence. Unless they do not encourage the public to revolt or soldiers to desert, these statements are protected under Article 26 of the Turkish Constitution and Article 10 of the ECHR. In December 2012, Eskisehir Criminal Court of First Instance referred to the Turkish Constitution's Article 26 (Freedom of Expression and Dissemination of Thoughts,) the ECHR's Article 10, and Universal Declaration of Human Rights' Article 18 and 19. Accordingly, the Court held that Savda's statements were within the ambit of freedom of expression. Therefore there was no violation of Article 318. In December 2012, Eskisehir Criminal Court of First Instance considered Savda's statements within the ambit of freedom of expression as they did not incite violence. Istanbul Uskudar Criminal Court of First Instance took the same decision in September 2013. Finally, Istanbul Uskudar Criminal Court of First Instance held in March 2011 that Savda's statement—even though it is “wrong, disturbing, uneasy, extreme, oppositional” and contradicts the majority's beliefs—is insufficient to find him guilty. Contrary to these five courts' decisions, Nusaybin Criminal Court of First Instance convicted Savda in March 2011 under Article 318 of the Criminal Code.<sup>204</sup>

In the present case, although the Court appreciated the Turkish domestic courts' interpretation of Article 318 of Turkish Penal Code in the light of Article 10 of the ECHR,<sup>205</sup> the Court once again stated that Turkey's domestic law is inadequate to solve the problems pertaining to refusal to serve in the army on the grounds of beliefs.<sup>206</sup> The Court also indicated that alienating people from military service itself does not constitute a legitimate ground for restrictions of the right to freedom of expression. Although the statements involve hostile views towards military service, they do not incite violence, hate, and revolt.<sup>207</sup> Therefore, restrictions on the right to freedom of expression were not necessary in a democratic society,<sup>208</sup> and

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<sup>204</sup> *ibid* at [14].

<sup>205</sup> *ibid* at [24].

<sup>206</sup> *ibid* at [20].

<sup>207</sup> *ibid* at [26].

<sup>208</sup> *ibid* at [29].

consequently, Article 10 was violated.<sup>209</sup>

In the case of *Ergin v Turkey*,<sup>210</sup> Ergin was charged under Article 155 of the Criminal Code (The current 318 of the Penal Code) in 1997.<sup>211</sup> The Military Court stated:

Military service was a constitutional duty and that the applicant, by denigrating military service had also denigrated the struggle against the PKK, a terrorist organisation which killed soldiers, police officers, teachers and civil servants. It held that the offending article contained terms contrary to morality and public order.

In a similar vein, the Government indicated:

The applicant's conviction was necessary in a democratic society because the article was offensive to the wounded and the families of conscripts who had been killed during their military service, and that the criticisms of military service were contrary to morality and the public interest.<sup>212</sup>

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<sup>209</sup> *ibid* at [30].

<sup>210</sup> *Ergin v Turkey* App no. 47533/99 (ECtHR, 4 May 2006).

<sup>211</sup> Mr Ergin's statement was as follows: "This last week in bus stations has been a time for sending the August conscripts on their way... The novice soldiers setting off – "but you'll soon be back", people tell them to console them – already seemed during these ritual send-offs to be plunging into war by donning "invisible khaki". It was a time when war seemed rather attractive; the congratulations and praises made it seem like a warm nest, almost as warm as a mother's arms, into whose embrace they would have liked to run. What we saw at each of these ceremonies shows that the thing has become a collective hysteria and that this hysteria has also spawned its own indispensable attributes: the traditional drum and clarinet, the famous three-crescented flag, sometimes accompanied by the corn-ear flag of the RP [Welfare Party] or the rose-bearing flag of the BBP [Great Union Party] ... Warm-up ceremonies are organised for those setting off for the war, the exaltation felt on killing a man is the exaltation of winning a match and, what is more, the killer justifies his act by speaking of the love he has for his fatherland and his nation. In short, it can't be said that what we're doing is right... Those verses, written by a fallen soldier, are carved on his own tombstone. He will no longer see those who gather to give the conscripts a send-off, no longer hear the drum, the clarinet or the gunfire, not be able to read the verses written on his tombstone, on seeing which he would perhaps have felt repelled by the determinism they convey. Because from now on he is reduced to a title: a martyr... It is because the State does not recognise as such the war which is etched deeply into the collective life and the collective memory that, apart from a small minority, those who return from it after losing an arm, a leg or an eye receive no allowance. These people who are no longer capable of meeting their own needs are being deceived by talk of fictitious jobs. 'There is a war, but not officially; you are war-wounded, but you count for nothing.' *ibid* at [11].

<sup>212</sup> *ibid* at [29].

The ECtHR stated:

Although the words used in the offending article give it a connotation hostile to military service, they do not exhort the use of violence or incite armed resistance or rebellion, and they do not constitute hate-speech, which, in the Court's view, is the essential element to be taken into consideration.<sup>213</sup>

According to the ECtHR, unlike the case of *Arrowsmith v the United Kingdom* in which the applicant distributed a leaflet to encourage soldiers to desert, the applicant's statement in the present case is published in a public newspaper and it "did not seek, either in its form or in its content, to precipitate immediate desertion."<sup>214</sup> Therefore, restrictions on the applicant's freedom of expression breached Article 10 of the Convention.<sup>215</sup>

In brief, free speech has a vital role to play in the creation of public awareness about political, moral, and other issues. Such an approach allows individuals and the press to disseminate information about social matters.<sup>216</sup> However, Article 318 of the Turkish Penal Code is intended to suppress any criticism of the military. Criminalising journalists, particularly by using Article 318 of the Turkish Penal Code, limits the "critical media reporting" on public issues. This, therefore, has detrimental effects on the enjoyment of the right to freedom of expression.<sup>217</sup>

As it appears, the limitations on the human rights based on the maintenance of the national security have been the concern of the European Court's case law in which the Court establishes certain criteria under the "quality of law test." Accordingly, the test requires the "laws to be foreseeable, that they should restrain the discretion of those to whom they confer powers, and that safeguards should be created to guard against the abuse of such powers."<sup>218</sup> Similarly, the Johannesburg principles are adopted in 1995 with the aim of clarifying the legitimate grounds for restricting the free speech, namely national security. Given the complexity of the right to free speech and

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<sup>213</sup> *ibid* at [34].

<sup>214</sup> *ibid* at [34].

<sup>215</sup> *ibid* at [35].

<sup>216</sup> Steve Foster, *Human Rights and Civil Liberties* (Longman 2003) 356.

<sup>217</sup> Human Rights Committee United Nation, 'Concluding Observations on the Initial Report of Turkey Adopted by the Committee at Its 106th Session 15 October to 2 November (13 November 2012) CCPR/C/TUR/CO/1' para.24.

<sup>218</sup> Leigh and Born (n 18) 52–53.

restrictions on it, these principles set basic standards for the protection of the free speech.<sup>219</sup> For instance, the principle 2.b states that:

In particular, a restriction sought to be justified on the ground of national security is not legitimate if its genuine purpose or demonstrable effect is to protect interests unrelated to national security, including, for example, to protect a government from embarrassment or exposure of wrongdoing, or to conceal information about the functioning of its public institutions, or to entrench a particular ideology, or to suppress industrial unrest.<sup>220</sup>

Tshwane principle 2.b also states that:

Given that national security is one of the weightiest public grounds for restricting information, when public authorities assert other public grounds for restricting access—including international relations, public order, public health and safety, law enforcement, future provision of free and open advice, effective policy formulation, and economic interests of the state—they must at least meet the standards for imposing restrictions on the right of access to information set forth in these Principles as relevant.<sup>221</sup>

Similarly, as noted above, limitations on free speech must meet the triple test criteria<sup>222</sup> of the Convention. The simple consideration of the issue as a national security matter by the state does not restrict the freedom of expression.<sup>223</sup> As it is stated in Principle 4 (b) of the Tshwane principles, “it is not sufficient for a public

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<sup>219</sup> Campbell Public Affairs Institute (n 200) 1.

<sup>220</sup> ‘The Johannesburg Principles on National Security, Freedom of Expression and Access to Information, 1 October 1995’ para.2.b <<http://www.refworld.org/docid/4653fa1f2.html>> accessed 28 September 2017.

<sup>221</sup> *The Global Principles on National Security and the Right to Information: The Tshwane Principles* : 12 June 2013. (Open Society Foundations 2013) para.2.b.

<sup>222</sup> The Principle 3 of the Tshwane principles reads as follows: No restriction on the right to information on national security grounds may be imposed unless the government can demonstrate that: (1) the restriction (a) is prescribed by law and (b) is necessary in a democratic society (c) to protect a legitimate national security interest; and (2) the law provides for adequate safeguards against abuse, including prompt, full, accessible, and effective scrutiny of the validity of the restriction by an independent oversight authority and full review by the courts.

<sup>223</sup> Article 19 (Organization) and Liberty. (Organization) (eds), *Secrets, Spies and Whistleblowers: Freedom of Expression and National Security in the United Kingdom* (Article 19 and Liberty 2000) 1–2.

authority simply to assert that there is a risk of harm; the authority is under a duty to provide specific, substantive reasons to support its assertions.”<sup>224</sup>

The level of respect for democracy and human rights differs among members of the European Council however such international principles and criteria. Given these differences, the effectiveness of Article 10 on the implementation of the right to freedom of expression varies.<sup>225</sup> Further, there is a clear danger of abuse of power by states. For instance, given their “extraordinary power” in the name of securing freedoms, the security agencies are themselves constituting a significant danger of “destroying those freedoms, and even democracy itself.”<sup>226</sup> In other words, the authorities are in a position enabling them to restrain any criticism and public debates on their policy. They also appeal to the national security as an excuse for their lack of respect for democracy.<sup>227</sup> Similarly, Ian Leigh and Laurence Lustgarten point out the danger of abusing the national security concept. They consider the use of national security at the political arena “as a sort of intellectual curare, inducing instant paralysis of thought.”<sup>228</sup>

### **5.3. The Right to Conscientious Objection and the United Nations Human Rights Law**

#### **5.3.1. The Right to Conscientious Objection and Article 18 of the International Convention on Civil and Political Rights**

Given the lack of an explicit recognition of the right to conscientious objection at the international level, the right to religion, conscience, and thought constitutes one of the fundamental rights that give rise to the right to conscientious objection. Having examined the right to religion, conscience, and thought in the light of the ECHR and the case-law of the ECtHR in the previous section, this section examines the right to conscientious objection under the United Nations Human Rights Law. The question that has to be considered here is whether Article 18 of the Covenant, which protects the right to freedom of religion, thought, and conscience, constitutes a ground for the

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<sup>224</sup> *The Global Principles on National Security and the Right to Information: The Tshwane Principles* : 12 June 2013. (n 221) para.4.b.

<sup>225</sup> Voorhoof (n 199) 19.

<sup>226</sup> Laurence Lustgarten and Ian Leigh, *In from the Cold: National Security and Parliamentary Democracy* (Clarendon Press ; Oxford University Press 1994) 363.

<sup>227</sup> *ibid* 20–21.

<sup>228</sup> *ibid* 20.

recognition of the right to conscientious objection. To start with the wording of Article 18 of the Covenant, Article 18.1 reads as follows:

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 [their] choice, and freedom, either individually or in community with others and in public or private, to manifest [their] religion or belief in worship, observance, practice and teaching.<sup>229</sup>

This Article's relevance to the right to conscientious objection is that religions mostly adopt nonviolent principles strictly forbidding killing. Some of them forbid people to even be involved in actions contradicting the requirements of being a member of this religion. Therefore, the protection of religion without enabling the right to be exempted from such obligations that contradict their belief is not adequate. Article 18 of the Covenant protects manifestation of "religion or belief in worship, observance, practice and teaching." This gives meaning to individual's inward feelings and helps individuals to put their belief into action. Therefore, beliefs that require conscientious objection must be protected under Article 18 of the Covenant.<sup>230</sup>

Similarly, the explicit protection of observance and practice in Article 18.1 of the ICCPR illustrates that individuals should not be compelled to act against their convictions. The mere recognition of a right to hold a conscientious belief that forbids one from taking a human life is not satisfactory. The practical importance of the right to conscience is understood when it affords an opportunity to satisfy one's convictions. Therefore, it can be said that the main aim of recognising the right to conscientious objection is to properly guarantee the right to conscience.<sup>231</sup> Furthermore, Article 18.2 reads as follows "[n]o one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice."<sup>232</sup> Coercing individuals into serving in the army clearly violates Article 18.2 of the Covenant.<sup>233</sup>

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<sup>229</sup> International Covenant on Civil and Political Rights, 19 December 1966, Article 18.1.

<sup>230</sup> Wolff (n 30) 84–85.

<sup>231</sup> *ibid* 82.

<sup>232</sup> International Covenant on Civil and Political Rights, 19 December 1966, Article 18.2.

<sup>233</sup> Wolff (n 30) 85.

### **5.3.2. Development of the Right to Conscientious Objection under the United Nation Bodies**

#### **5.3.2.1. Resolutions and General Comments**

The General Assembly in its Resolution 33/165, which is entitled the “status of persons refusing service in military or police forces used to enforce apartheid,”<sup>234</sup> “recognizes the right of all persons to refuse service in military or police forces which are used to enforce apartheid.”<sup>235</sup> Similarly, the Commission on Human Rights, in its Resolution 1987/46, stated that:

Recognizing that conscientious objection to military service derives from principles and reasons of conscience, including profound convictions, arising from religious, ethical, moral or similar motives,

1. Appeals to States to recognize that conscientious objection to military service should be considered a legitimate exercise of the right to freedom of thought, conscience and religion recognized by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights

2. Invites States to take measures aimed at exemption from military service on the basis of a genuinely held conscientious objection to armed service.<sup>236</sup>

The Commission on Human Rights, in its Resolution 1989/59,<sup>237</sup> also recognised that “everyone to have conscientious objections to military service as a legitimate exercise of the right of freedom of thought, conscience and religion as laid down in Article 18 of the Universal Declaration of Human Rights as well as Article 18 of the

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<sup>234</sup> United Nations General Assembly, ‘Status of Persons Refusing Service in Military or Police Forces Used to Enforce Apartheid 20 December 1978, A/RES/33/165’, <<http://www.refworld.org/docid/3b00f1ae28.html>> accessed 14 April 2017.

<sup>235</sup> *ibid* para.1.

<sup>236</sup> United Nations Commission on Human Rights, ‘Conscientious Objection to Military Service (10 March 1987) E/CN.4/RES/1987/46’ <<http://www.refworld.org/docid/3b00f0ce50.html>> accessed 21 May 2017.

<sup>237</sup> United Nations Commission on Human Rights, ‘Conscientious Objection to Military Service (8 March 1995) E/CN.4/RES/1995/83’ <<http://www.refworld.org/docid/3b00f0d220.html>> accessed 21 May 2017.

International Covenant on Civil and Political Rights.”<sup>238</sup> It also “appeals to States to take necessary steps to accommodate the exemption from military service.”<sup>239</sup>

Furthermore, the Human Rights Committee in its General Comment 22<sup>240</sup> stated that:

Many individuals have claimed the right to refuse to perform military service (conscientious objection) on the basis that such right derives from their freedoms under Article 18. In response to such claims, a growing number of States have in their laws exempted from compulsory military service citizens who genuinely hold religious or other beliefs that forbid the performance of military service and replaced it with alternative national service. The Covenant does not explicitly refer to a right to conscientious objection, but the Committee believes that such a right can be derived from Article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one’s religion or belief.<sup>241</sup>

The main question before the Committee in the draft of the General Comment 22 was whether the Committee would completely revise its initial standpoint and recognise Article 18 of the Covenant as a ground for the right to conscientious objection. By referring to “the obligation to use lethal force,” the Committee seems to prefer a middle standpoint. In this sense, the Committee limits the right to conscientious objection to cases requiring a use of lethal force.<sup>242</sup>

It is also important to consider that applying for the conscientious objection status is not limited to exemption claims that are raised before joining the army. As the United Nations Human Rights Council states, “persons performing military service may develop conscientious objections.”<sup>243</sup> Individuals might decide to be conscientious objectors during their service in the armed forces. It might be a result of changing a religion or facing a specific problem while serving in the army. Therefore, the

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<sup>238</sup> *ibid* para.1.

<sup>239</sup> *ibid* para.2.

<sup>240</sup> United Nations Human Rights Committee (n 155).

<sup>241</sup> *ibid* para.11.

<sup>242</sup> Hitomi Takemura, *International Human Right to Conscientious Objection to Military Service and Individual Duties to Disobey Manifestly Illegal Orders* (Springer Berlin Heidelberg 2009) 60.

<sup>243</sup> United Nations Human Rights Council, ‘Conscientious Objection to Military Service (23 September 2013) A/HRC/24/L.23’.



conscientious objection status cannot be limited to those who have not joined the army.<sup>244</sup>

### 5.3.2.2. Reconsidering the Traditional Approach

Having provided the general documents of the United Nations bodies on the right to conscientious objection in the previous subsection, this subsection examines the case law of the Human Rights Committee on conscientious objection claims. In its initial decisions, the Human Rights Committee adopted a traditional approach and concluded that Article 18 of the Covenant does not protect the right to conscientious objection to military service. The reason behind this traditional approach was either the lack of an explicit recognition of the right to conscientious objection or vague interpretations of Article 8 of the Convention.<sup>245</sup> For instance, in *L.T.K v Finland*,<sup>246</sup> the applicant who “informed the authorities of his ethical convictions and of his desire to perform only alternative service,”<sup>247</sup> claimed that refusal of his conscientious objection status and prosecutions against him violated his right to religion, thought, and conscience under Article 18 of the Covenant.<sup>248</sup> The Committee, however, focused on the relationship between Article 8 of the Covenant and decided that “[t]he Covenant does not provide for the right to conscientious objection; neither Article 18 nor article 19 of the Covenant.”<sup>249</sup>

A shift from the traditional approach to a wider interpretation of Article 18 of the Covenant can be seen in the Committee’s later decisions.<sup>250</sup> Due to the consistent individual complaints, the Committee had revised its decision and included the right to conscientious objection under the protection of Article 18 of the Covenant.<sup>251</sup> For

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<sup>244</sup> Rachel Brett, ‘Quaker United Nations Office, International Standards on Conscientious Objection to Military Service, Novemner 2011’ 6  
<<http://www.refworld.org/docid/4f0564862.html>> accessed 16 March 2016.

<sup>245</sup> *ibid* 3.

<sup>246</sup> *L. T. K. v Finland*, Communication no. 185/1984, CCPR/C/OP/2 (1990).

<sup>247</sup> *ibid* at [2.2].

<sup>248</sup> *ibid* at [1].

<sup>249</sup> *ibid* at [5.2].

<sup>250</sup> See *Aapo Jarvinen v Finland*; *H.A.G.M. Brinkhof v The Netherlands*; *Foin v France*, *Maille v France*, *Venier & Nicolas v France* in which the Committee did not find the requirement of a longer alternative civilian service as it constitutes a discrimination under Article 26 of the Covenant.

<sup>251</sup> Takemura (n 242) 69.

instance, in *J. P. v Canada*,<sup>252</sup> while the Committee refused to recognise exemption claims regarding the taxes as part of the rights protected under Article 18 of the Covenant, it reached the conclusion that “Article 18 of the Covenant *certainly* protects the right to hold, express and disseminate opinions and convictions, including conscientious objection to military activities [emphasis added.]”<sup>253</sup> It can be seen that in *J. P. v Canada*, the Committee departed from its previous decisions in which Article 18 of the Covenant was interpreted to mean that it does not protect the right to conscientious objection.<sup>254</sup>

In the case of *Paul Westerman v the Netherlands*,<sup>255</sup> the question before the Committee in the current case was whether compulsory military service violated the right to freedom of conscience of the author. Although the Committee referred to General Comment 22 which recognises Article 18 of the Covenant as a legal ground for claiming the right to conscientious objection, it ruled that the author failed to prove that his objection is “insurmountable.”<sup>256</sup> The dissenting opinion in *Westerman* is worth examining. In the dissenting opinion by Committee members P. Bhagwati, L. Henkin, C. Medina Quiroga, F. Pocar and M. Scheinin, the Committee members considered the different aspects of the General Comment 22 of the Committee. They reminded the prohibition of discrimination against conscientious objection under paragraph 11 of the General Comment 22. Accordingly, the state’s failure to provide “justification for its decision to interfere with the author’s right under Article 18 of the Covenant in the form of denial of conscientious objector’s status and imposing a term of imprisonment” violated Article 18 of the Covenant.<sup>257</sup> This dissent, which interpreted the General Comment 22 from a different angle, raised awareness on all forms of discrimination against conscientious objectors. It also showed a tendency to recognise the right to conscientious objection.<sup>258</sup>

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<sup>252</sup> *J. P. v Canada*, Communication no. 446/1991, CCPR/C/43/D/446/1991 (1991).

<sup>253</sup> *ibid* at [4.2].

<sup>254</sup> *Major* (n 2) 15.

<sup>255</sup> *Paul Westerman v the Netherlands*, Communication no. 682/1996, CCPR/C/67/D/682/1996 (1999).

<sup>256</sup> *ibid* at [9].

<sup>257</sup> *ibid* at Dissenting Opinion by Committee members P. Bhagwati, L. Henkin, C. Medina Quiroga, F. Pocar and M. Scheinin.

<sup>258</sup> Jeremy K Kessler, ‘The Invention of a Human Right: Conscientious Objection at the United Nations, 1947-2011’ (2013) 44 *Columbia Human Rights Law Review* 753, 783.

Similarly, in the *Yeo-Bum Yoon and Myung-Jin Choi v Republic of Korea*,<sup>259</sup> the Committee for the first time decided that the lack of an alternative civilian service breaches Article 18 of the Covenant.<sup>260</sup> In this case, the authors claimed that the absence of an alternative civil service breaches Article 18 of the Covenant.<sup>261</sup> Further, the Committee reversed its decision in *L. T. K v Finland*. It expressed that “the Article 8 of the Covenant itself neither recognizes nor excludes a right of conscientious objection.”<sup>262</sup> The Committee further recalled paragraph 4 of its General Comment 22, which expresses that:

To compel a person to use lethal force, although such use would seriously conflict with the requirements of his conscience or religious beliefs, falls within the ambit of Article 18. The Committee notes, in the instant case, that the authors’ refusal to be drafted for compulsory service was a direct expression of their religious beliefs, which it is uncontested were genuinely held. The authors’ conviction and sentence, accordingly, amounts to a restriction on their ability to manifest their religion or belief. Such restriction must be justified by the permissible limits described in paragraph 3 of Article 18, that is, that any restriction must be prescribed by law and be necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others. However, such restriction must not impair the very essence of the right in question.<sup>263</sup>

The question raised before the Committee was whether these restrictions were compatible with Article 18.3 of the Covenant and had a legitimate ground.<sup>264</sup> Considering the arguments of the state party on the necessity of restrictions on Article 18 of the Covenant in the name of protection of public safety, the Committee focused on the fact that a large number of state parties introduced an alternative service into their legal systems and considered that “the State party [...] failed to show what special disadvantage would be involved for it if the rights of the authors’ under

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<sup>259</sup> Human Rights Committee United Nation, ‘Yeo-Bum Yoon and Myung-Jin Choi v. Republic of Korea, CCPR/C/88/D/1321-1322/2004’, (23 January 2007).

<sup>260</sup> Kessler (n 258) 783.

<sup>261</sup> United Nation (n 259) para.3.

<sup>262</sup> *ibid* para.8.2. See also *Young-Kwan Kim et al. v Rep. of Korea* (CCPR/C/112/D/2179/2012 Communication No. 2179/2012 of 14 January 2015) and *Atasoy and Sarkut v Turkey* (CCPR/C/104/D/1853-1854/2008 of 19 June 2012).

<sup>263</sup> *ibid* para.8.3.

<sup>264</sup> *ibid*.

Article 18 would be fully respected.”<sup>265</sup> The Committee, therefore, reached the conclusion that the failure of the state party to introduce an alternative civil service violates Article 18 of the Covenant.

