



## Ill-treatment of a person refusing to perform military service and claiming the status of conscientious objector

In today's **Chamber judgment**<sup>1</sup> in the case of **Enver Aydemir v. Turkey** (application no. 26012/11) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights.**

The case concerned Mr Aydemir's refusal to perform military service because of his religious beliefs, and also the subsequent proceedings against him, and his alleged ill-treatment on account of his refusal.

The Court found in particular that Mr Aydemir had been subjected to inhuman and degrading treatment in that he had been assaulted while in pre-trial detention on 24 and 25 December 2009, and had also been repeatedly prosecuted and convicted.

The Court also found that the authorities had not displayed the necessary diligence in conducting the investigation, since statements had been taken from Mr Aydemir more than a month after the events and the filing of his complaint, and the criminal proceedings instituted against the main perpetrators of the acts of violence were still pending some six years after the events.

The Court found that Mr Aydemir's objection to performing compulsory military service for the benefit of the secular Republic of Turkey did not fall within the scope of Article 9 (right to freedom of thought, conscience and religion) of the Convention, given that the arguments he had put forward for claiming the status of conscientious objector were not motivated by religious beliefs which were in serious and insurmountable conflict with his obligation to perform military service. The Court therefore rejected this complaint as being incompatible with the Convention in accordance with Article 35 § 3.

### Principal facts

The applicant, Enver Aydemir, is a Turkish national who was born in 1977 and lives in Istanbul (Turkey).

In 2007 Mr Aydemir declared himself to be a conscientious objector and refused to perform his military service. On 24 July 2007 he was taken by force to the Bilecik gendarmerie station, where he refused to put on military uniform and obey orders from his superior. On 31 July 2007 he was taken into pre-trial detention. On 3 August 2007 and 25 September 2007 two sets of criminal proceedings were instituted against him for persistent disobedience.

On 25 September 2007 Mr Aydemir was provisionally released but did not return to his regiment, thus becoming a deserter. On 24 December 2009 he was arrested and transferred to Maltepe military prison after the Military Court had ordered his pre-trial detention. According to Mr Aydemir, he was beaten by the prison warders and was also forced to undress and spend the night without

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

any bedding or clothes. On 25 December 2009 he was allegedly forced by five or six soldiers to put on military uniform and was subjected to various forms of ill-treatment when he refused to comply. On 30 December 2009 Mr Aydemir appeared before the Eskişehir Military Court, where he reiterated his refusal to perform military service and again declared himself to be a conscientious objector. On 2 August 2011 he was sentenced to a term of imprisonment for persistent disobedience, but the court decided to suspend the delivery of the judgment.

On 15 February 2010 a third set of criminal proceedings was instituted against him for desertion, committed between 6 October 2007 and 24 December 2009. On 5 July 2013 he was sentenced to 10 months' imprisonment for desertion, but his sentence was commuted to a fine. An appeal on points of law by Mr Aydemir is currently pending before the Military Court of Cassation.

On 7 June 2010 the Ankara Military Hospital diagnosed Mr Aydemir as having an "antisocial personality disorder" and declared him unfit for military service with effect from 30 March 2010. On 8 October 2010 the Military Court acquitted him of persistent disobedience following two further refusals.

In the meantime, on 28 December 2009 Mr Aydemir had filed a criminal complaint on account of the ill-treatment allegedly inflicted on him on 24 and 25 December 2009. Medical examinations revealed the presence of healed wounds on his body. A sergeant and the prison governor were charged with having punched and kicked Mr Aydemir on 24 and 25 December 2009, but the military prosecutor's office gave a decision not to prosecute in respect of the allegations that he had been forced to spend the night without any clothes or bedding. The case is currently pending before the Istanbul Criminal Court.

## Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of torture and inhuman or degrading treatment) of the Convention, Mr Aydemir complained that he had been repeatedly prosecuted and convicted because of his refusal to wear military uniform, and that he had been subjected to various forms of torture while in detention; he also complained that the investigation into his allegations had been deficient. In addition, relying on Article 9 (right to freedom of thought, conscience and religion), Mr Aydemir complained that he had been repeatedly detained, prosecuted and convicted because he had claimed the status of conscientious objector.

The application was lodged with the European Court of Human Rights on 21 January 2011.

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

Julia **Laffranque** (Estonia), *President*,  
Işıl **Karakaş** (Turkey),  
Paul **Lemmens** (Belgium),  
Valeriu **Griţco** (the Republic of Moldova),  
Ksenija **Turković** (Croatia),  
Stéphanie **Mourou-Vikström** (Monaco),  
Georges **Ravarani** (Luxembourg),

and also Stanley **Naismith**, *Section Registrar*.

