

TURKEY: HUNGER STRIKES

RIGHTS VIOLATIONS FACED BY PRISONERS ON HUNGER STRIKE AND THOSE PROTESTING IN SOLIDARITY

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RIGHT VIOLATIONS PRISONERS ON HUNGER STRIKE AND THOSE PEACEFULLY PROTESTING IN SOLIDARITY FACED IN TURKEY

Thousands of prisoners in Turkey went on hunger strike from November 2018¹ demanding that the imprisoned leader of the armed Kurdistan Workers' Party (PKK), Abdullah Öcalan, can meet regularly with his lawyers and family members.² The hunger strikes ended on 26 May after Abdullah Öcalan was finally able to see his lawyers on 2 and 22 May after being denied access to them for almost eight years.³

Amnesty International does not express support for particular hunger strikes, nor does it try to persuade people to end them. However, Amnesty International monitors and reports on human rights violations people on hunger strike face for carrying out this type of peaceful protest.

During the hunger strikes, Amnesty International received reports that the Turkish authorities failed to respect the rights of prisoners on hunger strike as many faced disciplinary punishments due to their peaceful protest. Amnesty International also received reports of regular police intervention at peaceful protests across the country preventing protestors from gathering to show solidarity with thousands of people on hunger strike. Prevention of peaceful protests breaches protestors' rights to freedom of expression and peaceful assembly.

Amnesty International collected the information provided in this briefing through interviews with lawyers of prisoners on hunger strike, representatives of human rights organizations in Turkey as well as by reviewing documents related to disciplinary punishments and prosecutions against prisoners on hunger strike or those holding solidarity protests. Amnesty International also wrote to the Turkish authorities on 21 May 2019 to share details of the alleged human rights violations and request their response to include in this briefing. As of 2 August 2019, Amnesty International have not received a response from the authorities.

DISCIPLINARY INVESTIGATIONS AND PUNISHMENTS AGAINST PRISONERS FOR BEING ON HUNGER STRIKE

Amnesty International received reports that many prisoners were subjected to disciplinary investigations and punishments, including bans from taking part in social and cultural activities as well as prolonged solitary confinement, as a result of them taking part in the hunger strike. The prisoners' lawyers allege that the authorities have done this to intimidate and pressure them to end their protest. Amnesty International opposes punishment of prisoners for being on hunger strike or attempts to coerce them to end their hunger strike. Such measures violate their right to freedom of expression, and may also amount to cruel, inhuman or degrading treatment or punishment in violation of international human rights law and standards.

Lawyers and representatives from human rights organizations Amnesty International talked to during the course of this research stated that prison authorities automatically initiate disciplinary investigations against prisoners on hunger strike due to the fact that they are taking part in the protest.

¹ Hunger strikes were initiated on 8 November 2018 by People's Democratic Party (HDP) member of the parliament, Leyla Güven, while she was being held in pre-trial detention in Diyarbakir E-type High Security Prison. Other prisoners joined the hunger strike on various dates since December 2018. Leyla Güven was released from prison on 25 January 2019 and continued with her hunger strike at her home in Diyarbakir until 26 May 2019.

² According to Human Rights Association of Turkey, around three thousand prisoners went on hunger strike in 92 prisons across Turkey since November 2018. <https://www.ihd.org.tr/turkiye-hapishanelerinde-devam-eden-aclik-grevleri-tespit-ve-degerlendirme-raporu-2/>

³ Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 28 to 29 April 2016, 20 March 2018: <https://rm.coe.int/168079457a>

While some then receive punishment simply for holding a hunger strike,⁴ there are others who receive punishment under vaguely worded provisions of the Law on the Execution of Punishments and Security Measures (Law No. 5275) for “refusing to take food given by prison management as a group to protest,”⁵ for “saying things or behaving in a way that may create fear, worry or panic in the prison,”⁶ for “preventing prisoners from eating, encouraging or persuading them to hold a hunger strike, making such orders”⁷ and for “carrying out or have others carry out educational and propaganda activities of criminal organizations.”⁸