To conclude, this section examined the right to freedom of religion, conscience, and thought under Article 18 of the Covenant. In order to clarify whether the right to conscientious objection is derived from the right to religion, conscience, and thought, the chapter first focused on the UN bodies’ resolutions and the general comments on the issue. Second, the historical evolution of the case law of the HRC is provided to clarify the UN’s effort on the recognition of the right to conscientious objection. The section reached the conclusion that the recognition of the right to conscientious objection affects the right to belief in a way that gives practical importance to the right to belief. Hence, the right to conscientious objection constitutes the very essence of the right to religion, thought, and conscience. Furthermore, Article 18 clearly specifies the right to “practice.” Therefore, “the true impact of the right occurs when individuals do not have to act in contradiction to their convictions.”<sup>266</sup>

#### **5.4. Conclusion**

Since the right to conscientious objection has not been recognised as an independent right at the international arena, it is essential to consider that the right to conscientious objection derives from the right to freedom of thought, conscience, and religion, which has been recognised in international treaties and organisations. The traditional interpretation of the ECHR by the ECtHR was that the text of the Convention does not protect the right to conscientious objection. However, individuals continued to bring cases to the ECtHR alleging that refusing to enable individuals to assert the right to conscientious objection is a violation of Article 9 of the ECHR. These attempts forced states to recognise the right to conscientious objection, and as such, there has been a significant change in the position of the ECtHR on the recognition of the right to conscientious objection. Yet, although international bodies such as the United Nations and the Council of Europe show an increased tendency towards the recognition of the right to conscientious objection, the implementation of the right varies from one state to another. As a result, some countries legally recognise

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<sup>265</sup> *ibid* para.8.4.

<sup>266</sup> Wolff (n 30) 82.

conscientious objection and prevent the criminalisation of objectors, yet others have not recognised the right.<sup>267</sup>

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<sup>267</sup> Leigh and Born (n 18) 74.

## Chapter 6

### The Role of the Army in the Turkish Society

“Most of the people of the world who are militarized are not themselves in uniform. Most militarized people are civilians.”<sup>1</sup>

#### 6.1. Introduction

The way the Turkish society perceives the military service has significant impacts on the recognition of the right to conscientious objection. Society's stance with regards to compulsory military service contributed to the prevalent justifications for having a standing army. However, the social dimensions of the issue and how society perceives the right to conscientious objection are neglected. Although the domestic law in Turkey does not recognise the right to conscientious objection as a human right, debates alone on the legal dimensions of the right to conscientious objection itself are insufficient to analyse the military's influence on society. Therefore, before analysing objection to military service (see chapter 8) and the current legal framework on the recognition of the right to conscientious objection in Turkey (see chapters 7,) one must highlight the cultural aspects of the military service including social practices as symbols and beliefs, and also the influence of the army on politics and education. Therefore, the chapter examines civil-military relations by considering the sociological factors that turn the military into an unquestionable and a sacred institution.

The chapter proceeds as follows: section 2 focuses on the strong position of the army in the Republic of Turkey. It provides a historical analysis of the military's direct intervention in politics through legal tools and the continuous redefinition of the national security concept. It also offers an analysis of the military's role in shaping the everyday life through soft means. Section 3 provides a gender analysis of the compulsory military service. Section 4 reconsiders civil-military relations in light of the recent changes, particularly the European Union (EU) harmonisation packages, the Ergenekon trials, and the 15 July 2016 coup attempt. Finally, the chapter

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<sup>1</sup> Cynthia Enloe, *Globalization and Militarism: Feminists Make the Link* (Rowman & Littlefield 2016) 18.

concludes that the change is not only institutional, but also cultural. That is to say, the perception of society has changed, and the unchallenged power of the military has been questioned.

## **6.2. The Historical Role of the Turkish Armed Forces**

Since the establishment of the Republic, the Turkish military aimed at westernising the country. For instance, Hilmi Özkök, the 24<sup>th</sup> Chief of General Staff between 2002 and 2006, stated the following:

While saving the very country, these soldiers also destroyed the political structure that had been based on the sultanate and caliphate [...] they built up a new, modern system based on societal power. This change was as important for Turkey as was the Renaissance for those in the West, and it was led by the soldiers.<sup>2</sup>

This passage shows that upon the declaration of the Republic, there had been a revolutionary transformation that effected a change both in the institutional structure, which was maintained for 600 years and in Turkey's social and cultural structures. Such transformation aroused oppositional voices in society,<sup>3</sup> and once again the army was seen essential to fight such opposition. Consequently, it gained society's support.<sup>4</sup>

Contrary to the aim of westernising the country, many hierarchical and patriarchal traditions, which made the military the main institution of the Ottoman Empire, were kept alive in the new Republic.<sup>5</sup> For instance, the Empire enlarged its territories by conquests and military victories in which the army played an essential role.<sup>6</sup> Similarly, the army played a crucial role in saving the homeland during the collapse

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<sup>2</sup> Ersel Aydinli, Nihat Ali Ozcan and Dogan Akyaz, 'The Turkish Military's March toward Europe' (2006) 85 Foreign Affairs 77, 2.

<sup>3</sup> Betül Urhan and Seydi Çelik, 'Perceptions of "National Security" in Turkey and Their Impacts on the Labor Movement and Trade Union Activities' (2010) European Journal of Turkish Studies. Social Sciences on Contemporary Turkey 3.

<sup>4</sup> Tanel Demirel, 'Soldiers and Civilians: The Dilemma of Turkish Democracy' (2004) 40 Middle Eastern Studies 127, 130.

<sup>5</sup> Nilufer Narli, 'Changes in the Turkish Security Culture and in the Civil-Military Relations' (2009) Western Balkans Security Observer-English Edition 56, 60.

<sup>6</sup> Ayse Aslıhan Celenk, 'Democratization of the National Security Discourse and the Political Parties in Turkey' (2009) Erciyes Üniversitesi İktisadi ve İdari Bilimler Fakültesi Dergisi 119, 122.

of the Ottoman Empire following World War I (WWI)<sup>7</sup> by organising the Anatolian people to defend their nation. Since the War of Independence brought about victory, the army gained society's support and was hailed as the "hero."<sup>8</sup> In other words, the founders of the Republic were exposed to traumatic effects of two big wars: the WWI and the Independence War. Such encounter with wars resulted in the urge to overemphasise the necessity of maintaining national security. It comes as no surprise that these events have contributed to the rise of an over-concerned state with national security.<sup>9</sup>

After the creation of the new Republic, the armed forces have continued to play a significant role in the political arena because it contributed to the Republic building process and the westernising of society. This turned the army into a "political symbol of nationhood" and a tool used to maintain national security.<sup>10</sup> That is to say, since the creation of the Republic of Turkey in 1923, the Turkish Armed Forces (TAF) have occupied a dominant position in the Republic because it is viewed as the guardian of the Republic. The military, therefore, remained immune from parliamentary control, and also had the power to control the political arena in Turkey.<sup>11</sup>

Another common characteristic shared by the Ottoman Empire and the new Republic is that in the Ottoman Empire's era, there was no attempt to separate the military from the civilian sphere.<sup>12</sup> In the new Republic, there was an attempt made by Mustafa Kemal Atatürk, the founder of the Republic, to separate the politicians from soldiers. For instance, military members of the Parliament were asked to choose either being soldier or politician by Atatürk in his public speech: "commanders should avoid the effects of politics while they are fulfilling their duties as soldiers. They should remember that there are people, who will fulfil the political obligations. The

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<sup>7</sup> Aydınli, Ozcan and Akyaz (n 2) 2.

<sup>8</sup> Celenk (n 6) 123.

<sup>9</sup> Urhan and Çelik (n 3) 2–3.

<sup>10</sup> Ümit Cizre Sakallioğlu, 'The Anatomy of the Turkish Military's Political Autonomy' (1997) *Comparative Politics* 151, 154.

<sup>11</sup> Ümit Cizre, 'Problems of Democratic Governance of Civil-Military Relations in Turkey and the European Union Enlargement Zone' (2004) 43 *European Journal of Political Research* 107, 113.

<sup>12</sup> Celenk (n 6) 122.



separation of army from politics is an important principle of the Republic.”<sup>13</sup> Although this institutional separation is seen as an important step to reduce any tendentious interference of military officials in politics,<sup>14</sup> such separation was not directed at enabling the civilian control of the military.<sup>15</sup> That is to say, despite such separation attempt, the military remained powerful enough to influence the political situation.<sup>16</sup> Even after the establishment of the Republic, top figures involved in politics had a military background, and Atatürk enjoyed the military’s support for the reforms and principles he introduced.<sup>17</sup> He, however, insisted that the commander of the armed forces Marshal Fevzi Cakmak must be in the Cabinet and serve as a Prime Minister. Given these conditions, it can be said that there were no realistic attempts to separate the military from the civilian sphere. Military officers were part of the Cabinet and also actively involved in politics.<sup>18</sup>

In brief, the imagined concept of nation-in-arms reinforced the assumption that being a good citizen means first and foremost being a good soldier. Furthermore, portraying the army’s effort as the only factor, which brought independence, enhanced the military’s “indispensable” position in the nation. Such position that the military acquired impedes any challenges to the army’s dominant position. Examining the military’s dominant position over politics and its visible influence on nation-making demonstrates the pervasive militarist traditions in society.<sup>19</sup> As a result, any critique pertaining to the military is perceived as a threat to the nation’s existence. The following subsections consider such perceived threats to national security and how they set the ground for the state to have a standing army.

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<sup>13</sup> Cited in *ibid*.

<sup>14</sup> Ilter Turan, ‘The Military in Turkish Politics’ (1997) 2 *Mediterranean Politics* 123, 125–126.

<sup>15</sup> Sakallioğlu (n 10) 156.

<sup>16</sup> Turan (n 14) 126.

<sup>17</sup> Frank Tachau and Metin Heper, ‘The State, Politics, and the Military in Turkey’ (1983) 16 *Comparative Politics* 17, 19–20.

<sup>18</sup> George S Harris, ‘The Role of the Military in Turkish Politics’ (1965) 19 *Middle East Journal* 54, 54–55.

<sup>19</sup> Demirel (n 4) 139–140.

### 6.2.1 Why Having a Standing Army?

While the conscription system is deemed to be necessary for the state to defend its territories, conscientious objection is viewed as violations of responsibilities because the military service is a must duty for male citizens. In other words, objectors are perceived as “lazy” and “unwilling” to risk their lives as opposed to others who join the army to protect the nation.<sup>20</sup> This perception reveals that the national security discourse plays an important role in both the recognition of the right to conscientious objection and the expansion of the dominant position of the Turkish military. For this reason, this subsection pays attention to the national security discourse and the perception of the “enemy.”

Turkey has attributed significant importance to the concept of national security: an importance which Ümit Cizre sees as a kind of an “obsessive anxiety.”<sup>21</sup> The military’s influence on the political situation and society at large has been legitimised by the concept of national security, which is defined in vague and broad terms. Although it is frequently mentioned in the Turkish law, “national security” has no clear definition.<sup>22</sup> For instance, in Article 3(a) of the By-Law of Secretariat General of the National Security Council, national security is defined as “being able to resist all external or internal attacks, defeatist attempts, natural disasters and conflagrations. National security means to protect and maintain the state authority and using all national strength, efforts and activities for being victorious in a war.”<sup>23</sup> Similarly, the General Assembly of the Lawsuit Department of the Council of the State defines national security as the “protect[ion] and secur[ity of] the legal entity of the State against the internal and external threats emerging throughout the country.”<sup>24</sup> Furthermore, the 1983 Law number 2945 of the National Security Council and Secretariat General of the National Security Council defined national security as “the protection and maintenance of the constitutional order, national presence, integrity, all

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<sup>20</sup> Emily N Marcus, ‘Conscientious Objection as an Emerging Human Right’ (1997) 38 Virginia Journal of International Law 507, 510.

<sup>21</sup> Sakallioğlu (n 10) 154.

<sup>22</sup> Urhan and Çelik (n 3) 11.

<sup>23</sup> Definition is borrowed from *ibid.*

<sup>24</sup> *ibid.*

political, social, cultural and economic interests in international field as well as against any kind of internal and external threats, of the State (md.2/a)”<sup>25</sup>

The country’s political and legal structure has considerable impacts on the selection of actors who define national security.<sup>26</sup> For instance, in Turkey, “definition of security has been more in military than non-military terms.”<sup>27</sup> Also, as Pinar Bilgin underlines, the definition of the national security concept “does not depend on objective criteria but on the relevant actors.”<sup>28</sup> Such actors have the power to include any issue seen necessary to the national security agenda. However, perceiving national security through lenses of the military not only positions the army as the main actor capable of defining national security, but also grants military institutions supremacy over civilian institutions.<sup>29</sup>

Maintaining national security in Turkey is perceived as “being able to have capabilities and opportunities if there is a need.”<sup>30</sup> This understanding is reminiscent of the principle of the Roman Empire: “if you want to live in peace, you should be ready for war whenever necessary.”<sup>31</sup> This excessive concern over having a standing army always ready to face enemies is justified by Turkey’s geographical position. In line with this, the former President Kenan Evren stated that “Turkey’s historical position indicates that it is obliged to pursue a policy based on being strong and stable within its region [...since] it is surrounded by unfriendly neighbours.”<sup>32</sup> It seems that politicians expressed concerns over Turkey’s geographical position. They adopt national security policies based on the idea that there are external enemies surrounding Turkey. The speech of the Commander of the Military Academy

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<sup>25</sup> *ibid.*

<sup>26</sup> Celenk (n 6) 120.

<sup>27</sup> Ümit Cizre, ‘Prime Movers, Specific Features and Challenges of Security Sector Reform in a “Guardian State”: The Case of Turkey’ (Geneva Centre for the Democratic Control of Armed Forces (DCAF) 2007) 5.

<sup>28</sup> Pinar Bilgin, ‘Making Turkey’s Transformation Possible: Claiming “Security-Speak”—not Desecuritization!’ (2007) 7 *Southeast European and Black Sea Studies* 555, 558.

<sup>29</sup> Celenk (n 6) 120–121.

<sup>30</sup> Cigdem Ustun and Ozgehan Senyuva, ‘Turkish Political Elite Perceptions on Security’ in Canan-Sokullu (ed), *Debating Security in Turkey: Challenges and Changes in the Twenty-First Century* (2013) 273.

<sup>31</sup> Cited in *ibid.*

<sup>32</sup> Cited in *ibid.*

delivered at the military school also shows how Turkey's geographical position is overemphasised. He indicated that:

You will see that Turkey has the most internal and external enemies of any country in the world. You will learn about the dirty aspirations of those who hide behind values such as democracy and human rights and who want to take revenge on the Republic of Atatürk.<sup>33</sup>

Overemphasising Turkey's geographical position affects both the security discourse and the political development of the country. To exemplify, Bülent Ecevit, the Prime Minister of Turkey says: "Turkey's special geographical conditions require a special type of democracy."<sup>34</sup> Similarly, Turkey's geopolitics according to the military bureaucracy "does not allow for more democracy."<sup>35</sup> These views reflect the widespread understanding of the national security concept that focuses on Turkey's geopolitics in order to justify the state's attitude towards non-compliance with the rules of democracy.<sup>36</sup>

In addition to references to Turkey's geographical position, the fear of the internal enemy is the most desirable idea used to convince citizens of having a standing army to protect national security. The definition of "national security" has changed over time in response to the political developments of the country.<sup>37</sup> For instance, the scope of national security was broadened in the 1990s. Internal threats, "political Islam," and "Kurdish separatism" were included in the concept of national security. This enlargement of the scope of threats, first, strengthened the influence and the monopoly of the military over the definition of national security.<sup>38</sup> Second, it re-emphasised the army's self-image as the guardian of the Republic. The civilian government was accused of turning Turkey into an Islamic society and of failing to deal with terrorism threatening the existence of the state, and, therefore, declared

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<sup>33</sup> Gareth Jenkins, *Context and Circumstance: The Turkish Military and Politics*. (Taylor and Francis 2013) 90. Cited in Pinar Bilgin, 'Turkey's Changing Security Discourses: The Challenge of Globalisation' (2005) 44 *European Journal of Political Research* 175, 184.

<sup>34</sup> Cited in Ersel Aydinli and Dov Waxman, 'A Dream Become Nightmare? Turkey's Entry into the European Union' (2001) 100 *Current History* 381, 385.

<sup>35</sup> Cited in Bilgin (n 33) 186.

<sup>36</sup> *ibid.*

<sup>37</sup> Ustun and Senyuva (n 30) 271.

<sup>38</sup> Celenk (n 6) 120–121.

incompetent to resolve the on-going conflict with the Kurdish Worker Party (PKK.) As a result, the TAF highlighted its vital role in maintaining the Republic.<sup>39</sup>

Creating an atmosphere of fear and having a narrow understanding of national security have significant impacts on individuals' liberties. Such security threats lead governments to use arms in order to maintain security and dismantle the opposition.<sup>40</sup> Furthermore, the assumption that a "coercive military response" is essential for the maintenance of security makes the use of arms an indispensable element of national security.<sup>41</sup> In other words, "the capacity to coerce, kill, and destroy becomes the important source of power, and thereby, the safeguard for national security."<sup>42</sup> As a result, the concept of national security has become the government's most desirable tool used to build a large standing army. The expanded power of the military in politics has been explained by the redefined concept of national security. The political conflict in Turkey has been reshaped in accordance with the concept of internal security threats.<sup>43</sup>

The interference of the military in politics prevents any civilian demands and suggestions for security matters. Under these conditions, the contribution of civilian to the conceptualisation of national security policy has been restricted.<sup>44</sup> In other words, such atmosphere poses a significant challenge for those who desire questioning the military issues in public spheres. The difficulties with regards to discussing the military issues arise in view of the deep sociological factors such as linking the military service with manliness or creating the "military-nation myth." Therefore, there is a need for a change in the public's perception and understanding of

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<sup>39</sup> Demirel (n 4) 130.

<sup>40</sup> Shannon Lindsey Blanton, 'Instruments of Security or Tools of Repression? Arms Imports and Human Rights Conditions in Developing Countries' (1999) 36 *Journal of Peace Research* 233, 235.

<sup>41</sup> *ibid* 233.

<sup>42</sup> Cited in *ibid*.

<sup>43</sup> Cizre (n 11) 108.

<sup>44</sup> Narli, 'Changes in the Turkish Security Culture and in the Civil-Military Relations' (n 5) 64–65.

national security, so the military's problematic issues can be discussed in public spheres.<sup>45</sup>

Since national security is the main concern of the military, particularly until the 2000s, any civilian debate on the concept of national security has become a taboo. Until 2002, national security was as Nilüfer Narli explains following Gökhan Yücel: a “taboo that everyone more or less knows about, yet which nobody dares to deal with because it is a ‘hear no evil, see no evil, and speak no evil’ subject.”<sup>46</sup> Similarly, the Prime Minister Mesut Yilmaz, in his speech delivered at the Congress of the Motherland Party in 2001, defined national security as a “syndrome.” According to him, Bilgin argues, the national security syndrome prevented any democratic changes in the Turkish domestic law and the main problem, in addition to the broad definition of national security, was the fact that politicians and civilians are not included in the process of defining national security.<sup>47</sup> In his speech at the meeting of the Motherland Party's Chairmanship Council, he also maintained that “[National security] is an issue that concerns everyone in Turkey. Therefore it should be discussed not only by the political parties, but by the public as well.”<sup>48</sup>

Politicians' responses to this call for debates are important to see how they perceive national security. For instance, according to Sabahattin Cakmakoglu, “there is not any problem. National security policy does not consist of personal assessments. It is developed by taking into consideration Turkey's strategic position and its neighbours.”<sup>49</sup> Similarly, according to both the Turkish General Staff and Minister of Defence, “although national security may indeed be an ‘issue that concerns everyone in Turkey’, it need not be discussed in public.”<sup>50</sup> These statements indicate that

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<sup>45</sup> Nilgun Toker Kılınç, ‘The Morals and Politics of Conscientious Objection, Civil Disobedience and Anti-Militarism’ in Özgür Heval Çınar and Coşkun Üsterci (eds), *Conscientious objection: Resisting Militarized Society* (Zed Books 2009) 71.

<sup>46</sup> Cited in Narli, ‘Changes in the Turkish Security Culture and in the Civil-Military Relations’ (n 5) 64–65.

<sup>47</sup> Bilgin (n 33) 191.

<sup>48</sup> Cited in *ibid.*

<sup>49</sup> Cited *ibid* 192.

<sup>50</sup> Cited *ibid.*

politicians were not ready to accept the necessity of opening public debates on national security.<sup>51</sup>

The issues mentioned above afforded a picture of Turkey's political culture, which is "not a citizen-centred and democratic-parliamentarian," rather a reflection of a society in which issues, labelled as "national," are not subjected to democratic debates and the parliament's control.<sup>52</sup> Furthermore, under the leadership of Atatürk, the military forces played an important role in establishing the Republic of Turkey and introducing reforms that are directed at westernising the country. Since then, the army considered itself responsible for protecting such reforms and national security from potential threats.<sup>53</sup> In line with this duty, the military determined such potential "threats" to the unity of the nation and, therefore, adopted policies accordingly.<sup>54</sup>

### **6.2.2 The Institutionalisation of the Military's Political Role**

As Samuel Huntington states, "in a democratic country the military may undermine civilian control and acquire great political power through the legitimate process and institutions of democratic government and politics."<sup>55</sup> To elaborate on Huntington's point, this section provides an investigation of the institutional and the legal mechanisms giving the military its ascendancy over the political situation in Turkey.

Militaries may gain their extended power over social and political matters through both direct and indirect means. The Turkish case provides a great example of the indirect influence of the military on politics. The relationship between the governments and the military in Turkey, particularly since 1983, shows that the military has indirect impacts on the domestic affairs of governments. Rather than using repressive methods and aiming to build a "military government," the military used legal and constitutional mechanisms as well as cultural and historical pretexts to

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<sup>51</sup> *ibid.*

<sup>52</sup> Suavi Aydın, 'The Militarization of Society: Conscription and National Armies in the Process of Citizen Creation' in Özgür Heval Çınar and Coşkun Üsterci (eds), *Conscientious Objection: Resisting Militarized Society* (Zed Books 2009) 31.

<sup>53</sup> Müge Aknur, 'The Impact of Civil-Military Relations on Democratic Consolidation in Turkey' in Müge Aknur (ed), *Democratic Consolidation in Turkey* (Universal-Publishers 2012) 203.

<sup>54</sup> Turan (n 14) 132.

<sup>55</sup> Samuel P Huntington, *The Soldier and the State: The Theory and Politics of Civil-Military Relations* (Harvard University Press 1957) 85.

maintain its privileged status on political matters. After each military intervention, it provided itself with legal protections; it regarded itself as the guardian of the Republic instead of staying in power.<sup>56</sup> As it appears, the Turkish military gained a privileged status, which is enhanced by legal and institutional tools.

After the military coups, the military remained present in civilian spheres. Consequently, the military exerted influence on institutions, considered civil in democratic countries.<sup>57</sup> Since 1923, Turkey has experienced four military coups. First, the Democrat Party came to power in 1950, and when the economic conditions deteriorated and the conflict between right and left wings arose, the military launched a coup on 27 May 1960.<sup>58</sup> Second, the military intervened on 12 March 1971 in politics by giving a memorandum to Süleyman Demirel, the Prime Minister (the Justice Party.) This led to his resignation. Third, the military, once again, staged a coup due to the political unrest faced by the country in September 1980.<sup>59</sup> This time, the military ruled the Republic for three years and issued the 1980 Constitution.<sup>60</sup> Fourth, the Islamist Welfare Party won the elections in 1994 and became “the largest party in parliament.” Necmettin Erbakan was the first Islamist Prime Minister, whom the military considered as a threat to secularism. This time, the military did not take power directly, but instead issued a series of “recommendations.”<sup>61</sup>

Concerning the institutional power of the military, the creation of the National Security Council as a “legal mechanism to assure a voice for the military profession” and granting it authority to consider security matters were the main pillars of the military’s continuous influence on politics.<sup>62</sup> Under the 1961 Constitution, the Council was created to “*communicate* the requisite fundamental recommendations to the Council of Ministers with the purpose of assisting in the making of decisions

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<sup>56</sup> Sakallioğlu (n 10) 153.

<sup>57</sup> Aydınli, Özcan and Akyaz (n 2) 4.

<sup>58</sup> Gareth Jenkins, ‘Continuity and Change: Prospects for civil—Military Relations in Turkey’ (2007) 83 *International Affairs* 339, 341.

<sup>59</sup> The Turkish Armed Forces justified the coup by Article 35 of Turkish Armed forces Internal Service Law, which states that “the duty of the Turkish Armed Forces is to protect and preserve the Turkish homeland and the Turkish Republic as defined in Constitution.”

<sup>60</sup> Jenkins (n 58) 342.

<sup>61</sup> *ibid* 345.

