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# Turkey

## Restrictive laws, arbitrary application - the pressure on human rights defenders

### Introduction

Despite recent legal and constitutional reforms in Turkey, human rights defenders in that country continue to be targeted for harassment and intimidation by state officials, and their activities are still restricted through a huge number of laws and regulations. Those used against human rights activists include Anti-Terror laws, public order legislation, laws on associations and foundations and press laws, with the result that the rights to freedom of association, assembly and expression cannot be exercised fully and freely. Infringement of these rights can also lead to activists suffering violations of other rights, such as to liberty, to security of the person and to a fair trial. The broad restrictions in law on the activities of human rights defenders give state officials many pretexts to exert pressure on such activists, including through arbitrarily detaining them, prosecuting them, and prohibiting their actions.

The existence of these restrictive laws and regulations, their abusive interpretation in ways that curtail the rights of human rights defenders, and the failure to implement in practice relevant legislative reforms play out in a pattern of harassment that sits at odds not only with Turkey's international obligations but also with the current reform agenda that has produced positive legislative change in other areas. Human rights defenders are placed under surveillance by police officers, and their offices are searched on spurious grounds. Small demonstrations and meetings where press releases are read out are surrounded by large numbers of riot police, who sometimes outnumber the participants, while other police officers record and photograph those attending. The use of excessive force to disperse public events – and on occasion the mass detention of participants – can also be seen as an attempt to intimidate and silence human rights activists. All of these measures discourage others from becoming involved in such activities, and bolster the perception that the authorities are innately suspicious of – if not outright hostile towards – non-governmental organizations (NGOs).

Human rights defenders are also now facing a pattern of pressure, which appears to have evolved concurrent with the reform process in Turkey, through the huge number of investigations and trials opened against them under various laws and regulations. While such trials usually end in acquittal or a sentence which is suspended or commuted to a fine, the effect is a form of judicial harassment designed to intimidate human rights defenders and hinder their public activities.

Most of the cases cited in this report relate to human rights defenders actually working with human rights NGOs, and to lawyers and doctors working on human rights related cases. However, the problems that they face are also encountered by many other sections of civil society that take up and campaign on human rights issues – including trade

unionists; gay, lesbian and transsexual activists; women's groups; students; and anti-war campaigners.

All such activists must be able to carry out their legitimate actions without fear of harassment, intimidation or prosecution, and Turkey must take immediate steps to ensure that this is the case. This report concludes with a number of recommendations to the Turkish authorities, aimed at ensuring that human rights defenders can contribute fully, freely and in safety to the promotion and defence of human rights.

### **Human rights defenders: Who are they? What do they do?**

In 1998, the UN General Assembly declared that "Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels."<sup>1</sup> All those who are peacefully struggling for the realization of human rights are therefore human rights defenders. Some work in human rights organizations, student and youth groups, religious, women's or development associations; others are lawyers, journalists, academics, teachers, students, the unemployed or farmers in remote and poor rural areas.

Their work includes the search for truth and justice and strengthening the rule of law; the strengthening of democratic governance and accountability; the struggle for gender, racial and sexual equality; the protection of economic, social and cultural rights and the rights of indigenous peoples; the struggle against environmental degradation, hunger, disease and poverty; the struggle for an adequate standard of living, education and medical attention; the struggle to end war and arms proliferation and to provide urgent assistance to victims of conflict or natural disasters. Defenders work in various spheres of society and their work is often inspired and guided by internationally recognized human rights standards.

International, regional and national human rights governmental and non-governmental organizations have affirmed and adhered to this broad and inclusive definition of human rights defenders with the aim of ensuring the concept takes into account all forms of human rights activities around the world.

Human rights defenders often raise individual cases of human rights violations, seek redress and reform with the intention of compelling governments to improve respect for fundamental freedoms. To this end, human rights defenders monitor and report on government policy and practice to uphold the principles of the rule of law and human rights standards protected in domestic and international legislation.

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<sup>1</sup> Article 1(2). The full title is: UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. General Assembly resolution 53/144, 9 December 1998.

By exercising freedom of expression, movement and association human rights defenders provide a gauge, set standards and encourage respect for these principles in society at large. The degree of engagement of a government with the community of human rights defenders is a measure of its commitment and understanding of human rights and its willingness to make improvements in human rights protection.