Punishment for actions under Article 40 of Law No. 5275 is exclusion from cultural and sport activities between one to three months, while punishment for actions under Article 42 is having full or partial limitations between one to three months to send and receive letters, fax, telegram; watching television; listening to radio; making and receiving phone calls and use of other communication means. Article 43 bans prisoner from receiving visits except from his or her lawyers and officials. Acts under Article 44 are on the other hand punishable by up to 20 days of solitary confinement. Periods of solitary confinement lasting more than 15 days amount to prolonged solitary confinement, a punishment which violates the absolute prohibition of torture and other cruel, inhuman or degrading treatment in international law.

Disciplinary measures taken against prisoners on hunger strike reviewed by Amnesty International included:

- one month ban from sport and cultural activities as per Article 40(2)(g) of Law 5275 for starting a hunger strike
- 20 days of solitary confinement on the allegation that the prisoner has propagated for criminal organizations as per Article 44(3)(I) of Law No. 5275 for having discussed being on hunger strike and reasons for it on the phone with a relative
- ban from certain cultural and sport activities on the ground that the hunger strike disrupted the order, discipline and security of the prison.

Turkish authorities have an obligation to respect the right to freedom of expression of the prisoners, including their right to protest by pursuing a hunger strike. Permissible restrictions on the right to freedom of expression must be provided by law and be necessary and proportionate to a legitimate aim. Under Article 19 of the International Covenant on Civil and Political Rights (ICCPR), freedom of expression can only be restricted in a few cases for reasons of national security, public order, public health and other limited circumstances, such as the protection of the rights of others. In addition, Article 20 of the ICCPR prohibits advocacy of national, racial or religious hatred that constitutes incitement to violence, hostility or discrimination. Measures that punish individuals on hunger strike or seek to coerce them to end their hunger strike violate the right to freedom of expression.

CRIMINAL PROSECUTIONS OF INDIVIDUALS ON HUNGER STRIKE AND THOSE PARTICIPATING IN SOLIDARITY ACTIONS

In addition to disciplinary measures, Amnesty International is concerned that prisoners and others, who have been on hunger strike, are facing prosecution solely for their peaceful protest. On 26 February 2019, Istanbul Heavy Penal Court No. 26 accepted an indictment accusing 25 prisoners in Maltepe L Type Prison No. 2 and one in Maltepe L Type Prison No. 1 of “propagandizing for a terrorist organization” and “knowingly and willingly helping a terrorist organization” through their hunger strike. Their trial is ongoing.

⁴ Under Article 40 of the Law on the Execution of Penalties and Security Measures (Law No. 5275)

⁵ Article 42(2)(a) of Law No. 5275.

⁶ 43(2)(d) of Law No. 5275.

⁷ 44(2)(m) of Law No. 5275.

⁸ 44(3)(I) of Law No. 5275.

Similarly, around 80 individuals, including relatives of prisoners on hunger strike are facing prosecution at Diyarbakir Heavy Penal Court No. 11 for “propagandizing for a terrorist organization” because of going on hunger strikes that were to last for two or three days on various dates since 17 November 2018 at the Diyarbakir office of People’s Democratic Party (HDP) to show solidarity with the prisoners on hunger strike.⁹ In the indictments Amnesty International has seen, the prosecution alleges that those who participated in the protest did so following orders by the PKK basing this argument simply on two online news articles from 26 and 27 November 2018; one calling for support to end the “isolation” [of Abdullah Öcalan], the other calling for support for Leyla Güven, the member of the parliament from People’s Democratic Party (HDP), who was the first to go on hunger strike on 8 November 2018. The prosecution then alleges that the participants have “praised, justified and encouraged methods of coercion, violence, and threats used by the PKK” simply by holding the hunger strike.

