

Turkey

Memorandum to the Turkish Government

Introduction

After elections in July last year, the government restated its commitment to further legislative reform and advancing guarantees of human rights and freedoms. Amnesty International welcomes this statement of intent and recognizes the steps taken by the previous government to improve human rights standards in Turkey. However, in 2007 human rights suffered a regression. Violations of human rights increased and measures to combat them remained insufficient. Amnesty International believes that the current government must take action on the following issues, in accordance with the recommendations below, in order to achieve lasting, substantive improvements. In addition to implementing current legal reforms, urgent legislative reform must be adopted and the opportunity of the drafting of a new constitution to advance the protection of fundamental rights and freedoms for all must not be missed.

Torture, ill-treatment and impunity

Amnesty International is pleased that the current government has restated its policy of “zero tolerance for torture”. Advances were made by the previous government. The Turkish Penal Code, updated in 2005, increased the penalties for torture and ill-treatment and increased the statute of limitations. Measures to protect those in detention were introduced. Undoubtedly as a result of this, the numbers of cases of torture and ill-treatment in official places of detention have fallen.

The decision of the Supreme Court of Appeals in the case of Birtan Altınbaş also represents a legal landmark after countless delays in a trial lasting nine years. Four police officers will now finally be punished for the death under torture of Birtan Altınbaş while in custody in Ankara in 1991. The fact that the sentences have been

approved represents an important judgment in the fight against impunity.

In addition to these advances, however, there have also been setbacks. In prosecutions of torture and ill-treatment, independent medical reports have rarely been accepted by courts and the decision to set up a judicial police force, required under the Code of Criminal Procedures, has not been implemented. June 2006 revisions to the Law to Fight Terrorism allowed a delay of 24 hours in a detainee's right to legal counsel. The law also gave security forces the right to use lethal force "directly and unhesitatingly" in operations against "terrorist organizations".

Likewise, in June 2007 amendments to the Law on Powers and Duties of Police that gave police widespread powers of stop and search, additionally gave police increased authority in the use of lethal weapons. The law allows police officers to shoot escaping suspects in the event that a warning to stop is not obeyed. While the law requires that use of weapons be proportional, required proportionality in the use of lethal weapons in the law is descriptive rather than prescriptive. The law as it currently stands does not meet international standards on the use of firearms by law enforcement officers.

Despite the overall reduction in the number of cases of torture or other ill-treatment reported in police custody, instances of torture or other ill-treatment outside official places of detention, at demonstrations, in prisons and during prisoner transfer continued. There has been a lack of independent and effective investigation of allegations and in too many cases prosecutions of those responsible have not followed.

Muammer Öz has told Amnesty International that on 29 July 2007 he was subjected to ill-treatment by police. Muammer Öz, a lawyer, was in the district of Moda in Istanbul with family members when he was approached by police officers and asked for his identity card. He was beaten by two police officers on the street and then in a police car while being taken to the police station. A medical examination was conducted in the presence of police and did not record the fact that his nose was broken, although this was noted

in a subsequent independent medical report. Muammer Öz issued a complaint with the assistance of the Istanbul Bar Association. Initially, the Istanbul Governor's Office refused permission for either an administrative inquiry or a criminal inquiry into the conduct of the police officers and a statement released by the Istanbul Security Directorate stated that Muammer Öz sustained his injuries when he fell in an attempt to escape from the police. Despite this, a case has now been opened against the two police officers involved.

Nigerian asylum-seeker Festus Okey died in August 2007 after being shot with a police handgun while being held in police detention. Although a police officer has been charged with intentional killing, many questions remain. It is apparent that no recording was made during the course of the questioning and important evidence, namely the shirt worn by Festus Okey at the time of the shooting, has also apparently been lost by police officers. Ten people died during violent demonstrations centring on Diyarbakır in March 2006, and numerous allegations of torture or other ill-treatment have been made afterwards. According to an Amnesty International delegate who interviewed children who were detained, the claims were consistent and credible. Yet, more than 21 months after the events the only prosecution has been a case against 463 individuals for damage caused during the demonstrations. Not a single prosecution has been launched against law enforcement officers.

