

Turkey: No impunity for state officials who violate human rights

Briefing on the Semdinli bombing investigation and trial

Amnesty International considers that the bombing of a bookshop in the southeast town of Semdinli on 9 November 2005 raises fundamental questions about human rights violations allegedly perpetrated by the Turkish security forces in the course of counter-terror operations; and that the incident casts serious doubts on the will of the Turkish authorities to ensure that allegations of grave human rights violations – in particular those allegedly committed by members of the security forces – are promptly, thoroughly and impartially investigated and the alleged perpetrators brought to justice.

On 9 November 2005, in the town of Semdinli in Hakkari province, southeast Turkey, a bookshop was bombed, killing one man and injuring others (see AI Index: EUR 44/033/2005). After their apprehension at the scene of the crime, it was revealed that two of the suspects were gendarmerie intelligence officers (JİT) and the alleged bomber a Kurdistan Workers' Party (PKK) informant (a former PKK member who was now working for gendarmie intelligence). In early March 2006, all three were charged in the Van Heavy Penal Court No. 3 on suspicion of 'undertaking activities aimed at destroying the unity of the state and the territorial integrity of the country' (Article 302 of the Turkish Penal Code) and 'forming a gang to do this' (Article 316), articles which fall under the Anti-Terror Law (3713). If convicted, the sentence is aggravated life imprisonment. A gendarmerie sergeant is being tried separately in the Hakkari Heavy Penal Court, accused of having used excessive force resulting in death when he allegedly opened fire on the assembled crowd during the Semdinli prosecutor's scene-of-crime investigation some hours after the bombing.

In the immediate aftermath of the Semdinli bombing and related incidents on 9 November 2005, the Turkish Prime Minister, Justice Minister and Interior Minister immediately expressed strong determination to uncover all dimensions of this incident and to expend every effort in bringing the perpetrators to justice, with Prime Minister Erdogan stating: "From wherever this comes, whoever did it, they will pay the price. No one should expect preferential treatment or protection from us; the judiciary will do its duty diligently."

Amnesty International is concerned that to date, in spite of such assurances by the Prime Minister, the criminal investigation into the bombing and its circumstances has been mired by the interference of senior government, state and military officials, and that the recent decision by the Higher Council of Judges and Prosecutors to dismiss from office the prosecutor who prepared the indictment constitutes a flagrant assault on the independence of the prosecution in Turkey today. The organization is seriously concerned that the impact of such interference may have a chilling effect on the proper administration of justice in this and any other similar cases.

The first trial hearing against three suspects begins in the Van Heavy Penal Court No. 3 on 4 May 2006. Amnesty International will be following the trial closely, and reminds the Turkish authorities of their obligation under international human rights law to ensure that perpetrators of human rights violations are brought to justice *whoever they may be*. Turkey has repeatedly been found in violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms by the European Court of Human Rights for failure to carry out effective investigations of violations allegedly perpetrated by members of the security forces, and it is time now for the Turkish authorities to ensure that the administration of justice in Turkey internalizes the principles of the Convention to which Turkey is a state party.

Prior to the first trial hearing, Amnesty International would like to raise a number of serious concerns about the investigation of the bombing and the responses to the investigation by senior government, state and military officials.

1) **Interference in the investigation:** After the 9 November bombing, a number of senior government and military officials made comments which Amnesty International regards as constituting direct interference in the course of the investigation of the incident. Among them, the Prime Minister made negative remarks regarding the credibility of witnesses to the incidents in Semdinli testifying on the events, and the Head of the Army publicly gave a positive character reference for one of the suspects. Amnesty International considers that judgements about the reliability of witnesses must be a matter for the court alone, and that discussions of the character of the accused must not be allowed to prejudice the course of the trial.

