

TURKEY

Death sentence after unfair trial: The case of Abdullah Öcalan

Abdullah Öcalan, leader of the armed opposition group Kurdistan Workers' Party (PKK), was sentenced to death on 29 June 1999, after a State Security Court found him guilty of the charges of "treason and separatism" under Article 125 of the Turkish Penal Code (TPC). Amnesty International is concerned that Abdullah Öcalan may be executed after trial proceedings that failed to meet international standards for fair trials.

The last executions in Turkey took place in October 1984 - 15 years ago - and provoked an international outcry. Since then, death sentences have continued to be imposed by the courts, but none has been carried out. Turkey is a member of the Council of Europe and party to the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention), but is one of the few remaining member states not to have abolished the death penalty. At the Strasbourg Summit in 1997, the Turkish State President Süleyman Demirel joined with all the other heads of state and government of the Council of Europe member states in a pledge to abolish the death penalty and, pending that, to uphold the existing moratorium on executions.

In view of the current political atmosphere in Turkey and the balance of power in parliament, and as an effect of the deep wounds caused by the 15-year armed conflict between the security forces and the PKK, it is feared that Turkey may be set to take a step backwards and resume executions after a 15-year *de facto* moratorium. If Abdullah Öcalan's execution goes ahead and thus removes the psychological barrier created by 15 years of refraining from the implementation of death sentences, the door would be open for the execution of many others - in particular those already sentenced to death or standing trial in State Security Courts for politically motivated offences.

The resumption of executions in Turkey would be a severe setback for total abolition in Europe. It would also be contrary to the call made by the UN Commission on Human Rights on all states that retain the death penalty "to establish a moratorium on executions, with a view to completely abolishing the death penalty."¹ Last but not least, resuming executions would be a serious blow for human rights in a country which already has an appalling record of torture, "disappearances" and political killings.

¹ UN Commission on Human Rights resolution 1999/61.

One day after the death sentence against Abdullah Öcalan had been passed, the UN Special Rapporteur on extrajudicial, summary and arbitrary executions, Asma Jahangir, reiterated in a letter to the Turkish government her view “that the implementation of a death sentence passed after a trial in which fair trial standards were not respected, constitutes a violation of the right to life.”² Amnesty International is unconditionally opposed to the death penalty. The organization calls on the Turkish authorities not to execute Abdullah Öcalan, or any other person under sentence of death, and reiterates its appeal for the abolition of the death penalty in Turkey. The organization also urges that all political prisoners receive a fair trial, which is especially important when they are on trial for their lives. Amnesty International considers that the trial against Abdullah Öcalan violated both national law and international standards for fair trials. The organization, therefore, calls for a full retrial before an independent and impartial tribunal, in which the death penalty is not a possible punishment and under conditions which ensure the strictest compliance with fair trial standards enshrined in national and international law.

THE DEATH PENALTY IN TURKEY

The death penalty existed in Turkey before the foundation of the Republic of Turkey in 1923. Since 1923, 588 people have been executed in Turkey for crimes such as murder, drug trafficking and violent attempts to overthrow the constitutional order. In recent Turkish history there has been a tendency for executions to follow military coups. For example, after the 1960 coup, Prime Minister Adnan Menderes and two of his ministers were hanged. They were rehabilitated by an act of parliament in 1989 and reburied with full state honours in 1990. After the 1971 coup, Deniz Gezmis, Hüseyin İnan and Yusuf Aslan, leaders of a radical students’ movement, were executed. Between 1973 and 1980 there was a *de facto* moratorium on executions: death sentences were still passed but were not confirmed by the parliament. This moratorium ended shortly after the military coup of 12 September 1980.

Between October 1980 and October 1984, 50 people were executed; 27 had been convicted of politically related offences, 23 of ordinary crimes, the majority having been convicted by military courts after trials which did not meet internationally recognized standards for fairness. The last two men to be executed in Turkey were İlyas Has and Hür Aslan. İlyas Has was convicted of political killing in June 1980 and executed on 7 October 1984. Hür Aslan was convicted of being a leading member of *Devrimci Yol* (Revolutionary Way) at the time of violent clashes between workers and the police in

² Press release related to the letter dated 30 June 1999. The post of UN Special Rapporteur on extrajudicial, summary and arbitrary executions was established in 1982. The UN Special Rapporteur works mainly to counter violations of the right to life, including the imposition of the death penalty after unfair trials.

February 1980 in Gültepe/Izmir, in the course of which several workers and police officers were killed. He was not, however, convicted of the killings. He was executed on 25 October 1984. These last two executions were confirmed under the civilian government.

The last executions in Turkey in October 1984 provoked an international outcry. Since then there has been again a *de facto* moratorium on executions, as the Turkish Parliament did not vote on any death sentences brought before it for approval. However, death sentences continued to be imposed by military and civilian courts.

Under the Anti-Terror Law, passed in April 1991, hundreds of pending death sentences were commuted to terms of imprisonment, a move warmly welcomed by Amnesty International. The parliament had already amended the TPC in November 1990, reducing the number of offences punishable by death from 29 to 13. However, the 13 offences which currently carry the death sentence in Turkey include political offences, such as separatism (TPC, Article 125).

In 1996 at least 10 death sentences were passed by Turkish courts, three of which were commuted to prison terms, and seven were upheld by the Appeal Court; in 1997 at least 48 were passed³ and three upheld by the Appeal Court; in 1998 at least 21 sentences were passed; in the first six months of 1999, at least one sentence was upheld by the Appeal Court and seven others passed, including the death sentences against Abdullah Öcalan, his former deputy İsmail Sakık and the latter's brother Arif Sakık.

In June 1999, a total of 48 death sentences upheld by the Appeal Court had been submitted to the Judicial Commission of the parliament for review. In November 1993, for the first time since 1984, the Judicial Commission of the Turkish parliament approved a death sentence and sent it to the general assembly of the Turkish parliament for approval. It has not, however, yet been approved by the general assembly.

First steps have been taken in Turkey to fully abolish the death sentence. In the bill for a new penal code, prepared by a parliamentary commission under Prof. Dr. Sulhi Dönmezer between 5 July 1996 and 25 June 1997, the death penalty has been eliminated.⁴ In early 1999, the Turkish government then in office informed the Council of Europe that "this bill is one of the priority items on the Parliament's order of business."

BACKGROUND ON THE PKK AND HUMAN RIGHTS ABUSES

Kurds in Turkey are estimated to number at least 12 to 15 million. They are not recognized as an ethnic minority, and their very existence and their language have long been suppressed and officially denied, because ethno-lingual diversity is perceived as a threat to the idea of a homogeneous, unitarian nation state. It is against this background that Kurds, and those who defended their rights, have been exposed to grave human rights violations, including the denial of their right to freedom of expression and association, torture, "disappearance", unfair trials, extrajudicial executions, death penalties and executions.

³ This figure includes 33 defendants sentenced to death in the trial in connection with the massacre in Sivas on 2 July 1993 during which 37 people were killed. This sentence was overturned by the Appeal Court in January 1999 and the trial is currently being reheard.

⁴ The death penalty also exists in the Law on the Prohibition and Prosecution of Smuggling, the Law on Forestry, and the Military Criminal Code.

