

TURKEY

Abdullah Öcalan's detention and trial must conform to international standards

On 23 February 1999 the Secretary General of Amnesty International, Pierre Sané, wrote to the Prime Minister of Turkey, Bülent Ecevit, to express the organization's concerns in the case of Abdullah Öcalan, the arrested leader of the outlawed Kurdish Workers' Party (PKK). At the time of writing, Abdullah Öcalan was being held in isolation on an island prison near Istanbul and had been denied access to legal counsel (access was finally granted on 25 February). He is charged with treason under Article 125 of the Turkish Penal Code, a charge that may carry the death penalty. This is the full text of Amnesty International's letter:

23 February 1999

Dear Prime Minister,

While Abdullah Öcalan was still in Italy, Amnesty International made clear its belief that Abdullah Öcalan should face a court of justice to determine his guilt or innocence in the thousands of killings of civilians and prisoners committed by the Kurdish Workers' Party under his leadership, since its foundation in 1978. He is now to be tried in Turkey. You have given public assurances that Abdullah Öcalan will receive a fair trial. In a case in which the emotions of so many people are so strongly engaged it is indeed essential that the judicial authorities take the utmost care to observe universally recognized standards of justice.

Appeals that Abdullah Öcalan should have a fair trial have also been made by the UN Commissioner for Human Rights, and by the European Union. Turkish authorities have expressed impatience at such appeals, but they are being made because Abdullah Öcalan's right to a fair trial has already been violated. Fair trial concerns begins at the moment of arrest (in this case, an arrest which was apparently not lawful), and continues throughout the preliminary investigation. During this period, a detainee should be given access to legal counsel. The UN Special Rapporteur on torture has stated quite categorically that incommunicado detention should be abolished. Turkey's Criminal Procedure Code, which permits four days' incommunicado detention, threatens a detainee's right to a completely fair trial as well as exposing them to risk of ill-treatment or torture. More than seven days have passed since Abdullah Öcalan was taken into custody, yet to Amnesty International's knowledge he has still not had access to a lawyer. This undermines confidence that standards of justice will be respected during the later stages of the trial.

The world will use international human rights standards to judge the fairness or otherwise of the trial which Abdullah Öcalan is to face. These standards are not foreign prescriptions, inappropriate to the Turkish situation, but were composed with the participation and approval of Turkish governments. Those in the form of treaties were freely ratified by the Turkish parliament, and under Article 90 of the Turkish Constitution, form an integral part of Turkish domestic law.

Everyone facing a criminal charge has the right to assistance of legal counsel (Principle 1 of the UN Basic Principles on the Role of Lawyers; Principle 17 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment) - a competent and effective lawyer *of their choice*. The UN Human Rights Committee has stressed that "all persons must have immediate access to counsel". The defendant must be permitted to communicate with the lawyer in confidence - within sight but not within the hearing, of law enforcement officials. There must be no interception of written or oral communications between the accused and their lawyer.

Lawyers representing Abdullah Öcalan should be free from intimidation or improper interference in their professional duties. Principle 18 of the UN Basic Principles on the Role of Lawyers states that lawyers should not be identified with their clients or their clients' causes as a result of defending them. The Turkish Government should make publicly clear, in order to ensure the personal safety of lawyers acting for Abdullah Öcalan, that he has a right to defence counsel, that any lawyer appointed is duty-bound to defend him and must carry out their duties to the very best of their ability.

The accused has the right to be brought *promptly* before a judge. The UN Human Rights Committee has stated that "delays should not exceed a few days" and questioned whether 48 hours before being brought before a judge is not unreasonably long. The European Court has ruled that detaining a person for four days and six hours before bringing him before a judge was not prompt access. More than seven days elapsed before Abdullah Öcalan was brought before a judge.

It has been announced that the indictment against Abdullah Öcalan will be prepared by 25 March, and that the hearings will begin in early April. Long delays in opening a trial may indeed affect the fairness of a trial, but Article 6(3)(b) of the European Convention requires that the accused should have "adequate time and facilities for the preparation of his defence". The amount of time necessary depends on the complexity of the case, but the court should consider very seriously any requests from the accused for adjournment on the grounds of insufficient time to prepare. In any case, the timetable of the court should not be driven by external considerations such as an election date.

The right to adequate facilities for defence includes the right of the accused to obtain the opinion of independent experts.

No statements taken from the defendant or witnesses under coercion should be accepted by the court. The court has a duty to investigate any allegations that statements have been extracted under torture. Statements shown to have been taken under torture may not be used in court other than as evidence in a trial against the torturers. State Security Court prosecutors and judges as a group have failed badly in their duty to be vigilant for signs of torture, and to order investigations whenever there is a complaint of torture or indications that torture may have occurred. Many victims who report to State Security Courts that they have been tortured are treated with insouciance or irritation. It is almost unheard of for State Security Court judges to initiate investigations of torture, as it is their duty to do.

Prisoners have the right to humane conditions of detention, including access to food, washing and sanitary facilities, bedding, clothing, medical care, access to natural light, recreation, physical access and communication with others inside the prison and outside, including family and friends. Abdullah Öcalan should not be held in prolonged solitary confinement or in small-group isolation, which may amount to cruel, inhuman or degrading treatment.