<sup>62</sup> Harris (n 18) 182–183.



related to national security and coordination [emphasis added.]”<sup>63</sup> However, Article 111 of the 1961 Constitution was amended as follows: “the National Security Council *recommends* the necessary basic views for decision to be taken in connection with national security and coordination [emphasis added.]”<sup>64</sup> With this amendment, the Council was granted further privileges. For instance, the Council was authorised to adopt recommendations instead of expressing opinions.<sup>65</sup> Also, the 1982 Constitution reinforced the authority and duties of the Council. Further, with Article 118 of the 1982 Constitution,<sup>66</sup> the implementation of such recommendations has regarded as a priority.<sup>67</sup>

The 1982 Constitution, which was promulgated after the 1980 coup, is one of the military’s vital tools. The new Constitution marked a different dimension in the political culture and restricted the public participation in politics. The provisions of the Constitution provided a legal basis to expand the military power in governmental institutions.<sup>68</sup> First, under Article 104 of the 1982 Constitution, which is entitled the “duties and powers,” the president has the authority

To proclaim martial law or state of emergency, and to issue decrees having the force of law, by the decisions of the Council of Ministers under his/her chairpersonship, to submit to referendum, if he/she deems it necessary, laws regarding amendment to the Constitution, to decide on the use of the Turkish Armed Forces.

Article 104 of the 1980 Constitution granted the president the power to decide on a wide range of matters, including declaring a state of emergency.

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<sup>63</sup> 1961 Turkish Constitution No. 334, 9 July 1961, Article 111.

<sup>64</sup> 1961 Turkish Constitution No. 334, 9 July 1961, amended Article 111.

<sup>65</sup> Sakallioğlu (n 10) 157.

<sup>66</sup> Article 118 of the Constitution reads as follows: The National Security Council shall submit to the Council of Ministers its views on taking decisions and ensuring necessary coordination with regard to the formulation, establishment, and implementation of the national security policy of the State. *The Council of Ministers shall give priority consideration to the decisions of the National Security Council* concerning the measures that it deems necessary for the preservation of the existence and independence of the State, the integrity and indivisibility of the country, and the peace and security of society [emphasis added].

<sup>67</sup> Sakallioğlu (n 10) 157; Nasser Momayezi, ‘Civil-Military Relations in Turkey’ [1998] *International Journal on World Peace* 3, 11–12.

<sup>68</sup> Sakallioğlu (n 10) 162.

Second, under Article 108 of the 1982 Constitution,

The State Supervisory Council which shall be attached to the Office of the Presidency of the Republic, with the purpose of ensuring the lawfulness, regular and efficient functioning and improvement of administration, conduct all inquiries, investigations and inspections of all public bodies and organizations, all enterprises in which those public bodies and organizations share more than half of the capital, public professional organizations, employers' associations and labour unions at all levels, and public welfare associations and foundations, upon the request of the President of the Republic.

As it appears, the State Supervisory Council<sup>69</sup> depends on the president's consent while investigating *all public bodies*. When we consider the fact that Kenan Evren, a soldier who led the 1980 coup, was the President of the Republic between 1982 and 1989, the rationale behind the extension of president's power pertained to the military's aim to control the political development of the government.<sup>70</sup>

Third, Provisional Article 1 of the 1982 Constitution stated that:

On the proclamation, under lawful procedure, of the adoption by referendum of the Constitution as the Constitution of the Republic of Turkey, the Chairman of the Council of National Security and Head of State at the time of the referendum, shall assume the title of President of the Republic and shall exercise the constitutional functions and powers of the President of the Republic for a period of seven years.<sup>71</sup>

Under this provision, Kenan Evren was elected as President of the Republic and with the Provisional Article 9, which stated that "the President of the Republic may refer to the Turkish Grand National Assembly for further consideration on any constitutional amendments adopted by the Assembly."<sup>72</sup> He was authorised to veto the constitutional amendments. The Presidential Council also gained the power to review legislations on any subjects such as public order, martial law, and national security. As it appears, the 1982 Constitution reinforced the president's power and the

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<sup>69</sup>"The main function of the council is to audit governance in terms of compliance with legal regulations, in coordination with high efficiency. The council is under the direct authority of President of the Republic of Turkey." See, <[https://en.wikipedia.org/wiki/State\\_Supervisory\\_Council](https://en.wikipedia.org/wiki/State_Supervisory_Council)> accessed 24 August 2017.

<sup>70</sup> Momayezi (n 67) 11.

<sup>71</sup> Provisional Article 1 of the 1982 Constitution

<sup>72</sup> Provisional Article 9 of the 1982 Constitution.

competence of National Security Council and helped the military to maintain its status quo as the guardian of the Republic.<sup>73</sup>

### **6.2.3. The Social Integration of the Military's Political Role**

The previous subsection analysed the institutional tools used to maintain the military's influence on governmental policies. This subsection explores the military's non-institutional tools—the cultural norms.

In the early years of the Republic, the military's influence on the youth's educational and ideological stands became visible in the compulsory military service. The military training was not limited to physical strength but also aimed at “modernising” the youth by engaging them with the new Republic's objectives such as the secularization and the westernization of the country. Given the limited education recourses and schools during this era, mainly in rural areas, the army became the school of the nation, and the compulsory military service occupied a significant place in the youth's life.<sup>74</sup> Therefore, it is important to bear in mind that militaries have social and cultural impacts on society, mostly linked with citizenship and nationhood. As a result, militaries, as “repositories of mythical constructions of the past and embodiments of the nation's aspirations,” occupy dominant positions compared to other institutions.<sup>75</sup>

The typical characteristic of civil-military relations in Turkey is society's acceptance of the military and its competence to protect the nation against all threats—international, domestic, and political.<sup>76</sup> The question needs to be considered here is how did the military gain such consent? To arrive at an answer, it is important to examine the tools used by the military to gain society's consent.

The TAF maintained their prominent position in the country and gained public consent using “soft power,” instead of attempting to create a repressive military state. For instance, the armed forces disseminated their ideology via military and non-military educational curriculums, maintained the compulsory military service, and

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<sup>73</sup> Momayezi (n 67) 12–13.

<sup>74</sup> Jenkins (n 58) 340–341.

<sup>75</sup> Ronald R Krebs, *Fighting for Rights: Military Service and the Politics of Citizenship* (Cornell University Press 2006) 17.

<sup>76</sup> Ersel Aydinli, ‘A Paradigmatic Shift for the Turkish Generals and an End to the Coup Era in Turkey’ (2009) 63 *The Middle East Journal* 581, 585.

also used media for such ends.<sup>7778</sup> The military also used informal tools such as public speeches to “educate” the public about security issues of the country. Such tools effectively constructed a security culture.<sup>79</sup> That is to say, the perceived fear of state-collapse is integrated into society as a result of such high importance attributed to national security to justify the presence of the military in daily life.

The reason behind the military’s strong presence in Turkey can be explained by the dynamics of the Turkish society. Militarist values such as being “hero and brave” and dying for an exalted duty—becoming a “martyr,” are embedded in the Turkish identity. Further, the importance attached to being a martyr makes mothers of soldiers proud of becoming mothers of martyrs. They believe that their sons died for an exalted duty protecting the nation. In funerals of soldiers, it is customary to hear statements as “martyrs never die and the homeland will never be divided (sehitler olmez vatan bolunmez.)” Mothers also beat the drums in funerals of their “martyrs” to display their proud attitude. This is just another example of how militaristic values are integrated into society.<sup>80</sup>

To understand how such values are embedded in society, the way Turkish textbooks emphasise the importance of serving in the army and becoming a soldier is worthy of examination. School classes disseminate the idea that the Turkish military is “the symbol of the unity of the Turkish nation and the guarantor of the nation’s future.”<sup>81</sup> Such education system shapes society in a way that gives the military legitimacy to intervene in the political arena. Indeed, the importance of the military’s presence in the Turkish society is emphasised in school textbooks, daily conversations, and social practices.<sup>82</sup> For instance, in high schools, the National security classes aimed at raising conscientiousness among youths. The aim of the classes is explained below in the first article of the National Security Instruction Guide (Milli Savunma Öğretimi Yönetmeliği.)

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<sup>77</sup> Military schools are shut down after the 15<sup>th</sup> July coup attempt in 2016.

<sup>78</sup> Cizre (n 11) 113–114.

<sup>79</sup> Narli, ‘Changes in the Turkish Security Culture and in the Civil-Military Relations’ (n 5) 58.

<sup>80</sup> Demirel (n 4) 140.

<sup>81</sup> Aknur (n 53) 222–223.

<sup>82</sup> *ibid.*

Enhancing, in accordance with the prerequisites of total war, the already present spirit and consciousness of national security in Turkish youth in order to protect the Turkish Independence and Republic with an ever increasing might and vigour under all conditions and against all violations.<sup>83</sup>

The second aim was to introduce youth to

The Armed Forces, to bind youth to the Armed Forces with love and affection, to ideologically prepare them for the basic knowledge of main defence activities conducted by the Armed Forces; in this way, bringing them to a state where they can begin working in the Armed Forces or in active organs of civilian defence at any moment, creating a spirit of unity and cooperation, and thus cultivating a patriotic youth.<sup>84</sup>

In textbooks, the national security concept is addressed as “a national cause, a matter of life and death that the state and the government and all citizens must undertake without hesitation with their hands on their hearts and minds.”<sup>85</sup> Accordingly, students, as exposed to such textbooks, “will have acquired a sufficient degree of national security consciousness and culture and when service is required in national defence they shall blend this culture with the heroism which is present in our temperament and be worthy of our ancestors.”<sup>86</sup> The idea of dying for the nation is disseminated among the youth through statements such as “we shall all work for this land, live for this land and die for this land.”<sup>87</sup> The most prominent sign of this aim can be seen in schools’ celebrations and rituals. For example, primary school students repeated every morning until 2013 the national pledge of allegiance (Andimiz): “I am a Turk, I am honest, I am a hard worker and my principle is to love the elderly, protect those younger than me and love my country more than myself. I offer my existence to the Turkish nation as a gift.”<sup>88</sup>

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<sup>83</sup> Cited in Aydın (n 52) 28.

<sup>84</sup> Cited in *ibid.*

<sup>85</sup> Cited in *ibid* 29.

<sup>86</sup> Cited in *ibid* 28–29.

<sup>87</sup> Cited in *ibid.*

<sup>88</sup> ‘Student Oath (Turkey)’ (*Wikipedia*, 19 November 2016)

<[https://en.wikipedia.org/w/index.php?title=Student\\_Oath\\_\(Turkey\)&oldid=750424807](https://en.wikipedia.org/w/index.php?title=Student_Oath_(Turkey)&oldid=750424807)> accessed 24 September 2017.

By reading such textbooks, pupils are subjected to the view that the military service has vital importance in maintaining both the nation's spirit and power because the military is portrayed as the only institution that instils such spirit.<sup>89</sup> For instance, the military duty is defined in textbooks as follows:

The principal task is to preserve and advance the Turkish motherland, independence and republic under all circumstances and provide the security of the Turkish nation. For this task to be accomplished [the individual] must be in the strongest possible bodily and spiritual state, devoted to one's duty with awareness and full of love for the country [...] Military discipline is a continuation and maturation of family discipline, school discipline and finally community discipline. Today the behaviour of a father who does not give his daughter to a man who has not fulfilled his military service is a reflection of the importance and value we, as a nation, place in the military and in military discipline.<sup>90</sup>

As it appears, the military's influence in Turkey is not only institutional but also cultural.<sup>91</sup> Such influence is a product of Turkey's cultural and political structure.<sup>92</sup>

To conclude, in addition to the fear of losing the territorial integrity, Turkey's cultural and social features, which consider Turks as warriors and the military as the school of the nation, constituted the main elements enabling the military to interfere in politics and blur the line between civilian and military spheres. The belief that the military not only protects the nation against enemies but also functions as the guardian of democracy's fundamental principles has significant impacts on society's perception of the military.<sup>93</sup> That is to say, the military used cultural tools to bolster its institutional power .

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<sup>89</sup> *ibid* 29.

<sup>90</sup> Cited in *ibid* 29–30.

<sup>91</sup> Aknur (n 53) 222.

<sup>92</sup> Ayse Nilufer Narli, 'Aligning Civil-Military Relations in Turkey: Transparency Building in Defence Sector and the EU Reforms' 157–158.

<sup>93</sup> *ibid*.

### 6.3. Gender and Compulsory Military Service in Turkey

To understand the integration of militaristic values into society through cultural tools, it is necessary to explore the role of gender in this process. As explained in chapter 4, examining the military without a reference to gender would only provide a narrow understanding of militarism. Therefore, this section examines gendered understandings of the military service, so to offer a gender reading of militarism and the military in Turkey.

Before entering into the discussion, it is worth clarifying that women might experience discrimination in a variety of ways. The exclusion of women from the military service in a society with a strong military tradition raises concerns over whether this exclusion affects women's relationship with the state. Allowing women to serve in the army also invites a few worries because there may occur human rights violations such as sexual harassment and discrimination in terms of job qualifications. This section, however, studies the first point—the exclusion of women from the military service, not the second point—women inside the military. The question that arises here is what does the exclusion of women from the military service mean in a highly militarised society?

Reading the exclusion of women from the military service in the context of Turkey as a country adopting a male conscription system will afford a better understanding of how the military perceives the dichotomy of women versus men. For instance, when the law, which considered military service compulsory in Turkey, was introduced in 1927, an Assembly member raised the following question:

If voting and becoming a candidate is a national issue, participating in the country's defence is also a similar duty. I realise that the first article of the compulsory military service law has only included men. I would like to ask whether you have taken women's services into consideration, or to what extent.<sup>94</sup>

The response to the question acknowledges that women contributed to the Independence War by “carrying ammunition, providing support services, or at times

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<sup>94</sup> Ayşe Gül Altınay, *The Myth of the Military Nation: Militarism, Gender, and Education in Turkey* (Palgrave Macmillan 2004) 33.

fighting with the enemy.”<sup>95</sup> They also indicated that in the future, *if they are needed*, women would contribute in the same way again without being subjected to conscription.<sup>96</sup>

This response evoked another question: when do states need women in military roles? In the Turkish case, one of the prominent examples in which women were needed in military occurred during Atatürk’s modernisation process of the new Republic. The modernisation process required some women to become prominent figures in society to introduce the concept of the new and the modern woman. The story of Sabiha Gökçen, Atatürk’s adopted daughter, who played an important role in “liberating” and “modernising” women merits examination. During the military “operation” in Dersim, a Kurdish populated province, Gökçen, who is trained as a military pilot, wanted to join these “operations” as a combat pilot. However, unlike her male colleagues, she had to prove that her gender identity would not affect the nature of her work in order to be assigned the job.<sup>97</sup> Their conversation regarding her participation runs as follows:

Atatürk: I will let you go...but you should not forget this: you are a girl [...] you will be faced with a band of deceived men [...] in case of an accident, you might have to do emergency landing and surrender to them [...] have you thought about what would you do in such a situation?

Gökçen: [...] If something this unfortunate happens, don’t you worry; I will never surrender to them alive.

Atatürk: [...] I will give you my own pistol [...] if anything that will put your honor to risk should happen, do not hesitate to use this pistol against others or to kill yourself.<sup>98</sup>

This conversation suggests that women are seen as “symbolic markers of the nation.” As a result of viewing women-as-nation and nation-as-women, protecting women and their “honour” becomes an additional motive for “dying and killing.”<sup>99</sup> Therefore, any

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<sup>95</sup> *ibid* 49.

<sup>96</sup> *ibid* 33.

<sup>97</sup> *ibid* 38.

<sup>98</sup> Cited in *ibid* 39.

<sup>99</sup> V Spike Peterson, ‘Sexing Political Identities/Nationalism as Heterosexism’ (1999) 1 *International Feminist Journal of Politics* 34, 48.



threat to women's bodies is perceived as a threat to the nation's honour. In the case of Gökçen, she still needed to be protected because of her sexuality though she was a soldier. Her willingness to fight and die in the case of any threat that might affect her honour—and therefore the nation's honour—was a precondition for receiving the job.<sup>100</sup>

In a nutshell, there is a close relationship between militarism and gender inequality in that the exclusion of women may reduce their chances of reaching high ranks.<sup>101</sup> However, as explained in chapter 4.3.2, not all men “enjoys this privileges” of militarism. Therefore, the discussion shall turn to the examination of LGBTTT's (lesbian, gay, bisexual, and transgender/ transsexual) exemption from military service within the heterosexual dimension of the gendered state. In this context, attention will be paid to the following question: what would happen if a man does not perform these heterosexual norms given that the military is seen as a “first step on the path to manhood?”<sup>102</sup> (For a detailed discussion of the relationship between militarism and manhood, see chapter 4.3.2.)

In Turkey, homosexuals are not subjected to dismissal, but an individual who declares his homosexuality is allowed to claim an exemption.<sup>103</sup> The 1927 Military Law No.1111, Article 10(8), which regulates “the principles relating to those who shall be subject to military service obligations and how these obligations shall be rendered” reads as follows: “according to the Turkish Armed Forces Health Aptitude Regulation, those whose [level of] physical capability is not suitable for military

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<sup>100</sup> Altınay (n 94) 39.

<sup>101</sup> Galia Golan, ‘Militarization and Gender: The Israeli Experience’ (1997) 20 *Women's Studies International Forum* 581, 583–584.

<sup>102</sup> Ayşe Gül Altınay, ‘Refusing to Identify as Obedient Wives, Sacrificing Mothers and Proud Warriors’ in Özgür Heval Çınar and Coşkun Üsterci (eds), *Conscientious Objection: Resisting Militarized Society* (Zed Books 2009) 90.

<sup>103</sup> Historically, gay men were banned from military service. For instance, “Don't Ask, Don't Tell”—the official USA policy on homosexuals serving in the military service from 1993 to 2011—banned gay people from military service. Although this policy did not authorise the military to ask about soldier's sexual orientation, disclosing sexual identity resulted in dismissal from the military. The reason behind this implementation is that it would affect the “military performance” if they allow known homosexuals to serve in the army. See A Belkin, ‘Don't Ask, Don't Tell: Is the Gay Ban Based on Military Necessity?’ (2003) 33 *Parameters: journal of the US Army War College*. 108, 109. In Britain, the ban on homosexuals was lifted in 2000 following the ECtHR's decision that found banning LGBT from military service is a violation of the right to privacy. See *ibid* 110.

service shall be exempted from military service.”<sup>104</sup> It is important to consider how homosexuals are being exempted under this Article. Before the 2013 amendment of the Turkish Armed Forces Health Eligibility Regulation, Appendix-C Article 17(B)(3) considered “homosexuality, transsexuality, transvestitism” as psychosexual diseases and states that “the *psychosexual and sexual behavioural disorder* must be visible in all aspects of the individual’s life, and it must be established, through observation or documents, that this has or would create problems in a military environment [emphasis added.]”<sup>105</sup> In order to be declared unfit and, therefore, receive the rotten report,<sup>106</sup> applicants must prove their homosexuality. This process might also include a rectal examination, evidence such as photographs or videos showing that the applicant is passive.<sup>107</sup> As the Commission of European Communities’ 2009 Progress Report stated,

The Turkish armed forces have a health regulation which defines homosexuality as a ‘psychosexual’ illness and identifies homosexuals as unfit for military service. Conscripts who declare their homosexuality have to provide photographic proof. A small number have had to undergo humiliating medical examinations.<sup>108</sup>

The amended version of the Article abolished Article 17(B)(3.) As a result, homosexuality is no longer officially considered as a disease. However, the amendment added 17(D)(4,) which excludes people from military service based on their “sexual identity and behavioural disorders.” The amendment also excludes LGBTs on the grounds that “sexual manners and behaviour cause or are expected to cause problems of adaptation and functionality in a military environment.”<sup>109</sup> That is

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<sup>104</sup> Law on Military Service Act No:1111, 20 March 1927, Article 10(8).

<sup>105</sup> Turkish Armed Forces Health Eligibility Regulation, Appendix-C Article 17 (B)(3).

<sup>106</sup> Alp Biricik, ‘Rotten Report and Reconstructing Hegemonic Masculinity in Turkey’ in Özgür Heval Çınar and Coşkun Üsterci (eds), *Conscientious Objection: Resisting Militarized Society* (Zed Books 2009) 116. Editors note: “The name of a health report that certifies bodily and mental disorders of a person in military service, issued by military doctors in the military system in Turkey.”

<sup>107</sup> *ibid* 113.

<sup>108</sup> *Turkey 2009 progress report. Commission staff working document. SEC (2009) 1334 final, 14 October 2009* (2009) 26 <[http://aei.pitt.edu/44631/1/Turkey\\_2009\\_1.pdf](http://aei.pitt.edu/44631/1/Turkey_2009_1.pdf)> accessed 20 December 2015.

<sup>109</sup> Turkish Armed Forces’ Health Eligibility Regulations No. 86/11092, 8 October 1986, Appendix-C Amended Article 17(D)(4).

to say, although homosexuality is no longer defined as a disease, it causes adaptation problems according to the amendment.

#### **6.4. The Military's Decreasing Political Role during Justice and Development Party**

As demonstrated above, the military enjoyed a visible and dominant position in relation to political matters. The importance of the military service and trust in the army are internalised in society. However, the army's intervention in politics has been neutralised during the Justice and Development Party (AKP government.) When the AKP came to power, Tayyip Erdoğan paved the way for the gradual transformation instead of taking concrete steps towards challenging the military's role in politics. Preparing society for a change was, therefore, part of his agenda. To gain support, Erdoğan promised to democratise the country, so it can join the European Union. This necessitated a change in the military's institutional structure, and, therefore, reforms were introduced to fulfil the requirements of the European Union.<sup>110</sup> Having examined the dominant position of the army at both the institutional and the social levels in the previous sections, this section focuses on the decreasing role of the army.

##### **6.4.1. The Institutional Change**

Following the Copenhagen criteria of becoming an EU member, Turkey has executed harmonisation reforms. These reforms are directed at reducing the institutional tools enabling the military to interfere in politics.<sup>111</sup> For instance, with the 2001 and 2004 constitutional amendments, several major changes that have enormous impacts on the military's institutional structure were introduced. First, with the 7<sup>th</sup> harmonisation package, the role of the National Security Council (NSC) has been reduced to recommendations on national security.<sup>112</sup> Second, NSC's influence on the civilian sphere, namely education, media and art, was eliminated. While the 6<sup>th</sup> EU

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<sup>110</sup> Koray Caliskan, 'Explaining the End of Military Tutelary Regime and the July 15 Coup Attempt in Turkey' (2017) 10 Journal of Cultural Economy 97, 98.

<sup>111</sup> Nilufer Narli, 'EU Harmonisation Reforms, Democratisation and a New Modality of Civil-Military Relations in Turkey' in Giuseppe Caforio (ed), *Contributions to Conflict Management, Peace Economics and Development*, vol 12 (Emerald Group Publishing Limited 2009) 434.

<sup>112</sup> "The NSC is to determine national security concept and develop ideas about the security in accordance with the state's security approach and recommend these security views to the Council of Ministers." Narli, 'Aligning Civil-Military Relations in Turkey: Transparency Building in Defence Sector and the EU Reforms' (n 92) 164.

harmonisation package removed the members of NSC from the High Audio-Visual Board, the 8<sup>th</sup> EU harmonisation package removed the military representatives from the High Education Board.<sup>113</sup> Third, the 7<sup>th</sup> EU harmonisation package amended the Military Criminal Code and abolished the military trials of civilians.<sup>114</sup>

In the 2010 referendum, the majority supported amendments to the 1982 Constitution, which was drafted by the military after the 1980 coup. One of the amendments was the abolition of the Constitution's Article 15, which granted immunity to military personnel from prosecution. Thus, the two leaders of 1980 coup, Kenan Evren and Tahsin Sarıkaya, were brought to trial. With this amendment, the military no longer enjoys immunity and political power, and in fact, its public image was shaken.<sup>115</sup>

#### **6.4.2. The Social Change**

These reforms not only transformed the military's power at the institutional level, but also had impacts on society's perception of the military. For instance, media started challenging the military expenses, and also the military was no longer seen as a taboo in academia. Furthermore, conscientious objection has gained momentum and objectors challenged ideas conjuring up all male Turks as soldiers.<sup>116</sup> The new political situation no longer considers the intervention of the army in the political arena as a "reliable" solution.<sup>117</sup>

Indeed, on July the 15<sup>th</sup> 2016, Turkey experienced an unprecedented circle of events due to a failed coup attempt. Having followed Erdoğan's call to take to the streets,<sup>118</sup>

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<sup>113</sup> *ibid* 164–167.

<sup>114</sup> Narlı, 'EU Harmonisation Reforms, Democratisation and a New Modality of Civil-Military Relations in Turkey' (n 111) 445–446.

<sup>115</sup> Ariana Keyman, 'Civil-Military Relations in Turkey' <<http://www.e-ir.info/2012/05/21/civil-military-relations-in-turkey/>> accessed 5 June 2017.