## Decision of the Court

### [Article 3 \(prohibition of inhuman and degrading treatment\)](#)

The Court observed that in its decision of 14 March 2012 the Military Court had found it established that two military officers had committed acts of violence (several kicks and punches and a slap in the

face) against Mr Aydemir on 24 and 25 December 2009, and that he had also been forced to wear military uniform on 25 December. It noted, however, that the perpetrators had not been convicted, since the Military Court had declined jurisdiction and had referred the matter to the ordinary courts. The Court saw no reason to depart from the Military Court's findings and considered that the treatment to which Mr Aydemir had been subjected had undoubtedly been such as to arouse in him feelings of fear, anguish and inferiority capable of humiliating and debasing him and possibly breaking his physical and moral resistance. It further noted that several sets of criminal proceedings had been instituted against Mr Aydemir and considered that the cumulative effect of his criminal convictions was likely to repress his intellectual personality. In the Court's view, these aspects were sufficiently serious to render the treatment complained of inhuman and degrading.

As regards the effectiveness of the investigation, the Court noted that the authorities had conducted an investigation into the allegations of assault and that the military prosecutor's office had charged two military officers with acts of violence. However, the Court observed that the prosecutor's office had given a decision not to prosecute in respect of Mr Aydemir's allegations that he had been forced to undress and spend the night of 24 December 2009 without any clothes or bedding, and that it had declined jurisdiction to examine the complaint of insulting behaviour, finding that this was a matter for the disciplinary tribunal. The Court was therefore not satisfied that the authorities had displayed the necessary diligence in conducting the investigation, noting firstly that statements had not been taken from Mr Aydemir until 1 February 2010, more than a month after the events and the filing of his complaint, and that some six years after the events, the criminal proceedings instituted against the main perpetrators of the acts of violence were still pending.

The Court therefore concluded that there had been a violation of the substantive and procedural aspects of Article 3 of the Convention.

#### [Article 9 \(freedom of thought, conscience and religion\)](#)

The Court observed that in its judgment of 5 July 2013 the Military Court had found that Mr Aydemir's objection to performing military service was based on political grounds and not on religious beliefs which were in serious and insurmountable conflict with the obligation to perform military service; among other things, Mr Aydemir had argued in his defence submissions that he was unable to perform military service for the secular Republic of Turkey, but would be able to do so under a system based on the Koran and subject to its rules. The court had thus concluded that Mr Aydemir had not categorically refused to perform compulsory military service.

In the Court's view, the Military Court's reasoning did not appear irrelevant, seeing that it could legitimately be inferred from Mr Aydemir's position before the national authorities that he had not claimed either to hold the belief that all military service was to be opposed, or to support a pacifist and anti-militarist philosophy.

Although no definition of conscientious objection existed, the Court pointed out that the Human Rights Committee had held that conscientious objection was based on the right to freedom of thought, conscience and religion where this right was incompatible with the obligation to use "lethal force". Furthermore, the Court considered it legitimate to restrict conscientious objection to religious or other beliefs that included a firm, fixed and sincere objection to participation in war in any form or to the bearing of arms.

The Court was mindful of Mr Aydemir's beliefs concerning his objection to military service for the benefit of the secular Republic of Turkey, but observed that not all opinions or convictions fell within the scope of Article 9 § 1 of the Convention. It noted in particular that Mr Aydemir's complaints did not involve a form of manifestation of a religion or belief through worship, teaching, practice or observance within the meaning of Article 9 § 1. Accordingly, the Court concluded that Mr Aydemir's opposition to military service was not such as to entail the applicability of Article 9 of the Convention, and that the evidence before it did not suggest that his stated beliefs included a firm,

fixed and sincere objection to participation in war in any form or to the bearing of arms. Since it was not satisfied on that account that Mr Aydemir's objection to performing military service was motivated by sincere religious beliefs which were in serious and insurmountable conflict with his obligation to perform military service, the Court rejected his complaint under Article 9 of the Convention, holding that it was incompatible with the provisions of the Convention within the meaning of Article 35 § 3.

#### [Article 41 \(just satisfaction\)](#)

The Court held that Turkey was to pay Mr Aydemir 15,000 euros (EUR) in respect of non-pecuniary damage and EUR 3,000 in respect of costs and expenses.

*The judgment is available only in French.*

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#### **Press contacts**

[echrpess@echr.coe.int](mailto:echrpess@echr.coe.int) | tel.: +33 3 90 21 42 08

**Inci Ertekin (tel: + 33 3 90 21 55 30)**

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Nina Salomon (tel: + 33 3 90 21 49 79)

Denis Lambert (tel: + 33 3 90 21 41 09)

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