The PKK was founded in 1978 by Abdullah Öcalan and other former student activists in Ankara as a Marxist-Leninist organization. The PKK aimed to achieve its declared overall goal -- an independent Kurdish state -- by armed struggle. At certain stages of the PKK's history, violence was also used against Kurdish landlords (*Aghas*) or dissidents and critics in other left-wing organizations. The political goal was revised in 1993 to demand autonomy for Turkey's Kurdish population. In August 1984 the PKK started an armed struggle against Turkish government forces. Turkey's southeast provinces, which have a predominantly Kurdish population, were the main theatre of this bitter conflict in the course of which around 3,000 settlements were evacuated and/or burned,⁵ up to three million people were internally displaced and tens of thousands were killed. Both parties to the conflict have been responsible for many civilian deaths. In some cases, it has not been possible to identify the perpetrators.⁶ However, after the arrest of Abdullah Öcalan on 15 February 1999, the media presented him to the public as responsible for the deaths of about 29,000 people who lost their lives in the armed conflict. According to the indictment against Abdullah Öcalan, 4,472 civilians and 5,346 members of the security forces (including 1,225 village guards and 247 police officers) were killed in this conflict.

Amnesty International has documented and repeatedly criticized human rights abuses committed by the PKK and other armed opposition groups. In the 1980s the PKK frequently engaged in the killing of whole families. Many women and children were caught in the cross-fire and killed in the course of the armed clashes when the PKK attacked village guards, but relatives of village guards were also sometimes deliberately and arbitrarily killed. The PKK has targeted teachers on the grounds that state education is delivered only in Turkish and that education in Kurdish is forbidden. Some 90 teachers were killed by the PKK between 1984 and 1995. People both from within the PKK and outside who were alleged to have acted as informers against the PKK or otherwise collaborated with the Turkish government were killed by the PKK. Reports from various sources indicate that armed PKK members killed at least 400 non-combatants between 1993 and 1995. Armed PKK members were responsible for at least 60 deliberate and

⁵ The exact number of evacuated or burned villages is almost impossible to establish, since some villages are comprised of several settlements, each with its own name, spread over many square miles. Some districts of a village might be burned while others are spared. Some burned villages have later been reoccupied. In Summer 1997, the Turkish liberal daily newspaper *Radikal* quoted government statistics mentioning 3,170 evacuated and demolished villages and army figures of 2,664 villages. *Radikal*, 14 July 1997. On 16 July 1999, *Özgür Politika* quoted the results of an Investigation Commission of the Turkish parliament mentioning 3,428 evacuated settlements, 905 of which being villages and 2,523 smaller units.

⁶ For example, the Turkish authorities were quick to blame the PKK for the "Güçlükonak Massacre" in which 11 Kurdish men were killed on 15 January 1996 in the province of __rnak. However, a broad-based delegation who travelled east to conduct a fact-finding mission accused Turkey's Chief of General Staff of responsibility for the massacre. See AI Index: EUR 44/24/98. This massacre is not mentioned in the indictment against Abdullah Öcalan.

arbitrary killings in 1996, and for at least 10 in 1997. Abductions as well as arbitrary and deliberate killings of non-combatants by the PKK continued throughout 1998 and 1999.

Amnesty International strongly believes that, where there is evidence that a person has perpetrated human rights abuses, they should be brought to justice. However, the organization also believes that all alleged perpetrators should be tried in accordance with international standards of fairness and that no person, irrespective of the charges, should be sentenced to death or executed.

UNFAIR TRIAL AGAINST ABDULLAH ÖCALAN IN TURKEY

In 1998 Abdullah Öcalan was expelled from Syria where he had been living and leading the PKK for some 18 years. When he arrived in Italy on 12 November and applied for asylum, he was detained on the basis of an international arrest warrant issued by Germany. An appeal court in Rome lifted the detention order on 16 December after Germany withdrew its arrest warrant. A request by Turkey for the extradition of Abdullah Öcalan was rejected by Italy because the charges brought against him carried the death penalty. Amnesty International welcomed this decision by the Italian government. The Italian government indicated that they were exploring the possibilities of bringing him to trial before a national or international court. However, in January 1999, with the knowledge of the Italian government, Abdullah Öcalan left Italy for an unknown destination. On 15 February 1999, he was taken into the custody of Turkish security forces in Kenya in circumstances which have yet to be clarified and brought to Turkey where he was detained on the island of Imral_ in the Marmara Sea which can be reached only by boat from Mudanya.

Several trials and investigations against Abdullah Öcalan were pending in Turkey when he was still outside the country. One of these trials had been opened in October 1997 at Ankara State Security Court No. 2. In this case, Abdullah Öcalan and seven other defendants were prosecuted for their participation in a program broadcast on the pro-Kurdish television station MED TV. Abdullah Öcalan faced charges under Article 125 of the TPC which are punishable by death. The Court decided in the hearing on 24 February to separate his case from that of the seven other defendants. The first hearing of this separate trial, with which two other trials against him were joined, started on 24 March.

Although he was now held in Turkey, Abdullah Öcalan was not brought to the State Security Court No. 2 in Ankara for the hearing on 24 March. The court, however, permitted relatives of security officers killed in armed clashes with the PKK to be intervening parties in the trial. As “plaintiffs”, the relatives had the right to raise their concerns during the hearings and they were permitted to be represented by lawyers. In the next hearing in the State Security Court No. 2 in Ankara on 30 April 1999, to which



Abdullah Öcalan was similarly not brought from the island of Imral_, the prosecutor introduced a new indictment that he had prepared in the meantime and that was supposed to embrace all the charges brought against Abdullah Öcalan in connection with the armed struggle of the PKK. Again, Abdullah Öcalan was accused under Article 125 of “treason and separatism”. The court decided that the main trial should start on 31 May on the island of Imral_ where a special courtroom had been constructed. The trial on Imral_ is referred to in this document as the "main trial".

The following is a discussion of Amnesty International’s fair trial concerns related to the period from the arrest until the start of the main trial (“pre-trial rights”) and during the main trial.⁷

1) Pre-trial rights

Amnesty International stresses that fair trial concerns begin from the moment of arrest and encompass the preliminary investigation, the trial, all appeals and the imposition of the sentence. Amnesty International calls on the Turkish authorities to provide sufficient information to determine whether Abdullah Öcalan’s arrest in Kenya was in line with national and international law.

⁷ For further information on international standards governing fair trial please refer to Amnesty International: *Fair Trials Manual*, London, 1998, AI Index: POL 30/02/98.

After Abdullah Öcalan was taken into the custody of Turkish security forces in Kenya on 15 February 1999, he was brought to the prison on the island of Imral_ in Turkey. Television reports showed that he was blindfolded at least during the flight to Turkey and upon arrival on the island. The practice of blindfolding was condemned by the UN Committee against Torture in its report on Turkey under the Convention against Torture in November 1993.⁸ However in Turkey, the Regulation on Apprehension, Police Custody and Interrogation does not prohibit blindfolding, and the practice continues as a matter of routine. Almost all detainees are blindfolded while giving their statement. This can be considered a form of ill-treatment in itself, and makes the reliable identification of officers responsible for abuses more or less impossible.

Place and conditions of detention

After Abdullah Öcalan was brought to Imral_, all other prisoners were evacuated from this prison which had, until then, half-open status.⁹ Imrali was proclaimed a restricted military zone after a decision taken by the Council of Ministers on 17 February. Special security measures were introduced at the prison by a National Defence Ministry communiqué published in the Official Gazette (*Resmi Gazete*) on 27 February 1999. All those wishing to go to the island, including Abdullah Öcalan's lawyers, have to apply for a permit. In letters to the Turkish State President Süleyman Demirel, dated 2 March 1999, and to the Justice Minister, dated 9 April 1999, Abdullah Öcalan's lawyers stated that, in violation of national law and international standards, the prison was not under the control of the Ministry of Justice as it should be according to Turkish law, but a "place of interrogation" under the control of the General Staff, and that the staff working there are part of the Special Force (*Özel Harekat Tim*) under the command of the General Staff.¹⁰

⁸ The Committee against Torture is an expert body which monitors the implementation of the (UN) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by states which are parties to this treaty. In its 1993 report, the Committee against Torture concluded that the practice of torture in Turkey is systematic. Turkey ratified the Convention in 1988.