Additionally, Amnesty International received information that six men and women aged between 18 and 22 are in pre-trial detention since early May for their alleged participation in a protest in Batman to draw attention to the situation of prisoners on hunger strike. According to the statements some of them have given to the authorities that are seen by Amnesty International and according to their lawyers, those who participated in the protest held hands and stood in front of the traffic for about a minute while traffic lights were red and then ended their protest when the lights turned green. Some of them reportedly shouted the names of some of those on hunger strike as well as “long live struggle of prisoners” during this peaceful protest.

All six, who have been in prison on pre-trial detention, as well as two others, who are not in pre-trial detention, are accused of “membership of a terrorist organization” as the prosecution claims that they held their short and peaceful protest as an order by the PKK. They are also accused of preventing vehicles from moving because they held their protest on a street open to traffic. There is no allegation in the indictment that the protest itself was violent or that it had caused any disruption in traffic or any damage to public or private property. Their first trial hearing will be held at Batman Heavy Penal Court No. 2 on 7 August 2019.

Amnesty International was also informed that a lawyer (Arzu Kayaoğlu) from Lawyers for Freedom Association (Özgürlükçü Hukukçular Derneği) was taken into police custody as she was accompanying relatives of prisoners on hunger strike who were detained on 9 May 2019 while walking towards Bakırköy Women’s Prison. After four days in police custody, she was released with bail conditions by an Istanbul court pending criminal investigation. Her bail conditions involve having to sign with the police twice a week and a ban on foreign travel. Istanbul Heavy Penal Court No. 23 accepted the indictment accusing her and others of “knowingly and willingly helping a terrorist organization”¹⁰ for her presence at the peaceful protest. Her first trial hearing is scheduled for 19 December.

Similarly, lawyers Rengin Ergül and Ahmet Balkaya, respectively, director and member of Lawyers for Freedom Association, are indicted with the allegation of violating the Law on Meetings and Demonstrations (Law No. 2911) for accompanying peaceful protestors in front of Bakırköy Women’s Prison on 3 May 2019.

Again in Istanbul, journalist Zeynep Kuray, covering solidarity protests in Sirkeci neighbourhood and journalist, İrfan Tunççelik, covering another one in front of Bakırköy Women’s Prison were taken into police custody on 10 May 2019 along with some of the protestors. On 13 May, an Istanbul Court released the journalists with bail conditions pending criminal investigation.

Hunger strikes are a form of peaceful protest and those protesting in this manner should not face prosecution for exercising their right to freedom of expression. As such, the competent authorities must refrain from initiating criminal prosecutions against those engaged in peaceful protest, including those who carry out hunger strikes or peacefully protesting in solidarity. Any pending charges related to such peaceful protests must be dropped.

⁹ The numbers of joined up files that Amnesty International is informed of are 2019/96 and 2019/100.

¹⁰ Article 220/7 of Turkey’s Penal Code (Law no. 5237). The indictment also alleges that the participants, including Arzu Kayaoğlu did not follow the order of the police to end the protest breaking Article 32/1 of the Law on Meetings and Demonstrations (Law No. 2911).

ALLEGATIONS OF EXCESSIVE AND UNNECESSARY USE OF FORCE DURING POLICE INTERVENTIONS AGAINST SOLIDARITY PROTESTS

There have been protests in various cities since the hunger strikes have started in November 2018. These protests have intensified and occurred almost daily in certain locations since April 2019 to draw attention to the worsening health situation of those who have been on hunger strike for months. Many of the protesters were the mothers of those on hunger strike joined under an informal collective calling themselves Mothers for Peace.

Amnesty International has reviewed documents, seen videos, and talked to lawyers and human rights organisation representatives who have accompanied protesters in their gatherings in Batman, Mardin, Diyarbakır, Istanbul and Kocaeli.

Many of these protests have been dispersed by the police across the country, such as mothers of prisoners on hunger strike holding a sit-in at Koşuyolu Park in the Bağlar neighbourhood of Diyarbakır province, south eastern Turkey, on 5 May and the gathering of mothers of prisoners on hunger strike in front of Gebze Women's Prison in western Turkey on 19 April 2019. Videos that were released showing police officers pushing elderly women at the 19 April protest created a public outcry.¹¹ Use of water cannon against women protestors in the town of Kızıltepe in Mardin province, also in the south east, on 20 April¹² and against protestors in Diyarbakır on 10 May,¹³ who were surrounded by police and therefore unable to leave, allegedly resulted in injuries. Protestors as well as lawyers taken into custody during the protests also report that they were ill-treated in police vehicles and have had their hands cuffed behind their backs in a way that caused them pain.