Amnesty International urges the government to take concrete steps in order to combat the impunity of state officials for grave human rights violations. The following steps would, if implemented, be significant moves towards eroding such impunity:

Centralize and improve data collection on serious abuses of human rights by law enforcement officers in order to obtain a clear picture of the operation of the law.

Enhance preventative mechanisms

ratify the Optional Protocol to the Convention against Torture; implement it by creating independent national

monitoring mechanisms to carry out regular and unannounced visits to all places of detention;
introduce video and audio recording of all interviews of suspects in police and gendarmerie custody.

Ensure prompt, independent, impartial and thorough investigations of all allegations of human rights violations by members of the security forces

develop an effective complaints mechanism;
ensure that prosecutors investigate the responsibility of commanding officers;
suspend from active duty officers under investigation for human rights violations and ensure their dismissal if convicted;
ensure compensation for and rehabilitation of victims of human rights violations.

Address flawed trial proceedings

ensure that trial proceedings are impartial and fair;
end prolonged delays in trial proceedings.

Legal reform

prevent a return to incommunicado detention by repealing revised Article 10b of the Law to Fight Terrorism;
revise Appendix Article 2 of the Law to Fight Terrorism and Article 4 of the Law amending the Law on the Duties and Powers of Police to ensure that the use of lethal force by law enforcement officials complies with international standards;
repeal the statute of limitations for the crime of torture.

Improve medical reporting and forensics

make the Forensic Medical Institute independent of the Ministry of Justice;
promote the acceptance as evidence by courts of medical and psychiatric reports from independent expert bodies;

take urgent steps to ensure that medical examinations of all detainees are carried out thoroughly, independently and impartially.

Fair Trial Concerns

Amnesty International has long held concerns over violations to the right to fair trial especially for those prosecuted under anti-terrorism laws. In protracted and unfair trials, statements allegedly extracted under torture continue to be used as evidence.

In June 2007, Mehmet Desde and seven others were convicted on the basis of unproven allegations of connections to the Bolshevik Party (North Kurdistan/Turkey). The party has not used or advocated violence. The conviction of Mehmet Desde was based mainly on statements that were allegedly extracted under torture.

Since December 2006 Selahattin Ökten has remained in pre-trial detention on the basis of a single piece of evidence that was allegedly extracted under torture and has since been retracted. He is charged with undertaking armed actions for the Kurdistan Workers Party (PKK).

Amnesty International urges the government to take action to:

End all use of evidence extracted under torture or other ill-treatment in court

- ensure that the courts investigate all allegations that evidence has been obtained by torture or other ill-treatment;
- ensure that any evidence elicited as a result of torture or other ill-treatment is excluded at trial in compliance with Article 148(1) of the Turkish Criminal Procedure Code and Article 15 of the UN Convention against Torture;
- review all pending criminal proceedings to determine all cases where there are allegations that statements by defendants or witnesses were illegally extracted through torture or other ill-treatment;

- drop all pending criminal cases where the main evidence against the defendant rests on "confession"-based evidence alleged to have been illegally extracted through torture or other ill-treatment.

Ban incommunicado detention

- incommunicado detention should not be allowed under any circumstances, particularly as it often facilitates the use of torture or other ill-treatment.

Ensure the principle of "equality of arms" and the right to an effective defence

Ensure that prosecution and defence are treated before the courts in a way that gives them a procedurally equal position during the course of the trial and an equal position to make their case ("equality of arms"). This includes ensuring the right to adequate time and facilities to prepare a defence. In particular:

- repeal further June 2006 amendments to the Law to Fight Terrorism (Articles 9(d) and 9(e) of Law 5532) limiting the right to an effective defence and imposing restrictions on the right to confidential meetings between lawyer and client;
- take measures to ensure that, where necessary, defendants enjoy the right to be assisted by qualified interpreters at all stages in the investigation and during court hearings;
- ensure the defendant's right to call and examine witnesses. In particular, take steps to end the practice of courts ruling arbitrarily to reject legitimate requests by defence lawyers for prosecution witnesses (and defence witnesses) to be brought to court to testify and to be cross-examined;
- ensure that the prosecutor is not seated with the judges but on a par with the defence.

