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Turkey: Unfair trials -- failed justice under new courts

Amnesty International has revealed today that people charged under anti-terrorism legislation in Turkey continue to face unending trials with some people still detained after more than a decade.

In its report, *Turkey: Justice delayed and denied*, the organization points out that such trials often rely on past evidence obtained through torture.

"Unfair trials continue to blight Turkey's human rights record. A look at the prolonged and flawed trials of those charged under anti-terrorism legislation provides a striking indication of the extent of the failure of justice in Turkey today," said Nicola Duckworth, Director of the Europe and Central Asia Programme at Amnesty International.

"The Turkish government professes its commitment to eradicating torture, yet it is shocking to discover that evidence extracted through such methods continues to be admitted in the special Heavy Penal Courts and judges are still refusing to throw it out."

Those charged under anti-terrorism legislation are brought to trial before special Heavy Penal Courts, which replaced the State Security Courts in June 2004. However, the same pattern of unfair trial procedures continues:

- People charged as far back as 1993 are still behind bars having been denied an effective defence or genuine retrial, even where the European Court of Human Rights has ruled on their case and found Turkey in violation of its fair trial obligations;

- Judges and prosecutors are often the same people who presided over the same cases in the days of the State Security Courts, thus recreating the old pattern of failed justice under the new system;

- The right to effective defence is violated by judges who routinely and arbitrarily fail to call witnesses to be brought to testify and be cross-examined by defence lawyers.

Even after the Turkish authorities have provided the possibility for people to be retried following European Court judgments finding Turkey in violation of fair trial principles, to date such retrials have not been a fresh, thorough and impartial re-examination of the evidence.

"By law, some people in whose favour the European Court of Human Rights has ruled, have the right to retrial. However to date, if such a retrial is opened, it is conducted in a way worthy of Kafka's attention - the same judges and prosecutors wipe off the dust on the same files and predictably reach the same decision that was already criticized by the Court in the first place. Old and compromised evidence, most often

obtained through torture, is not overturned," Nicola Duckworth said.

Moreover, in providing the right to retrial following European Court rulings finding Turkey in violation of fair trial rights, the government has introduced a get-out clause which blocks the possible retrial of anyone with cases pending at the Court on 4 February 2003. The motivation for this was to find a way to avoid the retrial of Abdullah Öcalan, leader of the Kurdistan Workers' Party. The measure thus also has a discriminatory effect on all the other cases in the European Court which, along with Abdullah Öcalan's, were pending on the same date.

"The Turkish authorities must undertake as an urgent priority a systematic review of all pending criminal proceedings to determine all those cases where there are allegations that during interrogation statements by suspects/defendants or witnesses were illegally extracted through torture or other ill-treatment. They must take steps to drop all cases where there is well-founded suspicion that the main evidence against the defendant is based on 'confessions' allegedly extracted by force," Nicola Duckworth said.

Amnesty International calls on the Turkish authorities to comply with international standards for fair trials and undertake a full investigation of all torture allegations; end all use of torture evidence in court; ensure the right to an effective defence; end prolonged pre-trial detention and protracted criminal proceedings.

For more information see: *Turkey: Justice delayed and denied: The persistence of protracted and unfair trials for those charged under anti-terrorism legislation*, AI Index: EUR 44/013/2006, <http://web.amnesty.org/library/index/engneur440132006>.

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