

8 March 2010

Public

amnesty international

Summary of Amnesty International's Concerns in Turkey July to December 2009



Freedom of Association – closure of the Democratic Society Party

In a case that underlined the need for Turkey to amend its laws on political parties which fail to uphold international standards on freedom of association, the Constitutional Court ruled in favour of the closure of the pro-Kurdish Democratic Society Party (DTP). In the judgment on 11 December, the panel of judges voted unanimously for the closure of the DTP which itself had been formed following the issuing of legal proceedings for the closure of the Democratic People's Party (DEHAP). In addition to closing the political party, the Court ruled that 37 members of the party be banned from politics for a period of five years. Individuals banned from politics included two of the DTP's 21 elected members of parliament: the DTP co-chair Ahmet Türk MP and Aysel Tuğluk MP, four elected regional mayors and other party officials and members. Amnesty International (AI) issued a statement criticizing the closure and calling for Turkey's laws on political parties to be brought in line with international standards on freedom of association (Index: EUR 44/007/2009).¹

The remaining members of the Democratic Society Party parliamentary group reformed as the Peace and Democracy Party (BDP) together with Ufuk Uras, an independent MP representing an Istanbul constituency.

Widespread and often violent demonstrations across Turkey followed the decision of the Constitutional Court to ban the DTP. Following the protests, there were allegations of excessive use of force by law enforcement officials and reports of hundreds of arrests of demonstrators.

Prosecution of children under anti-terrorism legislation

In a letter to the Minister of Justice in July, AI expressed the organization's concerns regarding the continuing prosecutions of children under anti-terrorism legislation. AI received widespread allegations of ill-treatment and excessive use of force by law enforcement officials during the often violent

¹ For more information see Amnesty International, *Turkey: Constitutional Court rules in favour of closure of pro-Kurdish Democratic Society Party*, Index: EUR 44/007/2009). Available at <http://www.amnesty.org/en/library/info/EUR44/007/2009/en>.

demonstrations regarding the “Kurdish problem” and allegations of ill-treatment in prison of PKK leader Abdullah Öcalan. AI noted that thousands of children had been arrested in relation to the demonstrations and faced prosecution under anti-terrorism legislation.

In particular, AI raised concerns regarding the apparent arbitrary application of anti-terrorism legislation in the prosecutions of children, leading in many cases to convictions with long custodial sentences. Children were frequently prosecuted under the anti-terrorism law (*terörle mücadele kanunu*, no. 3713), specifically Article 7/2 which criminalizes making propaganda for a terrorist organization, and additionally under Article 314/2 of the Penal Code via Article 220/6 of the Penal Code that allows those who commit crimes in the name of a terrorist organization to be prosecuted additionally as if they were members of the organization. This application of the law followed the jurisprudence of the Supreme Court of Appeals (Judgment no. 2008/11): after considering the tactics of the PKK to make use of civil disobedience, the Court ruled that in demonstrations publicized by media organizations regarded by the Turkish state to be associated with the PKK, such as *Roj TV* and *Firat News Agency*, those that participate in demonstrations could be said to be acting on behalf of a terrorist organization.

In the letter, AI also expressed concerns that this application of anti-terrorism legislation allowed the courts to convict children for terrorist offences without sufficient evidence and that the legislation required urgent review. In the cases reviewed by AI and according to lawyers representing children, in the vast majority of cases children were convicted of the terrorist offence under which they were charged. Evidence leading to the conviction was commonly CCTV footage showing that they were present at the demonstrations or photographs showing that that they made “V-for victory” signs during the demonstrations. In many cases, however, the sole piece of evidence was the statement of a police officer that the child was present at the demonstration and that they shouted slogans in support of the PKK. In a small minority of cases the sole piece of evidence was the statement of a secret witness who could not be cross-examined in court.