End prolonged pre-trial detention and protracted criminal proceedings

- ensure respect for the rights of all persons charged with a criminal offence to trial without undue delay;
- ensure that all persons detained pending completion of criminal proceedings are tried within a reasonable time, or

released pending trial if the time deemed reasonable in the circumstances is exceeded.

Address failure of courts to conduct thorough and impartial retrials after European Court of Human Rights rulings

- ensure that a thorough and impartial retrial takes place, including *de novo* examination of all evidence and its application to law, and recall of all witnesses to testify and to be cross-examined by both prosecution and defence;
- consistent with respect for the right to the presumption of innocence, ensure that persons awaiting retrial on criminal charges are not automatically detained;
- take steps to allow all cases, in which the European Court of Human Rights finds a violation of fair trial principles, the right to retrial in Turkey, lifting the present denial of retrial to those whose cases were pending at the Court on 4 February 2003.

Human Rights Defenders

Amnesty International is concerned that unacceptable hurdles are placed in the way of human rights defenders. These obstacles include prosecution under various pieces of legislation, with some prominent human rights defenders in particular subjected to a huge number of prosecutions. Human rights defenders have also been subjected to threats and intimidation from lawyers, police and security forces; surveillance; restrictions on freedom of movement and freedom to carry out investigations; imprisonment and killings. Requests by non-governmental organizations for meetings have been ignored by the government and attempts have been made to close down organizations. The worsening situation has been compounded by official statements that have been viewed as further undermining the position of human rights defenders.

Most recently, in an action that threatens the rights of freedom of expression and association, attempts have been made by the Istanbul Governor's office to close the gay, lesbian, bisexual and transgendered people's association Lambda Istanbul. The

governor's office justifies the prosecution on the grounds that the organization "violates law and morals". The next hearing is scheduled for 31 January 2008.

Steps need to be taken to ensure that state officials recognize the legitimacy of the work of human rights defenders. Sanctions should be taken against state officials who abuse the judicial system and/or the governmental administrative system with the intention of harassing such defenders or curtailing their legitimate work. The government should also ensure that human rights defenders are not prosecuted for exercising their rights to freedom of expression, association and assembly. All outstanding prosecutions for acts protected under international standards should be halted. Any future investigations launched against human rights defenders should be monitored by the government. Protecting the work of human rights defenders will contribute to the implementation of legal reforms.

Human rights defenders have a right to the protection of the state, like any other citizen. The failure to prevent the murder in 2007 of human rights defender and journalist Hrant Dink and the subsequent flaws in the investigation must not be repeated. Hrant Dink had reported threats to his life to the Public Prosecutor in Şişli. According to the indictment in the murder trial, one of the defendants also acted as a police informer and told the police of the plans to assassinate Hrant Dink numerous times in the months before the murder took place. Nevertheless, steps were not taken to ensure protection. Subsequent to the murder, the statement by the Istanbul Police Chief that the killing was the act of a gunman working alone and the actions of military police in posing with the alleged killer in photographs as if he was a "hero" illustrate an official reluctance to examine the full scope of the crime and contribute to the perception that sections of the law enforcement agencies may be biased. The scope of the investigation must be widened to examine the culpability of the police authorities and the military police.

Freedom of Expression

There are numerous cases where individuals continue to be prosecuted for the peaceful expression of their non-violent opinion demonstrating that the right to freedom of expression is regularly violated in Turkey. This is due both to the existence of flawed legislation in some cases and to the arbitrary implementation of the law by judges and prosecutors. The government must take urgent steps to address both of these areas.