<sup>116</sup> Narlı, 'EU Harmonisation Reforms, Democratisation and a New Modality of Civil-Military Relations in Turkey' (n 111) 446.

<sup>117</sup> *ibid* 465.

<sup>118</sup> "Thousands went out to the streets with the authority of the government to stop the coup and protect the nation against the putschists who have become its abject. In the aftermath of the failed coup attempt, streets and squares, formerly banned for dissident protestors, were filled with people celebrating the "glorious defense of democracy," waving Turkish flags, chanting slogans against the coup, and shouting, "Allahu Ekber." The call to be on the streets during and after the coup attempt ostensibly was for unity." Begüm Başdaş, 'Unity in Rupture: Women against the Coup Attempt in Turkey' (2017) 13 *Journal of Middle East Women's Studies* 186, 186.

people gathered to stand together against the coup. According to Acikoz, while soldiers confronted unarmed civilians, civilians' reaction to young conscripted soldiers also showed the same level of "collective violence" and "some of the most disturbing spectacles of the coup night were the grotesque scenes of lynching in which surrendered conscripts were whipped and beaten."<sup>119</sup> As a result, the military's image, which was socially accepted for long, was destroyed. The soldier's body, which used to be considered as the nation's symbol, was damaged (see chapter 3.4.1.2.)<sup>120</sup>

The conscripted soldier is one step behind from being a "real man." When completed his service, he can be considered ready to settle down. Although the soldier's uniformed body is masculinised, he is still a "childishly innocent figure." That is the reason why soldiers are mostly seen as Mehmetcik (Little Mehmet) and why in the aftermath of the coup, the image of young helpless conscripts—the "innocent Mehmetcik" is considered morally disturbing.<sup>121</sup>

In the aftermath of the coup attempt, trust in the military and the motto of "every Turk is born soldier" was shaken. However, officials categorised coupist soldiers as "terrorists" to distinguish them from heroic soldiers. Those who died during the coup attempt were denied funeral service, and instead a "traitors' cemetery" was created for them.<sup>122</sup> That is to say, despite this shaken image of the military, masculinity and militarism were valorized, and, therefore, strengthened. The prevailing language in the democracy vigils glorified martyrdom and wounded warriors (ghazi).<sup>123</sup> Those opposed the coup acted in a militaristic way reflecting attitudes of a militarised society. While challenging the military, the urge of maintaining militarist and gendered motives was kept alive. The irony runs as follows: challenging the military with militarist and masculine tools, chanting for the death penalty, and over-emphasising heroism and martyrdom. This is the irony that reproduces militarism in different ways.

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<sup>119</sup> Salih Can Açıksöz, 'He Is a Lynched Soldier Now: Coup, Militarism, and Masculinity in Turkey' (2017) 13 *Journal of Middle East Women's Studies* 178, 178.

<sup>120</sup> *ibid.*

<sup>121</sup> *ibid* 178–179.

<sup>122</sup> *ibid* 179.

<sup>123</sup> *ibid* 180.

Some of the images in social media about the aftermath of the coup-attempt mirror how masculine and militarist attitudes were displayed against the military coup. The most noticeable image as shown in figure 2 below shows a man sitting on a tank gun as if it was a huge penis.<sup>124</sup> One must note that this image does not represent the whole society; in fact, it contradicts the on-going demilitarisation attempts calling for the elimination of the gendered ways of thinking in the Turkish society.



**Figure 2 Men are on the tank<sup>125</sup>**

What is striking about these protests is that women protestors were also present and took to the streets from the very first moment. In fact, many images went viral and became symbols of the protests. These include a woman wearing a hijab standing alone in front of the military tank as shown in figure 3 and also a headscarfed woman driving a truck full of men to the protests as shown in figure 4.<sup>126</sup> Such images indicate on the one hand that the previously excluded women in the Kemalist era

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<sup>124</sup> Başdaş (n 118) 186.

<sup>125</sup> The image is taken from: <http://www.ntv.com.tr/turkiye/askeri-darbe-girisimi-onlendi-161-kisi-sehit-oldu-20-darbeci-olduruldu,Spt9YN-r30ad6wvtYi7TGA>

<sup>126</sup> Başdaş (n 118) 186.

attended the protests<sup>127</sup> and on the other hand invite some worries about the way these women are presented. The images also urge one to ask whether the presence of these women protestors indicates “a glimpse of a different future.”<sup>128</sup>

These women were presented “as proof of the state’s legitimacy and as the desirable (makbul) citizens of Erdoğan’s “new Turkey.”<sup>129</sup> This is reminiscent of Erdoğan’s statement on a woman protestor who climbed on a tank to protest the states’ policies in 2011: “I do not know whether she is a woman or a girl<sup>130</sup> who climbed on tank.”<sup>131</sup> Such statement—which publicises a woman’s private life—indicates that women protestors might be presented in different ways depending on what they are protesting: either as “ideal citizen” or “marginal citizen.” Given the politician’s attitudes towards women activists protesting against state policies, one can only hope that these images of protesting women mirror a sign of a new public environment that does not marginalise women protestors, but embraces wider segments of society.

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<sup>127</sup> Feyza Akinerdem, ‘Are There Women Out There?: Democracy Vigils and the Politics of Representation after the Failed Coup Attempt in Turkey’ (2017) 13 *Journal of Middle East Women’s Studies* 189, 191.

<sup>128</sup> Başdaş (n 118) 187.

<sup>129</sup> *ibid.*

<sup>130</sup> In Turkish, the distinction between “woman” and “girl” refers to whether she is a virgin or not, rather than her age.

<sup>131</sup> Başbakan: “O kadın, kız mıdır kadın mıdır?” (Prime Minister: “This Woman, Is She a Woman or a Girl.” See:

<https://www.cnnturk.com/2011/yazarlar/06/04/basbakan.o.kadin.kiz.midir.kadin.midir/618955.0/index.html>



Figure 3 A woman resisting alone<sup>132</sup>



Figure 4 A woman driving a truck towards Taksim<sup>133</sup>

<sup>132</sup> The image is taken from: <http://t24.com.tr/video/tanklara-karsi-tek-basina-direnen-kadin,2818>

<sup>133</sup> The image is taken from <http://www.hurriyet.com.tr/taksime-kamyonla-cikan-kadinlar-konustu-40158673>



## 6.5. Conclusion

This chapter analysed how militaristic values are embedded in education, politics, and the everyday life. The analysis shows that any public debate about national security and any critique of the army can be seen as a threat in countries attaching important significance to the army and the national defence. Similarly, any refusal of the military service involves a range of difficulties. This is precisely because Turkey is ruled by a Constitution, which is a product of the 1980 coup, and the idea that “each Turk is born a soldier” still prevails.<sup>134</sup>

The chapter argued that in a militarist society, people are convinced that the best way for them to enjoy peace is to be prepared for war. Furthermore, the conscription system contributes significantly to the militarisation of society by “instilling in them the view that killing for the home country is a patriotic duty.”<sup>135</sup> Militarisation, however, involves forms of refusal as much as approval. Soldiers, for example, might revolt, disobey orders, wound themselves, and refuse to join the army.<sup>136</sup> These only are a few forms of refusal amongst many.

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<sup>134</sup> Özgür Heval Çınar and Coskun, ‘Introduction’ in Özgür Heval Çınar and Coşkun Üsterci (eds), *Conscientious Objection: Resisting Militarized Society* (Zed Books 2009) 2.

<sup>135</sup> Panu Poutvaara and Andreas Wagener, ‘The Political Economy of Conscription’ 17 <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1491419](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1491419)> accessed 15 June 2015.

<sup>136</sup> Ulrich Bröckling, ‘Sand in the Wheels? Conscientious Objection at the Turn of the Twenty-First Century’ in Özgür Heval Çınar and Coşkun Üsterci (eds), *Conscientious Objection: Resisting Militarized Society* (Zed Books 2009) 53.

## Chapter 7

### The Right to Conscientious Objection in Turkish Law

#### 7.1. Introduction

Due to the lack of an explicit and a universal recognition of the right to conscientious objection, objectors face serious human rights violations. First, since there is no specific provision in the Turkish Law on the right to conscientious objection, objectors run the risk of facing a series of criminal convictions, which might subject them to inhuman and degrading treatment. Second, objectors and their supporters are deprived of their right to freedom of expression following Article 318 of the Turkish Penal Code, which penalises both objectors and their supporters.<sup>1</sup> In fact, moral convictions are not subjected to criminal sanctions insofar as they remain unpronounced. When objectors and their supporters act in accordance with such moral convictions, they face prosecution.<sup>2</sup> In addition to the repeated punishments, conscientious objectors also face additional and unequal treatments for their refusal such as losing chances to find a job and the right to pursue a parliamentary seat because the law only allows those who performed their military service to be elected as members of the parliament.

This chapter aims to examine the right to conscientious objection with regards to the aforementioned issues. The analysis proceeds as follows: section 2 examines the Turkish legislation on conscientious objection, with a particular focus on the legal concept criminalising conscientious objection. Section 3 analyses the right to conscientious objection in the context of the right to freedom of expression in Turkey. Section 4 examines significant domestic cases in relation to the right to conscientious objection in Turkey.

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<sup>1</sup> Hülya Üçpınar, 'The Criminality of Conscientious Objection in Turkey and Its Consequences' in Özgür Heval Çınar and Coşkun Üsterci (eds), *Conscientious objection: Resisting Militarized Society* (Zed Books 2009) 248.

<sup>2</sup> ibid 242.

## **7.2. The Criminalisation of Conscientious Objection**

The lack of national legislation on the recognition of the right to conscientious objection causes serious human rights violations. Therefore, before examining the criminality of objection (section 7.2.2,) it is worth analysing the national legislation on the compulsory military service in order to clarify the provisions conflicting with international standards (section 7.2.1.)

### **7.2.1. National Legislation**

Article 72 of the 1982 Constitution, which is entitled “national service,” states that “national 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 public service shall be regulated by law.”<sup>3</sup> The military service is not a constitutional duty because the Turkish Constitution does not refer to “military service” in regulations with regards to “national service.”<sup>4</sup> As Osman Can indicates, in Article 72 of the Turkish Constitution, “military service represents only one of the alternative forms of national service.”<sup>5</sup>

The only provision related to the military service in the Constitution is Article 76, which states that individuals “who have failed to perform compulsory military service shall not be elected deputies, even if they have been pardoned.”<sup>6</sup> It cannot be legally concluded from the Article that military service is imposed on Turkish citizens through the Constitution. On the contrary, one can argue that citizens are not obliged to attend the military service by Constitution. Furthermore, the Constitution does not provide any provision preventing the recognition of the right to conscientious objection.<sup>7</sup> However, there is a crucial issue that needs to be considered. Article 76 still reflects the fact that the conscientious objectors in Turkey are, as the Human Rights Committee puts it, “practically deprived of their civil and political rights such

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<sup>3</sup> Constitution of the Republic of Turkey Act No:2709, Article 72.

<sup>4</sup> Hülya Üçpınar (n 1) 243.

<sup>5</sup> Osman Can, ‘Conscientious Objection and the Turkish Constitution’ in Özgür Heval Çınar and Coşkun Üsterçi (eds), *Conscientious Objection: Resisting Militarized Society* (Zed Books 2009) 237.

<sup>6</sup> Constitution of the Republic of Turkey Act No:2709, Article 76.

<sup>7</sup> Hülya Üçpınar (n 1) 244.

as freedom of movement and right to vote.”<sup>8</sup> Once they have declared their refusal to military service, they are deprived of their fundamental constitutional right such as the right to be elected as members of Parliament.<sup>9</sup> Thus, they do not enjoy their full civil and political rights.

As it appears, military service is not a constitutional duty; however, it is imposed as compulsory through the Law on Military Service Act No: 1111 Article 1, which states, “every male Turkish citizen is obliged to perform his military service in accordance with this law.”<sup>10</sup> With this Article, military service is considered compulsory for every male Turkish citizen. Moreover, Article 45 of the Military Penal Code makes this duty an absolute obligation by stipulating that “individuals may not evade military service, and penalties may not be revoked, for religious or moral reasons.”<sup>11</sup> Unlike Article 45 of the Military Penal Code, the Turkish Constitution protects the right to religion and conscience. Article 24, which is entitled “Freedom of Religion and Conscience” states that “everyone has the right to freedom of conscience, religious belief and conviction”<sup>12</sup> and Article 25, which is entitled “Freedom of Thought and Opinion,” regulates that “everyone has the right to freedom of thought and opinion. No one shall be compelled to reveal his thoughts and opinions for any reason or purpose, nor shall anyone be blamed or accused on account of his thoughts and opinions.”<sup>13</sup>

As Hülya Üçpınar highlights, this contradiction between the Constitution and the Military Penal Code gives rise to the application of Article 11 on “Supremacy and Binding Force of the Constitution,” which indicates that “the provisions of the Constitution are fundamental legal rules binding upon legislative, executive and judicial organs, and administrative authorities and other institutions and individuals.

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<sup>8</sup> Human Rights Committee United Nation, ‘Concluding Observations on the Initial Report of Turkey Adopted by the Committee at Its 106th Session 15 October to 2 November (13 November 2012) CCPR/C/TUR/CO/1’ para.23.

<sup>9</sup> Article 67 of the Turkish Constitution, entitled “right to vote, to be elected and to engage in political activity” reads as follows; “in conformity with the conditions set forth in the law, citizens have the right to vote, to be elected, to engage in political activities independently or in a political party, and to take part in a referendum.”

<sup>10</sup> Law on Military Service Act No: 1111, 20 March 1927, Article 1.

<sup>11</sup> Military Penal Code Act No: 1632, 22 May 1930, Article 45.

<sup>12</sup> 1982 Constitution of the Republic of Turkey Act No:2709, 7 November 1982, Article 24.

<sup>13</sup> *ibid*, at Article 25.

Laws shall not be in conflict with the Constitution.”<sup>14</sup> In the case of Aydemir, the applicant alleged that Article 72 of the Constitution was contrary to the essence of the Constitution, however, the Eskisehir Military Court rejected the applicants’ claim on the grounds that exemption based on religious grounds is against to Article 10 of the Turkish Constitution<sup>15</sup> on equality before the law.<sup>16</sup>

To sum up, Article 72 of the Constitution, as Üçpınar argues, allows the authorities to regulate how the national service is performed, yet it does not state that the military service is compulsory. Therefore, Article 1 of the Military Code and 45 of the Military Penal Code contradict the Turkish Constitution, which does not impose a compulsory military service but recognises the right to freedom of conscience. She also points out that “the Constitution explicitly recognises freedom of conscience while the law explicitly criminalises the exercise of this constitutional freedom.”<sup>17</sup> As a result of this contradiction and the fact that the right to conscientious objection is not recognised, objectors have been subjected to a number of convictions.

### **7.2.2. The Arbitrary Detention of Conscientious Objectors**

Having examined the national legislation on the military service in the previous section, this section focuses on the criminalisation of objection, with a particular attention paid to Turkey’s compliance with the international standards<sup>18</sup> on prevention

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<sup>14</sup> 1982 Constitution of the Republic of Turkey Act No:2709, Article 11.

<sup>15</sup> Article 10 of the Turkish Constitution states that; “everyone is equal before the law without distinction as to language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such grounds [...] No privilege shall be granted to any individual, family, group or class.”

<sup>16</sup> Enver Aydemir, Eskisehir Military Court Case No: 2013/164 Decision No 2013/349 (05.07.2013).

<sup>17</sup> Hülya Üçpınar (n 1) 244.

<sup>18</sup> The effect of the international treaties at the domestic level is worthy of analysis so to clarify if Turkey complies with these international standards concerning the right to fair trial. Article 90 of the Turkish Constitution provides: “International agreements duly put into effect have the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional [...] In the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail.” Furthermore, according to Article 27 of the Vienna Convention on the Law of Treaties, “a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”

of arbitrary detention of conscientious objectors, namely the principles of “non bis in idem” and the “right to fair trial.”

#### **7.2.2.1. The Non Bis In Idem Principle**

Those who decide to be objectors and refuse the militarist structure of society, they face the threat of punishment for the rest of their lives. When a soldier decides to be an objector while he is serving in the army, his decision is followed by an act of disobeying orders. This leads to endless prosecutions under the military rules that punish the “not obeying orders” or “desertion.”<sup>19</sup> In the civilian sphere, objectors face prosecution under Article 318 of the Turkish Penal Code, entitled “alienating people from military service” for publicly declaring their objection. It is clear that objectors are under threat of being punished until they accept serving in the army. As the United Nation Working Group on Arbitrary Detention notes:

Conscientious objection—which has its theoretical basis in the freedom of conscience and thus of opinion—gives rise, particularly in countries that have not yet recognized conscientious objector status, to repeated criminal prosecutions followed by sentences of deprivation of liberty which are renewed again and again.<sup>20</sup>

Similarly, the Human Rights Committee in concluding observations on the initial report of Turkey in 2012 highlighted that since the right to conscientious objection has not been recognised, objectors and their supporters are still at the risk of repeated prosecutions because of their persistent refusal to perform military service.<sup>21</sup> Such persistent refusal also raises concerns over whether the second refusal can be considered as a new act, which subjects the objector to another punishment. On this point, the Human Rights Committee on its General Comment No. 32 stated that:

Repeated punishment of conscientious objectors for not having obeyed a renewed order to serve in the military may amount to punishment for the same crime if such

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<sup>19</sup> Mine Yıldırım, ‘Conscientious Objection to Military Service: International Human Rights Law and the Case of Turkey’ (2010) 5 Religion & Human Rights 65, 75.

<sup>20</sup> Working Group on Arbitrary Detention United Nation, ‘Recommendation 2: Detention of Conscientious Objectors E/CN.4/2001/14’ para.91.

<sup>21</sup> United Nation, ‘Concluding Observations on the Initial Report of Turkey Adopted by the Committee at Its 106th Session 15 October to 2 November (13 November 2012) CCPR/C/TUR/CO/1’ (n 8) para.23.

subsequent refusal is based on the same constant resolve grounded in reasons of conscience.<sup>22</sup>

The Working Group on Arbitrary Detention in communication concerning Osman Murat Ulke also considered the question of whether “after an initial conviction; each subsequent refusal to participate in military service does constitute a new offence and gives rise to a fresh conviction.”<sup>23</sup> The Working Group considers the fact that

Osman Murat Ulke publicly declared himself to be a conscientious objector (“I am not a deserter, I am a conscientious objector.”) because, to use his words, he did “not want to kill people”. Having burned his call-up papers, he was questioned, arrested and detained by the military authorities on several occasions, beginning on 7 October 1996, for refusal to perform military service. He received seven sentences of imprisonment of a few months each. On 4 May 1998, he was sentenced to seven months’ imprisonment, bringing the total duration of the sentences to 43 months. With the exception of the period from December 1996 to 28 January 1997, Mr. Ulke has been in continuous detention since 7 October 1996.<sup>24</sup>

After he declared objection, Ulke was detained and was subjected to seven sentences of imprisonment. The Working Group concluded that:

There is, since, after the initial conviction, the person exhibits, for reasons of conscience, a constant resolve not to obey the subsequent summons, so that there is ‘one and the same action entailing the same consequences and, therefore, the offence is the same and not a new one’ [...] Systematically to interpret such a refusal as being perhaps provisional (selective) would, in a country where the rule of law prevails, be tantamount to compelling someone to change his mind for fear of being deprived of his liberty if not for life, at least until the date at which citizens cease to be liable to military service.<sup>25</sup>

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<sup>22</sup> United Nations Human Rights Committee (HRC), ‘General Comment No. 32, Article 14 Right to Equality before Courts and Tribunals and to Fair Trial (23 August 2007) CCPR/C/GC/32’.

<sup>23</sup> Working Group on Arbitrary Detention United Nation, ‘Civil and Political Rights, Including Questions of Torture and Detention Opinion No. 36/1999 (9 November 2000) E/CN.4/2001/14/Add.1’ para.8.

<sup>24</sup> *ibid* para.5.

<sup>25</sup> *ibid* para.9.

Although, in its *Ulke v Turkey* opinion, the Working Group on Arbitrary Detention focused on the question of whether imprisonment of the objector after the initial imprisonment was deemed arbitrary, in its opinion regarding Halil Savda,<sup>26</sup> the Working Group also considered if the initial imprisonment of the objector was arbitrary. The Working Group states that:

On previous occasions, [the Working Group] has already declared arbitrary the detention of conscientious objectors following a second conviction on the grounds that this would be tantamount to compelling a person to change his or her convictions and beliefs for fear of not being subjected to criminal prosecution for the rest of one's life, being incompatible with the principle of double jeopardy or *ne bis in idem*, thus violating article 14, paragraph 7 of the ICCPR<sup>27</sup>

As this passage illustrates, the Working Group once more considered the repeated convictions of objectors arbitrary. What is distinctive about this case is that, the Working Group examined whether the first criminalisation of objection is arbitrary. Highlighting that restrictions of the right to freedom of religion, belief, and conscience are not justified, the Working Group decided that the applicant was a “genuine conscientious objector” and restrictions on the applicant’s right to freedom of religion and belief are not justified. Therefore, it maintained that Savda’s convictions were, *including the initial one*, arbitrary.<sup>28</sup>

In conclusion, since Turkey has not adopted any legislation that protects conscientious objectors from punishment, conscientious objectors are repeatedly accused of the same crime. However, international instruments now suggest that the right to conscientious objection stems from the right to freedom of conscience, thought, and religion. Also, they ask states to amend their legislation, which causes repeated prosecution of objectors. Similarly, the Working Group in its recommendation asks states which have not recognised the right to conscientious objection to grant objectors the conscientious objector status. It further states that “such prosecutions should not give rise to more than one conviction, so as to prevent

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<sup>26</sup> Working Group on Arbitrary Detention United Nation, ‘Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development Opinion No. 16/2008 (Turkey) A/HRC/10/21/Add.1’.

<sup>27</sup> *ibid* at [39].

<sup>28</sup> *ibid* at [38].



the judicial system from being used to force conscientious objectors to change their convictions.”<sup>29</sup> Furthermore, the UN Commission on Human Rights emphasises that states should refrain both from “subjecting objectors to imprisonment and to repeated punishment for failure to perform military service.”<sup>30</sup> It also states that “no one shall be liable or punished again for an offence for which he has already been finally convicted or acquitted.”<sup>31</sup>

#### **7.2.2.2. The Right to Fair Trial**

According to Article 14.1 of the ICCPR,<sup>32</sup> “in the determination of any criminal charge against [them], or of [their] rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”<sup>33</sup> The Human Rights Committee in its General Comment 32 clearly notes that such requirements enshrined in Article 14 of the ICCPR apply to all courts, both civilian and military. While there is no provision in the Covenant prohibiting military courts from trying civilians, the Covenant requires the military and special courts to be compatible with the rules enshrined in Article 14 of the ICCPR. The nature of the court cannot be an excuse to not apply or limit the requirements of the Article 14. Therefore, courts are still binding with these rules. Since the trial of civilians in military courts might cause serious equity problems, it is vital to ascertain that these trials are held genuinely and with a full guarantee of provisions enshrined in Article 14 of the Covenant. Such trials, special and military, should be exceptional. State Party also should show the “objective and serious reasons” requiring states to resort to such trials.<sup>34</sup>

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<sup>29</sup>United Nation, ‘Recommendation 2: Detention of Conscientious Objectors E/CN.4/2001/14’ (n 20) para.94.

<sup>30</sup> Commission on Human Rights United Nation, ‘Conscientious Objection to Military Service (22 April 1998) E/CN.4/RES/1998/77’ para.5.

<sup>31</sup> *ibid.*

<sup>32</sup> In a similar vein, Article 6.1 of the ECHR provides: “in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”

<sup>33</sup> International Covenant on Civil and Political Rights, 19 December 1966, Article 14.

<sup>34</sup> United Nations Human Rights Committee (HRC) (n 22) para.22.

The United Nation Human Rights Committee also states that “the requirement of competence, independence and impartiality of a tribunal [...] is an absolute right that is not subject to any exception.”<sup>35</sup> According to the Committee, states should provide the judges with protection from any political imposition in order to guarantee the independency. States should guarantee this protection through the constitution and the domestic law, which include objective criteria and clear procedures about the obligations and rights of judges.<sup>36</sup>

With the aim of enlightening the question of whether Turkey complies with the right to fair trial in the case of conscientious objectors, it is worth providing an analysis of Turkey’s domestic law that gives competence to the military courts to try civilians. Before the 2010 amendment, Article 145 of the Constitution provided the following:

Military justice shall be dispensed by military courts and military disciplinary organs. These courts and tribunals shall be responsible for conducting proceedings concerning offences committed by military personnel, which are breaches of military law or are committed against other military personnel, on military premises or in connection with military service and the related duties.

