

TURKEY

Amnesty International's continuing concerns and the EU Accession Partnership with Turkey

On the eve of the European Council meeting in Nice/France on 7-10 December 2000, the Secretary General of Amnesty International, Pierre Sané, wrote to EU Heads of State or Government to express the organization's concerns in Turkey. The European Council in Nice was to discuss the issue of the status of preparations for the enlargement of the European Union. On 8 November, the European Commission had presented its regular annual report on Turkey's progress towards accession, stating that Turkey still does not meet the Copenhagen political criteria (democracy, rule of law, human rights and protection of minorities). Turkey has to meet these criteria before the European Union will start accession negotiations. The European Commission also presented a draft decision by the Council on the "principles, priorities, intermediate objectives and conditions" contained in the Accession Partnership with Turkey, which identifies short-term (to be fulfilled in 2001) and medium-term objectives Turkey is requested to meet in relation to the Copenhagen political criterion. Other human rights related concerns were also raised, including a request that Turkey should lift its geographical reservation to the 1951 UN Convention relating to the Status of Refugees which effectively bars non-European refugees from effective and durable protection in Turkey. On 4 December, the Council of the European Union endorsed the Commission's proposal.

Open letter to EU Heads of State and Heads of Government

30 November 2000

Dear Presidents, dear Prime Ministers,

Amnesty International is writing to you in order to raise our concerns related to the human rights situation in Turkey.

Amnesty International takes no position on whether or not any candidate country, including Turkey, should join the European Union (EU). The organization welcomes the EU's decision to monitor the human rights situation in the candidate countries and to report regularly on progress made. Amnesty International fully agrees with the conclusion in the 2000 Regular Report from the Commission on Turkey's Progress towards Accession ("Turkey 2000"), issued on 8 November 2000, that "compared to last year, the situation on the ground has hardly improved".

Amnesty International understands that during the accession process Turkey, like other candidate states, will benefit from EU encouragement and support for its reforms.

In order to further contribute to an improvement of Turkey's human rights situation we take the opportunity to draw your attention to our recommendations, especially those which are not yet included in the EU recommendations in the "Turkey 2000" report or in Turkey's Five-Year Plan (known as the "Demirok report").

Torture and impunity

Amnesty International is concerned that torture is still widespread in Turkey. Reports received by Amnesty International indicate that torture is not only inflicted on people suspected of politically motivated offences, but also on detainees who were arrested on suspicion of having committed criminal acts. The latter cases are, however, more difficult to document, because apparently due to intimidation and fear of reprisals these people rarely contact human rights organizations.

Measures to prevent torture should be taken immediately rather than in 2002 or 2003 as the Demirok report anticipates. Incommunicado detention should be abolished completely and immediately, and clear guidelines should be introduced to ensure that all detainees have immediate access to a lawyer. Amnesty International is aware that under current legislation people arrested under suspicion of offences in the jurisdiction of State Security Courts are denied the right to see a lawyer in the first four days after arrest. The organization receives regular reports that even when detainees are entitled under the law to see a lawyer this often does not happen in practice.

In the Demirok report the protection of women and children is mentioned, but not explicitly in relation to torture. Amnesty International has documented several cases of rape and other sexual abuse of women in custody; some of these offences have taken place over the last year. The definition of rape as interpreted by Turkish courts is very narrow (forced penetration of the vagina by a penis) and other forms of physical sexual abuse are not even defined as a crime. Amnesty International urges the Turkish authorities to amend the law so that all acts of sexual violence and abuse are defined as crimes with appropriate sanctions commensurate with the seriousness of these offences. All officials involved in the custody, interrogation and medical care of detainees and prisoners, as well as all prosecutors and judges should be informed that rape and sexual abuse by law enforcement officials are criminal acts which constitute torture or ill-treatment and will not be tolerated.

Detainees should have immediate access to independent, impartial and competent medical doctors. Independent medical or psychiatric reports should be admissible in the investigation of torture allegations. Amnesty International has documented several cases in which such reports have not been taken into consideration, and investigations into allegations of torture were discontinued. Medical examinations should be conducted in

private under the control of the medical expert and outside the presence of security or other government officials. In the case of rape and other forms of sexual abuse the examining health personnel should be of the same sex as the victim unless otherwise requested by the latter. For further recommendations please see Amnesty International's recommendations to the Turkish government which are attached to this letter. (AI Index: EUR 44/19/00)

As the report "Turkey 2000" acknowledges, a climate of impunity for law-enforcement officials continues. Amnesty International has documented the different factors contributing to this climate.¹ In this regard, the organization does not, however, agree that the law on the prosecution of civil servants, adopted in December 1999, was a step forward, as suggested by the Commission's report. This law still requires the permission of a superior official for a prosecution against a security officer to be opened.² Amnesty International has documented several cases in which such permission was refused under the new law:

Ramazan Tekin, Deputy Mayor of Diyarbakır, was arrested in January 2000 and held for 10 days at Diyarbakır Gendarmerie where he was reportedly beaten, suspended by the arms, sexually abused and given electric shocks. Doctors from the Forensic Institute who examined him reportedly confirmed that his ribs were broken and his kidneys damaged. His lawyer filed a formal complaint against the security officers suspected of being responsible, but the governor of Diyarbakır did not give permission for the two gendarmes to be prosecuted. The appeal against this decision was rejected.