Amnesty International has repeatedly called for Article 301 of the Turkish Penal Code to be abolished on the grounds that it poses a grave threat to freedom of expression due to the fact that it is worded in broad and vague terms. Amnesty International is concerned that the number of cases opened under this article appears to have increased in 2007.

Foreign Minister Ali Babacan has acknowledged that restrictions to freedom of expression go far beyond Article 301 and that many more articles require revision.¹ Several articles in particular must be made priorities for amendment:

Article 216 prohibits inciting the population to enmity or hatred and denigration. While Amnesty International recognizes that states are authorized to prohibit advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, this article is formulated more broadly than the relevant provisions in international human rights law, and has been applied extensively in particular to prosecute dissenting opinions and to stifle opposition voices.

Article 7 of the Law to Fight Terrorism criminalizes making propaganda for a terrorist organization or for its aims. Under international standards, the permissible imposition of lawful restrictions on the exercise of the right to freedom of expression on grounds such as national security and public order must be demonstrated in every case to be necessary and proportional. Under this law also the peaceful expression of non-violent dissenting opinions has been criminalized.

¹ *Radikal* "TCK 301, 404 gibi yapıştı" 7 November 2007

Refugees and asylum-seekers

Amnesty international is concerned that refugees and asylum-seekers are being forcibly returned to countries where they may be in danger of serious human rights violations, in breach of the international law principle of *non-refoulement* and contrary to Turkey's obligations under international various international treaties, including the Convention against Torture, as well as the European Convention on Human Rights. Amnesty International is also concerned that asylum-seekers are not being allowed access to a fair and effective procedure to determine their status as refugees.

Iranian nationals, Ayoub Parniyani, his wife Aysha Khaeirzade and their son Komaz Parniyani were, in October 2007, reportedly forcibly returned to Iraq where due to the human rights situation there, their lives could be at risk. This was in spite of the fact that the family members were recognized as refugees by the United Nations High Commissioner for Refugees (UNHCR) office in Ankara in 2003 and were entitled to international protection: as such, they should not have been forcibly returned. Their deportation follows that of five recognized Iranian refugees who were forcibly returned to northern Iraq in August. According to the UNHCR the five were detained for a month after being returned. The incidents illustrate a pattern of forced returns from Turkey of refugees recognized under UNHCR's mandate.

In July 135 Iraqis were returned to Iraq after being refused the right to seek asylum. Amnesty International opposes all returns to Iraq due to the extreme violence and instability as well as widespread human rights abuses in the country.² Many Iraqi civilians have been killed by armed groups, coalition forces or armed criminal gangs in different parts of the country, including the north.

Such returns that threaten the life, freedom or physical integrity of those forcibly returned constitute a flagrant violation of Turkey's

² See Amnesty International's report *Millions in flight: the Iraqi refugee crisis* (AI Index: MDE 14/041/2007, 24 September 2007).

obligations under the principle of *non-refoulement*. Turkey must not return refugees or those whose status as refugees has not been effectively determined. The government should take concrete steps to implement a fair and effective national asylum procedure and allow refugees to be integrated in Turkey in line with international standards. Until such a procedure is legislated for and implemented, Turkey must fully respect the rights of asylum-seekers and refugees, including respecting refugee status determination procedures conducted by the UNHCR, allowing recognized refugees to be resettled, and respecting the principle of *non-refoulement*.

Conscientious Objection

Amnesty International is concerned that Turkey does not recognize the right to conscientious objection and that no civilian alternative is available to compulsory military service. Conscientious objectors continue to be repeatedly prosecuted and often imprisoned each time they refuse to perform military service and then served with call-up papers on their release.

The April 2006 judgment of the European Court of Human Rights in the *Ülke* case, that found this practice of repeated prosecutions and convictions to be a violation of the Article 3 prohibition of degrading treatment, has not been implemented. Osman Murat Ülke has again been summoned to present himself to serve the remainder of a sentence for a previous conviction related to his refusal, on the grounds of conscience, to perform military service.