Conversely, the degree of difficulties and attacks faced by human rights defenders often reflects the pervasiveness of human rights violations at large. By stifling the activities of human rights defenders, governments also weaken their ability to expose violations, increasing the risk that practices of human rights violations will continue and worsen, unexposed and thus unopposed. In defending the rights of others, human rights defenders need to be protected too.

### **International protection for human rights defenders**

When governments persecute human rights defenders, they violate their basic rights such as the right to freedom of expression, opinion and assembly, as well as the right to a fair trial, freedom from arbitrary arrest, ill-treatment and torture and the right to life. All these rights are enshrined in a long string of international and regional treaties and declarations.

Leading human rights organizations, including Amnesty International, campaigned for more than a decade for the adoption of an international instrument that recognizes and strengthens the right to defend human rights.

On 9 December 1998, on the eve of the 50th anniversary of the Universal Declaration of Human Rights, the UN General Assembly adopted the Declaration on Human Rights Defenders. The adoption of this Declaration at such a significant moment reflected the level of importance afforded to the role of human rights defenders in advancing the promotion and protection of human rights.

The Declaration stresses the universality and indivisibility of all human rights, focussing on the rights of association, opinion, access to and sharing of information, the right to make criticism of public affairs and to complain to governments, the need for investigation and remedy of abuses, and the right to communicate with international organizations. It affirms that states should promote understanding of human rights, create or support independent national human rights institutions and programmes of human rights education for citizens to know and exercise their rights, and train public officials in human rights.

Article 12.2 of the Declaration emphasizes the duty of states to protect human rights defenders by affirming that: "The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration."

A Special Representative of the UN Secretary General on the situation of human rights defenders was appointed in August 2000: she is Hina Jilani, a prominent human rights defender and lawyer from Pakistan, whose mandate is:

- (a) To seek, receive, examine and respond to information on the situation and the rights of anyone, acting individually or in association with others, to promote and protect human rights and fundamental freedoms;*
- (b) To establish cooperation and conduct dialogue with Governments and other interested actors on the promotion and effective implementation of the Declaration;*
- (c) To recommend effective strategies better to protect human rights defenders and follow up on these recommendations.<sup>2</sup>*

The need to monitor and protect the rights of human rights defenders has received increasing recognition on the regional level as well. In June 1999, the General Assembly of the Organization of American States adopted a resolution supporting human rights defenders. In November 2003, the African Commission on Human and Peoples' Rights announced that it plans to establish a Focal Point on Human Rights Defenders, under the responsibility of Commissioner Jainaba Johm.

## **Turkish law and international standards**

Turkey is a party to – that is, it has voluntarily undertaken a legal commitment to uphold the provisions of – numerous international and regional human rights treaties. The need for domestic law to conform to a state's international treaties is a recognised rule of general international law.

Among the relevant treaties to which Turkey is a state party are the International Covenant on Civil and Political Rights,<sup>3</sup> and the European Convention for the Protection of Human Rights and Fundamental Freedoms. These and other treaties oblige Turkey to respect and protect the basic rights of all persons within its territory and subject to its jurisdiction, including the rights listed in the UN Declaration on Human Rights Defenders, as well as other relevant rights not explicitly included in the Declaration, such as freedom from torture and other ill-treatment, freedom from arbitrary arrest and the right to a fair trial.

In addition, Turkey's Constitution includes a general commitment to human rights,<sup>4</sup> as well as provisions for specific human rights such as the right to personal liberty and

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<sup>2</sup> UN Commission on Human Rights Resolution 2000/61, UN Doc. E/CN.4/RES/2000/6 of 27 April 2000. The Special Representative's mandate has been resumed annually since.

<sup>3</sup> Turkey became party to this Covenant, as well as to the International Covenant on Social, Economic and Cultural Rights in December 2003, a step which Amnesty International welcomes.

<sup>4</sup> See, for instance, The Constitution of the Republic of Turkey (as amended on 17 October 2001), Articles 2 and 14.

security (Art. 19), freedom of expression (Art. 26), freedom of association (Art. 33) and freedom of the press and other media (Arts. 28-31).<sup>5</sup>