AI expressed its grave concern that there had been consistent accounts of torture and other ill-treatment of children on transfer to prison and that in some cases children had been held together with adults. AI also expressed

concerns that children prosecuted under anti-terrorism legislation were routinely held in pre-trial detention for extended periods of time without any provision for them to continue their education and, in contravention of the Convention on the Rights of the Child to which Turkey is a party.

In Diyarbakır, pre-trial detention periods were often six months; in Adana a period of three months was more common. However, pre-trial detention periods of more than one year were recorded. In some cases children had been held together with adult remand prisoners, with boys in Batman and girls in Adana reportedly subjected to this prison regime. Where children were held separately from adults, the prison regime did not differ from the one for adults. The children were reportedly made to wash their own clothes and dishes. In many cases a detention period of three months led to children missing a year of schooling after they were required to re-sit their school year due to missing classes. In Adana, Amnesty International interviewed children who complained of severe beatings on transfer to Kükçüler adult prison. Such reports were made consistently by children previously held at the prison suggesting systematic ill-treatment. It was reported by children that they spent periods of more than one week in solitary confinement at the adult prison before being transferred to a children's prison.

AI also expressed concerns that anti-terrorism legislation allowed children as young as 15 to be tried in adult courts according to the same procedures as adults and that official court records showed that children as young as 12 had been tried in adult courts under the same procedures as adults in contravention of Turkey's child protection law (no.5395) and the UN Convention on the Rights of the Child. According to the anti-terrorism law (Article 9), children aged 15 years and above are to be tried in adult courts (special heavy penal courts) for terrorism-related offences.

In September the UN Committee on the Rights of the Child (CRC) issued a series of recommendations to Turkey regarding the prosecution of children under anti-terrorism legislation in order to bring the state's practice in line with the Convention on the Rights of the Child. In November the government submitted to parliament a draft bill amending the anti-terrorism law. The government proposals, if brought into law, would allow for more lenient sentencing of children convicted under the anti-terrorism law and remove the requirement for children over 15 years old accused of terrorism-related

offences to be tried in adult courts. These amendments alone, if brought into law, would not allay the concerns expressed by the CRC, AI or civil society more broadly regarding the prosecutions. The amendments had not been passed by the parliament by the end of 2009.

On 1 December AI launched a campaign calling on the Turkish authorities to comply with the Convention on the Rights of the Child and other international standards on juvenile justice and to conduct prompt, effective and impartial investigations into allegations that law enforcement officials and prison guards have ill-treated children.²

Human rights defenders

On 24 December Muharrem Erbey, Vice-President of the Human Rights Association (İHD) and President of the Diyarbakır Branch of İHD in south-eastern Turkey, was taken into custody by anti-terrorism units of the Diyarbakır police. Muharrem Erbey was detained apparently on the basis of links to the Kurdistan Workers' Party (PKK) through his alleged membership of the Kurdistan Communities Union (KCK).³ On the same day, his home, office and the Diyarbakır Branch of İHD were searched by anti-terrorism police units. AI was concerned that he may have been targeted due to his work as a human rights defender and considered him to be a possible prisoner of conscience.

In addition to Muharrem Erbey more than 30 others were detained, including nine elected mayors of the pro-Kurdish Peace and Democracy Party. The detentions came two weeks after the Constitutional Court ruled in favour of closing the Democratic Society Party, the predecessor of the Peace and Democracy Party.

Official records showed that during his interrogation by a public prosecutor, Muharrem Erbey was questioned on his activities for İHD. The association told AI that information seized by police during the raid of the Diyarbakır Branch of the Human Rights Association included confidential information provided by individuals regarding alleged human rights abuses by members of the security

² For more information see Amnesty International, *The Wire*, December 2009/January 2010, NWS 21/006/2009. Available at <http://www.amnesty.org/en/library/info/NWS21/006/2009/en>

³ Prosecutors allege that KCK is an organization formed by the PKK to bring together and mobilize pro-PKK groups within urban areas across Turkey

forces. Computer hard disks taken during the raid by police were not returned to the İHD by the end of December, hampering their human rights work.