On 4 October 2007 Enver Aydemir was brought before a military court for refusing to perform military service. He was released by the court on the condition that he presents himself to the military authorities to perform military service. He remains adamant that he will not perform military service.

Turkey should display its willingness to recognize the right to conscientious objection by not pursuing further charges against Enver Aydemir. Turkey must also implement the *Ülke* judgment as required by the Committee of Ministers in their recent Interim

Resolution.³ At a previous Committee of Ministers meeting in June 2006 the Turkish delegation stated that a draft law was being prepared that would put an end to the violation found in the *Ülke* case. The government should confirm that this law is being drafted and without delay make it available for public consultation.

Most fundamentally, the government must institute laws that recognize and guarantee the right to conscientious objection and provide for a genuinely civilian alternative to military service that is not punitive in length.

“F-Type” prisons

Introduced in 2000, “F-Type” prisons have been used to incarcerate high security prisoners in a cell-based system that replaced dormitory-based prisons. Amnesty International has long held concerns regarding the “F-Type” prison regime, and in particular, harsh and arbitrary disciplinary punishments and isolation of prisoners.

In January 2007 the government published Circular 45/1, a document that addressed concerns that prisoners were being held in isolation and unable to associate with other prisoners. However, while the circular states that prisoners should be able to hold meetings with other prisoners for up to 10 hours per week, its implementation has differed from one prison to another and many prisoners have not been allowed to associate with each other to the extent required in the circular.

Amnesty International calls on the government to discontinue the use of solitary confinement and small-group isolation as a punishment for prisoners and to increase the hours of association in line with international standards. As a first step, the government should take measures to ensure the full implementation of the circular; investigate the reasons for its apparent non-implementation in some prisons; and address the causes of the non-implementation, be they logistical or resource based

³ Resolution CM/ResDH(2007)109 adopted by the Committee of Ministers on 17 October 2007 at the 1007th meeting of the Ministers’ Deputies.

Killings in disputed circumstances

Amnesty International is concerned by reports of killings of civilians by security forces which often demonstrate a disproportionate use of force and in some cases may amount to extrajudicial executions. Investigations have been compromised by being carried out in secret and without notification to the families, and because in a number of cases evidence has been lost by law enforcement officials. The killing of Bülent Karataş, apparently shot by military police officers for not obeying a stop warning, is particularly disturbing given that the account of the incident given by Rıza Çiçek differs greatly from that offered by the soldiers. Rıza Çiçek, who was severely wounded, claimed that the two men were first told by the military police officers to remove their clothes before shots were fired. The incident occurred in the Hozat province of Tunceli on 27 September 2007.

Also of grave concern is the shooting of Ejder Demir on 13 September 2007 in Van's Özalp province. According to research conducted by Mazlumder and the Human Rights Association (İHD), Ejder Demir had been the subject of threats to his life by military police in the days before the incident took place. Testimony given by villagers alleged that on 13 September a group of military police, in plain clothes and in a civilian vehicle, entered the village of Yukarı Koçkiran looking for Ejder Demir. Claims that Ejder Demir was shot in the back are corroborated by the autopsy report. Furthermore, according to the statements, villagers were prevented from assisting Ejder Demir by military police officers firing randomly into the air.

Amnesty International calls on the government to ensure that any use of lethal force upholds the principles of necessity and proportionality and is only applied within the parameters of international standards, including the United Nations Basic Principles on the use of Force and Firearms by Law Enforcement Officials. All reported shootings and killings by law enforcement officers must be investigated thoroughly, promptly, independently and impartially.

Violence against women

Amnesty International is concerned that inadequate measures are taken to prevent violence against women. While efforts have been made to increase the number of shelters available to women who have been subjected to domestic violence, Amnesty International is concerned that the figure is well below the number required under the 2004 Law on Municipalities and that far greater action is required. There is also concern that the emergency helpline established by the prime ministerial circular in July 2006 has not been established. Amnesty International calls on the government to provide reliable centralized statistics regarding cases of violence against women and to implement the prime ministerial circular and the 2004 Law on Municipalities.