Such interventions did not only breach on the right to freedom of peaceful assembly by breaking up a peaceful protest, but protestors, through their lawyers, and lawyers accompanying them also allege that the police used excessive and unnecessary force against them in an attempt to disperse them or to take them into custody.

Amnesty International calls on the authorities to promptly conduct impartial, independent and effective investigations into allegations of unnecessary and excessive use of force and ill-treatment by police officers and bring all those suspected to be responsible to justice in proceedings that meet fair trial standards. These interventions where allegations were received by Amnesty International include those on 19 April in front of Gebze Women's Prison; on 20 April 2019 against women protestors in the town of Kızıltepe Mardin province, including the use of pepper spray and water cannon; on 23 April against women protestors in front of Batman M Type Closed Prison; on 3, 4 and 9 May in front of Bakırköy Women's Prison in Istanbul; and on 5, 10 and 11 May in Diyarbakır.

Authorities must stop breaking up peaceful protests and instead ensure that everyone, including those wishing to demonstrate their solidarity with individuals on hunger strike, can exercise their right to freedom of peaceful assembly. States have a positive obligation to facilitate peaceful assemblies in law and in practice. As is the case in Turkish law, the exercise of the right to freedom of peaceful assembly is not subject to permission of government authorities, this right is also protected under international law and standards in conventions Turkey is a party to. Any decision to disperse an assembly should be taken only as a last resort and carefully in line with the principles of necessity and proportionality, i.e. only when there are no other means available to protect a legitimate aim which outweighs the right of people to assemble peacefully. In any such situation, police must as far as possible avoid any use of force and in any event must always restrict it to the minimum level necessary.

¹¹ Vide of the 19 April incident can be viewed at: http://www.cumhuriyet.com.tr/haber/turkiye/1354141/Gebze_Cezaevi_onundeki_ailelere_coplu_polis_mudahalesi.html.

¹² http://www.bianet.org/bianet/insan-haklari/207695-gebze-den-sonra-kiziltepe-baris-annesi-yerde-suruklendi?bia_source=rss

¹³ <https://www.youtube.com/watch?v=n9bZevwhjB8&feature=youtu.be>

BLANKET BANS ON PROTESTS IN RELATION TO THE HUNGER STRIKES

In addition to above mentioned police interventions dispersing peaceful assemblies, Amnesty International is also alarmed by systematic bans that have been imposed over such assemblies by governors: On 22 April, Kirklareli Governorate announced on its website that all protests and assemblies in relation to the hunger strike within the border of Kirklareli province are banned between 22 April and 6 May as per an ordinance issued by governor's office on 22 April 2019 (Ordinance no. 1150).¹⁴ This ban was then renewed until 21 May with a new ordinance issued on 6 May 2019 (Ordinance No. 1227).¹⁵ In introducing the ban, the authorities cited grounds that protests may lead to breaches of public safety and security, without providing evidence. Lawyers in Diyarbakır also told Amnesty International that they have seen a similar governor ordinance for Diyarbakır, but have not been provided with a copy.

A hypothetical risk of public disorder cannot establish legitimate grounds for prohibiting a peaceful assembly. The principles of necessity and proportionality require consideration of all relevant circumstances, the impact on the legitimate concern protected and the possibility that the risk will concretize, and whether less restrictive means would suffice. The responsibility to maintain public order and to facilitate the enjoyment of the right to freedom of peaceful assembly lies with the state and its organs, including its law enforcement agencies.