### **Background – human rights defenders in Turkey from the 1980s onwards**

During the 1980s Turkey was the location for many serious human rights violations including the widespread use of torture and ill-treatment. By the early 1990s, these violations included “disappearances”, mass extrajudicial executions and the forcible displacement of people from Kurdish villages in the southeast region. These violations took place in the context of the bitter conflict between the state and an armed opposition group, the Kurdistan Workers’ Party (PKK), in which 30-35,000 people are estimated to have been killed. In this environment, individuals or organizations working against such human rights violations and abuses found their work was obstructed in every way and that they themselves were targeted by the state which often accused them of supporting the PKK. The result was that human rights defenders themselves became the victims of arbitrary detentions, torture and ill-treatment, threats, and imprisonment as prisoners of conscience through the use of “anti-terror” legislation, “disappearances” and extrajudicial executions.<sup>6</sup> Monitoring of human rights abuses and violations in the southeast region - which was under a state of emergency between 1987 and 2002 - became especially difficult as the authorities used extraordinary powers granted to them by emergency legislation to close down branches of human rights organizations or otherwise obstruct their activities. Furthermore, authorities and the mainstream media (under considerable pressure from the state) presented the work of some human rights organizations as undermining Turkey’s interests and reputation and damaging public confidence in the country’s security forces.



For example, the Human Rights Association (*İnsan Hakları Derneği – İHD*), founded in 1986 by a group of lawyers and human rights activists, is Turkey’s largest independent human rights organization. The İHD has been outspoken in its condemnation of human rights violations and abuses by both the government and armed opposition groups and has therefore found itself repeatedly targeted for attack. Its officials were threatened, arrested, prosecuted, tortured,<sup>7</sup> abducted and killed; its offices were ransacked, closed and bombed. Since 1991 and 1998 at least 12 İHD representatives were killed. In most cases the killers have never been identified and in some cases members of the Turkish security forces were strongly implicated. In May 1998, the then İHD president Akın Birdal was shot and critically injured at the İHD headquarters by two members

<sup>5</sup> The provisions of the Constitution relevant to human rights defenders are discussed further below.

<sup>6</sup> For background information on the situation of human rights defenders in Turkey in the 1990s, see Amnesty International report *Turkey: Dissident voices jailed again* (AI Index: EUR 44/045/1994, June 1994).

<sup>7</sup> For example, see Amnesty International report *Turkey: Human rights defender tortured in Tunceli* (AI Index: EUR 44/14/1996, January 1996).

of an ultranationalist group. Amnesty International believes the Turkish authorities created the climate for this assassination by trying to link them to the PKK.<sup>8</sup>

In comparison with the 1990s the period from 2000 saw significant changes in the position of human rights defenders in Turkey. These are mainly linked to two factors – the end to widespread conflict in the southeast after the capture of PKK leader Abdullah Öcalan in 1999,<sup>9</sup> and subsequent improvement in the internal security situation, and the drive by Turkey to achieve its long-term goal of full membership of the European Union (EU) (discussed below). The effect has been improved security and a steady reduction in the severe human rights violations that occurred during the 1990s together with some changes in the legal framework within which human rights defenders operate.<sup>10</sup> There have been fewer cases of branches of the major human rights organizations being closed down and of human rights defenders being arbitrarily detained or imprisoned than there were in previous years.

However, the actions and statements of many state officials - including prosecutors, judges, and police officers – seemed to suggest that they continued to view human rights defenders as “internal enemies” and inevitably the “mouthpieces” of armed opposition groups. This was underlined after PKK/KADEK declared that it would adopt a policy of non-violent struggle in pursuit of cultural rights for the Kurdish population in Turkey – although this did not include a disarming and transition to civilian politics. Thereafter, peaceful demands for cultural rights were tarred with the brush of “terrorism” and prosecuted, generally under Article 169 of the Turkish Penal Code (TPC) for “aiding and abetting an illegal organization” without any linkage being proved. For example, at the beginning of 2001, thousands of students were detained, excluded from university or prosecuted after they submitted petitions to their universities asking for elective courses in Kurdish. These cases were opened on the basis of the fact that PKK/KADEK was calling for the same thing. Responding to these kinds of charges, one lawyer asked: “If an organization’s policy is that everyone should brush their teeth and drink tea every day, and I do so, can I then be accused of aiding and abetting that organization?”

Article 169 of the TPC was also used in the crackdown on human rights defenders and activists who protested against Operation “Return to Life” on 19 December 2000 and isolation in the new “F-Type prisons”.<sup>11</sup> Human rights defenders and supporters of prisoners

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<sup>8</sup> For more detailed information on the case of Akın Birdal, see Amnesty International report *Turkey: “Creating a silent society”* (AI Index: EUR 44/005/1999, February 1999).