⁹ The prison on Imral_ had housed prominent inmates before: the former Prime Minister Adnan Menderes who was overthrown by a military coup in 1960 was imprisoned on Imral_ and subsequently executed and buried there in 1961.

¹⁰ In the lawyers' view, since the change of its status the prison on Imral_ is no longer an "officially recognized place of detention". Article 10 of the UN Declaration on the Protection of all Persons from Enforced Disappearance provides that all detained people have the right to be held only in an officially recognized place of detention to ensure that detainees have access to the outside world and as a safeguard against human rights violations.

A delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment and Punishment (CPT) which visited Abdullah Öcalan on 2 March 1999 reported that it “was satisfied that, at [that time], he was not at risk of physical ill treatment.” The CPT also stated, however, that “additional measures are required to counter the potentially negative effects on Mr Öcalan’s mental health of being held on his own in a remote location under a high security regime. Those measures relate *inter alia* to his possibilities for contact with the outside world and the precise nature of the regime applied on him” which “should gradually be rendered less restrictive.” The CPT stressed that “Prisoners who present a particularly high security risk should, within the confines of their special unit, enjoy a relaxed regime (able to mix freely with fellow prisoners in the unit; allowed to move without restriction within what is likely to be relatively small physical space; granted a good deal of choice about activities, etc.) by way of compensation for their severe custodial situation.”¹¹ Yet there are no other prisoners on the island with whom Abdullah Öcalan can associate. Amnesty International considers that the conditions of detention in which Abdullah Öcalan was and is being held amount to solitary confinement and may constitute cruel, inhuman or degrading treatment.

The right to have access to the outside world

Incommunicado detention occurs when detainees are deprived of access to lawyers, family and friends, and doctors. The UN Special Rapporteur on torture has stated quite categorically that incommunicado detention should be abolished. Turkey’s Law on the State Security Courts permits four days’ incommunicado detention. In Abdullah Öcalan’s case, even this period was extended and thus his right to a fair trial undermined. He was only granted access to lawyers 10 days after his arrest and to his family after one month and a half. In its statement the CPT asked the Turkish authorities for positive action “necessary to ensure that relatives of Mr Öcalan who wish to visit him are able to do so in safety and without excessive delay.” Since April, his access to family members has remained restricted and irregular.

During the first two and a half months, the conditions of his detention were aggravated by the lack of access to radio, television and newspapers. Access to radio, newspaper and books was only granted after the CPT had published on 4 May its statement on its visit to Turkey, asking the Turkish government to ensure Abdullah Öcalan’s access to such items.

Interrogation

¹¹ The CPT delegation’s observations made during their visit to Turkey between 27 February and 3 March 1999, set out in a letter dated 22 March 1999 and made public on 4 May 1999. The CPT is an expert body which monitors the implementation of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment by Council of Europe states which are parties to this treaty. Turkey ratified the Convention in 1988.

Under Turkish law, prosecutors are authorized to make investigations directly or through police officers. Police officers are obliged to execute orders of the prosecutor concerning the legal procedure (Turkish Criminal Procedure Code Article 154). They are also required to send the documents resulting from the investigation immediately to the prosecutor (Article 156). However, in the case of Abdullah Öcalan the prosecutors were obviously not informed about or in control of the interrogation. Abdullah Öcalan was interrogated on the island by gendarmes until 21 February. As the defence lawyers point out in their defence speech, according to some documents in the trial files the interrogation started on 15 February, according to others on 16 February. The prosecutors, staff of Ankara State Security Court No. 2, had tried to travel to the island in order to question Abdullah Öcalan on 18 February, but were not allowed to do so on the grounds that “the detainee was still being interrogated by security officers”. The lawyers also quote a letter of the prosecutors to the General Command of the Gendarmerie dated 8 March asking for a copy of the interrogation protocol. If the prosecutors were indeed not in control of the investigation, this constitutes a violation of Turkish law.

Abdullah Öcalan was eventually questioned by the prosecutors on 21 and 22 February. On 23 February, he was brought before a judge who changed the arrest warrant *in absentia* into an arrest warrant in the presence of the defendant. Abdullah Öcalan was remanded on the island. His lawyers stress that having been remanded, the defendant should only be interrogated by a prosecutor. However, they established that Abdullah Öcalan was still being interrogated by an "Interrogation Commission" in early April. The membership of the commission was not known to the lawyers. The lawyers repeatedly demanded Abdullah Öcalan's transfer to a “recognized prison”, annulment of the interrogation and new interrogation by the Prosecutor.¹²

Right to be brought promptly before a judge

The right to be brought promptly before a judge is established in Article 5 (3) of the European Convention. The European Court of Human Rights has ruled that detaining a person for four days and six hours constitutes a failure to allow prompt presentation to a judge.¹³ This right was violated in the case of Abdullah Öcalan. According to the indictment, the judge from the Ankara State Security Court was prevented “by poor weather conditions” from travelling to the island until 21 February. He issued the arrest warrant in presence of the detainee on 23 February. If travelling to the island is dependent on special weather conditions, the Turkish authorities should have arranged another place

¹² For example, in their letter to State President Süleyman Demirel dated 2 March and in the trial session on 24 March.

¹³ *Brogan et al. v. United Kingdom*, 1988.

of detention in order to ensure Abdullah Öcalan's right to prompt presentation to a judge as well as his access to the outside world and his lawyers.

Restrictions to the right of defence

Under international law, everyone charged with a criminal offence has the right to defend his or her self. This right includes, among others, the right to counsel, the right to immediate access to counsel upon arrest, the right to assistance of counsel including during pre-trial phases, the right to facilities which guarantee respect for the right to confidential communications with counsel and adequate time and facilities to prepare a defence. Amnesty International is concerned that throughout the pre-trial and trial period, Abdullah Öcalan's defence rights have been violated.

The European Court has acknowledged that the right to a fair trial normally requires an accused person to be allowed legal counsel during the initial stage of police investigation. In the case *Murray v. United Kingdom*, the Court found in 1996 that the failure to grant access to counsel during the first 48 hours after the arrest was a violation of Article 6 of the European Convention.¹⁴ The UN Special Rapporteur on torture has recommended that anyone who has been arrested "should be given access to legal counsel no later than 24 hours after the arrest." This right is regularly violated in Turkey as the Law on the State Security Courts permits four days' incommunicado detention. Turkish authorities did not grant Abdullah Öcalan access to his lawyers until 10 days after his arrest.

On 4 March, a Chamber of the European Court requested the Turkish authorities to secure compliance with Article 6 of the European Convention, to respect the rights of the defence in full, including the applicant's right to see and have unrestricted, effective access to the lawyers representing him in private.¹⁵ The Turkish government was invited to inform the Court of the measures taken by the authorities to satisfy these requests. However, Abdullah Öcalan's access to his lawyers remained restricted. Throughout the pre-trial detention and the trial Abdullah Öcalan was refused adequate time and facilities to communicate with his counsel. The authorities permitted him to meet his lawyers only twice per week. The first meeting, on 25 February, was limited by the authorities to 20 minutes, the second to 45 minutes, and the following meetings to one hour each. In several cases even these short visits were prohibited.¹⁶

¹⁴ *Murray v. United Kingdom*, (41/1994/488/570), 8 February 1996.