AI was also concerned that Muharrem Erbey was not able to effectively challenge the lawfulness of his continued pre-trial detention because of a “secrecy decision” which blocks the disclosure of the evidence against him to him or his lawyers. The measure which is commonly enforced in prosecutions which are reported in the media is enacted by the judge following an application from the prosecutor under Article 153 of the Code of Criminal Procedure on the grounds that release of the documents would “jeopardise the aims of the investigation”.

Torture and other ill-treatment – deaths in custody

Between July and December, at least five deaths in custody were reported.

In October 52-year-old Resul İlçin died as a result of head injuries sustained while in police detention in the south-eastern province of Şırnak. According to information supplied to AI by the lawyer representing the family of Resul İlçin, he and another man, Mehmet İlgin, were brought to the İdil District Security Directorate by police officers during the night of 21 October after the car that they were travelling in was stopped by the police. The following is account of the developments, according to the criminal complaint brought against police officers by the family of Resul İlçin. The two men were questioned by police for more than one hour on the side of the road before being brought by police to the İdil District Security Directorate. After their arrival at the security directorate, Mehmet İlgin was questioned outside the main building, while Resul İlçin was taken inside the building for questioning. About 10 or 15 minutes after their arrival at the security directorate, police officers told Mehmet İlgin that Resul İlçin had fallen. Mehmet İlgin then entered the main building of the security directorate and saw the body of Resul İlçin lying on the ground at the entrance. Resul İlçin was then taken by police officers to the İdil State Hospital before being transferred to the Cizre State Hospital where his death was confirmed. An official autopsy report stated that he had multiple head injuries and that there was bruising on various areas of Resul İlçin’s body. Following the death, the governor of Şırnak province issued a statement preceding the outcome of the authorities’ investigation into the incident, stating that Resul İlçin’s death was caused by a fall and not as a result of ill-

treatment. An investigation into the incident was continuing at the end of the period under review.

The trial of 60 state officials accused of responsibility for the death in custody of 29-year-old Engin Çeber continued.⁴ Three hearings were completed during the period under review. AI sent trial observers to two of the hearings. During the hearings, persons held in detention at Metris Prison in Istanbul at the time that Engin Çeber was detained there and a lawyer present during Engin Çeber's detention at a police station in Istanbul gave witness statements to the court. The former detainees testified to seeing Engin Çeber being beaten by approximately 10 prison guards. The lawyer present at the police station testified that Engin Çeber had injuries to his head and had trouble speaking as a result of the beatings that he had suffered in police custody. The lawyer also testified to seeing another detainee lying unconscious on the floor of the police station after being allegedly beaten by police officers. The trial was continuing at the end of the period under review.

Prison conditions – access to medical treatment

In July, AI wrote to the Turkish authorities to express concern that Güler Zere, a prisoner at Adana Karataş Women's Prison, had not been given access to appropriate medical treatment as required under international human rights standards including the UN Standard Minimum rules for the Treatment of Prisoners. Güler Zere had previously been diagnosed with a form of cancer. A medical report seen by AI dated 22 June 2009 clearly states that Güler Zere had a life-threatening illness, that she was dependent on the care of others and that she could not receive appropriate treatment while remaining in prison. Despite appeals from her lawyers for her prison sentence to be suspended, the Institute of Forensic Medicine repeatedly failed to consent to her release from prison. Güler Zere was eventually released from prison in November by Presidential decree.

⁴ For more information see Amnesty International, *Turkey: Justice for victim tortured to death in custody*, 15 January 2009 available at <http://www.amnesty.org/en/for-media/press-releases/turkey-justice-victim-tortured-death-custody-20090115>

Prison conditions of Abdullah Öcalan

On 19 November AI issued a statement welcoming the government announcement that PKK leader Abdullah Öcalan would henceforth be able to associate with other prisoners after being held in isolation for 10 years on the island of İmralı (**Index: EUR 44/006/2009**). During this time the organization had repeatedly called on the Turkish authorities to bring his prison regime in line with international standards applicable to all persons in detention. In the statement AI also restated continuing concerns relating to prison regimes in Turkey, including the non-implementation of prisoners' rights to associate with each other.⁵ Following his transfer to the new prison, Abdullah Öcalan issued statements through his lawyers indicating that the conditions of his detention had deteriorated and that regulations allowing him to associate with the five other prisoners had not been fully implemented.