<sup>9</sup> Following the capture of its leader Abdullah Öcalan in Kenya by Turkish Special Forces in 1999 the PKK declared a unilateral ceasefire and retreated to northern Iraq. In 2002, the organization renamed itself the Kurdistan Freedom and Democracy Congress (KADEK) and, in November 2003, the Kurdistan People’s Congress (Kongra-Gel).

<sup>10</sup> This has been the case especially in the southeastern provinces which saw, in 2002, the lifting of a State of Emergency dating from 1987 which had severely restricted the rights to freedom of expression, assembly and association.

<sup>11</sup> High-security “F-Type” prisons, where inmates are housed in cells rather than open dormitories, were introduced in December 2000. Many prisoners across Turkey went on hunger strike in protest. On 19



who went on hunger strike came under great pressure as the previous Turkish government attempted to silence criticism of the new prison system. Many were threatened and beaten during demonstrations. Several human rights groups - including five İHD branches<sup>12</sup> - were closed down, their offices raided, materials confiscated and investigations and prosecutions opened against them.

### The reform process

Since 2001, two Turkish governments have undertaken constitutional and legislative reform in the drive to achieve the long-term goal of EU membership for Turkey. Human rights protection has, in the context of maximizing the chances of EU membership by meeting the Copenhagen Criteria,<sup>13</sup> been a significant issue for the Turkish authorities.<sup>14</sup>

Seven reform packages (the so-called “Harmonization Laws”) have been passed thus far – some of the measures have abolished or altered many laws that had been used in the past to prosecute and imprison human rights defenders, as well as addressed other human rights issues, such as torture and ill-treatment. While Amnesty International welcomed these reforms as a first step in protecting human rights, their impact has been uneven and they have not led to the end of pressure on human rights defenders. While the government may publicly tolerate or welcome the contribution that defenders make, the pattern of investigations and prosecutions suggests that certain state officials still continue to consider them as “enemies of the state” and restrict their activities by judicial means.

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December the security forces intervened in 20 prisons to end the hunger strike by force: 30 prisoners and two soldiers died as a result of the operation. Hundreds of prisoners were transferred to the newly built F-Type prisons, where they have been held in isolation. For further information, see Amnesty International report *Turkey: "F-Type" prisons - Isolation and allegations of torture or ill-treatment* (AI Index: EUR 44/025/2001, April 2001).

<sup>12</sup> These were the Malatya (East Anatolia), Gaziantep (South East), Van (East Anatolia), Konya (Central Anatolia), Izmir (Western Anatolia) and Bursa (Marmara Region) branches.

<sup>13</sup> The 1993 Copenhagen Criteria include a requirement that the applicant state demonstrate “stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities.”

<sup>14</sup> The Accession Partnership with Turkey, adopted by the Council of the European Union on 8 March 2001, is the key feature of the enhanced pre-accession strategy, mobilizing all forms of the assistance by the EU to the candidate country within a single framework. It sets out the financial means available to help implement the Copenhagen Criteria and provides the basis for a number of policy instruments to help Turkey in this process. For further information, see AI briefing: *Turkey – From paper to practice: making change real* (AI Index: EUR 44/001/2004, 12 February 2004).

### **An era of legal reform – but old attitudes persist**

Earlier we highlighted the use of Article 169. The new era of reform has not put an end to the practice of persecuting human rights defenders based on claims of “aiding and abetting” illegal organizations.

On 6 May 2003 police officers searched the head office of the İHD in Ankara and confiscated books, reports on human rights violations, files, cassettes, press releases and hand-written notes, as well as seven computers and computer discs. They also demanded access to the bank accounts of the İHD. After completing their search, the same group of police officers then went to the offices of the Ankara branch of the İHD, where they carried out a search and took away one computer and other written materials<sup>15</sup>. Amnesty International was informed in a communication from the Ministry of Justice that the search had been carried out on the orders of Ankara State Security Court under Article 169 of the TPC “upon established suspicion that the Headquarters...has been coordinating a campaign to voice support for the terrorist organisation PKK/KADEK”<sup>16</sup>. Claims of a similar kind were also made in the course of the 2003 against individual human rights defenders including Sevim Yetkiner, head of the Muş branch of the İHD, who was imprisoned between 17 July and 6 August 2003 and is being prosecuted on such grounds.<sup>17</sup>

Also striking are examples of cases that date back to an earlier period which nevertheless have recently resulted in the severest of sanctions:



The Turkish human rights group Mazlum Der – whose full name in Turkish translates as “The Organization for Human Rights and Solidarity with Oppressed People” – was founded on 24 January 1991 in Ankara. It describes itself as “independent of the state and political parties or groups and aiming to defend and support human rights for all people both in and outside Turkey without any discrimination or double standards”. Nevertheless, the organization has found itself targeted because of unfounded allegations of links with armed Islamist groups.