¹⁵ This response is related to the Chamber's decision on 4 March that Rule 39 allowing interim measures should be applied in the case of Abdullah Öcalan. In his application to the Court, Abdullah Öcalan had alleged a violation of the European Convention under Article 5 (the right to liberty and security) and referred to Article 2 (right to life), Article 3 (prohibition of torture) and Art. 6 (1) (the right to a fair trial) and requested the application of Rule 39.

¹⁶ For example, on 23 March lawyer Mahmut _akar was delayed when asked to submit a

statement to the Mudanya Criminal Court because of an arrest warrant concerning himself. He was released subsequently, but was unable to travel to Imralı. On 26 March the authorities denied the lawyers access to the island, because they had missed the motor boat going there. When the lawyers insisted, another boat was provided. On 30 March the lawyers' visit was denied on the ground that no permit had been issued for their travel to the islands. On 6 April lawyers Irfan Dünder, Hasip Kaplan, Ercan Kanar and Ahmet Zeki Okçuoğlu were controlled when entering the district of Mudanya. Irfan Dünder was taken to the military branch office in Mudanya on the grounds that he was allegedly evading military service; he was released after an hour.

The defence lawyers were not allowed to bring any written or printed material to the meetings with Abdullah Öcalan - not even the documents from the trial file, blank paper or pens. Thus, the lawyers could only orally inform him about the charges and the contents of the file against him during these time-restricted visits. The lawyers were his prime bridge to the outside world. When he finally gained access to daily newspapers, news items about himself were cut out of them, according to his lawyers' reports. Thus, he could not follow the public discussions around the trial. Furthermore, the authorities did not allow him to receive the books, journals and documents he had requested for the preparation of his defence and which were mentioned in the indictment. Again, Abdullah Öcalan himself had no access to the trial files. His lawyers did not obtain a copy of the 45 files containing all the documents related to the case (according to the lawyers a total of some 15,000 pages) until two weeks before the beginning of the trial.¹⁷ In view of the complexity of the case, two weeks was not an adequate time period to study the files and prepare Abdullah Öcalan's defence.

Amnesty International is concerned that these restrictions constitute a violation of Abdullah Öcalan's right to adequate time and facilities to prepare a defence as guaranteed in Article 6 (3) (b) of the European Convention. Nevertheless, the defence lawyers' demand to adjourn the trial was rejected in the first session of the trial on 31 May 1999.

While the pre-trial defence preparation depended mainly on oral exchange between the lawyers and their client, the right to confidential communication with legal counsel enshrined in national and international law was also violated. The Turkish Criminal Procedure Code ensures in Article 144 that the detainee has the right to meet with his legal counsel at any time and that their conversation should not be heard by anybody else. The right to confidential communication is also enshrined in international law within Principle 22 of the Basic Principles on the Role of Lawyers and in Principle 18(4) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment as well as in Rule 93 of the European Prison Rules. Respect of this right requires that there be no interception or censorship of written or oral communications between the accused and his or her lawyers. However, Abdullah Öcalan's first meeting with his lawyers on 25 February took place in the presence of a judge, a court secretary, who prepared a record of the conversation which took place, and two uniformed guards whose faces were concealed behind ski masks. This crucial breach of procedure was noted in the record of the visit at the request of the defence lawyers. In subsequent visits by the defence lawyers until the end of April, guards were present not only within sight, but also within hearing distance. Hence, Abdullah Öcalan's right to confidential

¹⁷ Reportedly, the presiding judge did not take the lawyers' access to the trial files very seriously. While they were copying the file, he said to them: "You don't need to copy all of them. It's a shame to waste your money."

communication with his lawyers was breached at each instance until May when this situation seems to have improved. This breach impeded the ability to prepare his defence.

Right to be present at trial

While Abdullah Öcalan was remanded on the island, trials opened against him before his arrest were continuing before different courts in Turkey. They were joined with the trial at State Security Court No. 2 in Ankara. Abdullah Öcalan was deprived of the right to be present during the sessions of the trial before the Ankara State Security Court on 24 February, 24 March and 30 April. Although the right to be present at one's trial is not expressly mentioned in the European Convention, the European Court has stated that the object and the purpose of Article 6 mean that a person charged with a criminal offence is entitled to take part in the trial hearing.

Right to be informed promptly of charges

Furthermore, in violation of the right to be informed promptly of any charges against him, as guaranteed in Article 6 (3) (a) of the European Convention, neither Abdullah Öcalan nor his lawyers received a copy of the indictments of trials which had previously been opened against him. The indictment prepared for the main trial was distributed and partly read by the State Prosecutor at a press conference two days before the session on 30 April, whereas the lawyers did not receive a copy of it before it was read in the trial session, even on written request. Thus, the right to information about the charges was breached. Also, Article 30 of the Turkish Press Law, according to which an indictment should not be published before being read in court, was violated.

Right to be presumed innocent

Article 6 (2) of the European Convention guarantees that "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law." This means that judges must refrain from pre-judging any case, and other public officials should refrain from making statements about the guilt or innocence of an accused before the outcome of a trial has been reached. However, the Turkish media and police often infringe this right.¹⁸ During the initial investigation in the case of Abdullah Öcalan, parts of the interrogation record were conveyed to the press. The Chief Prosecutor at Ankara State Security Court finally warned the prosecutors involved in the Öcalan investigation

¹⁸ In Turkey, political prisoners are often presented immediately after their interrogation by the police to the media together with alleged evidence such as political publications and weapons. At this stage, they have not even been brought before a judge. Thus, the right to be presumed innocent is regularly violated.

not to pass information from the trial and the indictment to the press, or he would open an investigation against them.¹⁹

Harassment of Abdullah Öcalan's defence lawyers

The trial proceedings took place in a highly emotional atmosphere to which the state-controlled media contributed. Abdullah Öcalan was not only presented to the public as a "leader of a terrorist organization", but also as a "baby killer".²⁰ The fact that relatives of soldiers killed in the armed clashes with the PKK were permitted to be intervening parties to the trial hearings also raised tensions and emotions during the sessions. This political atmosphere contributed to the harassment of Abdullah Öcalan's lawyers.

Ahmet Zeki Okçuoğlu and Hatice Korkut were reportedly kicked and punched on 25 February as they arrived at the quay-side at Mudanya to set off for the prison island of Imralı for their first meeting with Abdullah Öcalan. Both lawyers and their families received telephone threats. Even people with the same surname were said to have been harassed. The lawyers say that they were confronted on nearly every visit to the island by a gathering of plainclothes police officers, members of the extreme right-wing Nationalist Action Party (MHP) and of an organization close to the MHP called Hearths of the Idealists (*Ülkü Ocakları*), who insulted and threatened them. Reportedly, no legal procedures were brought against the people suspected of involvement in these attacks including even those which were reported to have taken place in sight of police officers.