Impunity

In September a young teenager, Ceylan Önkol was killed in an explosion near her home in the Lice district of south-eastern Turkey. According to witness statements Ceylan Önkol was grazing cattle approximately 200 metres from her home at the time of her death. Witnesses also reported hearing the sound of a mortar coming from the direction of the nearby Tapantepe gendarmerie station immediately before the sound of the explosion.

Following the explosion and the discovery of Ceylan Önkol's body at the scene, the local authorities were notified and a public prosecutor was requested to come to the scene in order to investigate the incident. According to witness reports supported by official documents, a public prosecutor did not arrive at the scene until three days after the incident. No prompt and thorough crime scene investigation was carried out at the scene. The judicial authorities cited security reasons as preventing them from attending the scene. An investigation into the cause of the death and another one about the failure of the officials to come to the scene of the incident were continuing at the end of the period under review.

⁵ For more information see Amnesty International, *Turkey: Amnesty International welcomes improvement in prison conditions of Abdullah Öcalan after 10 years in isolation*, Index: EUR 44/006/2009.

In October the Supreme Court of Appeals ruled that a gendarmerie officer charged following a fatal shooting in the south-eastern province of Siirt should face punishment. The ruling by the General Penal Board (*Ceza Genel Kurulu*) came after the local court had referred a previous judgment of the Supreme Court of Appeals that the gendarmerie officer should be convicted and sentenced according to the charge of killing through negligence (*Taksirle öldürme*). As such it was the final appeal possible within the domestic legal system. The shooting occurred when unarmed civilians chanted slogans and threw stones at the officers' vehicle. Although the court recorded that the shooting was disproportionate, it ruled that it was inappropriate to punish the officer because of "the gravity of the physical attack..., the fact that it continued increasingly despite the warnings and the totality of the conditions of the region". It overturned the previous ruling of the court that the officer's fear, nerves and worry did not amount to circumstances in which the conviction could be quashed.

The trial of seven police officers prosecuted following the shooting of Ferhat Gerçek, a 19-year-old shot by police in October 2007 following a dispute over the sale of a magazine, continued during the period under review. In addition to the police officers, Ferhat Gerçek, who was left permanently paralyzed by the shooting, was also being prosecuted in the same trial and faced up to 15 years in jail if convicted. AI sent a trial observer to the hearing in October where it was revealed that police radio recordings relating to the incident had been destroyed one year previously. AI remained concerned that due to this, in addition to the previous loss of evidence by police officers and failures in the investigation of the incident, the chances of bringing those responsible to justice were remote.

Conscientious objection

In November, three soldiers were convicted of beating conscientious objector Mehmet Bal in June 2008 and sentenced to three months' and 10 days' imprisonment. All four men had been prisoners in Hasdal military prison.

Neither the senior officer who allegedly ordered the attack on Mehmet Bal nor any other official at the prison faced prosecution.⁶

In November four supporters of Mehmet Bal: Oğuz Sönmez, Mehmet Atak, Gürşat Özdamar and Serkan Bayrak were acquitted of the charge of “alienating the public from the institution of military service” (Article 318 of the Penal Code). The prosecution had been launched following their participation at a protest in support of Mehmet Bal in 2008. The trial of Sami Görendağ, Lezgin Botan and Cüneyt Canıuş, on charges brought under Article 318 following similar protests, continued at the end of the period under review. If convicted and imprisoned, AI would consider them to be prisoners of conscience.