Özkan Hoşanlı is the former chair of the local branch of Mazlum Der in Malatya, a town in southeast Turkey. On 1 May 2003 a court in Turkey confirmed that he should be imprisoned for 15 months for attempting to participate in demonstrations in April and May 1999 while he was deputy chair of the branch. Özkan Hoşanlı had been trying to observe - in his role as a human rights defender - demonstrations in support of female students banned from attending classes at İnönü University in Malatya because they chose to wear a headscarf. A trial had originally been opened against 75 of these detainees in 22 June 1999 at Malatya

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<sup>15</sup> See Urgent Action 121/03 (AI Index: EUR 44/014/2003, 6 May 2003).

<sup>16</sup> Information note from Ministry of Justice, dated May 29 2003.

<sup>17</sup> For further information, see Urgent Action 218/03 (AI Index: EUR 44/020/2003, 17 July 2003) and follow up (AI Index: EUR 44/021/2003, 27 August 2003).

State Security Court (DGM) in which the prosecutor asked for the death sentence for 51 of the defendants on charges of “having tried to create public unrest with the aim of forcibly changing the constitutional order of Turkey”. Sentences of between five and 15 years were requested for Özkan Hoşhanlı and another 24 defendants for supposedly participating in this unrest. The indictment alleges that “...Özkan Hoşhanlı’s point of reference is radical Islam according to the types of work of the association [Mazlum Der] for which he is deputy head”. These charges against the protestors were eventually dropped by the court. However, Özkan Hoşhanlı and 18 other defendants were later convicted for contravening Law No. 2911 on Meetings and Demonstrations by “participating in an illegal demonstration”. On 1 May 2003, the Turkish High Court of Appeals upheld a sentence against Özkan Hoşhanlı of imprisonment for 15 months in addition to a monetary fine. Amnesty International considers him a prisoner of conscience, imprisoned for his peaceful activities as a human rights defender.

### **Investigations and prosecutions as a means of harassment**

One new pattern of pressure that runs concurrent with the reform process is the huge number of trials and investigations opened against human rights defenders under various laws and regulations. According to figures supplied by the İHD, 300 cases were opened against it and its staff in the first 14 years of its existence; in the last three years alone there have been more than 450 cases opened against it. While such trials usually end in acquittal or a sentence which is suspended or commuted to a fine, Amnesty International considers them as a form of state harassment designed to intimidate human rights defenders and restrict their activities. It should be noted that the figures provided do not include the even greater number of investigations opened by prosecutors against the organization and its branches which do not result in a prosecution.

The level of this harassment means that many human rights organizations and activists have great trouble keeping track of the investigations and cases opened against them. Activists that are notable for the large number of such proceedings brought against them for their human rights activities include Osman Baydemir – lawyer and former head of the Diyarbakır branch of the İHD; Rıdvan Kızgın – head of the Bingöl branch of the İHD; Alp Ayan - a psychiatrist at the Human Rights Foundation of Turkey (*Türkiye İnsan Hakları Vakfı* - TİHV); and Eren Keskin – lawyer, deputy chair of the İHD and head of a legal aid project which supports women who have been sexually assaulted in custody.<sup>18</sup> The huge number of trials and investigations against individuals such as these is a heavy impediment to their work as well as an extra burden. Certainly such pressure has the impact of discouraging others from

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<sup>18</sup> Osman Baydemir has had a total of 200 trials opened against him for his human rights activities; Rıdvan Kızgın has had at least 47 cases opened against him; Alp Ayan has had more than 20 cases opened against him and Eren Keskin has been the subject of at least 86 lawsuits. For further information on the latter case, see the Amnesty International report *Turkey: End sexual violence against women in custody!* (AI Index: EUR 44/006/2003, February 2003), pp. 22-23 and 36-37.

becoming involved in the defence of human rights. Furthermore, the initiation of such a huge number of legal proceedings on the slightest of pretexts and the high rate of acquittal in court must also be considered a waste of public funds and cast the criminal justice system into disrepute.