Military courts shall also be responsible for dealing with *offences committed by civilians* where these are designated by special laws as breaches of military law, or have been committed against military personnel, either during their performance of duties designated by law or on military premises so designated [emphasis added.]<sup>37</sup>

The Turkish Constitution before the 2010 amendments explicitly recognised that the military courts had the competence to try civilians for offences under military rules.<sup>38</sup> This has been the concern of the ECtHR. In the case of *Ergin v Turkey*,<sup>39</sup> the applicant after publishing an article entitled “giving the conscripts a send-off, and

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<sup>35</sup> *ibid* at [19].

<sup>36</sup> *ibid*.

<sup>37</sup> The 1982 Constitution of the Republic of Turkey, Article 145.

<sup>38</sup> As amended on September 12, 2010; Act No. 5982 Article 145 provides; “military justice shall be exercised by military courts and military disciplinary courts. These courts shall have jurisdiction to try military offences committed by military personnel and offences committed by military personnel against military personnel or related to military services and duties. Cases regarding crimes against the security of the State, constitutional order and its functioning shall be heard before the civil courts in any case. *Non-military persons shall not be tried in military courts*, except during a state of war [emphasis added.]”

<sup>39</sup> *Ergin v Turkey* App no. 47533/00 (ECtHR, 4 May 2006).

collective memory” (Asker uğurlamalar ve toplumsal hafıza) was accused of evading the military service and, therefore, sentenced to imprisonment by the Military Court of the General Staff.<sup>40</sup> The European Court considered the fact that as a member of the Council of Europe, Turkey was the only country that explicitly and constitutionally gives competence to military courts to try civilians in peacetime.<sup>41</sup> According to the Court, “situations in which a military court has jurisdiction to try a civilian for acts against the armed forces may give rise to reasonable doubts about such a court’s objective impartiality.”<sup>42</sup> In this regard, the Court concluded:

It is understandable that the applicant, a civilian standing trial before a court composed exclusively of military officers, charged with offences relating to propaganda against military service, should have been apprehensive about appearing before judges belonging to the army, which could be identified with a party to the proceedings. Accordingly, the applicant could legitimately fear that the General Staff Court might allow itself to be unduly influenced by partial considerations. The applicant's doubts about the independence and impartiality of that court can, therefore, be regarded as objectively justified.<sup>43</sup>

In the case of *Ercep v Turkey*,<sup>44</sup> the applicant, a Jehovah’s Witness, was regarded as a deserter because of his failure to report for duty when was called for military service. He was, therefore, sentenced to imprisonment by the military court. Since the first call-up, he consistently refused to join the military service. He faced further criminal proceedings until 2006<sup>45</sup> when he was tried in a military tribunal. In this regard, the applicant alleged that “as a civilian, to appear before a court made up exclusively of military officers” violates his right to fair trial. The Court considered the fact that although he was subjected to Military Criminal Code, “for criminal-law purposes,” the applicant was still a civilian. The court further recalled to a domestic legislation in which the Turkish Court decided that “one can be regarded to be a member of the

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<sup>40</sup> *ibid* at [7].

<sup>41</sup> *ibid* at [21].

<sup>42</sup> *ibid* at [49].

<sup>43</sup> *ibid* at [54].

<sup>44</sup> *Ercep v Turkey* App no. 43965/04 (ECtHR, 22 November 2011).

<sup>45</sup> In 2006 Parliament passed a new law under which military courts no longer had jurisdiction to try civilians.

armed forces only from the time he or she reported for duty with regiment.”<sup>46</sup> Considering the applicant’s circumstances, the Court concluded that the applicant, “as a civilian standing trial before the Court,” has justifiable reasons to apprehend why tried in a court consists of judges belonging to the army. As the army could be seen as a party to the proceeding, there is a risk that military court might be influenced by partial considerations. The Court also acknowledged that “the applicant’s doubts about the independence and impartiality of that court” are objectively justified, and there is a violation of Article 6.1 of the Convention.<sup>47</sup>

The European Court scrutinised the trials of civilians by military courts during peacetime again in the case of *Duzgoren v Turkey*<sup>48</sup> in which the applicant was accused of “inciting others to evade military service” because of distributing a leaflet on conscientious objection.<sup>49</sup> As a civilian tried in military courts, the applicant alleged that General Staff Court cannot be considered as independent and impartial. In this regard, he highlights the fact that the members of the Court are subjected to “the orders and instructions of the Military Defence.”<sup>50</sup> Considering the issue of whether a civilian could be tried in a military court, the European Court referred to its *Ergin v Turkey* decision, and once more decided that the trial of civilians by military courts is a violation of Article 6 of the ECHR.<sup>51</sup>

It is vital to emphasise that Turkey has amended Article 145 on 2010 and following this amendment, military courts no longer have the competence to try civilians. The amended Article provided the following:

Military justice shall be exercised by military courts and military disciplinary courts. These courts shall have jurisdiction to try military offences committed by military personnel and offences committed by military personnel against military personnel or related to military services and duties. Cases regarding crimes against the security of the State, constitutional order and its functioning shall be heard before the civil courts

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<sup>46</sup> *Ercep v Turkey* App no. 43965/04 (ECtHR Press Release 254(2011)).

<sup>47</sup> *ibid.*

<sup>48</sup> *Duzgoren v Turkey* App no. 56827/00 (ECtHR, 9 November 2006).

<sup>49</sup> *ibid* at [8].

<sup>50</sup> *ibid* at [16].

<sup>51</sup> *ibid* at [22].

in any case. *Non-military persons shall not be tried in military courts*, except during a state of war [emphasis added.]<sup>52</sup>

### 7.3. The Right to Conscientious Objection and Article 318 of the Turkish Penal Code

To provide a comprehensive analysis of the criminalisation of conscientious objection, it is also necessary to investigate the criminalisation of supporters, particularly journalists and human rights activists.<sup>53</sup> Therefore, this section examines the restrictions put against declarations of conscientious objection and acts of support to those who already declared their objection in public in relation to the right to freedom of expression.

As discussed in chapter 5.2.2, the right to freedom of expression is one of the fundamental rights found in both international and regional levels, and the right is protected in various instruments. For instance, Article 10 (1) of the ECHR states that “this right shall include freedom to hold opinions and *to receive and impart information and ideas* without interference [emphasis added.]”<sup>54</sup> Similarly, ICCPR Article 19(2) reads as follows:

Everyone shall have the right to freedom of expression; this right shall include freedom *to seek, receive and impart information and ideas of all kinds*, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice [emphasis added.]<sup>55</sup>

Mine Yildirim draws attention to the fact that freedom of expression is protected under both Article 19 of the ICCPR and Article 10 of the ECHR in a way that also

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<sup>52</sup> 1982 Constitution of the Republic of Turkey, amended Article 145.

<sup>53</sup> ‘Conscientious Objector Mustafa Karayay Acquitted in Ankara Court’ (*IFEX*) <[http://www.ifex.org/turkey/2009/04/16/conscientious\\_objector\\_mustafa/](http://www.ifex.org/turkey/2009/04/16/conscientious_objector_mustafa/)> accessed 30 August 2017; ‘Four Rights Activists on Trial For “alienating the Public against the Military”’ (*IFEX*) <[http://www.ifex.org/turkey/2009/07/22/activits\\_on\\_trial/](http://www.ifex.org/turkey/2009/07/22/activits_on_trial/)> accessed 30 August 2017; ‘Two Women Journalists Critical of Militarism Targeted by Nationalist Newspaper’ (*IFEX*) <[http://www.ifex.org/turkey/2008/01/22/two\\_women\\_journalists\\_critical/](http://www.ifex.org/turkey/2008/01/22/two_women_journalists_critical/)> accessed 30 August 2017; ‘Writer on Trial for Supporting Conscientious Objector; Several Others Await Verdicts in Climate of Courtroom Violence’ (*IFEX*) <[http://www.ifex.org/turkey/2006/06/05/writer\\_on\\_trial\\_for\\_supporting/](http://www.ifex.org/turkey/2006/06/05/writer_on_trial_for_supporting/)> accessed 30 August 2017.

<sup>54</sup> European Convention on Human Rights, 3 September 1953, Article 10.

<sup>55</sup> International Covenant on Civil and Political Rights, 19 December 1966, Article 19(2).

covers the “freedoms to have opinion and freedom to receive and impart information.”<sup>56</sup> Accordingly, individuals adopting the belief that killing is wrong have the right to disseminate their ideas and receive any information about their convictions. However, conscientious objectors are under the threat of being punished for declaring their motivations in public under Article 318 of the Turkish Penal Code. Before the 2013 amendment, the Turkish Penal Code Article 318 stated that

- (1) Persons who give incentives or make suggestions or spread propaganda which will have the effect of discouraging people from performing military service shall be sentenced to imprisonment for a term of six months to two years.
- (2) If the act is committed through the medium of the press and media, the penalty shall be increased by half.<sup>57</sup>

With the fourth judicial package passed into law by the Parliament, paragraph 1 of Article 318 now provides “people who urge those carrying out their military service to desert or suggest to those who are yet to carry out their military service to be dissuaded from carrying it out are imprisoned for six months to two years.”<sup>58</sup> Although the new version of the Article refers to “dissuading” people from performing military service instead of “alienating” people from military service, the Article 318 of the Turkish Penal code, as objector Halil Savda states, is still “the armour of militarism.”<sup>59</sup> The Article would continue to put objectors at risk of prosecution for their declaration.

Furthermore, as Üçpınar notes, although objectors have been prosecuted under Article 318 of the Turkish Penal Code, the Article is also applied to prosecute journalists and human rights defenders who make and publish supportive declarations of objectors. Thereby, Article 318 is intended to prevent any claim or public discussion on the right to conscientious objection.<sup>60</sup> Similarly, while drawing attention to the aggravation clause of Article 318 which states that “if the act is committed through the medium of

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<sup>56</sup> Yıldırım (n 19) 88.

<sup>57</sup> The new Turkish Penal Code No. 5237, 26 September 2004, Article 318.

<sup>58</sup> The new Turkish Penal Code Amended Law No. 5237, 26 September 2004, Article 318.

<sup>59</sup> Halil Savda, ‘Halkı Askerlikten Soğutma: 318 Davasında 4 Kişiye Hapis Cezası [Alienating People from Military Service: 4 People Sentenced to Prison in the Article 318 Case]’ <<http://anarsistfaaliyet.org/sokak/halki-askerlikten-sogutma-318-davasinda-4-kisiye-hapis-cezasi/>> accessed 13 September 2017.

<sup>60</sup> Hülya Üçpınar (n 1) 248.

the press and media, the penalty shall be increased by half,”<sup>61</sup> the Organization for Security and Cooperation in Europe (OSCE) Representative on Freedom of the Media clearly noted that “with Article 318 on Discouraging people from performing military service, it in fact becomes punishable for journalists to report or debate on the military service.”<sup>62</sup> Thomas Hammarberg, the Commissioner for Human Rights of the Council of Europe, following his visit to Turkey in 2011, also noted that Turkish Penal Code, namely Article 318, allows criminal proceedings against journalists and human rights defenders which in fact give rise to violations of the right to freedom of expression.”<sup>63</sup> He also states:

As regards cases concerning convictions for having published statements which were considered to incite abstention from compulsory military service, six judgments of the Court against Turkey await execution. Pursuant to Article 318 of the Criminal Code, the non-violent expression of opinions on conscientious objection is still a criminal offence [...] He [The Commissioner] has been informed that in June 2010 four persons were sentenced by an Ankara Court to imprisonment ranging from 6 to 18 months for having issued a press release in favour of a conscientious objector, Enver Aydemir.<sup>64</sup>

#### **7.4. The Right to Conscientious Objection at the Domestic Court**

This part examines two distinct cases, Muhammed Serdar Delice<sup>65</sup> and Enver Aydemir,<sup>66</sup> to demonstrate how domestic courts interpret the right to conscientious objection. To start with former case, Delice was absent from his regiment between 24.02.2010–27.11.2011 and, therefore, was convicted under Military Penal Code Article 66/1-a of desertion. In his defence, he claimed that he was not a deserter but a conscientious objector. He stated that he left the military in order to declare his objection and became an objector. Before examining his situation, the Malatya

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<sup>61</sup> The new Turkish Penal Code No. 5237, 26 September 2004, Article 318.

<sup>62</sup> Miklos Haraszti, ‘Review of the Draft Penal Code: Freedom of Media Concerns’ (Organization for Security and Co-operation in Europe 2005) 4.

<sup>63</sup> United Nations High Commissioner for, ‘Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe Following His Visit to Turkey, from 27 to 29 April 2011: Freedom of Expression and Media Freedom in Turkey’ para.16 <<http://www.refworld.org/docid/4ecbc1952.html>> accessed 26 July 2017.

<sup>64</sup> *ibid* at [19].

<sup>65</sup> Muhammed Serdar Delice, Malatya Military Court, Case no. 2012/98 Decree no. 2012/40 (24 February 2012).

<sup>66</sup> Enver Aydemir, Eskisehir Military Court, Case no. 2013/164 Decree no. 2013/349 (05 July 2013).

Military Court considered the international standards on conscientious objection. The Court cited the Resolution 337 (1967) of the Parliamentary Assembly of Council of Europe on the right to conscientious objection, which states the following:

1. Persons liable to conscription for military service who, for reasons of conscience or profound conviction arising from religious, ethical, moral, humanitarian, philosophical or similar motives, refuse to perform armed service shall enjoy a personal right to be released from the obligation to perform such service.
2. This right shall be regarded as deriving logically from the fundamental rights of the individual in democratic Rule of Law States which are guaranteed in Article 9 of the European Convention on Human Rights.<sup>67</sup>

Furthermore, in the present case, the Malatya Military Court considered the fact that the claims regarding the right to conscientious objection were examined in the context of Article 3 and 14, instead of Article 9 of the ECHR. However, the Military Court admitted that after Bayatyan's case, the European Court applied Article 9 of the Convention and interpreted the right to conscientious objection in line with the "living instrument" approach, which requires the Convention to be interpreted in light of present-day conditions. The Military Court also took into consideration the fact that although the right to conscientious objection is not recognised at the national level, Article 90 of the Constitution requires the domestic courts to consider such international rules.<sup>68</sup>

As it appears, the Military Court referred to Bayatyan's case in which the European Court applied Article 9 of the Convention and admitted that under Article 90 of the Turkish Constitution, the judges are required to consider international rules. Yet, the Court did not recognise Delice as an objector. According to the Military Court, Delice served in the military for five months without any objection based on religious belief. His belief, the Court argued, was not expressed until after he had joined the military and accepted serving in the military despite his belief. The Military Court concluded

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<sup>67</sup> Parliamentary Assembly of Council of Europe, 'Resolution 337 (1967) Right of Conscientious Objection'.

<sup>68</sup> Muhammed Serdar Delice, Malatya Military Court, Case no. 2012/98 Decree no. 2012/40 (24 February 2012).



that although, as explained in Bayatyan's case, the right to conscientious objection is derived from the right to religion, conscience, and religion, and this interpretation could be applied to the domestic law as well, the right to conscientious objection does not mean that each individual could assert it based on their personal reasons: it is rather a right that can be enjoyed through their membership to a group such as Jehovah Witnesses. Demanding this right based on their membership to a group, which essentially refuses military service might not constitute a crime. However and according to the Military Court, Delice subscribed to Islam (a religion that does not refuse the military service) and became an objector after witnessing for himself the good and the bad sides of the military service during his five months service. Therefore, his claim is rejected on the grounds that, Delice could not prove that his objection to the military service was motivated by his religious beliefs, which were "genuinely held and were in serious and insurmountable conflict with his obligation to perform military service."<sup>69</sup>

In the case of Delice, the Military Court for the first time referred to an international case with an explicit reference to Article 90 of the Turkish Constitution. According to Delice's lawyer, "this decision is a precedent for all trials related to conscientious objection."<sup>70</sup> He also states:

For the first time, the European Commission, the European Convention on Human Rights and decisions of the ECHR were mentioned. Furthermore, the decision referred to Article 90 of the Constitution. Hence, it was defined that this could be applied in domestic law too. In other words, it was determined that the decisions of the ECHR and the provisions of the European Convention on Human Rights concerning freedom of religion and conscience can be evaluated within the context of conscientious objection.<sup>71</sup>

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<sup>69</sup> The Court is referring to the Bayatyan case in which the Court states; The applicant in the present case is a member of Jehovah's Witnesses, a religious group whose beliefs include the conviction that service, even unarmed, within the military is to be opposed. The Court, therefore, has no reason to doubt that the applicant's objection to military service was motivated by his religious beliefs, which were genuinely held and were in serious and insurmountable conflict with his obligation to perform military service.

<sup>70</sup> Ekin Karaca, 'Milestone Decision for Conscientious Objection in Turkey' (*Bianet - Bagimsiz Iletisim Agi*) <<http://www.bianet.org/english/religion/136857-milestone-decision-for-conscientious-objection-in-turkey>> accessed 13 September 2017.

<sup>71</sup> *ibid.*

Although this case could be interpreted as a positive step, the judgement could be criticised in several ways. First, it requires one's affiliation with a group, which refuses the military service. As Yildirim explains, the Military Court interpreted the ECtHR's case law as if the European Court requires one to be only a member of a religious belief system. In other words, the Military Court showed a tendency to accept the refusal of military service only when it is based on the rejection of an "intellectual, religious, or political group, as such."<sup>72</sup> Therefore, it obliged conscientious objectors to be affiliated with any group that is opposed to military service. However, as it is indicated in *Kalac v Turkey*, in which the applicant was exposed to forced retirement, "religious freedom is primarily a matter of individual conscience."<sup>73</sup> Second, the Court rejects Delice's claims on the grounds that he declared his objection after serving five months of military service. Thus, held that his motivations were not "sole and undivided." As it appears, the Court requires conscientious objectors to declare their objection before they are conscripted, and ignores the right to change one's beliefs.

In another case before the Military Court, the applicant, Aydemir, who left the military during his service and did not return to his regiment because of his religious beliefs forbidding him to serve for the secular Republic of Turkey. However, he stated that he could only serve in an army that derives its laws and principles from the Qur'an. The Military Court states that in the ECHR, claiming the right to conscientious objection must be grounded on "beliefs." Accordingly, individuals are required to be members of a belief system, so they can exercise the right to conscientious objection. Idealist, political, or any other personal reasons are inadequate to claim the right to conscientious objection. In other words, the right to conscientious objection is protected if based on an established belief system instead of individual opinions. Thus, according to the Court, conscientious objection means refusing military service based on objectors' membership to a religious, a political, or an intellectual group. The Court arrived at the conclusion that Aydemir's objection was not grounded on his religious beliefs, but instead on idealist and political

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<sup>72</sup> Mine Yildirim, 'Turkey: Selective Progress on Conscientious Objection' (*Forum 18 News Service*, 1 May 2012)

<[http://www.forum18.org/archive.php?article\\_id=1696&layout\\_type=mobile](http://www.forum18.org/archive.php?article_id=1696&layout_type=mobile)> accessed 26 July 2017.

<sup>73</sup> *Kalac v Turkey* App no 20704/ 92 (ECtHR, 1 July 1997) at [27].

opinions; therefore, his claim could not be protected under the right to religion or belief. Furthermore, since he claims that he could serve in another army, ruled by another political regime, there was no serious and insurmountable conflict with his religious beliefs.<sup>74</sup>

In brief, as explained before, the Constitution of the Republic of Turkey has flexible provisions enabling the implementation of exemption from military service. For instance, the Constitution protects the right to freedom of conscience, religion, belief, and freedom of expression. However, the judiciary has been unwilling to implement these provisions when dealing with cases of conscientious objection. The claims regarding the recognition of the conscientious objector status have not been considered in accordance with the international human rights jurisprudence. Such claims are examined under the influence of the widespread understanding, which prioritises protecting national security and maintaining state's power over any other human rights.<sup>75</sup> Even though the domestic courts recognise the right to freedom of thought, conscience, and religion, they require those claiming the right to conscientious objection to be subscribed to a specific group. Furthermore, the domestic courts reject conscientious objectors' claims on the grounds that ethical and political objections are not protected under Article 9 of the ECHR. They adopt a restrictive approach and exclude ethical and political motivations from the scope of the right to conscientious objection. Their approach complies only with the international arena's traditional approach.

## **7.5. Conclusion**

This chapter argued that conscientious objectors, who declare their ideas on non-participation in military service, are faced with human rights violations. Their declarations are not seen as an exercise of their right to freedom of expression. As a result of the lack of legislation, objectors run the risk of prosecutions and convictions. When they refuse to take part of the hierarchical structure of military service, they are faced with repeated punishment. After serving their punishment, they are forced to join the army again, which leads objectors to make new declarations that are yet seen

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<sup>74</sup> Enver Aydemir, Eskisehir Military Court, Case no. 2013/164 Decree no. 2013/349 (05 July 2013).

<sup>75</sup> Yildirim (n 19) 80.

as a new act that should be punished. In this point, Turkey needs legislation, which protects objectors from “civil death.” The principle of ne bis in idem should be applied. Furthermore, Article 318 of Turkish Penal Code considers any criticism of the military as a potential threat to the integrity of the military. The right to freedom of expression, which is the fundamental principle of a democratic society, is ignored. Any public declaration might be regarded as alienating people from military service. Criticising the militarist structure of society and behaving by one’s conscience is no easy task.

## Chapter 8

### The Resistance to Compulsory Military Service in Turkey

My friend, you would not tell with such high zest  
To children ardent for some desperate glory,  
The old Lie: Dulce et decorum est  
Pro patria mori<sup>1</sup>

#### 8.1. Introduction

The previous chapters analysed societal, institutional, and legal factors conducive to the militarisation of society (see chapters 6-7.) This chapter examines conscientious objection in Turkey by drawing on the claim that the rise of militarisation brings about a rise of demilitarisation attempts and “militarism can be reversed.”<sup>2</sup> The chapter focuses on the three aspects of conscientious objection in Turkey—classification of objection, its relationship with civil disobedience, and its critique of gender norms. The chapter first illustrates the classification of objection following Charles Moskos and Whiteclay Chambers’ typology as developed in chapter 3.2. Second, it applies the concept of civil disobedience as put forward in chapter 3.3 to Turkey’s case in order to show the relationship between conscientious objection and civil disobedience. Finally, it draws on the literature provided in chapter 4 which ask feminist questions with regards to militarism and war to analyse how gender and militarism are understood in the context of Turkey by conscientious objectors.

The central purpose of this chapter is to move beyond abstract concepts by integrating the real-life examples into the study and drawing on the objectors’ experiences and stories to understand militarism. This objective leads the study to provide a socio-legal analysis of conscientious objection in a sense that it examines the impacts of law on society. Therefore, based on interviews conducted with the conscientious objectors in Turkey, this chapter adopts an empirical, a feminist, and an antimilitarist approach to the militarisation process.

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<sup>1</sup> Harold Bloom, *Poets of World War I: Wilfred Owen & Isaac Rosenberg* (2002) 20.

<sup>2</sup> Cynthia Enloe, *Globalization and Militarism: Feminists Make the Link* (Rowman & Littlefield 2007).

The analysis proceeds as follows: section 2 explains the case study design and highlights the reasons behind why this thesis adopts the qualitative approach. Section 3 examines the real-life experiences drawing on the theoretical framework developed in chapters 3 and 4, and shifts attention to the interviews conducted with eighteen conscientious objectors and an expert on conscientious objection.

## **8.2. Fieldwork: Interviews with the Conscientious Objectors in Turkey<sup>3</sup>**

### **8.2.1. Semi-Structured Interviews as a Primary Data Collection Method**

The selection of interview as a data collection method is of great importance to understanding the experiences and perspectives of individuals affected by the subject matter.<sup>4</sup> In other words, interviews aim to shed light on the lives of individuals and their understanding of the issue.<sup>5</sup> Interviews, therefore, will be used as the main data gathering method to analyse conscientious objection through the eyes of objectors as they represent the most dedicated group challenging the militarisation of everyday life and encouraging the public to challenge militarism. Therefore, shedding light on the conscientious objectors' experiences with militarism gives the opportunity to understand and question the militarisation process, which not only occurs at the institutional level, but also at the societal.