Amnesty International also notes that the General Chief of Staff made laudatory comments about the Head of the Army, while at the same time being responsible for a decision on whether or not the latter would be subject to an investigation by the military prosecutor on the basis of the information forwarded by the Van prosecutor (see the third concern). The Ministers of Justice and the Interior also commented publicly on the content of statements made by individuals interviewed by the Parliamentary Investigative Commission into the Semdinli incidents. One public official interviewed by the commission was subsequently removed from his position as Head of the Intelligence Bureau of the Security Directorate. Amnesty International is concerned that the Ministers' comments may have discouraged public officials from sharing information with the Commission and may have contributed to prejudicing the final – and inconclusive – results of the commission's investigation.

2) **Interference in the prosecution and independence of the judiciary:** Shortly after the 92-page indictment had been submitted to the panel of judges at the Van Heavy Penal Court for their approval in early March 2006, the content of the indictment became a subject of intense discussion between the government and the military, with the General Chief of Staff seeking extraordinary meetings with the Prime Minister and the President. Amnesty International considers that on the basis of these actions and public statements made by different parties, the content of the indictment was deemed unacceptable to some senior authorities even before the court – invested with the authority to accept or reject it – had made its decision. Amnesty International considers that the merits or deficiencies of an indictment prepared by a prosecutor should be a matter for the court alone to decide, and that the actions of the General

Chief of Staff constituted a direct interference in the proper role of the prosecution as well as in the independence of the judiciary.

3) Parallel system of justice and no investigation of the chain of command: In the indictment the Van prosecutor also recommended that allegations of the alleged involvement in the Semdinli case of the Head of the Army and three local senior members of security forces in the region (the Commander of the Hakkari Province Gendarmerie, the Commander of the Hakkari Mountain Commando Brigade and the Commander of the Van Law and Order Corps) be further investigated by the military prosecutor since, according to Turkish law, these issues fell outside the remit of a civilian prosecutor in the civilian Heavy Penal Court and were a matter for the military court. This exposed once more the parallel system of justice in Turkey in relation to serious human rights violations allegedly committed by military personnel, whereby it is senior military authorities who give permission for investigation and prosecution by military prosecutors and military courts. (Amnesty International notes that the ongoing trial of the two accused gendarmerie intelligence officers in a civilian Heavy Penal Court is an exceptional case.) Amnesty International's concern is that when there are allegations of serious human rights violations – including killings, torture, “disappearances” – by members of the security forces, their investigation should be led by civilian prosecutors, and trials against them should take place in civilian courts.

The impact of this parallel system of justice in the case of the Semdinli bombing has been to prevent investigation of the local chain of command within the security forces in Hakkari and Van provinces - irrespective of the allegations made against the Head of the Army - since the General Chief of Staff did not authorize an investigation by the military prosecutor into whether or not they could be held responsible for the incidents in their capacity as senior personnel. By limiting the avenues of investigation to just two members of the security forces (plus an informer), there is a risk that a number of major questions may remain unanswered. Investigation of whether there was a chain of command responsible for the incidents would answer the questions of whether the Semdinli bombing was part of a wider conspiracy or even an official policy to carry out such bombings as part of a counter-terrorism operation.

Amnesty International is concerned that the effect of this system of investigation into serious human rights violations only taking place if authorized by senior military personnel can prevent investigation into chain of command responsibility.

4) The Higher Council for Judges and Prosecutors: a threat to the independence of the prosecution: After the Van public prosecutor had submitted the indictment to the court and its contents were publicly known via the press, the Minister of Justice authorized Ministry inspectors to investigate the prosecutor for possible misconduct. Subsequent to their recommendation that he receive a disciplinary sanction, the Higher Council for Judges and Prosecutors, which is under the remit of the Ministry, took a decision to dismiss him from exercising his profession as a prosecutor or as a lawyer. This decision is subject to an appeal to the Higher Council, and the Higher Council makes the final decision. Amnesty International considers the dismissal of the prosecutor a direct assault on the independence of the prosecution. Amnesty International considers that the Turkish authorities have failed to take account of the UN Guidelines on the Role of Prosecutors prepared by the UN Office of the High Commissioner for Human Rights which state that:

“States must ensure that prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability.” (para 4);

Furthermore, the Guidelines state that prosecutors have a duty to,

“Protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect;” (para 13b);

and that ,”Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offences.” (para 15).