Many such cases result in financial penalties against an individual or organization. Such fines are often a heavy burden upon human rights organizations who struggle to pay them. Furthermore, Article 70 of the Civil Code stipulates that all members of an association are responsible for the payment of fines levied against it. It is clear that the likelihood that an individual will, by joining an organization, become liable to pay fines may further discourage public participation in all NGOs in Turkey and weakens the human rights movement.

For example, on 9 July 2003 the trial of Hüsnu Öndül, chairman of the İHD and Feray Salman, the then General Secretary of the İHD, opened. They were charged with non-payment of a 10 billion Turkish lira (€5,972) fine. The fine had been levied against the two executives by the prosecutor responsible for press law offences on the charge that they had informed him “too late” about changes to the organization’s “Human Rights Bulletin”. The trial was postponed to 30 October 2003.

### **Repeat one law, use another?**

As a result of the reform process and the removal of certain laws that had been used to silence and imprison human rights defenders – together with the improved security situation in Turkey – some types of pressure against human rights defenders have apparently decreased. For example, imprisonment of human rights defenders as prisoners of conscience has decreased. Several laws that the European Court of Human Rights has judged to have been used to violate the right to freedom of expression have been amended or abolished completely. However, as use of some old measures has become impossible, new ways have been found to obstruct the activities of human rights defenders.

In 2003, the so-called sixth “Harmonization Law” which proposed the abolition of Article 8 of the Anti-Terror Law (ATL) which prohibits “separatist propaganda” was passed by the Grand National Assembly. It was vetoed, however, by the President Ahmet Necdet Sezer who cited concerns about the removal of this law. The law later eventually entered into force unchanged but it was reported that the Justice Minister Cemil Çiçek had responded to the President’s concerns by saying: “...when we say ‘let’s abolish Article 8’, we’re not saying ‘let’s leave such a crime unpunished’. This crime is dealt with in the Turkish Penal Code. Remember that in 1991 Articles 141 and 142 and 163 of the Turkish Penal Code were abolished...but these crimes did not remain unpunished – they were punished with Article 8. If we abolish that, the crime in this article, won’t stop being a crime...this crime will be dealt with again in the Turkish Penal Code.”<sup>19</sup> Although the abolition of Article 8 is a welcome step, this statement demonstrates Amnesty International’s concerns about the lack of a

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<sup>19</sup> *Radikal* newspaper, 20 May 2003.

coherent approach to reform and its consequences: if one law changes or is removed the authorities may find a different law or regulation with which to punish or frustrate the activities of human rights defenders.

### **The right to freedom of expression**

While the “Harmonization Laws” have amended or abolished several laws that have been used in the past to limit the right to freedom of expression, Turkish laws can still be used to limit the right to freedom of expression. Although restrictions and prohibitions of violations of fundamental rights and freedoms (Articles 13 and 14 of the Constitution) were reworded to a large extent in 2001, numerous articles of the Turkish Constitution still retain restrictions not compatible with Turkey’s obligations under international law.<sup>20</sup> Amnesty International urges the Turkish authorities to ensure that the restrictions do not go beyond the margins allowed by the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) to which Turkey is a state party.<sup>21</sup>

Amnesty International is concerned that the amendment of Article 26 in 2001 introduced further restrictions to the exercise of the right to freedom of expression “...for the purposes of protecting national security, public order and public safety, the basic characteristics of the Republic and safeguarding the indivisible integrity of the State with its territory and nation, preventing crime, punishing offenders, withholding information duly classified as a state secret, protecting the reputation and rights and private and family life of others, or protecting professional secrets as prescribed by law, or ensuring the proper functioning of the judiciary”. Such wording can be - and has been in the past - used to penalize peaceful statements on the Kurdish issue or the role of Islam in politics and society.

Apart from Article 169 of the TPC and Article 8 of the ATL, other laws which have been amended, and which had often been used to silence human rights defenders in the past, are: Article 159 of the TPC which criminalizes “insults” to different state bodies; Article 312/2 of the TPC which criminalizes incitement to enmity and hatred; and Article 7 of the ATL which outlaws propaganda for illegal organizations. Despite their amendment, Amnesty

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<sup>20</sup> Article 14 now reads: “None of the rights and freedoms embodied in the Constitution shall be exercised with the aim of violating the indivisible integrity of the state with its territory and nation, and endangering the existence of the democratic and secular order of the Turkish Republic based upon human rights. No provision of this Constitution shall be interpreted in a manner that enables the State or individuals to destroy the fundamental rights and freedoms embodied in the Constitution or to stage an activity with the aim of restricting them more extensively than stated in the Constitution. The sanctions to be applied against those who perpetrate these activities in conflict with these provisions shall be determined by law”.