HEALTH SITUATION OF PRISONERS WHO WERE ON HUNGER STRIKE

Amnesty International is further concerned about the use of prolonged solitary confinement in prisons across Turkey either as a result of disciplinary punishments or as per court sentences, such as aggravated life imprisonment. Under international law and standards, prolonged solitary confinement, which is confinement of prisoners for 22 hours or more a day without meaningful human contact for periods beyond 15 days, is absolutely prohibited as it constitutes cruel, inhuman or degrading treatment or punishment and in certain circumstances may amount to torture. Turkish authorities must ensure that no prisoner in Turkey is subjected to prolonged solitary confinement.

In addition to this, being held alone without meaningful human contact further aggravates the situation of prisoners on hunger strike, who are weakened by their protest and may need assistance to look after themselves. This is also true for hunger strikers who were grouped and placed in separate multiple-occupancy cells in some of the prisons without any accompanying help for their daily needs. According to legal representatives of prisoners who were held in such situation, this put their health further at risk. In certain circumstances prison authorities may consider necessary to move prisoners on hunger strike to cells separate from those who are not on hunger strike, provided it is not used with punitive intent but based on legitimate reasons, including health reasons.

Since the end of the hunger strikes on 26 May, Amnesty International has received complaints that some of the prisoners have not received adequate medical care that is necessary for ending long-term hunger strikes and restarting a regular feeding routine. Prison authorities must ensure that all prisoners ending their hunger strike have access to adequate medical supervision and health care appropriate to the specific needs of individuals terminating a hunger strike.

RECOMMENDATIONS TO THE GOVERNMENT OF TURKEY

- End any continuing punitive disciplinary measures against prisoners, who have been on hunger strike, for their peaceful protest, including solitary confinement;
- End the use of prolonged solitary confinement in all circumstances;
- Review Section 8 under Chapter 2 of Book 1 of Law on Execution of Judgements (no. 5275) on disciplinary punishments and in particular amend Articles 40, 42, 43 and 44 to ensure prisoners

¹⁴ <http://www.kocaeli.gov.tr/basin-duyurusu-22042019>

¹⁵ <http://www.kocaeli.gov.tr/basin-duyurusu--06052019>

on hunger strike do not face disciplinary investigations and punishments for their peaceful protest;

- Ensure that prisoners who have ended their hunger strike have adequate access to qualified health professionals and any specialist treatment that they might require;
- End prosecutions related to the peaceful protest of persons who have been on hunger strike and those who held protests in solidarity with individuals on hunger strike, and drop any related pending charges;
- Stop the practice of issuing blanket bans on peaceful assemblies, including those concerning hunger strikes;
- Promptly initiate impartial, independent and effective investigations into allegations of unnecessary and excessive use of force and ill-treatment committed by police officers during interventions in solidarity protests with those on hunger strike;
- Ensure that all prisoners in Imralı F-Type High-Security Closed Prison can receive regular visits from their relatives and lawyers, and stop any arbitrary prohibitions of their communication with the outside world.

TURKEY: HUNGER STRIKES

RIGHTS VIOLATIONS FACED BY PRISONERS ON HUNGER STRIKE AND THOSE PROTESTING IN SOLIDARITY

Thousands of prisoners in Turkey went on hunger strike from November 2018 demanding that the imprisoned leader of the armed Kurdistan Workers' Party (PKK), Abdullah Öcalan, can meet regularly with his lawyers and family members. The hunger strikes ended on 26 May after Abdullah Öcalan's lawyers were able to visit him on 2 and 22 May following an interruption of almost eight years.

Amnesty International does not express support for particular hunger strikes, nor does it try to persuade people to end them. However, Amnesty International monitors and reports on human rights violations people on hunger strike face for carrying out this type of peaceful protest.

During the hunger strikes, Amnesty International received reports that the Turkish authorities failed to respect the rights of prisoners on hunger strike as many faced disciplinary punishments due to their peaceful protest. Amnesty International also received reports of regular police interventions at peaceful protests across the country preventing protestors from gathering to show solidarity with people on hunger strike. Prevention of peaceful protests breaches protestors' rights to freedom of expression and peaceful assembly.