This research adopted a semi-structured interview method in which the researcher has sample questions covering the main issues. In addition to covering the same matters in all interviews, the researcher has room to ask further questions that might only be relevant to specific participants.<sup>6</sup> The reason for opting for a semi-structured interview method is that although conscientious objectors share some common points of view on militarisation, their unique life stories, their understanding of militarism, and the driving force behind their aims to reverse militarism differ markedly. Semi-

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<sup>3</sup> To comply with the Durham University regulations, I applied for the ethical approval in February 2016 before conducting the interviews. My application was sent to the "Durham Business School's Sub-Committee for Ethics" for approval. I received the formal approval in March 2016 and conducted all the interviews between April and May 2016.

<sup>4</sup> Margaret C Harrell and Melissa Bradley, *Data Collection Methods: Semi-Structured Interviews and Focus Groups* (RAND 2009) 24.

<sup>5</sup> P Gill and others, 'Methods of Data Collection in Qualitative Research: Interviews and Focus Groups' (2008) 204 BDJ 291, 292.

<sup>6</sup> Juliet Corbin and Anselm Strauss, *Basics of Qualitative Research: Techniques and Procedures for Developing Grounded Theory* (Fourth edition, SAGE 2015) 39.

structured interviews allow covering their unique stories, understanding their encounter with militarism, and making sense of the multi-dimensional nature of their refusal.

I conducted interviews with eighteen objectors and an expert in June and July 2016 in Ankara and Istanbul. The interviews were conducted in places that the conscientious objectors suggested, so to offer them a relaxed atmosphere. The interviewees were given the consent form, which explains that they could withdraw from the study at anytime and that they could also agree or disagree on recording the meeting. The length of interviews was between twenty minutes and two and a half hours. Although all the participants were given the option to remain anonymous, none of them asked for anonymity. The conscientious objectors in Turkey publicly and consistently refuse the call-ups. Most of them are known public figures. Since they are not “deserters” but “objectors,” they have no intention to hide their identity. On the contrary, their main aim is directed at bringing about social change in the Turkish society by raising public awareness on the issue. Since the purpose of conscientious objectors is to raise awareness by making people hear their voices, none of them asked for anonymity, and, therefore, their names are displayed.<sup>7</sup>

It is necessary to point that the self-involvement of the researcher in the qualitative research creates an area of dispute. There are two approaches concerning the matter. The first approach suggests that researchers should distance themselves from participants and “adopt a passive neutral stance.”<sup>8</sup> As opposed to this approach, the second argues that “a cold and calculating style of interviewing reinforces a gulf between the researcher and the informant, and does little to help or empower the informant.”<sup>9</sup> In this respect, researchers are entitled to be emotionally involved and engage in a constructive dialogue, instead of being distant. Such a dialogue also allows researchers to observe whether participants “understand and share the underlying logic of the approach.”<sup>10</sup>

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<sup>7</sup> This matter has been explained to the Ethic Committee before gaining the ethical approval and the Committee approved my request for displaying the participants’ names.

<sup>8</sup> Martyn Denscombe, *The Good Research Guide for Small-Scale Social Research Projects* (fourth edition, McGraw-Hill/Open University Press 2010) 179.

<sup>9</sup> *ibid* 180.

<sup>10</sup> *ibid*.

The position taken in this research is the combination of these two above-mentioned approaches. As Martyn Denscombe suggests, “the researcher’s identity, values and beliefs play a role in the production and analysis of qualitative data and therefore researchers should come clean about the way their research agenda has been shaped by personal experiences and social backgrounds.”<sup>11</sup> Therefore, I argue that sharing similar experiences with the participants provided me with an opportunity to create an environment in which the participants felt comfortable to elaborate on the interview’s questions in detail. At the same time, I was aware of that I was a complete stranger at the beginning, so I avoided personal and sensitive questions. Also, to create a non-biased environment, I refrained from making negative, discouraging, and misleading comments that make the participants feel that they need to respond in a particular way. Therefore, the participants were informed about the aim of the research in a manner, which does not elicit a particular response. Furthermore, I observed how they reacted when I introduced my research topic and myself, so to understand how approachable they were. I considered their approach as a sign of how they would like to be interviewed. While with some objectors I engaged in emotional and personal dialogues, with the others I only interfered to guide the interview.

### **8.2.2. The Aim of the Interviews**

Interview questions need to be designed in a way that seeks answers to the research objectives and provides a comprehensive understanding of the phenomenon.<sup>12</sup> Furthermore, as Jaber Gubrium argues, the aim of the qualitative interview is “to understand the meaning of respondents’ experiences and life worlds.”<sup>13</sup> In this respect, the interviews initially aimed at making sense of the objectors’ personal experiences with the military, militarism, and hegemonic gender relations in Turkey. To understand the perspective of the conscientious objectors and offer a precise analysis of the movement, I divided my questions into several parts. In the first part, I posed questions directed at the participants’ personal background, their political view, age, occupation, and family’s response to their objection. Having discovered their socioeconomic background, I lead the discussion towards the motivations behind their

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<sup>11</sup> *ibid* 302.

<sup>12</sup> Gill and others (n 5) 292.

<sup>13</sup> Jaber F Gubrium and James A Holstein, *Handbook of Interview Research: Context and Method* (SAGE Publications 2001) 83.



refusal. In the second part, I also discovered the visible and the fundamental reasons impelled the objectors to question the military while exploring their personal stories. At the same time, I tried to determine the relationship between conscientious objection and civil disobedience. In the third part, since their personal stories offered room to ask deeper questions, I extended my questions to cover their rejection to the militarisation's impacts on the everyday life. In a nutshell, the data collected from the interviews enables clarifying the typology of the movement in Turkey, the aim of objectors, and the issues they are raising.

### 8.2.3. Sampling

The research uses the nonprobability samples, which involve “human judgements, either purposefully or unintentionally” in the selection process of participants.<sup>14</sup> In this approach, the samples are chosen to reflect on “particular features of, or groups within, the sampled population. The sample is not statistically representative.”<sup>15</sup> The number of participants is determined based on the distinctive features of the whole population. These particular features are analysed to make sense of the central issues of the research.<sup>16</sup>

The number of conscientious objectors in Turkey is increasing. Since there is no legal procedure on conscientious objection, there is no official information on the number of objectors. The only information available is the data of the Association of Conscientious Objection in Turkey. According to their website, there are around 500 members of the Association (see Table 1.) To provide an updated analysis of the movement in this research, I tried to reach those conscientious objectors, actively involved in the movement by using snowballing sampling. This is one of the methods to the purposive sampling. It helps the researcher to ask the interviewee to “identify other people they know who fit the selection criteria.”<sup>17</sup> In this research, I reached all participants through personal connections of the two active objectors in Turkey. Through their connections, I reached those actively involved in the movement and

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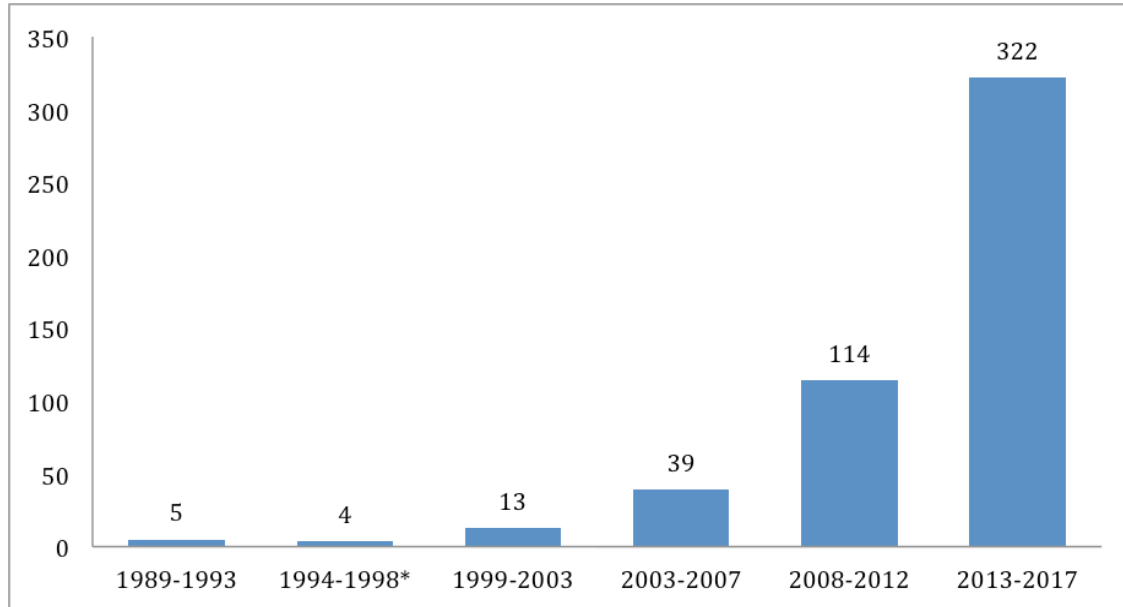
<sup>14</sup> Leonard Bickman and Debra J Rog (eds), *The Sage Handbook of Applied Social Research Methods* (2nd ed, SAGE 2009) 78.

<sup>15</sup> Jane Ritchie (ed), *Qualitative Research Practice: A Guide for Social Science Students and Researchers* (Repr, SAGE 2011) 78.

<sup>16</sup> *ibid.*

<sup>17</sup> *ibid* 94.

particularly based in Istanbul and Ankara. Except one religious objector, all the participants defined themselves as anarchists. The participants' demographics are shown below in the Table 2.



**Table 1 The number of conscientious objectors between 1989-2017<sup>18</sup>**

<sup>18</sup> The table is constructed in September 2017 based on information available in the Conscientious Objection Association website: <http://vicdaniret.org/vicdani-retlerini-aciklayanlar/>

<b>Gender</b>	<b>Political view</b>	<b>Occupation</b>	<b>Typology of their objection</b>
Women (8)	Anarchist (17)	Student (7)	Political (15)
Men (10)	None (1)	Theatre player (1)	Religious and political (2)
		Journalist (4)	Humanistic (1)
		Social worker (1)	Universal and absolute (18)
		Self-employed (1)	
		Waitress (1)	
		Lawyer (2)	
		Veterinary (1)	

**Table 2 Participant's demographics**

It is necessary to clarify “the risk inherent in snowball sampling is the overrepresentation of a single, networked group.”<sup>19</sup> Using the snowball method limits access to reaching diverse segments of society including those soldiers serving in the army only because they fear prosecution. I reached, however, members of the similar group, particularly anarchists and the members of the Association of the Conscientious Objection.

Indeed, each case study has its limitations and boundaries. “The ‘case’ must carry with it some idea of a boundary which is sufficiently clear and obvious to allow the researcher to see what is contained within the case.”<sup>20</sup> The present research is limited to studying active and anarchist conscientious objectors, and as a result, further research is required on the acceptance of the military service, especially by the family of martyrs. In this research, since the aim of the interviews was to investigate motivations behind objectors’ refusal to and experiences with militarism and gender norms, focusing particularly on an active group of conscientious objectors helped to examine the problematic issues those objectors raised.

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<sup>19</sup> Harrell and Bradley (n 4) 31.

<sup>20</sup> Martyn Denscombe, *The Good Research Guide: For Small-Scale Social Research Projects* (2nd ed, Open University Press 2003) 37–38.

#### 8.2.4. Data Analysis

The analysis of the data collected from interviews is grounded on the literature. The data has been analysed in the following way: having transcribed all interviews, I conducted the preliminary data analysis that is “a process of engagement with the text,”<sup>21</sup> which enables the researcher to gain a general idea on what has been collected.<sup>22</sup> Therefore, before coding the data, I read all transcripts in-depth to elaborate on the major points of the transcriptions. Having read the raw data several times and familiarised myself with it, I coded the data manually. Data coding constitutes the most important part of the analysis as the coded data enables the researcher to “read through all pieces of data coded in the same way and first try to figure out what is at the core of that code.”<sup>23</sup> Since the study adopted a thematic analysis in which “the researcher focuses analytical techniques on searching through the data for themes and patterns,”<sup>24</sup> the next step was searching for the themes. The themes that have emerged out of the data are shown below in table 2. Finally, I tried to combine the literature with the participants’ voices during the writing process.

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<sup>21</sup> Carol Grbich, *Qualitative Data Analysis: An Introduction* (SAGE 2012) 21.

<sup>22</sup> *ibid.*

<sup>23</sup> Uwe Flick, *An Introduction to Qualitative Research* (SAGE 2009).

<sup>24</sup> *ibid.*

Codes/ sub-codes	Themes
<ul style="list-style-type: none"> <li>➤ Political situation in Turkey</li> <li>➤ War environment in Turkey</li> <li>➤ Anarchist</li> <li>➤ Antimilitarist, anti-authoritarian, anti-hierarchy, anti-war</li> <li>➤ <i>Any</i> army</li> <li>➤ No alternative service</li> </ul>	Political, total, and absolute objection
<ul style="list-style-type: none"> <li>➤ Bringing about a change</li> <li>➤ Demanding peace</li> <li>➤ Non-violent</li> <li>➤ Public act</li> </ul>	Civil disobedience
<ul style="list-style-type: none"> <li>➤ Gender <ul style="list-style-type: none"> <li>• “Hero”</li> <li>• Masculinity: being a “real” man</li> <li>• Motherhood</li> </ul> </li> <li>➤ Social norms</li> <li>➤ Normalisation of militarism</li> </ul>	Gender and militarism

**Table 3 Theoretical driven codes and themes emerged from analysing the data**

### **8.3. Findings of the Interviews**

This section analyses the interviews in accordance with the theoretical framework developed in chapters 3 and 4. It aims to locate the global discussion of conscientious objection in the context of Turkey. Based on this, the section proceeds as follows: it provides the background of objectors, with a particular focus on their family’s reaction to their objection as a starting point. Then, it examines the objectors’ main motivations, so to clarify the nature of their objection. Further, on the basis of their motivations, the section respectively examines their objection in the context of civil disobedience and gender.

### 8.3.1. The Background of Conscientious Objectors

The background of ten men conscientious objectors and their family's reaction to their objection are shown below.

*Ercan Jan Aktas* expresses himself as an oppositional and an anarchist. He does several jobs. First, he works on war resistance and conscientious objection as an activist. Second, he is a member of a working group focusing on war, trauma, and confrontation issues. Third, he is a columnist. Ercan explains his family's reaction to his act as follows:

My family was aware that my political identity would lead me to select my own path, and that they would have no say about it. Getting used to the idea was not an easy task for them. The uncertainty of my situation, of course, causes physiological problems to those close to me as my mother or my partner. Once the social circle extends, you face reactions. For example, my extended family members uphold the opinion that 'you have been in this situation for ten years; you should have done your military service by now!' The problem gets bigger when this circle extends to the societal level. It is not a family matter anymore; you enter into conflict with society. Because you are born as a Turk in Turkey, it does not matter which ethnicity your family is coming from. The motto 'every man is born as a soldier' prevails. Being a soldier is an exalted duty. Manliness involves certain responsibilities such as getting married and being the head of the family. All of these are related to military service. If you reject serving in the army, you are not a first-class citizen. In these circumstances, you are in conflict with both the requirements of being a citizen and social expectations.

Ercan indicates that he has not been labelled as a "coward." He adds that "I have a political identity that creates a site in which my refusal is considered understandable. Since we aim to be politically consistent and act in accordance with our political views, objecting is the honourable thing to do."

*Halil Savda*, a Kurdish conscientious objector, a key public figure among objectors, identifies himself as a pacifist and an anti-militarist. He is the only objector calling himself a pacifist amongst those I interviewed. Halil explains his family's reaction to his objection as follows:

My family extremely suffers from the government's decisions. The ethnicity of my close family has been denied. The region is in conflict because of ethnicity. My family members hold the government responsible. Therefore, they supported my objection. However, they were, of course, concerned about the uncertainty of my situation that my objection might create. In the beginning, they tried to convince me to serve in the army, but once they noticed how determined I was, they supported me.

Regarding society's reaction Halil, like Ercan, notes the following: "I have not been exposed to such a reaction in my close social circle. But within my extended social circle, it is possible to be called a 'terrorist' or a 'traitor.'"

*Davut Erkan*, the consultant of the Association of Conscientious Objection and lawyer of objectors, identifies himself as an anarchist. Instead of making a public declaration, Davut announced his objection before the Constitutional Court. In fact, he is the first conscientious objector to have lodged an individual complaint to the Court. Davut explains his family reaction as follows:

My family is ordinary Anatolian, conservative and religious. I do not have a close relationship with them. I have not explained to them my stance, but they are getting used to the idea that their son is politically active. I grew up in a Kurdish region. Everyone can assume that growing in that region leads the youth to make choices, be politicised, and choose their own way. Of course, they expressed their concerns, but they believe at the same time that I am a lawyer and 'I will not put myself in danger.'

*Abuzer Yurtsever* identifies himself as leftist because of his Kurdish identity. During the interview, he highlighted several times that he constantly moved to different cities and countries and also lived in exile. Abuzer's family members are supportive of his decision, yet they are also worried about his future too.

*Bulent Bektas*, a theatre player, highlights his family's Alevi background. He thinks that Alevi beliefs have influenced his life, though he grew up in a secular family. Regarding his family's reaction, he states:

My family was worried. My father is a Kemalist. Therefore, compared to my mother's reaction, his reaction was extreme. Although I was not living with them, my father, whenever we met, was bringing up the subject. However, he told me to be careful over time, instead of convincing me. This is an indirect sign of approval.

*Burak Ozguler*, an animal rights activists, a veterinary, and an anarchist, states that “my family is Kemalist. I have not told them my decision until the last minute. However, after having experienced the brutality of police during Gezi protests, they became aware of what do the police and government mean.” Regarding his extended social circle, he also indicates that “my close social circle is open-minded and you can discuss and talk about most of the issues with them. Even my apolitical friends know that I am fighting against militarism. I have not experienced any accusation of being coward or lazy.”

*Gokhan Soysal*, a lawyer and co-chair of the Association of Conscientious Objection, introduces himself as an anarchist. However, he says that “I am a conscientious objector not because I am an anarchist. I am an anarchist because I am an objector.”

*Muhammed Cihad Ebrari* (Saatcioglu), an activist and a researcher on Middle East studies and politics, identifies himself as a peace and an environmental activist. He is known amongst his friends with Ebrari surname, meaning the good and virtuous, that he adopted from a very young age. When he evaluated his family’s reaction, he focused on the impacts his mother had on his life. Accordingly, he states:

My mother has huge impacts on my personality. She raised me in this way. I grew up in an oppositional family. Of course, my family members were curious and upset because of what happened to me. However, they did not question my decision as they were not expecting me to behave differently. Furthermore, refusing the military service within my social circle is precious.

*Mehmet Ozdemir*, an essay writer and a novelist, expresses himself in three different ways; as an anarchist, a revolutionist, and a *tevhidi*. He explains *tevhid* as “seeing humans—with no discrimination of colour, race, religious, and sex— animals, trees, the universe, and the environment as equivalent to each other.” He also explains his worldview as “a desire to achieve heaven on earth with no class, exploitation, and war.” Regarding his family’s reaction, he states that “I do not have a close relationship with my family members. Their first reaction was ‘you have not served in the army yet.’ But I am trying to explain my own choices clearly. I am not sure if they understand me because, in their opinion, I am someone who is deceived.”



*Muhammed Serdar Delice*, who owns and runs his own company, expresses himself as a Turk and a nationalist. However, he rejects to be identified as a member of the Nationalist Party. He clearly does not want to be associated with either the opposition parties or the power (iktidar). He explains his family's reaction as follows:

My family members are conservative, nationalist, and patriotic. You cannot think objectively in such an atmosphere. Their brain is washed. I am trying to improve myself and be not like them. My mother applied henna when she sent me off as a sign of approval to sacrifice my life for the nation. When I declared my objection, my father refused to let me in. Most of my friendships fell apart.

The background of eight women conscientious objectors and their family's reaction to their objection are shown below.

*Atlas Arslan* has been working as a journalist since 2009. She declared her objection in International Conscientious Objection Day (15 May 2015.) Regarding her family's reaction, she illustrates the following:

My parents are Alevi. I highlight their Alevi background because they are also Kemalist. They witnessed Dersim and Corum massacres and were exposed to the military enforcement and suffering. Nevertheless, they chose to advocate the army and militarism as a defence mechanism. That is to say, they took a shelter by trying to understand the military instead of reacting against it. Indeed, the army is so important for my family. Since my childhood, the most prominent sentence that I have heard from my parents is 'fortunately we have the army, otherwise what we would have done; Allah may keep us with soldiers.' Actually, they know that what happened to them was caused by militarism and the army's enforcement. However, it is not an easy task to question it. They are the kind of people that the army wanted to create; they idolise those who cause pain instead of questioning pain itself. In this sense, they are not in a position to understand my conscientious objection.

*Zeynep Cicek*, a sociologist and a Kurd Alevi, declared her objection in the International Women's Day. She does not identify herself with any political views. Regarding her family's reaction, she states:

My family is Kurd Alevi. My family members are not activists. In the beginning, they could not make sense of my objection. They could not understand why a woman would

object since she is not subjected to conscription. When I was detained for showing solidarity with Enver Aydemir, an objector who faced inhuman treatment, their first reaction was ‘you are not going to be a soldier. Why are you objecting?’ I tried to convince them by talking simply and giving them daily life examples rather than talking in an abstract way. I tried to make them understand that the main objects of war and militarism are women and children. Now, they seem convinced.

*Didem Dogan*, an English teacher, also declared her objection in the International Women’s Day. Although her family’s background is Kurd Alevi, her parents were hiding their identity. She identifies herself as an anarchist. Regarding her family’s reaction, she says that “I have no idea if my family members know about my objection. Even if I tell them, I do not think they will understand me.”

*Ozge Gunonu*, a student, identifies herself as an anarchist. She declared her objection in International Women’s Day. Regarding her family’s reaction, she states that “my family is open-minded. I grew up in a political atmosphere. I received good reactions. I believe that I made myself heard.”

*Meltem Nur Tuncer*, a social care specialist, declared her objection in the International Women’s Day. She states that “I choose women’s day as women’s objection is symbolic, a tool used to raise awareness and make people ask why a woman would declare an objection while she is not conscripted.” Although she does not want to identify herself with any political views or any form of ethnicity, she works with the Ankara Anarchist Initiative as it opposes all kinds of oppression. Regarding her family’s reaction, she states:

My family is not politically active. My uncle, surprisingly, got involved in the nationalist movement. He was tortured in prison. All I remember about him from my childhood is that he was always sick. After his death, my family refrained from talking about him. The rest of the family did not get involved in politics as they remember my uncle’s political experience, and therefore, fear to speak about politics. I did not speak to them about my objection. They will not understand me.

*Evin Sevgi Baran*, a student, also declared her objection in the International Women’s Day. She identifies herself as an anarchist. Regarding her family’s reaction, she states that “my family members are coming from a different ethnic background. I grew up in

a politicised family. They supported my decision. My father even suggested proofreading my declaration.”

*Ebru Altintas*, a student, declared her objection on the 10<sup>th</sup> of July 2016, the day I interviewed her. She identifies herself as an anarchist. Regarding her family’s reaction, she states that “my family members are not politically active. They are fascist and rightist. I have not told them about my objection.”

*Ozlem Dede*, a student, also declared her objection on the same day as Ebru. She identifies herself as an anarchist and a feminist. She also works on animal rights. Regarding her family’s reaction, she states that “I grew up in an oppositional family. My parents were worried as they wanted me to work in governmental institutions after my graduation. They reminded me of the potential consequences of my act not because they refuse it but because they felt responsible.”

### **8.3.2. The Nature of Their Objection**

Conscientious objectors have their own unique childhood stories leading them to adopt an antimilitarist perspective. The motivations behind their act vary to a great extent. However, all interviewees focused on the political nature of their refusal. The most repeated motivation amongst the objectors I interviewed was that “we will not serve in the current political situation, which promotes a war environment in Turkey.” For instance, having focused on moral and philosophical reasons behind his act, Halil summarises his objection with a reference to his political view. He says:

My objection is moral because the military service is a system based on killing human beings, and I believe that killing people is an immoral act. My objection is philosophical because I am an antimilitarist. I believe in nonviolence, I believe in demilitarisation, and I believe in the necessary removal of all guns from our life. My objection is also political because there is a war environment. Politically, I do not want to be part of this war.

In a similar vein, Muhammed Ebrari considers the current political situation as the main reason for his objection. But, he also links his religious belief with his political stand. He says that

I do not consider myself as a free person, and in my opinion, we are all slaves who perform compulsory things against our will. We have an identity, a job, and money. But I will never ever have a gun. Although the military service is compulsory too, it is still something that I can avoid. I have thousands of answers to the question of why I am objecting just as I have to the question of why I oppose the system. However, the most prominent one is that I will not serve for such a government in these circumstances (even if it was a democratic one, I would not serve). To clarify, the current government pursues an imperialist policy in the Middle East and applies violence against Kurds, of which I would never take part. I can classify my objection either as religious or *political*. I adopt a belief, which contradicts the current religionists. My belief is not cultural. It has impacts on my political stand. Therefore, my objection is both political and religious.