Another episode involved four lawyers working on Abdullah Öcalan's case who held a press-conference at the Press Museum in the Cağaloğlu district of Istanbul the next day. They were jostled by an angry crowd on entering the museum. After the press conference, the lawyers were unwilling to leave the building as there was a group of people shouting right-wing slogans and threats outside. After initially declining to offer any guarantees for the lawyers' safety, the police eventually brought a vehicle to the museum and accompanied them to relative safety. Another lawyer, Osman Baydemir, was arrested on his way to the press conference and detained for 24 hours in connection with a press statement he had made as part of the Diyarbakır Democracy Platform on 17 February. In the press statement the Platform had demanded that Abdullah Öcalan should have a fair trial in accordance with international standards.

¹⁹ *Cumhuriyet*, 20 March 1999.

²⁰ When Abdullah Öcalan was still in Italy, the Turkish state TV station TRT International used to broadcast in the middle of its daily news program the slogan "The baby killer is on holiday" illustrated by features of Abdullah Öcalan and bodies of dead babies.

At the end of the trial hearing on 24 March before the Ankara State Security Court, relatives of soldiers killed in the conflict who were participating in the trial as plaintiffs insulted and threatened Abdullah Öcalan's defence lawyers. The presiding judge called for calm, but took no measures against them. The lawyers had to leave the court through a window.

On 9 April lawyers Ahmet Zeki Okçuoğlu and Eren Keskin were loudly threatened when walking near Taksim Square in Istanbul. The man attacking them shouted, "You will not be able to walk freely on the street!" and, to the pedestrians immediately surrounding them: "These are the lawyers of the murderer!" The lawyers were verbally and physically assaulted. Numerous plainclothes police officers were seen near by, but did not intervene. When Ahmet Zeki Okçuoğlu said he would call the police, the attacker just responded, "The police will not protect you."

In the trial session on 30 April in Ankara an Amnesty International representative present at the session heard somebody call out, "They are beating up a lawyer." When the families of killed soldiers attending the session as plaintiffs applauded the news, the judge simply warned them to be quiet and did not order an immediate investigation of the incident. At the end of the session, the Amnesty International representative witnessed objects -- later said to include stones and metal objects -- being thrown at the defence lawyers, who subsequently had to leave the courtroom through a police cordon. According to reports, lawyers Niyazi Bulgan and Irfan Dündar were beaten by uniformed policemen inside the court's premises. After being taken to the police station adjoining the court, all the defence lawyers were transferred to the market place of Yenişehir where they were beaten and kicked by the police. During the transfer police officers reportedly threatened them saying, "We will kill you." The police officers also reportedly tried to incite people on the market place shouting, "These are Apo's lawyers", but only a few of the passers-by participated in the attacks. As a result of these attacks, lawyers Derya Bayir, Mükrimte Tepe (both female), Ahmet Avşar, Niyazi Bulgan and Irfan Dündar were injured.²¹

Sibel Ceylan, a Turkish and Belgian national, came to Turkey with a French delegation as interpreter in early April and worked for a while as a translator for the office of Abdullah Öcalan's lawyers, *Asrın Hukuk Bürosu* (the Century's Legal Office). On 7 May she was arrested at Istanbul airport when she was on her way home to Belgium. She was detained at Istanbul police headquarters for two days and reportedly ill-treated and sexually

²¹ In reports dated 30 April 1999, Ankara Medical Chamber documented the injuries sustained by the lawyers. Irfan Dündar's report noted an area of erythema on the left scapula, erythema in the shape of a line and an abrasion below the left collarbone, an area of erythema consistent with acute trauma on the left arm, an abrasion on the left kneecap, abrasions below the right kneecap, an area of ecchymosis on the upper right calf and widespread soft tissue trauma. Niyazi Bulgan's report noted skin lacerations on the left tibia, painful jaw movements and sensitivity on the left side of the jaw.

assaulted. On 9 May she was brought before a judge and remanded to Ümraniye prison. A trial was opened against her and lawyer Niyazi Bulgan from *Asrı'n Hukuk Bürosu*. They were charged under Article 169 of the TPC with supporting the leader of the illegal organization PKK. These charges were based on the fact that Sibel Ceylan carried a file prepared by Niyazi Bulgan with documents relating to the trial of Abdullah Öcalan, including a copy of the indictment. Niyazi Bulgan was charged with "aiming to help Abdullah Öcalan ... by going beyond his responsibilities as a lawyer in order to call for support from abroad and create a public opinion in his [Abdullah Öcalan's] favour." On 25 June, both Niyazi Bulgan and Sibel Ceylan were acquitted, and Sibel Ceylan was released from prison.

In response to the threats and harassment faced by the lawyers involved in the case, Amnesty International repeatedly called upon the Turkish government to support clearly and decisively the principle that lawyers should be free from intimidation or improper interference in the exercise of their professional duties. This is set out in Article 16 of the UN Basic Principles on the Role of Lawyers. Article 18 of these Principles states that "lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions", a right that was continually violated from the time the lawyers first took over the defence of Abdullah Öcalan.

2) The main trial

The main trial started on 31 May 1999 on the island of Imralı. Abdullah Öcalan was charged with "treason and separatism" under Article 125 of the TCP, which carries the death penalty. Unlike many other trials in Turkey, this trial was held continuously. Hearings started at 10am and continued until the afternoon, with a one-hour lunch break. The judges and prosecutors arrived at the island some days before the start of the trial and were accommodated on the island. The lawyers, plaintiffs and relatives of the defendant as well as the observers had to travel to the island each day. At the end of the first week, the trial was adjourned from 4 June to 8 June to enable the prosecution to prepare their plea. After the prosecutor requested a guilty verdict and demanded the death penalty, the defence lawyers asked for one month's adjournment in order to have adequate time for the preparation of the defence, but the court only granted two weeks - the maximum period allowed in trials before State Security Courts.²² The trial resumed on 23 June with the defence speeches and concluded on 29 June with the judgment in which Abdullah Öcalan was sentenced to death under Article 125 of the TPC.

Right to a full trial before an independent and impartial tribunal

²² Law on State Security Courts Article 20.

The individual's right to a trial by a competent, independent and impartial tribunal lies at the heart of due process of law. This right is guaranteed in Article 6 (1) of the European Convention. It is so basic that the Human Rights Committee has stated that it "is an absolute right that may suffer no exception."²³ However, Amnesty International is concerned that this right was violated on several grounds in the Öcalan trial.

²³ *Gonzalez del Rio v. Peru*, 28 October 1992. The Human Rights Committee is an expert body monitoring the implementation of the International Covenant on Civil and Political Rights (ICCPR) and its two optional protocols. State parties are required to submit periodic reports to the Human Rights Committee as well as special reports on request. The Human Rights Committee may review complaints submitted by or on behalf of individuals or by one state party against another. Turkey has not signed the ICCPR.

Abdullah Öcalan was tried in a State Security Court. Amnesty International has a number of reservations concerning the independence of State Security Courts and about their conduct of trials. One of the three judges in State Security Courts was a serving soldier; in the trial of Abdullah Öcalan this judge was a colonel by rank. It is clearly far from satisfactory for a civilian on trial for his life, and who has been in a bloody conflict with the Turkish armed forces for at least 15 years, to be tried by a semi-military tribunal. Apart from this, the European Court of Human Rights ruled in the case of *Incal v. Turkey* that a person tried in a State Security Court had legitimate cause to doubt the independence and the impartiality of the court because one of the judges was a military judge. In admitting the case of *Ç_raklar v. Turkey*, the European Commission of Human Rights stated that the State Security Court's "lack of independence and impartiality has been established."²⁴ The fact that a military judge made rulings in the Öcalan trial until it was adjourned on 8 June for the preparation of the final defence undermines Abdullah Öcalan's right to a full trial before an independent and impartial tribunal. In the first hearing of the main trial on 31 May, the defence lawyers requested the adjournment of the trial until the expected change in the composition of State Security Courts. However, this request was rejected by the court. Protesting this court decision, two senior lawyers withdrew from the trial; another senior lawyer had withdrawn immediately before the start of the trial.