<sup>21</sup> Namely: they must be prescribed by law and necessary in a democratic society in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health and morals, or for the protection of the rights and freedoms of others.

International remains concerned that they can be interpreted in a way that violates the right to the peaceful expression of non-violent opinions.

For example, in the legal changes that passed into law in 19 February 2002, the upper limit of sentences for “insulting or belittling” different state bodies under Article 159 of the TPC was reduced,<sup>22</sup> but people can still be punished under this article for criticizing “...Turkishness, the Republic, the Grand National Assembly or the moral personage of the Government or the military security forces of the State or the moral personage of the judiciary”. Since the maximum sentence had rarely been applied in the past, this change appears to be insignificant in practice. In the legal changes that passed into law on 9 August 2002, a sentence was added stating that: “*Expressions of thought made only for criticism, without the intention to insult or deride the bodies or institutions listed in the first paragraph do not require a penalty.*” While this addition may have limited the scope of punishable offences under this article, Amnesty International remains concerned that the article may be used to violate the right to freedom of expression.

Amnesty International has repeatedly raised concerns about the use of Article 159 TPC in order to prosecute human rights defenders and any other persons who expressed criticisms without advocating violence. For example, on 8 December 2003 the trial of the head of the Elazığ branch of the İHD, Cafer Demir opened. He was charged under Article 159 TPC for a speech that he had given while part of a panel on “Human Rights in Turkey” on 26 May 2003.

Sabri Ejder Öziç, the former head of Radyo Dünya, a local radio station in Adana, was sentenced under this article on 30 December 2003 for expressing views on 24 February 2003 against the deployment of foreign troops on Turkish soil and for claiming that were the Turkish parliament to authorize deployment it would be committing an act of terrorism. For this non-violent expression of opinion Sabri Ejder Öziç was sentenced to a one-year prison sentence. He is currently at liberty and is appealing against the verdict.

Article 312/2 of the TPC which criminalizes “incitement to enmity...based on social class, race, religion, creed or religious difference” is another law which has been used in the past to prosecute and imprison human rights defenders, politicians, writers, journalists and many others who have articulated views on Kurds or Islam or made leftist statements. During the 1990s, Article 312/2 was used especially against those who made statements concerning Islam. Notable was the imprisonment in 1999 of the current Prime Minister Recep Tayyip Erdoğan under this article after he delivered a speech in the town of Siirt on 6 December 1997. The indictment against him had referred specifically to four lines from a poem by Ziya

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<sup>22</sup> In the legal changes that passed into law on 30 August 2003, the lower limit for sentences under Article 159 TPC was reduced from one year to six months.

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Gökalp - lines which in no way advocate violence, and which, moreover, appeared in a book recommended to students and teachers by the Ministry of Education.<sup>23</sup>

On 6 February 2002 the minimum sentence for such crimes was reduced from one year to six months and the maximum sentence was reduced from three years to two years. However, the possibility of being punished with a fine was abolished. An additional sentence stipulated that statements would only be punished if they were made "...in a way that is dangerous to the public order". As result of this amendment, some possible prisoners of conscience were acquitted or not imprisoned. Another sentence added to the law in the same amendment would allow for the punishment of "...anyone who insults a section of the public in a way that is degrading and would damage human dignity". Amnesty International is concerned that the amended Article 312/2 of the TPC still contains such vague wording that the Article could continue to be used to punish the peaceful expression of non-violent opinion.

The Migrants' Association for Social Cooperation and Culture (Göç Der) is an NGO that works for those individuals who were displaced from the southeast during the conflict between the state and the PKK. The organization has found itself under intense pressure for its activities in researching this area. On 19 January 2004, a State Security Court in Istanbul sentenced the head of Göç Der, Şefika Gürbüz, to one year's imprisonment under Article 312 of the TPC, in association with the launch of a March 2002 report entitled *Forced Migration, 1999-2000*. The indictment had accused Şefika Gürbüz and Mehmet Barut, a sociologist from Mersin University and author of the report, of "openly inciting the people to hatred" on the basis that they alleged that individuals in the southeast had been tortured, had their houses and livestock burned, and been threatened with death in order to force them to migrate. The court reportedly reduced the sentence of Şefika Gürbüz to a fine of 10 billion Turkish lira (€1,300) "for good behaviour". Mehmet Barut was acquitted.