In September 1999 10 prisoners died and dozens were injured in a violent clash with guards and soldiers in Ankara Central Closed Prison. On 3 January 2000 the governor of Ankara refused permission to prosecute 150 gendarmes who were implicated. The appeal against this decision was accepted by a local court in May 2000. In June the Turkish Parliamentary Human Rights Commission made public their conclusion that excessive force had been used.

Amnesty International has called for an amendment of the law in order to ensure that decisions as to whether or not to prosecute a government officer for human rights violations are taken solely by prosecutors and judges.

Prison conditions

¹ For details please see Amnesty International: *Turkey: The duty to supervise, investigate and prosecute*, April 1999, AI Index: EUR 44/24/99, and *Turkey: Torture - A major concern in 1999*, March 2000, AI Index: EUR 44/18/00.

² For details see Amnesty International: *Turkey: New Law on the Prosecution of Civil Servants*, July 2000, AI Index: EUR 44/38/00.

Amnesty International welcomes the EU Commission's recommendation that the Turkish authorities should cooperate with the Committee for the Prevention of Torture (CPT) on the management regimes of the new prisons, and should pay particular attention to measures ensuring that prisoners spend a reasonable part of day engaged in purposeful activities outside their living units. Amnesty International also calls for prisoners to be allowed to associate with other prisoners. Amnesty International would like to draw your attention to the fact that regimes of solitary confinement and small group isolation already exist in Kartal Special Type Prison and in the prison on Imral_ where Abdullah Öcalan has been held in solitary confinement since February 1999.

Death Penalty

Amnesty International notes that Turkey is abolitionist in practice, and continues to call on the government to abolish the death penalty immediately and fully in law.

Freedom of Expression and Human Rights Defenders

Amnesty International agrees that legal and constitutional guarantees for the right to freedom of expression must be strengthened so that they are compatible with Article 10 of the European Convention of Human Rights. It must be ensured that the law can no longer be interpreted in such a way as to restrict this right. This requires a basic change of attitude on the part of the government and the judiciary which would lead to a revision of both law and practice. Amnesty International believes that any peaceful expression of views, even regarding the political structure of the state and possible secession should be permitted, and in this regard disagrees with the Demirok report. The European Court has interpreted restrictions to Article 10 very narrowly. Peaceful advocacy of reform, including in relation to matters affecting territorial integrity, may not be restricted even if there is domestic concern about violent separatism.

Amnesty International is concerned that human rights defenders are subjected to pressure and harassment which inhibits their work. This includes the closure of branches of human rights organizations (the Mazlum Der branch in Malatya has remained closed since 1999). Amnesty International has asked the Turkish government to reopen these offices and refrain from further arbitrary closures and prosecutions of human rights defenders for their peaceful activities. Also, effective action should be taken to ensure all public servants, including the security forces, recognize the legitimacy of the work of human rights defenders and abstain from making unsubstantiated allegations against them. Statements of this nature must be publicly countered, and appropriate measures applied against those responsible.

Fair Trials

The Commission's report recommends that the State Security Courts need to be brought further into line with standards existing in the EU, and that the efficiency of the

judicial system must be strengthened. However, the report does not mention the independence of the judiciary. In this regard, Amnesty International welcomes the recommendation in the Demirok report for a constitutional change so that all judicial appointments are made by an independent body, rather than the executive. Amnesty International recommends that this measure should be implemented as soon as possible.

In addition to this, Amnesty International calls for immediate measures to ensure compliance with international standards for fair trials. Pre-trial rights for all suspects should include the right of immediate access to a lawyer and being brought promptly before a judge; incommunicado detention should not be allowed under any circumstances, particularly as it often facilitates the use of torture. All suspects should have the right to a trial within reasonable time and the right to adequate time and facilities to prepare a defence. Any evidence elicited as a result of torture or ill-treatment should be excluded at trial. Also, the Turkish government needs to ensure that all defendants are tried before a competent, independent and impartial tribunal.

Turkey made a commitment in 1988 to establish Children's Courts in all provinces by 1998. Yet, to date, there are only six Children's Courts in four provinces, none of them in the east of the country. Also, the Turkish Law on Children's Courts defines children only as those under age of 15, instead of those under 18 which is the usual age of adulthood in international standards relating to juvenile justice. In Turkey, children between 15 and 18 years can be tried by ordinary courts. Children charged with offences under the jurisdiction of the State Security Courts and Military Courts are excluded from the right to be tried before a Children's Court. Amnesty International is concerned that children in this situation have very limited rights to a fair trial. Law and practice in Turkey must be brought in line with international standards.

Amnesty International calls upon the member governments of the EU and the EU institutions to address Amnesty International's concerns and recommendations in their dealings with Turkey, and to use their influence for a speedy, comprehensive and effective improvement in the human rights situation in Turkey, in line with international standards set by the Council of Europe and the United Nations.

Yours sincerely

Pierre Sané
Secretary General