In the light of the ruling of the European Court, Amnesty International welcomes the decision of the new Turkish parliament on 18 June 1999 to amend Article 143 of the constitution, and thereby to exclude military judges from all State Security Courts in order to comply with the European Court's judgments. As a consequence of the amendment of the constitution, when the Öcalan trial continued on 23 June, the military judge had been replaced by a civilian judge who had attended the trial as a reserve judge, but had not made decisions in the trial from the beginning. The defence lawyers argued that all procedures made up to 23 June 1999 contravened the law and, therefore, they demanded that all their interventions made in the hearings on 30 April and 31 May should be reheard by solely civilian judges. This demand was rejected by the court. Amnesty International believes that it is a fundamental principle of fairness that if there is a change of judges in the course of the proceedings, and the new judges have not participated in all the sessions of the proceedings which have taken place, the case should be retried.

²⁴ The Court ruled 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 independence and the impartiality of Izmir [State] Security Court." European Court of Human Rights, Case of *Incal v. Turkey* (41/1997/825/1031), Judgment, 9 June 1998. This conclusion was repeated in Case of *Ç_raklar v. Turkey* (70/1997/854/1061), Judgment, 28 October 1998. The Court translates *Devlet Güvenlik Mahkemeleri* (State Security Courts) as *National Security Courts*.

The civilian judge who was substituted for the military judge in the Öcalan trial had issued the arrest warrant against Abdullah Öcalan on 23 February 1999. The defence lawyers argued that this fact contradicts Article 22 of the Turkish Criminal Procedure Law saying that “A judge who participated in the decision against which an appeal is made cannot participate in the decision given by the Superior Court.” They further argued that a judge who issued an arrest warrant in the initial investigation cannot be impartial and should not take part in the final decision. Therefore, they applied to the court to stop the trial until an appropriate court delegation had been established, but their demand was also rejected by the court. This decision violated international standards for impartiality. The European Court of Human Rights had found a lack of impartiality where an investigating judge had ordered the accused to be detained prior to the trial and had interrogated the accused on a number of occasions during the investigation and was later appointed as the trial judge and as such conducted the trial of the same case.²⁵

²⁵ The case of *De Cubber*, 26 October 1984.

Concerns have been raised by several high ranking Turkish jurists that the body which appoints, transfers, promotes, disciplines and dismisses judges, called the Supreme Council of Judges and Prosecutors, is so closely connected with the executive as to call into question the independence of the civilian judiciary.²⁶ Discussion within the Turkish government about possible changes to the Supreme Council of Judges and Prosecutors suggests that the government, too, is aware that the Council is far from satisfactory. Amnesty International hopes that following the amendment of the constitution related to the military judges in the State Security Courts, further steps will soon be taken to fully ensure the independence of judges in Turkey.

The impartiality of the courts is also questioned by several factors: the arrangement of the court places the prosecutor alongside the judges, and the defendant and their counsel in a visibly junior position. In the case of Abdullah Öcalan the prosecutors even travelled to the island together with the judges and were accommodated with them on the island. These conditions of physical closeness to the prosecutors raise doubts about the judges' ability to maintain equal distance and impartiality towards prosecutors and lawyers.

Principle of “equality of arms”

Another 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. Based on trial observation in Turkey in numerous cases, Amnesty International is concerned that the principle of equality of arms is not consistently recognized in State Security Courts. Judges very frequently ignore the defence counsel's requests to call, examine and cross-examine witnesses, or to call mechanisms which might establish innocence or mitigation.

While the court permitted a number of relatives of alleged victims of the PKK to intervene in the proceedings of the trial of Abdullah Öcalan as parties, it refused the request of the defence lawyers on 4 June to join as intervening parties relatives of PKK militants who died in the clashes and to present witnesses to testify about the mediation attempts of the PKK.²⁷ The demands of the defence lawyers for additional investigation and hearing of witnesses were rejected by the Court.

²⁶ The Supreme Council of Judges and Prosecutors, 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.

²⁷ The PKK has announced unilateral cease-fires and declared itself ready for conflict mediation in 1993, 1995 and 1998. In 1993 Jalal Talebani, leader of the Patriotic Union of Kurdistan (PUK) in North-Iraq, was asked to mediate between the PKK and Turkish authorities when Turgut Özal was State

Whereas the prosecutors were accommodated on the island, the defence lawyers were denied such facilities, had problems in finding appropriate accommodation and were forced to get on a boat to the island every morning at 5.30am, meaning that they had to get up at 4am. When the hearings started at 10am, they had already been up for six hours. The President of the Istanbul Bar Association, Yücel Sayman, who observed the trial, said in an interview that the lawyers were tired and had difficulties concentrating, and he stressed that this inequality between prosecutors and defence lawyers was a violation of the principle of “equality of arms”.

Right to defend oneself

During the trial, Abdullah Öcalan was given more time than usual in Turkish trials to express his views and react to interventions. He declared from the very beginning that he would leave legal defence concerns to his lawyers. However, his opportunities to receive legal advice from his counsel were restricted. Abdullah Öcalan attended the trial enclosed in a glass box. Thus, he was unable to speak with his lawyers during the hearing and could not even pass notes to them. As the lawyers had to spend several hours each day travelling to the island, their possibilities to speak with Abdullah Öcalan before the trial were also restricted. On the first day of the trial the lawyers were told that the boat due to take them to the island had broken down. For that reason they arrived so late on the island that they were refused permission to talk to Abdullah Öcalan before the trial started. They were only allowed to meet him for 15 minutes during the lunch break. On the second morning they were again denied a meeting with their client due to “lack of time.” On the other days, they were given the opportunity to talk to him before and after the trial as well as during the break for periods between 15 and 40 minutes.

On 3 June the court allowed the trial to proceed despite the unpreventable absence of Abdullah Öcalan’s lawyers. After the third trial hearing, the lawyers had reportedly been verbally attacked and insulted by an angry crowd in front of their hotel in Bursa without intervention from the police officers on hand. The lawyers declared that they were forced to return to Istanbul because no hotel would let them stay. Therefore, they could not attend the hearing on Thursday, 3 June. Abdullah Öcalan was simply informed that his lawyers were not present and given the opportunity to comment. Then the trial proceeded without the lawyers. According to international fair trial standards, the trial should have been adjourned. The Human Rights Committee has previously held that in a case where the offence is punishable by death, the interests of justice require that the case should not proceed if the accused is not represented by counsel.

President. It was alleged that the government under Prime Minister Tansu Çiller also tried to assess the possibilities for conflict solution. Abdullah Öcalan’s lawyers requested to invite among others Jalal Talebani and Tansu Çiller as witnesses.

Right to a public hearing

Article 6 (1) of the European Convention establishes that, except in narrowly defined circumstances, all court hearings must be public. This right means that not only the parties in the case, but also the general public have the right to be present.²⁸ International law does not grant to states an unfettered discretion to define for themselves what constitutes an issue of national security.