In December conscientious objector Enver Aydemir was arrested and detained in Istanbul following a routine identity check by police, which revealed an outstanding arrest warrant against him. At the time of his arrest, Enver Aydemir had been travelling to attend a conference on the right to conscientious objection. Enver Aydemir had previously been prosecuted for his refusal to perform compulsory military service in 2007 and had not subsequently reported to the military unit to which he had been assigned, resulting in the arrest warrant being issued. Enver Aydemir told his lawyers that he was beaten with truncheons on arrival at Maltepe military prison in Istanbul following his refusal to wear military clothing. After several days of detention, Enver Aydemir was transferred to Eskişehir military prison where he remained in pre-trial detention on charges of persistent insubordination and desertion at the end of the period under review. AI considered him to be prisoner of conscience.

Rights of refugees and asylum-seekers

In August AI wrote to the Minister of the Interior expressing concern that the authorities continued to enforce fees for refugees’ and asylum-seekers’ residence permits which prevented access to economic and social rights such as health services, education, adequate housing and work. Despite statements

⁶ For more information see Amnesty International, *Soldiers convicted for ill-treatment of conscientious objector in Turkey*, 19 November 2009. Available at <http://www.amnesty.org/en/news-and-updates/news/soldiers-convicted-ill-treatment-conscientious-objector-turkey-20091119>

made by officials to representatives of NGOs in Turkey that the imposition of fees would end, the imposition of fees continued at the end of December.

On 24 September AI issued a statement calling on the Turkish authorities to release two Iranian refugees, who remained in detention despite a European Court of Human Rights ruling earlier that week stating that their detention was arbitrary, in violation of Article 5 of the European Convention of Human Rights.⁷ In the case of *Abdolkhani and Karimnia v. Turkey* (no. 30471/08), the Court ruled that Mohsen Abdolkhani and Hamid Karimnia had not been informed of the reasons for their detention, that they had not been provided access to a lawyer or an asylum procedure and that their detention was not prescribed by law. A request for referral of the case to the Grand Chamber of the European Court of Human Rights was pending at the end of the period under review. AI had previously written to the Turkish authorities calling on them to release the two men and others held under the same provisions. While the two men were eventually released on 23 October, many more foreign nationals remained in detention under provisions ruled unlawful by the Court. On 27 October AI launched a campaign calling on the Turkish authorities to release all persons held in detention under the provisions ruled unlawful by the Court.⁸

In October AI issued a statement calling on the Turkish authorities to allow refugees to return voluntarily to Turkey without fear of harassment and discrimination. The refugees who are Turkish citizens of Kurdish origin had began to return to Turkey from the UNHCR administered Mahmur refugee camp in northern Iraq. Some 11,000 refugees remain in the camp that was created to house persons who fled Turkey during the 1990s to escape human

⁷ For more information see Amnesty International, *Iranian refugees still held in Turkey despite court ruling*, 24 September 2009. Available at <http://www.amnesty.org/en/news-and-updates/news/iranian-refugees-still-detained-turkey-despite-court-ruling-20090924>, Amnesty International, *Denied protection: Refugees unlawfully detained*, 27 October 2009. Available at <http://www.amnesty.org/en/appeals-for-action/denied-protection-turkey-refugees-unlawfully-detained-0>

⁸ For more information and to take action see Amnesty International, *Refugees denied protection in Turkey – Refugees unlawfully detained*. Available at <http://www.amnesty.org/en/appeals-for-action/denied-protection-turkey-refugees-unlawfully-detained-0>

rights abuses following armed clashes between the outlawed Kurdish Workers Party (PKK) and the Turkish army.⁹

International Justice

On 6 November AI issued a statement condemning Turkey's invitation to Sudanese President Omar al Bashir to attend a meeting of the Organization of the Islamic Conference due to be held in Turkey, even though he is wanted by the International Criminal Court (ICC) on charges of war crimes and crimes against humanity. Turkish officials had stated that they would not arrest and surrender President Omar al Bashir, contrary to the state's obligations under the UN Convention against Torture requiring it to open an investigation when persons suspected of torture - without any limitation as to rank - are present and to take them into custody or take other legal measures to ensure their presence pending institution of criminal or extradition proceedings.¹⁰ Following such concerns being raised both internationally and within Turkey, the Sudanese authorities announced that President Omar al Bashir would not travel to the meeting.