Amnesty International also notes that another prosecutor has been punished in similar circumstances in Turkey: his dismissal, too, followed an attempt to indict a senior member of the military (former General Chief of Staff Kenan Evren in relation to the 12 September 1980 military coup). The organization also notes that the failure of countless prosecutors to address allegations of the most serious human rights violations – extrajudicial killings, torture, “disappearances” – have resulted in neither disciplinary nor criminal sanctions against them.

5) The need for an independent commission of inquiry into the Semdinli incidents: Given the serious allegations of direct official involvement in the events of 9 November in Semdinli and the questions raised thereof, Amnesty International called upon the government of Turkey to establish an *independent commission of inquiry*, (AI Index: EUR 44/033/2005), conducted in accordance with the UN Principles on the Effective Investigation of Extra-Legal, Arbitrary and Summary Executions. On the eve of the trial, Amnesty International renews its call on the government to establish such a commission. Particular attention is drawn to articles which emphasize ‘thorough, prompt and impartial investigation’ (article 9), by an investigative authority with ‘the power to obtain all the information necessary to the inquiry’, ‘the authority to oblige officials allegedly involved in any such executions to appear and testify’ and entitlement ‘to issue summonses to witnesses, including the officials allegedly involved and to demand the production of evidence’ (article 10). A further article is of particular relevance in this situation and provides that:

“In cases in which the established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons, Governments shall pursue investigations through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of the inquiry. The commission shall have the authority to obtain all information necessary to the

inquiry and shall conduct the inquiry as provided for under these Principles.”
(Article 11).

On 23 November, on the initiative of the Prime Minister, the Grand National Assembly of Turkey (the parliament) voted to establish a parliamentary investigative commission on the Semdinli incidents. Amnesty International is of the view that the setting up of the Parliamentary Investigative Commission did not comply with the UN Principles on the Effective Investigation of Extra-Legal, Arbitrary and Summary Executions, since the Commission lacked the necessary powers and authority to investigate.

Indeed, Amnesty International notes that the Republican People’s Party (CHP) member of parliament for Hakkari, Esat Canan, who was himself a witness to the incident in Semdinli during which the crowd was fired upon, raised serious concerns about the capacity of such a parliamentary investigative commission to conduct a full inquiry into the Semdinli incidents on the basis of the restrictions on the authority of such commissions laid out in the statute regulating their establishment and powers. Esat Canan called for the statute to be amended so that the article restricting such commissions from investigating issues pertaining to ‘state security and state secrets’ be repealed. No such measure was taken, however.

In April 2006 the Parliamentary Investigative Commission on Semdinli reported that it had failed to reach conclusions on the Semdinli incidents, stating that “some information needed to elucidate the incidents was not made available to it by the [Hakkari] Provincial Gendarmerie Command on the grounds that it pertained to state secrets; that not all the incidents were perpetrated by the PKK, that the footprints of a dog and a horse were mixed up [a saying indicating here that the evidence was confusing], that for this reason it had not been possible to assess where the incidents led”. The commission therefore left conclusions to the verdict of the court.

Recommendations to the Turkish authorities

Amnesty International calls on the Turkish authorities:

- To ensure that all human rights violations are promptly, thoroughly and impartially investigated
- To ensure the independence of the prosecution and the judiciary
- To ensure that no pressure is brought to bear on the court before which the three suspects accused of the Semdinli bombing are being tried
- To ensure an end to impunity for alleged perpetrators of human rights violations
- To ensure that all investigations into allegations of serious human rights violations committed by military and security personnel are led by civilian authorities and their trials take place in civilian courts
- To establish an independent commission of inquiry into the bombing incident and into the full circumstances surrounding it.