Amnesty International is concerned that the trial of Abdullah Öcalan was held in such conditions that the right to a public hearing was not fully recognized. Access to the courtroom on the island was limited and travel to the island only possible after a special identity and security check. The Turkish Foreign Ministry informed foreign embassies that probably only one representative from each embassy that applied would be permitted access to Imral_ island at a time; permits would not be transferable and would be valid for a particular day only, but that applicants could not specify on which day(s) they wanted to attend. In total, only 12 places in the court would be earmarked for foreigners including diplomats. Any other foreigners wishing to attend would have to apply as individuals either in person or through their Embassy in Ankara enclosing a special application form. Anyone wanting to “observe” the trial or “representing” an institution would not be allowed to attend. It was made clear that this included the EU Commission, European Parliament and Council of Europe.

Thus, neither intergovernmental organizations nor non-governmental organizations, including Amnesty International, could observe the trial as organizations. It was left solely to the discretion of the Turkish authorities whom they permitted to attend the trial. In this way, Amnesty International’s observer was excluded from the trial both as a representative of the organization and as an individual. Amnesty International is concerned that these restrictive procedures violate the right to a fair trial as guaranteed in Article 6 (1) of the European Convention.

THE VERDICT AND SUBSEQUENT LEGAL PROCEDURES

On 29 June on the island of Imral_, the Ankara State Security Court No 2 unanimously sentenced Abdullah Öcalan to death under Article 125 of the TCP, having determined that “he carried out acts aiming at the separation of parts of the territory which are under the sovereignty of the state by inciting and leading the armed terrorist organization which he founded”. The court also decided that in view of the severity and continuity of his

²⁸ In addition, the UN Declaration on Human Rights Defenders underlines the right of trial observers “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.”

actions and the grave, imminent and great danger to the country there was no place for the application of Article 59 of the TCP which allows for commutation of a death sentence.

Before reading out the judgment, the presiding judge reportedly asked those in the courtroom to listen to the verdict quietly, not to applaud subsequently, but to leave the courtroom in silence. Notwithstanding, relatives of soldiers killed in the armed conflict started to sing the national anthem. This was a final expression of the emotional atmosphere in and around the trial.

The presiding judge is reported to have expressed his general opposition to the death penalty immediately after the conclusion of the trial. He was quoted by journalists as saying that he was personally opposed to the death sentence, but that since it was in the law he had no option but to impose it. The other civilian judge in the Öcalan trial had previously issued a dissenting vote in a trial against members of the left-wing organization TIKKO²⁹ who were sentenced to death, pointing out that there was “a strong will in Turkey to abolish the death sentence parallel to developments in other civilised countries”.³⁰ In this context, he mentioned the draft bill for a new penal code from which the death penalty has been eliminated.

Amnesty International was pleased to learn that the newly elected President of Turkey’s Appeal Court said in an interview, “I am of the opinion that the European Convention on Human Rights overrides the constitution. The Turkish judiciary could make great progress by applying the principles set down in the Convention, especially Article 6 on the right to a fair trial and Articles 9 and 10 on the freedom of thought and belief and the freedom of expression.”³¹

²⁹ *Türkiye İçki Köylü Kurtuluş Ordusu* (Workers’ and Peasants’ Liberation Army of Turkey)

³⁰ *Milliyet*, 30 June 1999; *Hürriyet*, 6 July 1999.

³¹ *AFP*, 15 July 1999.

Like all death sentences and sentences of 15 or more years' imprisonment, Abdullah Öcalan's sentence will automatically be reviewed by the Court of Appeal. However, both the prosecutor of the State Security Court and the defendant and his legal counsel also have the right to appeal. After the judgment has been written by the State Security Court, it is submitted together with any appeals of the State Security Court's prosecutor or the lawyers to the Chief Prosecutor of the Appeal Court. The Chief Prosecutor of the Appeal Court will then prepare a statement recommending either upholding or rejecting the sentence. The file will then be discussed by the Ninth Criminal Chamber of the Appeal Court. The defence lawyers can request a hearing. If the Appeal Court confirms the sentence it becomes binding.³² If the Appeal Court quashes the sentence, the case will be reheard by the State Security Court. In case the State Security Court insists on its previous sentence, the case will be heard by the General Criminal Board of the Appeal Court.

After being confirmed by the Court of Appeal, in accordance with Article 12 of the TPC and Article 87 of the Constitution death sentences can only be carried out if they are approved by an act of parliament. Death sentences upheld by the Court of Appeal are submitted to the Judicial Commission of the Parliament which is free to stop the procedures *de facto* by not reviewing the case. If the Commission intends to proceed with the sentence, it prepares a draft law recommending or not recommending the execution, as the case may be, and submits it to the general assembly of the parliament. The approval of the parliament requires a simple majority. With the approval the parliament specifies the date and place of the execution. The State President is empowered to commute or lift the death and/or other sentences on grounds of age, disability or ill-health (Article 104 of the Constitution). Once the act is ratified and has been announced in the Official Gazette (*Resmi Gazete*), the Ministry of Justice is responsible for carrying out the execution, which usually happens within days, sometimes hours.³³

RECOMMENDATIONS

Amnesty International is concerned that Abdullah Öcalan was sentenced to death after an unfair trial. Amnesty International, therefore, calls on the authorities to ensure that he will have a retrial before an independent and impartial tribunal, in which the death penalty is

³² Turkish law provides an exceptional possibility for the Chief Prosecutor of the Appeal Court to try and "correct" the decision of the Appeal Court. It is then incumbent upon the General Criminal Board of the Appeal Court to decide. The latter's decision is binding. Defence lawyers do not have the right to appeal directly to the General Criminal Board of the Appeal Court, but only through the Chief Prosecutor.

³³ According to Article 12 of the TPC, no person under the age of 18 at the time of their offence may be executed. Execution of a pregnant woman must be deferred until she has given birth. An insane person may not be executed.

not a possible punishment and under conditions which ensure the strictest compliance with fair trial guarantees enshrined in national and international law.

The 15-year *de facto* moratorium on executions, the commutations and the reduction in the number of capital crimes were steps on the way to the complete abolition of the death penalty, bringing Turkey into line with the rest of Western Europe and, increasingly, Eastern Europe. However in view of the current political atmosphere and the Abdullah Öcalan trial, it now looks possible that Turkey is set to take a step backwards and resume executions. The death penalty is the ultimate form of cruel, inhuman and degrading punishment. It cannot be reversed in case of error, where it is found that an innocent person has been executed. It has never been shown to prevent crime - least of all politically-motivated crime - more effectively than other punishments. Turkey is a member of the Council of Europe and party to the European Convention of Human Rights, but is now one of the few remaining states not to have signed or ratified Protocol No. 6 of the European Convention which outlaws the death penalty except in time of war. The resumption of executions in Turkey would be a severe setback for the total abolition of the death penalty in Europe.

First steps have been taken in Turkey to fully abolish the death sentence. In the bill for a new penal code, prepared by a parliamentary commission under the direction of Prof. Dr. Sulhi Dönmezer between 5 July 1996 and 25 June 1997, the death penalty has been eliminated. In early 1999, the Turkish government then in power informed the Council of Europe that "this bill is one of the priority items on the Parliament's order of business." Amnesty International would warmly welcome this important step towards an improvement of Turkey's human rights record.

Amnesty International calls on the Turkish authorities:

- To ensure that Abdullah Öcalan is retried before an independent and impartial tribunal under conditions which ensure the strictest compliance with fair trial guarantees enshrined in national and international law and in a trial in which the death penalty is not a possible punishment.
- To ensure that all political prisoners in Turkey are tried in compliance with international standards for fairness.
- To respond to the recommendations of the CPT concerning Abdullah Öcalan's access to the outside world while in detention, in order to end the conditions of solitary confinement.
- To initiate an impartial investigation into the reports of ill-treatment and harassment of Abdullah Öcalan's lawyers.