Ercan also relates his objection to his political view and explains his motivations as follows: “my objection is political. I define my objection as an act that articulates my world-view; in a sense, it is individualistic. At the same time, it strengthens my political stand. Although being an objector is personal, it overlaps with my political views.”

Halil’s, Ercan’s, and Muhammed’s standpoints indicate the political aspects of conscientious objection. Moral and religious views lead to a political confrontation, as a form of conscientious objection, with the government, and no longer remain purely religious, moral, or humanitarian.

While explaining their political stand, the majority of objectors also focused on the hierarchical structure of the army. The common view amongst them was that “we reject hierarchy for political and moral reasons.” For instance, Bulent mentions that:

My objection is political. As I am an anarchist, my reference point is to avoid being associated with the government and anything that is related to the government. I organise my social circle in accordance with my political views. I would like to be in a place where there is no hierarchy—superior-subordinate relationship and institutionalised violence; a place that is not full of guns and violence. In this respect, my objection is political and at the same time sociological and humanitarian.

While forging the link between the motivations behind his objection and his political stand, Burak adopts a different perspective, confusing to even animal rights activists.

As a veterinary, he objects on the grounds that war does not only have impacts on people, but also on nature and animals. Accordingly, he explains the motivations behind his objection as follows:

My objection is political, conscientious, and moral. I do not differentiate between them. I am an animal rights activist. In Roboski massacre, hinnies were killed too. In my declaration, I focused on the effects of war on nature, animals, and wildlife. My objection is the product of a long period of questioning the government policies. However, I also morally and conscientiously refused to serve. Wearing uniform, killing human beings, destroying a forest, and killing animals are things most of us cannot do. Even if we are going to be put in prison, I do not think this will change anything.

Burak's animal rights activism and his narrative, which lead him to confront the governments' policies and refuse to serve in the army, demonstrate that objection in Turkey is not only moral and personal, but also political. That is to say, objectors turn their individual stories and what makes them uncomfortable into a political struggle. Gokhan summarises this viewpoint by reference to Tolstoy's famous quote. He says:

My objection is moral. As Tolstoy says 'everyone thinks of changing the world, but no one thinks of changing themselves'. Following this motto, I started to think of changing myself. Conscientious objection was a possible way to start. Also as a lawyer, realising the injustice we faced in a situation in which we are right makes an impact on my objection.

Except one objector, Ozge, all women objectors classified their objection as political regardless of that their main motivations are grounded on their anarchist, anti-authoritarian, or feminist worldview. Meltemnur, for instance, states:

My objection has a political meaning, which stems from a humanistic understanding. I can classify my objection in various ways. It rejects a wide range of issues. The common denominator of these rejections is my political stand. Although I am against all kind of militaries, the political situation in Turkey speed up my objection.

On the other hand, Ozge's classification of her objection differs from other objectors. She explains:

I am an anarchist. My objection is also conscientiously motivated. In fact, the current circumstances in the region, the war environment, governmentality (erk zihniyeti), and the fact that how governments and power interfere in our life with oppression are the main factors contributing to the rise of my objection. My objection is not grounded on religious or ethnic motivations. I refused the military because I am a human and an anarchist. Anarchism is a lifestyle. I do not want to devalue my objection by calling it political.

Although the majority of men conscientious objectors that I interviewed problematised masculinity, gender awareness was not considered the main motivation behind their act. Most women conscientious objectors considered the hidden impacts of militarism on people, with a particular focus on women's lives as the main motivation behind their act. For instance, the starting point for Atlas's objection is her interaction with women conscientious objectors with whom she held interviews for her book. Atlas explains the process she underwent, which is conducive to her objection, as follows:

As a press member, I was monitoring the 28 February and 12 September coups trials. I experienced militarism in a practical arena. I decided to write about those talking about peace, particularly women conscientious objectors whose voice has not been heard. My book *"Kiser Mami Papa: Women are rejecting war"* was the product of one and a half years work. My close relationship with women objectors changed my perspective. Establishing a close contact with women conscientious objectors and observing militarism from a closer point led me to perceive anti-militarism from a different perspective. When I completed the book, I had become a different person. With this transformation, as an anarchist, I declared my objection from an antimilitarist perspective. In my declaration, I further, focused on my job and how media approaches war and massacres and how their approaches reproduce war and militarism. Therefore, I choose 'media' as a subtitle for my objection.

Similarly, what made Didem declare her objection was the gender discrimination she experienced during high school. She explains her motivation by reference to her high school memory. She says:

It is not easy to classify my objection or answer the question of what motivated my act. I first encountered militarism when I was in high school. At that time, I was not aware of the situation as much as I do now. I was planning to apply for a military high school.

Such a contradiction, is it not? I had read the leaflets and noticed that only males were allowed to apply. After that, I started questioning everything, and I become enlightened. Further, the issues I witnessed on the subordination of women urged me to do something to increase my visibility.

To sum up, these objectors' narratives and their motivations suggest that conscientious objection in Turkey has both moral and political grounds. The majority of objectors to the military service are not private objectors.<sup>25</sup> It is not just the inward feeling of the individual against wars. Objectors cooperate with other people objecting the militarist construction of society. The aim of objectors is not only to refuse to serve in the military service but bring about social, political, and legal change. They express their objection publicly and try to raise awareness against militarist and gendered structures in society.

### **8.3.3. Conscientious Objection and Civil Disobedience**

Having provided the overview of the conscientious objection movement and drew the general framework in the previous section, this section engages with a wider perception of conscientious objection. It explores the political roots of objection by considering the difference between a personal and a political act and forging the link between civil disobedience and conscientious objection. It draws on the discussion of chapter 3.3 in which the elements of civil disobedience are provided.

#### **8.3.3.1. We Turn our Personal Story into a Political Story**

All the participants pointed that although their objection has personal significance, it is in a broader sense part of a movement requesting social change. For instance, Bulent indicates:

Within my politically motivated and anarchist social circle, I was not planning to serve in the army anyway. However, I declared my objection for the sake of solidarity with Mehmet Tarhan who was imprisoned because of his refusal. I felt that objecting at the personal level is insufficient and as such, I needed to be politically active.

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<sup>25</sup> Private objectors do not try to convince others about their motivations, therefore, their objection cannot be considered as a civil disobedience act.

Bulent's refusal is a reaction to imprisonment of objectors, not about seeking a personal exemption from the military duty only. Instead of declaring their objection publicly, objectors basically can hide and escape from the service without publicly exposing themselves to the risk of prosecution. Their willingness to put themselves at risk is a clear indication of that objection is not simply asking for personal exemptions from the military duty. Rather, it requests a social change. Mehmet, similarly, answers the question of what makes objectors' act not an individual demand but an act that attempts to bring about a change in society. He states:

My *individual* objection is directed at questioning and rejecting the normalisation process, which labels us as women, men, Muslim, and Christian. All these labels push you to follow a life that is shaped by others. When it comes to questioning these stereotypes, we—all objectors—stand alone. That is why I first consider my attempt as individualistic. Yet, our individual stands are becoming part of a movement.

Similarly, Gokhan believes that “if the individual is not free, society is not free, and visa versa. Although our objection has personal motivations, it needs to be directed at transforming society. I cannot make any distinction between them.” Burak also considers his objection as an act of civil disobedience in a sense that the act itself is directed at *bringing about change*. He highlights how they work in cooperation with other associations such as those who work on promoting animal rights, war, and militarism. He states that they want to promote the idea of refusing the compulsory military service and also raise awareness on animal rights because they believe that war destroys the nature and animals. Burak's attempt to forge the link between militarism and animal rights in making sense of his conscientious objection indicates that his aim is not simply to obtain an individual exemption from the military duty.

These narratives clearly illustrate that conscientious objection is a result of inward feelings and has personal facets. Yet conscientious objection has wider implications locating it within the political context.

### **8.3.3.2. Our Refusal is Illegal but Legitimate**

Under the current legislation in Turkey, the right to conscientious objection is not recognised. As explained in chapter 7, conscientious objectors face the risk of



prosecution under Article 318 of the Turkish Penal Code. Given the international standards on conscientious objection (see chapter 5), which recognise it as a human right, their objection is considered legitimate. Regarding the legitimacy of the objection act, Burak says:

You cannot gain *legitimacy* just by gaining legal acceptance. In a similar vein, not all illegal acts can be regarded as illegitimate. Therefore, the lack of a legal recognition has no impacts on the legitimacy of our act. It is an international right. Furthermore, we are in cooperation with both international and national organisations.

In parallel with Burak's point, Ercan highlights the legitimacy of their act. He illustrates his point by reference to solidarity among objectors in the case of prosecutions. He says:

Let's assume fifty citizens are taken into custody at the same time, and just one of them is a conscientious objector, the headline of the news would be that 'forty-nine individuals and a conscientious objector are taken into custody.' We have such a visibility as a result of cooperating with international organisations, namely War Resister's International (WRI) and Akdeniz Meeting in Cyprus. In the case of prosecutions of objectors, these institutions are informed of the situation in a very short time. That is what makes our act, if not legal, legitimate.

Similarly, Davut captures the similarities between civil disobedience and conscientious objection in the following way:

Individuals who develop the attitude of objection are aware of that they are getting involved in an illegal act and, therefore, ready to face the consequences of their actions. They base their argument on the legitimacy of their act. Furthermore, they publicly and openly refuse to serve. In this sense, their act can be considered as an act of civil disobedience.

#### **8.3.3.3. Our Rejection is Non-Violent**

Gokhan, on the other hand, focuses on the non-violent nature of objectors' act. He indicates that "objectors refuse on moral and political grounds, a *legal obligation* by *non-violent means*. Since the act itself aims at refusing guns, it draws on *public* speeches and declarations. It is done with the aim of transforming society."

#### **8.3.3.4. We Reject Publicly**

In Oguz's—an activist and expert on conscientious objection—words, the act of conscientious objection is a clear example of civil disobedience,

The act is nonviolent. The most important aspect of the civil disobedience act is that it reveals the will of the individual. For instance, the standing man's resistance in Gezi protests [A man stood motionless and silently for six hours during the Gezi protests in Turkey against the brutality of police] is a clear example of civil disobedience. Although it was an act committed by just a single person, it had more impacts than any other acts involving a great deal of people. The stand of the conscientious objectors is the same. What refusal reveals is the will of the individual. In that sense, it is precious. It has the aim of delivering a social message. Furthermore, objectors are willing to face the consequences of their act. For example, Mehmet Bal, a conscientious objector, came to trial with his luggage to indicate that he is ready to go to prison and that he had no intention to run away. Another striking example is that Murat Ulke, who holds a dual citizenship (Turkish-German), stayed in Turkey; he did not run away to Germany. The objectors' act involves all the elements of civil disobedience.

To conclude, although objection is an individual act, the aim is to bring about change not an attempt to seek an individual exemption from a duty. The conscientiously motivated act is only seen as an individual act. However, in Turkey conscientious objection is open to contribution and participation of others. Conscientious objection takes the form of a collective act rather than an individual one.<sup>26</sup> When objectors refuse to serve in the military, they illustrate their point via symbolic acts such as declaring their objection publicly, which mostly involves burning their draft paper in public or joining protests. Their acts are directed at gaining society's support and raising awareness about militarism. Therefore, it is a public act such as civil disobedience.

#### **8.3.4. Conscientious Objection and Gender**

The previous section focused on the conscientious objectors' aim at bringing about a change in society and examined the political motivations behind their act. Although this served the purpose of moving the discussion beyond the narrow understanding

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<sup>26</sup> Phil Harris, 'Curriculum Development in Legal Studies' (2010) 20 *The Law Teacher* 110, 112.

that reduces objection to only refusing a duty—the compulsory military service, it remains essential to take into account militarism’s cultural tools used to maintain its power. Therefore, having highlighted the political aspects of objection by establishing the relationship between conscientious objection and civil disobedience in the previous section, this section attempts to uncover the objectors’ references to gendered ways of thinking that normalise militarism. It discusses how the link between gender and militarism, which is examined in chapter 4, is understood in the context of Turkey.

To cover all aspects of the conscientious objection, this section examines the objection movement by taking into consideration the understanding of both men and women conscientious objectors. It aims to provide a gender analysis of militarism and its impacts on both women and men’s everyday life by focusing on the question of why is it necessary to ask feminist questions? With this aim in mind, the first subsection seeks to understand women’s involvement in peace movements via refusing conscription, and the second subsection explores conscientious objectors’ critique of masculinity.

#### **8.3.4.1 Why Women Object?**

Before analysing women’s objection, it is vital to touch on the fact that Turkey adopts a male conscription system. Since women are not subjected to conscription, they are likely to be seen as irrelevant to the issue. Though women’s conscientious movement gains momentum, given the fact that women are exempted from conscription, their objection has created a climate of potential confusion even in the academic environment. Women are ironically asked a common question: *why* do you refuse? Although men are asked the same question, it carries different implications in women’s case. However, refusing the duty itself is not the only purpose of objection. Conscientious objection is a tool that objectors employ to question the circumstances behind conscription. The cynical approach to women’s objection not only creates a male-dominated atmosphere in producing anti-militarist views but also ignores the multiple purposes behind the refusal act.

Developing a feminist curiosity, while shedding light on the conscientious objection movement in Turkey is of vital importance to making sense of conscientious

objection from a wider perspective and also unveiling the tools used to integrate militarism into society. As Enloe argues, “the use of a feminist curiosity to fully understand conscientious objection means going further, exploring women’s full range of relationships to men, to ideas of manliness and to soldiering and militaristic cultures in general.”<sup>27</sup> In this sense, Enloe’s feminist curiosity concept, as discussed in chapter 4, will be used to understand how militarism is integrated into society, and explore the role of societal expectations in the normalisation of militarism.

#### **8.3.4.1.1. We are the most Affected**

As a starting point, the questions that ought to arise are what does women’s objection mean? What are the motivations behind women’s refusal? If women are not subjected to conscription, then what are they objecting? Attempts to arrive at answers and reach the roots of militarism require an inquiry into motivations behind women’s conscientious objection. Atlas, who studies women’s involvement in the conscientious objection movement by interviewing twenty-one women conscientious objectors, and also evaluates women’s objection by considering the reasons that motivated her interviewees, states that

I would like to summarise the issue from the discourse, which arose while interviewing women conscientious objectors. To refuse the source of the ongoing violence, massacre, and oppression, we do not need to be subjected to conscription. We argue that conscientious objection is a women’s right as women are the most affected by militarism. Even though the military does not explicitly ask us to serve in the army, it already includes us in the system by seeing us as a nest that will give birth to a soldier, and also by expecting us to say ‘long live the homeland (vatan sagolsun)’ when the soldier gets killed. While the system expects us to beat a drum in the funeral, to say ‘long live the homeland’ or ‘today is my son’s wedding day,’ we do not need to be included into the army. We already are. That is the reason why women declare their objection.

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<sup>27</sup> Cynthia Enloe, ‘Where Are the Women in Military Conscientious Objection? Some Feminist Clues’ in Özgür Heval Çınar and Coşkun Üsterci (eds), *Conscientious Objection: Resisting Militarized Society* (Zed Books 2009) 81.

In addition to summarising the common denominators amongst women objectors, Atlas' narrative focuses on how the invisible roots of militarism affect women and produce societal expectations. Didem also takes a similar position to Atlas's. She highlights the impacts of militarism on women by considering the roles women play as mothers, sisters, and wives. She indicates:

My objection is aimed at increasing the visibility of women and speaking out that we, women, are here too and affected by war because militarism targets women as much as men. Women can base their objection on a variety of reasons, amongst which is the fact that when a conscripted dies, women as mothers, wives, or sisters go into deep emotional crisis. That is to say, despite the fact that women are not called-up to the army, their lives are already touched.

A man conscientious objector, Gokhan, a lawyer of the conscientious objectors and the co-chair of the Conscientious Objection Association, explains how mothers are affected by militarism from a different perspective. He points to the transformation of soldiers' families and illustrates:

The compulsory military service aims to reshape the individual who has already been shaped by the compulsory education. However, the military does not only form the thinking of soldiers but also of their parents'. Parents of soldiers start thinking differently about the domestic politics. For instance, parents who used to sympathise with the HDP (Peoples' Democratic Party, the pro-Kurdish opposition party), can transform into parents who hate the Kurds both because of the political atmosphere and the fact that their son is in the army. This is to say, the compulsory military service reshapes thinking of parents as much as of soldiers.

#### **8.3.4.1.2. We Refuse to Cooperate with Militarism**

As was discussed in chapter 4.3.1.2, militarism has an agenda that does not only impact men's lives, but also shape women's ethical attitude to normalise the militarisation process. As such, women's objection, as Didem states, is meant "to refuse to cooperate with militarism and declare that we refuse to be part of the dirty war." In a similar vein, Zeynep argues that militarism needs women. In her words, "in patriarchal societies, women are expected to give birth to a boy, and once they have done so, they are exalted." In this sense, she explains her objection as "a slap in the face of militarism; a voice bursting out that I am a woman and not obligated to give

birth; a refusal to cooperate with the system.” According to her, it is vital to say that “war is made possible by discourses on women and children.” Zeynep’s position that links reasons of war with gender can be explained with Cockburn’s argument which considers the gender relations, among other things such as capitalism and ethnicity, as a cause of war. In that sense, “women anti-war activists bring gender relations into the picture not as an alternative but as an intrinsic, interwoven, inescapable part of the very same story.”<sup>28</sup>

#### **8.3.4.1.3. We are Refusing the So-Called “Normal” and Speak out What is Hidden**

Societal expectations of men and women play a vital role in the militarisation of society. Most social scientists have shown that social norms dictate the roles women and men play in society, thus bestowing upon them different gendered practices. For instance, when it comes to roles in the family, women are assigned a vulnerable position as opposed to their counterparts who enjoy the “protector” status in the family. As Rachel Woodward and Trish Winter argue, men and women are assigned different roles to take part in global militarism. However, these various roles must be read in reference to the gendered social practices that “has become naturalised, the outcome of consistent efforts made to sustain that connection.”<sup>29</sup> For example, Meltem Nur focuses on leaving household chores to women because they are “equivalent to men’s military duty, in a sense that both of them have become normal and unquestionable.” The starting point of her critique is grounded on her curiosity to question the gendered roles in her family. She recalls a memory of her mother, the figure of women in their house who accepted her role as a mother and as a wife: “I remember one day my mother was working in the kitchen and when she needed any help, she just called me but not her two sons, who were also sitting in the living room.” Meltem Nur started to question the militarisation of society by considering the relationship between militarism and gender roles. She thinks that the perception of women is naturally peaceful plays an important role in normalising the militarisation process. She indicates:

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<sup>28</sup> Cynthia Cockburn, ‘Gender Relations as Causal in Militarization and War’ (2010) 12 International Feminist Journal of Politics 139, 140.

<sup>29</sup> Rachel Woodward and Trish Winter, *Sexing the Soldier: The Politics of Gender and the Contemporary British Army* (Routledge 2007) 103.

I refuse the idea that women are more peaceful and naive than men because such an idea leads women to accept the roles attributed to them without questioning. I believe that women eventually internalise these assigned roles and see them as part of their natural characteristic. However, everyone has masculine and feminine sides. Accepting these social norms and considering them as ‘fate’ serves the militarisation of the society.

Similarly, Ozlem criticises the gender roles by questioning the importance attributed to motherhood. She indicates:

Women are shaped by the political power (iktidar, erk) as peaceful and naive to fit in male dominant systems. They are assigned this artificial peaceful nature as a result of socialisation process. Therefore, it is not biological. In this respect, women need to get involved in peaceful movements not because of the naive and the peaceful nature attributed to them but because of resistance.

The general point of Ozlem and Meltemnur figures prominently in Enloe’s work which runs against “taking things for granted,” and instead calls attention to bringing into question what is “natural” or “trivial”<sup>30</sup> It can be seen that women conscientious objectors debate the merits of militarism by employing their feminist curiosity; they challenge the tradition of gendered stereotypes, which portrays them as naturally peaceful and vulnerable—“the protected,” and thereby ensures them a position within the dominant male narrative.

#### **8.3.4.1.4. “Exalted” Mothers versus “Incomplete” Women<sup>31</sup>**

Furthermore, to understand the rise of militarism and its roots, it is important to question the “multi-layered processes via which militarism gains legitimacy and popular and elite acceptance.”<sup>32</sup> In this sense, women conscientious objectors make the hidden aspects of militarism visible and enable us to make sense of its impacts on society at a wider level, thus revealing these “multi-layered processes.” For instance,

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<sup>30</sup> Enloe, *Globalization and Militarism* (n 2) 24–25.

<sup>31</sup> The Prime Minister, in his public speech, expressed that women without children are “incomplete women” (eksik kadin) see <http://www.diken.com.tr/erdogan-kadinligin-taniminda-yapti-anneligi-reddeden-kadin-eksiktir-yarimdir/>.

<sup>32</sup> Cynthia Enloe, ‘Dismantling Militarism, Decommissioning Masculinities’, *The Postwar Moment: Militaries, Masculinities and International Peacekeeping, Bosnia and the Netherlands* (Lawrence & Wishart 2002) 23.

Zeynep uncovers the hidden layers of militarism by illustrating the social expectations of motherhood. She indicates:

At the micro level, the common understanding that women need to get married at a certain age and give birth to a son is part of the militarist agenda. The myths that present heaven as a prize for fertile women and exalt mothers while portraying infertile women as incomplete are the invisible facets of militarism. Similarly, portraying the nation as women and MOTHERland (ANAvatan) puts men in a position that they need to protect their mothers from all kinds of threats. At this point, militarism interferes with women's daily life through honour myths. In short, the effects of militarism on women can be read via these invisible facets of militarism that link the nation with honour and women.

Ozlem, similarly, touches on similar points. She states:

Ideas of the honourable women and the patriotic mothers, which make women raise children by taking into account gender roles, are the invisible tools giving militarism its power. Politicisation of women by these gender roles pushes women either consciously or unconsciously to feed war, and puts them in a position to send soldiers to war. In brief, conscientious objection is a critique of patriarchy.

Zeynep's and Ozlem's positions and motivations behind their act show that militarism is integrated into society. "Militarism is much, much broader than war, comprising an underlying system of institutions, practices, values, and cultures."<sup>33</sup> Conscientious objection cannot be reduced to a rejection of the compulsory military service. The military and the compulsory military service are only institutional aspects of the militarisation process.

Didem, who was planning to attend a military high school when she was a teenager, defines her objection as "a stand against the militaristic values prevailing in family relations, education and all aspects of our life." In a similar vein, Meltem Nur indicates:

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<sup>33</sup> Laura Sjoberg and Sandra Via, 'Introduction' in Laura Sjoberg and Sandra Via (eds), *Gender, War, and Militarism: Feminist Perspectives* (ABC-CLIO 2010) 3.



There are so many things that bother me, ranging from gender issues to the subordination of women. Therefore, my objection is not only directed at the military as an institution because the military service is not only about holding a gun. In fact, it has sociological and physiological facets.

To summarise how militarism is integrated into society, Ebru states:

Since I was born, I was raised as a soldier despite the fact that I was not given a gun. When I started my education at the age of seven, I stood up like a soldier in the school line and was asked to march and say ‘I am a Turk, may my presence be sacrificed for the existence of the Turkish nation!’ I was put in a position in which I can sacrifice my presence for any circumstances or sacrifice my son or husband. Therefore, I grounded my objection on the effects of militarism on social life. My objection is not directed only at refusing the use of guns but also at militarism in general.

Ebru’s stand is an obvious example showing how gendered and militarised societies indoctrinate the lives of people with masculinised values even before they are enlisted. This is done through childhood games, toys, and advertisement on social and mainstream media.<sup>34</sup> Therefore, it can be said that women are objecting the impacts of militarism on society. Their refusal of the military goes beyond simple objecting of its institutional structure. That is the reason why although they are not subjected to compulsory military service, women’s uprising gained momentum and as a result, is considered as part of the conscientious objection movement.

#### **8.3.4.2 Hegemonic Masculinity**

To understand gender relations, it is necessary to consider the relationship between men and women rather than limiting the critique of manhood to the hierarchy among men and adopting a “feminist perspective,” which only focuses on women. Gender relations mutually impact each other and, therefore, require a two-sided

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<sup>34</sup> Cynthia Cockburn, ‘War and Security, Women and Gender: An Overview of the Issues’ (2013) 21 Gender & Development 433, 439.

investigation.<sup>35</sup> In this respect, this section examines how men objectors perceive their objection and “manhood” as well as women’s involvement in the movement.