Prisoners in pre-trial detention have the right to wear their own clothing or prison clothing which is different from that of convicted prisoners. They have the right to wear civilian clothing in good condition for court appearances. Rule 33 of the UN Standard Minimum Rules requires that restraints such as handcuffs should be removed when a detainee appears before a court, since they may have a bearing on the presumption of innocence.

An accused person has a right to trial before a manifestly competent, independent and impartial tribunal. Abdullah Öcalan is reportedly to be tried under the rules of a State Security Court. Amnesty International has a number of reservations concerning the independence of State Security Courts and about their conduct of trials.

Amnesty International is not convinced of the need in Turkey for a special class of tribunal to try political crimes. The UN Working Group on Arbitrary Detention has stated that: "one of the most serious causes of arbitrary detention is the existence of special courts, military or otherwise, regardless of what they are called. Even if such courts are not themselves prohibited by the International Covenant on Civil and Political Rights, the Working Group has none the less found by experience that virtually none of them respects the guarantees of the right to a fair trial enshrined in the Universal Declaration of Human Rights and the said Covenant."

One of the three State Security Court judges, and often the prosecutor, is a serving soldier. It is clearly far from satisfactory for a civilian on trial for his life, and who has been in bloody conflict with the Turkish armed forces for at least 15 years, to be tried by a semi-military tribunal, particularly in view of the rulings of the European Court of Human Rights in the case of *Incal v Turkey* that “because one of the judges of the Izmir State Security Court was a military judge, it might allow itself to be unduly influenced by considerations which had nothing to do with the nature of the case. The Court of Cassation was unable to dispel these concerns as it did not have full jurisdiction. In conclusion, the applicant had legitimate cause to doubt the impartiality of Izmir State Security Court.” In admitting the case of *Ciraklar v Turkey*, the European Human Rights Commission stated that the State Security Court’s “lack of independence and impartiality has been established.”

There are also question-marks over the independence of the civilian judiciary - as several high-ranking Turkish jurists have recently affirmed. Doubts stem from the make-up of the ruling body of the judiciary, the Supreme Council of Judges and Prosecutors, which appoints, transfers, promotes, disciplines and dismisses judges. The Council, as established by the 1982 Constitution, fails satisfactorily to separate the powers of the judiciary and the executive. It is chaired by the Minister of Justice, a Ministry of Justice Undersecretary and five judges selected by the President (under the 1961 Constitution, members of the Council were selected by a vote of appeal court judges). Decisions of the Council are not open to judicial review. Discussion within the Turkish Government about possible changes to the Supreme Council of Judges and Prosecutors suggests that the government too is aware that it is far from satisfactory. Judges appointed to try this case must be impartial. The UN Human Rights Committee has stated that impartiality “implies that judges must not harbour preconceptions about the matter put before them,” They must make their decision solely on the evidence presented to them.

An essential criterion of a fair hearing is the principle of “equality of arms”. This means that both the prosecution and the defence must be treated in a manner ensuring that they have procedurally equal positions during the course of the trial, and are in an equal position to make their case. Amnesty International’s observation of many trials in Turkey leads it to believe that the principle of equality of arms is not consistently recognized in State Security Courts. The arrangement of the court places the prosecutor alongside the judges and the defendant and their counsel in a visibly junior position. This relationship is frequently reflected in the conduct of the trial itself, since judges very frequently ignore the defence counsel’s requests to call, examine and cross-examine witnesses, or to call court surveys or other mechanisms which might establish innocence or mitigation.

Except in narrowly defined circumstances, all court hearings must be public, according to Article 10 of the Universal Declaration of Human Rights and Article 6 (1) of the European Convention. This right is relied upon by trial observers. The UN Declaration on Human Rights Defenders underlines their right "to attend public hearings, proceedings and trials, so as to form an opinion on their compliance with national law and applicable international obligations and commitments." Safety considerations may present problems for public access but international law does not grant to states an unfettered discretion to define for themselves what constitutes an issue of security, and therefore the Turkish authorities should do all in their power to ensure that hearings are held as openly as possible.

Everyone has the right to be presumed innocent, and treated as innocent, until and unless they are convicted. Judges and prosecutors must refrain from pre-judging any case - but this responsibility also applies to all other public officials who should not make statements about the guilt or innocence of an accused before the outcome of the trial. It also means that the authorities also have a duty to prevent the news media from influencing the outcome of the case by pronouncing on its merits. The Turkish media has already seriously infringed this right, and therefore the Turkish Government should show leadership by advising the press to rein in its comments on Abdullah Öcalan's trial, and using legal enforcement measures where necessary.

Abdullah Öcalan faces charges which carry the death penalty. Since Turkey has not carried out any executions since 1984, it is classed by Amnesty International as a *de facto* abolitionist state. This was a great step forward, which has not been sufficiently recognized. Amnesty International urges Turkish parliament to maintain its moratorium on executions, and the Turkish Government to sign the sixth optional protocol to the European Convention and thereby remove the death penalty altogether.

Yours sincerely,

Pierre Sané
Secretary General