Workers' rights

In July the indictment was presented in the case of more than 30 members of the Confederation of Public Sector Trade Unions (KESK) accused of membership of the Kurdistan Workers' Party (PKK). AI was concerned that the evidence contained within the indictment regarded their union's support for Kurdish language rights and other legitimate union activities and did not demonstrate their participation in or advocacy of violence. In November the 22 members of KESK who had been held in pre-trial detention were released pending the outcome of the trial.

⁹ For more information see Amnesty International, *Turkey: The right of refugees to return with dignity*, 23 October 2009. Available at <http://www.amnesty.org/en/for-media/press-releases/turkey-right-refugees-return-dignity-20091023>

¹⁰ For more information see Amnesty International, *Turkey: No safe haven for fugitive from international justice*, 9 November 2009. Available at <http://www.amnesty.org/en/for-media/press-releases/turkey-no-safe-haven-fugitive-international-justice-20091106>

Also in December, more than 40 employees of the Turkish State Railways were suspended following a one-day strike by union members regarding their right to collective bargaining and right to strike. A spokesperson for Turkish State Railways said that as state employees, they did not have the right to strike in law and that the action taken was therefore illegal. Despite government commitments to address the issue, national law failed to uphold public sector workers' right to strike as protected under International Labour Organization (ILO) standards to which Turkey is a party. .

Trade union rights more broadly remained insufficiently protected in national law. Despite government statements indicating that legal amendments aimed at bringing national law into conformity with international standards on trade union rights could be brought before Parliament, no progress was made during the period under review. Earlier in the year, the International Labour Organization (ILO) Committee of Experts had issued a series of recommendations to the Turkish authorities to bring legislation into line with ILO standards. In particular the Committee stressed the right to organize, the right to strike and the right to bargain collectively, for both the private and public sectors, as areas where national law failed to uphold ILO standards to which Turkey is party. These recommendations had not been acted upon at the end of the period under review.

Ilisu Dam (update to EUR 44/004/2009)

On 7 July Amnesty International issued a statement welcoming the decision of the German, Swiss and Austrian governments to withdraw funding, provided through their respective Export Credit Agencies (ECAs), to the Ilisu dam project in Turkey. The three governments took the decision following independent expert assessments concluding that the dam project had not met agreed standards, including in relation to the social and environmental impacts of the project (**Index: EUR 44/004/2009**).¹¹

¹¹ For more information see Amnesty International, *Turkey: German, Swiss and Austrian governments withdraw financial support for Turkey's Ilisu dam project where human rights violations were a risk*, Index EUR 44/004/2009. Available at <http://www.amnesty.org/en/library/asset/EUR44/004/2009/en/97023822-3748-4e9d-b4c8-02e056b9e98a/eur440042009en.html>

Following the governments' withdrawal of funding guarantees, government officials stated that alternative sources of funding were being sought. Reports later in the year indicated that construction work was continuing at the Ilisu Dam site.

Universal Periodic Review submission

On 9 November Amnesty International submitted a written briefing on its concerns about human rights violations in Turkey to the UN Universal Periodic Review (UPR) ahead of the 8th session of the UPR Working Group, due to take place in May 2010 (**Index: EUR 44/005/2009**). The document highlighted Amnesty International's concerns about violations to the right to freedom of expression, the continued incidence of torture and other ill-treatment and impunity for such human rights violations, unfair trials and the violations to the rights of refugees and asylum-seekers.¹²

¹² For more information see Amnesty International, *Turkey: Submission to the UN Universal Periodic Review: Eighth session of the UPR Working Group of the Human Rights Council, May 2010*, (EUR 44/005/2009). Available at <http://www.amnesty.org/en/library/info/EUR44/005/2009/en>