- Not to execute Abdullah Öcalan or any other person, but to uphold the *de facto* moratorium on executions.
- To realize previous plans to abolish the death penalty and then ratify Protocol No. 6 of the European Convention.

Appendix

Prisoners under death sentence with cases before the parliament

Name	Year ⁱ	Prison	Comments
AKALP, ABDURRAHIM	1999		
AKAN, YA_AR	1997	Adana 1 st class Military Prison	Soldier, sentenced to death for the rape and murder of a woman in Sept. 1996. Death sentence ratified by the Military Appeal Court.
AR_, MEHMET	1996/97?	Manisa E Type Closed Prison	Sentenced to death for murder.
A_K_N, HASAN	1998/99?		Sentenced to death by Izmir State Security Court (SSC) on 02/04/97 for PKK membership and the bombing of a cafeteria in Izmir on 17/09/95, resulting in five deaths.
ATALAY, CELAL	1997		Sentenced to death for the second time on 10/12/96 by Burhaniye Heavy Penal Court for abduction and murder of a musician in July 1994 (the first verdict given on 15/06/95 had been overturned by the Appeal Court). On 20/06/97 the Appeal Court upheld the verdict which had convicted him and BIRSEN GÜNGÖREN in first instance.
ATAY, HASIP MEHMET	1995	Gaziantep E Type Closed Prison	Sentenced to death for raping and killing a 10-year-old primary school student by Gaziantep Heavy Penal Court No. 2.
AZAKL_, ALI	1998/99?		
BIÇER, MEHMET S_DD_K	1999		Sentenced to death by Diyarbakir SSC on 01/04/98 for killing nine villagers and wounding three others in a mosque in Yolaç village, Silvan, in 1992.
ÇAKMAK, CEMAL	1997/98?	Ankara Central Closed Prison	Sentenced to death under Art. 146/1 for murder of a TIKKO co-detainee in Ankara Central Prison. Previously sentenced to life imprisonment for attempting to change the constitutional order by force (TKP-ML/TIKKO).

Name	Year ⁱ	Prison	Comments
ÇELIKEL, ÇA_ATAY	1999		Sentenced to death for killing a woman in Istanbul in 1995.
Ç_NAR, İBRAHİM	1997/98?	Antalya Prison	Sentenced to death for rape and murder.
DAYAN, MEHMET SAIT	1994/95?	Bart_n Special Type Prison	Sentenced to death under Article 125 (separatism).
DUMAN, BURHANETTİN	1997/98?	Ankara Closed Prison	Sentenced to death for murder and armed robbery.
ERENGÜL, CÜNEYT	1997	Adana 1 st class Military Prison	Soldier. (See AKAN, YA_AR)
FIDANC_, MEHMET	1999		See BICER, Mehmet S_dd_k
GEDİK, BEKİR	1994	Diyarbak_r Military Prison	Sentenced to death for PKK membership and murder.
GIRGIN, MÜRSEL	1996/97?	Eski_ehir Closed Prison	Sentenced to death for murder.
GÖKÇE, EKREM	1996/97?	Akhisar Closed Prison	Sentenced to death for murder.
GÖMİ, KEMAL	1997/98?	Istanbul Closed Prison	Sentenced to death under Art. 146/1 by Istanbul SSC for attempting to alter Turkey's constitutional order using armed force and killing six police officers (DHKP-C).
GÜNE_, HALİL	1996/97?	Halfeti Closed Prison	Detained in Istanbul on 25/07/94. In 1996 sentenced to death by Urfa Heavy Penal Court No. 2 for killing a prison warden in the Halfeti district of Urfa.
GÜNEY, SÜLEYMAN	1997/98?	Nev_ehir Closed Prison	Sentenced to death for murder.
GÜNGÖREN, BİRSEN	1997		Woman. (See ATALAY, CELAL)
HANEDAR, RABBENA	1996	Ankara Closed Prison	Sentenced to death under Article 146/1 (changing the constitutional order by force) for being a member of the DHKP-C and having killed former Justice Minister Mehmet Topaç along with ALI OSMAN KÖSE, HASAN_AHINGÖZ and ALI NAZİK (Ankara SSC on 19/12/95).
İNAND_, ADIL	1997/98?	Kahraman Mara_E Type Closed Prison	Sentenced to death for multiple murder.
İYİT, SİNAN	1996?	Yozgat	Sentenced to death under Article 125

Name	Year ⁱ	Prison	Comments
		E Type Prison	(separatism).
KARACA, YAKUP	1994/95?	Elmal_Prison	Sentenced to death for murder.
KATRA_, MURAT	1996?	Ermenek Special Type Closed Prison	Sentenced to death for murder.
KAYA, ASLAN	1997/98?	Diyarbak_r E Type Close Prison	Sentenced to death for separatism (Art. 125)
KAYA, MEHMET	1998/99?		
KELE_O_LU, TANER	1996	Kars Prison	Sentenced to death for murder.
KÖSE, ALI OSMAN	1996	Ankara Closed Prison	Sentenced to death under Article 146. (see HANEDAR, RABBENA)
NAML_, MUSTAFA	1998/99?		
NAZ_K, ALI	1996	Ankara Closed Prison	Sentenced to death under Article 146. (see HANEDAR, RABBENA)
ÖZBOLAT, EROL	1997	Çank_r_ Closed Prison	Sentenced to death for being a member of the DHKP-C and taking part in certain armed attacks under Article 146/1 by Ankara SSC on 11/10/96.
ÖZCAN, SELAMI	1996/97?	Yozgat Closed Prison	Sentenced to death for political crime .
ÖZDEMİR, ISMAIL	1996?	Giresun Prison	Detained during operation in the southeast. Sentenced to death for murder.
ÖZEN, MEHMET NURI	1998/99?		See A_KIN, Hasan
ÖZO_LU, NIZAMETTİN	1994	Amasya Prison	Sentenced to death under Article 125 (separatism) for PKK membership and murder.
ÖZTÜRK, CO_KUN	1996	Metris Prison	Sentenced to death by Istanbul Bakırköy Heavy Penal Court no.2 for the murder of a woman and her two children in 1994.
PESCI, MEHMET	1997/98?	I_d_r Prison	Sentenced to death for murder.
_AHIN, KADIR	1996/97?	Eski_ehir Closed Prison	Sentenced to death for murder.
_AHINGÖZ, HASAN	1996	Ankara Closed Prison	Sentenced to death under Article 146. (see HANEDAR, RABBENA)
_ENOL, NADIR	1996/97?	I_d_r	Sentenced to death for murder.

Name	Year ⁱ	Prison	Comments
		Closed Prison	
SEZGIN, ALI	1998/99?		
TEKE, ALI	1999		Sentenced to death under Article 146 for taking part in an armed attack against police officers in Bornova district of Izmir on 09/04/92.
UZUNDIZ, SEYFETTIN	1992/93	Bayrampa_a Closed Prison	Sentenced to death for murder by Istanbul Heavy Penal Court no. 1 on 26/10/92. Death sentence approved by the Judicial Commission of the Parliament in November 1993.
VARKAN, AZIZ	1996/97?	I_d_r Closed Prison	Sentenced to death for murder.
Y_LD_R_M, HALIL	1996	Isparta Closed Prison	Sentenced to death for murder.

i. Year sentence was confirmed by Appeal Court.