Men objectors focused on two arguments regarding women conscientious objectors. First, they focused on the integration of militarism into society. In Bulent’s view,

Conscientious objection cannot be reduced to the refusal of joining the army. It is not only the military and the military service that feed war. Gun factories and institutions serving war in indirect ways are part of the war policy. When we look at the issue from a wider perspective, women’s objection will make sense.

Gokhan also believes that:

Women’s objection is not something exclusively about wartime. War is culture. War does not happen at once and all of a sudden. Its roots need to grow culturally and politically. Among these are considering women as a second-class citizen, disdaining them, and exalting motherhood.

While evaluating the growth of militarism in society, Bulent and Gokhan focus on the necessity to understand the root of the problem. Paying attention to elements that nurture the roots of the problem is essential to understand and challenge what lies beneath the surface. Their stand can be explained with Cockburn’s argument, which considers war as the tip of an iceberg. She argues:

War-fighting between two armies is only the tip of the iceberg, as it were, of an underlying, less immediate, set of institutions and relationships that can be understood as systemic [...] Such a systemic view of war readily opens up to a gender analysis. Its institutions, let us say the ‘military industrial complex’, can be seen as loci of several dimensions of power, economic, national—and patriarchal.<sup>36</sup>

This new political space, the involvement of women in the movement, is the result of women’s struggle in “tracing military conscription to its roots in militarism.”<sup>37</sup> Their

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<sup>35</sup> Cynthia Cockburn and Dubravka Žarkov, *The Postwar Moment: Militarities, Masculinities and International Peacekeeping, Bosnia and the Netherlands* (Lawrence & Wishart 2002) 14–15.

<sup>36</sup> Cockburn (n 28) 147.

<sup>37</sup> Enloe, ‘Where Are the Women in Military Conscientious Objection? Some Feminist Clues’ (n 27) 87.

primary motivation behind considering their refusal as part of the conscientious objection movement is that they believe that a movement, only composed of men, carries a risk of privileging masculinity.<sup>38</sup> In line with this argument, the second prominent justification among men conscientious objectors of women's involvement in the movement focuses on the necessity of eliminating the risk of becoming a male-dominated movement. The gender system exaggerates the biological differences in a way which positions men at the top of the hierarchy among sexes. Both during and after war, men are associated with "arms and glory" in the political arena while women are seen in relation to "birthing and mourning" and limited to the domestic arena.<sup>39</sup>

Similarly, during peacetime, whoever challenges the policy and aims to bring about a change in society can be seen as a leader in the movement and gain rewards. In other words, "activists inside any conscientious objector movement that allows them to privilege masculinity and normalise patriarchy run the serious risk of not challenging but reinforcing one of the cultural pillars of militarism."<sup>40</sup> Savda, one of the public figures of the movement, also expressed his concerns over being called a "hero" while clearly other objectors and himself oppose the concept of heroism. He argues the following:

War feeds men. Even when they refuse to be part of war in certain political arenas, they might be labelled as 'heroes' because of their willingness to accept the consequences of their act. In this respect, for the conscientious movement not to invent heroes, women's involvement in the movement, their criticism of masculinity, and their anti-militarist stand are essential and precious.

Davut also sees women's involvement in conscientious objection movement as "precious in the sense that it helps to overcome the handicap that conscientious objection is the man preserved political arena." In a similar vein, Ercan indicates that "solidarity with women, their presence and contributions are important elements that prevent the movement from being male-centred and help to preserve its multiplicity and diversity." Oguz also touches on women's presence in and contribution to the

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<sup>38</sup> Özgür Heval Çınar and Coşkun Üsterci (eds), *Conscientious Objection: Resisting Militarized Society* (Zed Books 2009) 87.

<sup>39</sup> Cockburn and Žarkov (n 35) 13.

<sup>40</sup> Çınar and Üsterci (n 38) 87.

movement. He recalls his memory about how women were so critical of the movement in that they prevented it to be male-dominant. He gives an example of women's contribution, which is about their refusal of the sexual organ of the baby boy on the cover of the journal that Istanbul initiative was going to publish. According to Oguz,

Women's ability to mobilise more people during solidarity with arrested conscientious objectors added value to the movement itself. In addition to their involvement in these solidarity movements, they were also the main elements of the variety of solidarity movements that are initiated by women.

To summarise the justifications of women's objection to military service, Davut makes a critical comment by saying the following:

When you evaluate conscientious objection in its restricted sense and consider it only as a legal demand, women's refusal and the fact that women define themselves as the subject of the movement might be found bizarre. However, the conscientious objection movement in Turkey is not grounded only on a legal demand. Its foundation is based on political motivations. Politically, it is seen as an arena of opposing militarism and raising voices against war. War is not an only men issue. Furthermore, objection declarations are not focused on only refusing the duty of the military service; they are positioned at refusing the war machine, the state, and the militarist system, including the duty of the military service. Women are subjects of conscientious objection as the war affects them the most. Therefore, women's involvement in the movement is precious. Conscientious objection should not be seen as a legal demand because this vision will limit it to a demand for exemption from a 'duty.' It is not an issue of exemption from a duty. It is a demand for the abolishment of the facts, which urge people to refuse taking part in the military.

The section now moves to examine how these male conscientious objectors perceive their manhood in a society that links being a "real" man with a heroic understanding of manhood, specifically through the military service. Burak, for instance, highlights that "as a vegan not only exposed to the cliché of every man serves in the army but also all men eat meat." Gokhan gives an example of how manhood is linked with nationalism and militarism. He says that

Parents display the Turkish flag in their house when their kid is getting circumcised and when they bid farewell to their son. The military service is seen as the last step towards becoming a ‘real’ man. Militarism and nationalism are grounded on the idea of manhood. What is accepted is that being a Turkish, a Sunni, and a man. I believe that the concept of manhood and the military service have bearings on femicide, violence, hatred against LGBT, transvestite murder, and drive transsexual suicide. When a man kills his wife who requests a divorce, he sees his ‘manhood’ as a justification for his action.

Davut considers serving in the army as the last step of fulfilling the requirements of being a “real” man. He states:

The perception of manhood is imposed on us since a very young age, so even before conscription. In the masculinisation process, the military is nailing the coffin. The military service is seen as an exam to pass for all you have been through during your childhood. However, conscientious objectors do not fail to pass this exam, but they refuse to take it.

Ercan questions masculinity and illustrates the link between masculinity and militarism as follows:

Militarism determines the role of man as a father, a husband, a boss, and a brother. Militarism is actually grounded on the social roles attributed to men and women. You can experience these social norms in your daily life, in the bus, at home, at your workplace, everywhere. Masculinity is the most problematic aspect of society. Transsexuals commit suicide. Why do they do that? Because they live in a racist, a sexist, and a monistic society that produces violence. Transsexuals cannot find a living space in this environment. That is the reason why I criticise, question masculinity, and base my conscientious objection on refusing masculinity. When I give talks, I try to keep the masculinity discussion alive, open it for discussion, and create a site of discussion and work on a potential change.

#### **8.4. Discussion and Conclusion**

Findings from the fieldwork demonstrate that the most common reference amongst the participants is the political and the cultural dynamics of the war environment in Turkey. The questions I posed in relation to the typology of their objection were

answered by highlighting three major points. Their first point was related to their political views—anarchism and their anti-authoritarian and anti-hierarchic positions. The second point was that they would not serve in *any* army. The third point was that their rejection includes any service that subjects them to hierarchy. All these references reveal that their objection is total, absolute and political.

Another common reference amongst the participants was that Turkey's social, cultural, and political dynamics and how society perceives the military service have important impacts on the recognition of the right to conscientious objection and the militarisation of society. In harmony with the findings of chapter 6, which examines the role of the Turkish army on society, the participants' narratives and attitudes towards social norms revealed that the ultimate control of the military is a product of specific cultural and political structures of Turkey. Participants consistently expressed their desire for changing such norms and linked their claims with peace. This revealed that although motivations behind the conscientious objectors' act were initially personal, their refusal also involved questioning and challenging the militarisation of society. Since their objection has political implications, it is no longer a personal but a public objection. It is clear from the data that such political motivations are followed by the objectors' purpose to engage in public discussion through their non-violent declarations and their willingness to face the consequences of their act. All these references reveal that their objection is an act of civil disobedience.

Yet another common point among the participants was their direct reference to gender norms as an underlying reason for their objections and the normalisation of militarisation. The objectors' critique of masculinity, heroism, and martyrdom and the narratives emerging out of the interviews also illustrate that women's rejections have great impacts on extending the definition of conscientious objection. Women have been able to enlarge the scope of conscientious objection and, therefore, achieved a feminist efficacy in direct opposition to the militarisation process. That is to say, women used conscientious objection as a tool to refuse the impacts of militarisation on their lives and also reject aspects of everyday militarism. This, of course, cannot only be seen in reference to the army but also as an overarching critique of the present political situation in Turkey. Indeed, women's objection raised public awareness and a set of concerns about the hidden aspects of the militarisation process and also

opened up new lines of inquiry viz. women and war, which the academic elite considered as worthy of detailed examination.

To sum up, it is evident from the interview data that the objection movement in Turkey does not only refuse the duty of the compulsory military service. It instead aims to challenge the sociological elements, which maintain the conscription system. The conscientious objectors, both women and men, are asking for societal change. They do not only reject a duty but also the gendered and the militarised system that maintains conscription and, as such, influences the entire society. In that sense, their objection is not only individual, but also political.

## **Chapter 9**

### **Conclusion**

#### **9.1. Summary of Findings**

The objective of the present research was twofold. The first aim was to examine the right to conscientious objection in the context of the right to thought, religion, and conscience. The second aim was to shed light on the social background of the lack of the legal recognition of the right to conscientious objection at the national level. To achieve these two aims, the present thesis was composed of two main parts.

The Part I focused on the general scope and the framework of conscientious objection. It consisted of three chapters in which the birth of universal conscription, the resistance to conscription, and the legal recognition of conscientious objection were examined respectively.

Following chapter 1, which explained the original contribution to knowledge, highlighted the gap in literature, and provided an overview of the thesis, chapter 2 is centred on studying the history of conscription to understand the role it plays in the militarisation of society. It highlighted the importance of social and historical factors contributing to militarism, so to understand the roots of the problem. Therefore, in order to understand the reality behind the issue, chapter 2 analysed the tools used throughout history by the military to convince the youth to be part of its mechanism. It suggested that conscription as empowered by concepts as citizenship, the myth of citizen-soldier, and nation-in-arms played a vital role in the militarisation of society.

Examining the tools used to convince people during the rise of conscription affords a comprehensive picture on why objectors refuse the conscription system. In this regard, one of the questions raised was that what are conscientious objectors refusing? To reach an answer, chapter 3 elaborated on resistance to forced recruitment and examined the crisis in the social legitimacy of the compulsory military service and the states' justifications of the obligation to die and kill. Therefore, the conflict between



the conscience and the law was the focus of this chapter. The chapter presented two findings.

First, it examined the classification of conscientious objection: religious-nonreligious conscientious objection, selective-universal conscientious objection, and alternative-absolute conscientious objection. The first finding of the chapter was that discrimination amongst objectors based on the nature of their motivation is forbidden. Ethical, humanitarian, and philosophical beliefs should be recognised as legitimate grounds for protection of the right to conscientious objection. Therefore, the right to conscientious objection needs to cover non-religious objectors (those objecting because of their political and non-religious belief,) selective objectors (those objecting to a specific war due to their critique of the state's current policy,) and absolutist objectors, (those who object taking any alternative service even if it is civil in nature as their objection does not only seek an exemption from the taking of arms, but also demands a change in the militarist and gendered implementations.)

Second, following such findings, the chapter argued that conscience is not only related to protecting individuals' inner convictions, but also to changing their social environments so that they can act in accordance with such inner convictions. The overlap between the conscience and the law and the sociological reasons behind both approval and refusal of the military service were the focus of this chapter. In this sense, the second finding of the chapter was that while conscientious objectors refuse the conscription system, they do not only ask for an exemption but aim at bringing about change. In these cases, their objection is an act of civil disobedience.

With a particular focus on gender issues, chapter 4 explored the social norms reinforcing militarism. It argued that antimilitarist critique of conscription requires an investigation into gender because "gender relations are deeply implicated in what is done to turn ordinary people into soldiers, and shape them up for fighting."<sup>1</sup> In other words, gender awareness constitutes the major pattern of the effectiveness of peace movements.<sup>2</sup> The chapter found that both women and men play the role attributed to them in the process of militarisation. The chapter also suggested that the desire to be

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<sup>1</sup> Cynthia Cockburn, 'War and Security, Women and Gender: An Overview of the Issues' (2013) 21 *Gender & Development* 433, 438.

<sup>2</sup> *ibid* 446.

the “heroes” and the “protectors” is the prominent reason behind men’s contribution to the war effort, while women’s contribution is being “supportive” girlfriends and “exalted” mothers.

Chapter 5 examined the position of conscientious objection at the international and the regional arena, with a particular focus on the European Human Rights Law and the United Nation Human Rights. This chapter aimed at providing international standards on the right to conscientious objection and attempted to reach an answer to the question of how does the international law approach the conflict between the individual conscience with the law that obliges military service? The findings of the chapter suggested that international documents recognise the right to conscientious objection and hold the view that the right to conscientious objection to military service is derived from the right to religion, conscience, and thought.

Part II of the research examined Turkey as a case study for three reasons. First, conscientious objection is a problematic topic which remains neglected. Second, since Turkey still adopts conscription and has a prominent military history, it constitutes a stimulating case for analysing the impacts of society’s cultural characteristics on the recognition of the right to conscientious objection, so to offer a socio-legal study. Third, examining the situation from the Turkish context in which women are not subjected to conscription, yet their objection is accepted as part of the movement shows the importance of including women to antimilitarist movements.

Chapter 6 focused on the role of the military in the Turkish politics and provided a historical background on the integration of the values of Turkish Armed Forces (TAF) into society. The chapter aimed at examining civil-military relations from sociological perspectives. In this context, the chapter examined the cultural tools used in the militarisation process and which granted the TAF a strong position in society. The findings of chapter 6 demonstrated that first, the lack of the legal recognition of the right to conscientious objection is a product of Turkey’s cultural characteristics. Second, the power of the TAF in politics declined. However, this cannot be considered as a demilitarisation attempt because militarism and masculinity still prevail.

Chapter 7 focused on the legal aspects of conscientious objection in Turkey. It analysed the domestic law pertaining to the compulsory military service and conscientious objection. It highlighted that Turkey does not have legislation, which protects objectors from arbitrary detention. It examined Article 318 of the Turkish Penal Code, which criminalises “alienating people from military service.” One of the themes emerged from the analysis of the two domestic cases was that domestic courts adopt a restrictive understanding of the right to conscientious objection and also narrow the scope of the right. Such a narrow reading of the right to conscientious objection limits the claims of conscientious objectors, whose understanding stems from international standards of the right. Finally, drawing on the revised ECtHR jurisprudence, the chapter showed that Turkey’s domestic law is incompatible with international standards and that the right to conscientious objection requires an explicit legal recognition.

Chapter 8 examined objection to military service and the demilitarisation attempts. It focused on sociological aspects of conscientious objection in Turkey. In order to provide a clear and a nuanced understanding of conscientious objection movement, the chapter offered empirical evidence and reflected the voices of the conscientious objectors by adopting interviews as a method of data collection. Since each objector has their own reasons and priorities, the research adopted semi-structured interviews. A number of themes emerged from the interviews’ analysis.

First, the findings of interviews supported one of the main arguments of chapter 3 that conscientious objection—in most cases—is an act of civil disobedience. The participants clearly showed that when objectors refuse to serve in the military, they make their point via symbolic acts such as publically declaring their objection, which mostly involves the act of protesting and burning their draft papers. Their acts aim at gaining the support of members of the public and raising awareness about militarism. Therefore, their objection is a public act like any other act of civil disobedience.

Second, the findings of the interviews showed that since militarism enjoys a dominant position in society, conscientious objectors in Turkey aim at bringing about a change in the militarist structure of society. Their reading of militarism does not only object war, the taking of weapons, or even the military as an institution, but also social

norms that normalise war and militarism.<sup>3</sup> Their main aim is to challenge the widespread understanding that “the military is a racial characteristic of Turks.” Objectors oppose the compulsory military service, which is seen as the highest duty of Turkish citizens and the first step towards gaining social status.<sup>4</sup> As a “regime of obedience,” militarism “subordinates citizens to the will of the state.” In this regards, anti-militarist movements refuse this subordination by *publicly* demanding freedom.<sup>5</sup>

In a nutshell, chapter 8 first found that the conscientious objection movement in Turkey does not only request the recognition of the right to conscientious objection, but also challenge the system. Second, the crucial point, which conscientious objectors oppose was the influence of militarism on society. Therefore, conscientious objection is an act of civil disobedience, which both women—though they are not subjected to conscription—and men commit to reverse militarism.

To sum up, the research adopted an inclusive definition of conscientious objection by drawing on the connection between gender and militarism and acknowledging the objection act as an act that goes beyond a personal demand for exemption from the military service. With a particular focus on Turkey, this thesis provided an empirical and a socio-legal analysis of the right to conscientious objection. It examined sociological factors bolstering conscription systems and argued that gender analysis is inevitable to understand and challenge the militarisation process.

## **9.2. The Original Contribution to Knowledge**

This research employed conscientious objection as a tool to examine the militarisation of society. It engaged with questions that investigate both the legal and the sociological aspects of the problem such as what are the social backgrounds of the lack of legal recognition?

The research contributed to literature theoretically and empirically. Theoretically, the

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<sup>3</sup> Nilgun Toker Kılınç, ‘The Morals and Politics of Conscientious Objection, Civil Disobedience and Anti-Militarism’ in Özgür Heval Çınar and Coşkun Üsterci (eds), *Conscientious objection: Resisting Militarized Society* (Zed Books 2009) 69.

<sup>4</sup> Coskun Usterci and Ugur Yorulmaz, ‘Conscientious Objection in Turkey’, *Conscientious Objection: Resisting Militarized Society*, London/New York: Zed Books (Zed Books 2009) 168.

<sup>5</sup> Toker Kılınç (n 3) 69–70.

main contribution to literature lies on the lack of a socio-legal analysis of conscientious objection. The research made an attempt to engage the law with the daily life and investigate a legal problem—the lack of explicit recognition of the right to conscientious objection—considering the historical and cultural reasons behind it. The research found that the cultural characteristics are the major factors behind the non-recognition of the right to conscientious objection in Turkey. The first part of the thesis examined the international and the regional law on the right to conscientious objection. This was done after a historical background to the rise of the conscription system and the sociological aspects of resistance to conscription were provided. The research concluded that the right to conscientious objection is a human right, and stems from the right to religion, conscience, and thought. It also highlighted that the implementation of this right differs at the national level.

Empirically, the research adopted a case study method. The second part of the thesis focused on the right to conscientious objection in Turkey. It followed the same structure with the first part and provided a historical and a cultural background when introducing the legal problem. This part adopted semi-structured interviews as opposed to the current legal scholarships on conscientious objection. It provided empirical evidence to the impacts of law on people. Therefore, the research not only added a socio-legal study to the literature, but also presented an empirical work on the legality of conscientious objection and civil-military relations in Turkey. It found that conscientious objection in Turkey is not only directed at gaining a personal exemption, but also achieving social change. Conscientious objectors in Turkey are absolutists and totalists.

### **9.3. Limitations of the Study and Future Recommendations**

Further research is needed on this topic to make the conscientious objection movement debatable in both academic and public spheres and also raise awareness on the subject matter. This research, which highlighted the necessity of conducting a socio-legal research on conscientious objection may be of interest to other researchers and attract their attention to socio-legal studies. It is essential to point out the possible niches for further research.

The present thesis engaged with major research questions and provided a nuanced understanding of conscientious objection, yet it did not touch on several issues. On the theoretical side, first, the research primarily focused on gender and heroism as primary tools of militarisation. However, it is important to scrutinise the role of nationalism in relation to the recognition of the right to conscientious objection. Therefore, although chapter 1 examined issues related to nationalism such as nation-in-arms, citizenship, patriotism, further research is required to draw the link between nationalism and military service.

Second, to explore the gendered dimensions of the military service, the research focused only on the exclusion of women from such a duty (see chapter 6.) Since women's active role in the military cannot be considered as a sign of less militarised-masculine societies, the main aim was not to include women in the army but to demonstrate how women as "the protected" and men as "the protector" maintained the system. It was beyond the scope of the present research to study women inside the military, yet it remains important to do so. Therefore, further comparative studies on women inside the military and the exclusion of women from the military service, are necessary. For example, the Israel Defence Forces (IDF), which conscripts women, can be one of the case studies to illustrate that including women in the army does not provide a less gendered army, and can also afford a picture of gendered implementations within the military.

Third, the research is intentionally limited to investigate resistance to the compulsory military service as an objection to militarism and gender roles during "peacetime." Therefore, it focused on absolute and total conscientious objectors. Although chapter 2 provided a brief analysis of selective objection and highlighted the importance of including selective objection in the definition of conscientious objection, a detailed analysis of selective objection remains essential. The IDF, for instance, can be an ideal case study to compare the absolute objection in Turkey with a selective objection, which rejects the occupation of Palestine.

Fourth, a detailed analysis of alternative conscientious would afford an opportunity to assess a possible change in Turkey. The questions that the chapter 3 raised merit further examination. The most prominent ones include: who should administer the alternative civilian service? What sort of alternative service is acceptable? In this

sense, Germany which first had recognised conscientious objection with an alternative service then abolished conscription, can be a potential case for examining the advantages and disadvantages of the recognition of conscientious objection with an alternative civil service. This will provide insights into the question of whether the recognition of the right to conscientious objection provides a solution to the problems associated with the lack of an explicit recognition of the right to conscientious objection in Turkey. In line with that, Germany as a case will also offer insights to evaluate the potential legal reforms regarding the recognition of the right to conscientious objection in Turkey.

On the empirical side, chapter 8, which analyses the interviews with the objectors, focused only on active conscientious objectors, those who mostly object because of their anarchist view. Although interviewing objectors, those who constitute the marginalised group, was vital to understand the major reasons for refusal, conducting interviews with mothers of martyrs and soldiers remain essential to the study of militarism in society.

To conclude, this research is limited to absolute and total objection in Turkey. Selective objector and alternative service were not examined in detail. These limitations of the research can be considered as a potential site for future studies on comparative studies, which examine the conscription systems and the recognition of the right to conscientious objection in other militaries such as the German Army and the IDF. In other words, the research contributed to central issues of social science such as antimilitarism and gender studies. However, comparative studies that include multiple case studies and provide a detailed examination of social movements towards forced recruitment are needed. Such case studies that consider many significant contextual and historical factors will offer a comprehensive understanding of why the particular recognition of the right to conscientious objection occurred as it did and whether this can be applied to Turkey's case. Therefore, a further study is required to add to the literature a comparative analysis of the right to conscientious objection in Turkey.

#### **9.4. Final Suggestions for Potential Legal Reforms**

The present research supports objectors' claim for a change and based on the findings of the interviews, it suggests two main recommendations for possible legal reforms in Turkey. Regarding the first recommendation, some reforms can be made to the current legal system that subjects objectors to a "fear" of repeated convictions. The abolition of Article 318 of Turkish Penal Code is necessary to protect objectors and their supporters from the risk of prosecutions. As for the second recommendation, an explicit recognition of the right to conscientious objection should be granted. The findings of interviews with conscientious objectors illustrated that conscientious objection in Turkey stems from the objector's political and humanitarian beliefs. Taken into account the typology of objection in Turkey, which is total and political, introducing a law that recognises ethical, humanitarian, philosophical, and political beliefs as legitimate grounds for objection is necessary. Such a reform will not contradict the Turkish Constitution, which protects the right to freedom of conscience. Furthermore, another finding emerged from the interviews is that most objectors are absolute objectors, which means they will not cooperate with a reform that requires an alternative service. That is to say, since most (active) objectors are absolutists who reject any form of service, an alternative service that is non-punitive and civil may be a solution only for those who are eager to cooperate. The absolutist objectors, however, will continue to object to the alternative service.

It is important to clarify that in the case of an explicit and an inclusive recognition of the right to conscientious objection that recognises absolute, total, and political forms of objection, the legal aspects of the matter will be solved, yet objectors will keep resisting the gendered and the militarist structures in other ways. That is to say, the legal recognition is required to bring an end to human rights violations, and this can be achieved via changing the social norms empowering militarism.



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