Amnesty International considers that legal and constitutional guarantees for the right to freedom of expression must be further strengthened so that they are compatible with international legal provisions, such as those of Article 10 of the European Convention of Human Rights. The European Court has interpreted restrictions to Article 10 very narrowly. Peaceful advocacy of reform, including in relation to matters affecting territorial integrity, may not be restricted even if there is domestic concern about violent separatism. Amnesty International continues to call for a thorough reform of law and practice to fully ensure freedom of expression in Turkey.

### **Pressure on associations in Turkey**

There has been a massive increase in the number of trials and investigations opened against human rights activists and organizations for being in breach of various laws and regulations relating to the administration of associations and foundations, with holding public meetings

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<sup>23</sup> For further information see AI report *Turkey: Freedom of expression denied* (AI Index: EUR 44/34/98, 13 August 1998).

and with making public statements. It is not only the right to free expression that is heavily curtailed for human rights defenders in Turkey but also the rights to freedom of association and assembly. The amendment of the Constitution's Article 33 on freedom of association which entered into force on 17 October 2001 introduced the same fundamental restrictions as for freedom of expression: "...on the grounds of protecting national security and public order, or prevention of crime commitment, or protecting public morals, public health".<sup>24</sup>

The activities of NGOs in Turkey are regulated by a plethora of laws and regulations – these include the laws detailed above, but also the Constitution, Law No. 2908 on Associations, Law No. 2762 on Foundations, the Civil Code, the Press Law, Law No. 2911 on Meetings and Demonstrations, the Law on the Gathering of Donations, the Law on Police Duties and Competencies, and public order legislation.<sup>25</sup> This plethora of laws and regulations contains several restrictions that conflict with the right to freedom of association as enshrined in Article 21 of the International Covenant on Civil and Political Rights (ICCPR) and have been used to seriously impede the activities of human rights organizations.

In particular, Law No. 2908 on Associations - despite amendments made in 2001 and 2003- continues to be used in a way that puts pressure on NGOs and their operations and conflicts with the spirit of the UN Declaration on Human Rights Defenders. In the words of the Turkish Bar Association, it is a law which "...discourages the forming of organizations, sees citizens as potential criminals and is an obstacle to modernization".<sup>26</sup> This law regulates the activities and organization of associations in Turkey in minute detail. Crucial is Article 5 which forbids the formation of associations with various goals including those "...contrary to...national security and public order and general health and morals, the creation of a minority in the Turkish Republic on the basis of race, religion, sect and regional difference and the division of the unitary state structure of the Turkish Republic; or the denigrating or belittlement of the personality, principles, works or memories of Atatürk [the founder of the Turkish Republic and its first President]". Article 37 forbids the development of activities

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<sup>24</sup> Excerpt of Article 33: "...The formalities, conditions, and procedures governing the exercise of freedom of association shall be prescribed by law. Associations may be dissolved or suspended from activity by the decision of a judge in cases prescribed by law. In cases where delay endangers national security or public order and in cases where it is necessary to prevent the perpetration or the continuation of a crime or to effect apprehension, an authority designated by law may be vested with power to suspend the association from activity. The decision of this authority shall be submitted for the approval of the judge in charge within twenty-four hours. The judge shall announce his decision within forty-eight hours, otherwise this administrative decision shall be annulled automatically..."

<sup>25</sup> Gotfried Plagemann has discussed the restrictions of these laws in the article *Civil Society under strong supervision – The position of NGOs in the Turkish legal system*, Istanbul, 2000. These laws are further examined in the report by the Helsinki Citizen's Assembly *Freedom of Expression and Association – What kind of legal framework?*, Istanbul, September 2002.

<sup>26</sup> Draft Law on Associations 2003, Turkish Bar Association, Şen.



with these goals by an association.<sup>27</sup> Amnesty International welcomed the January 2003 amendment to this law which removed the provision prohibiting the simple act of claiming that there was a minority in Turkey based on these differences, as well as the "...protection, advancement and spreading of other languages and cultures than the Turkish language and culture", the latter being considered acts of attempting to "create a minority" and therefore prohibited.

Although the Turkish Constitution states that everyone has the right to form an association, Article 4 of the Law on Associations – as well as other laws and regulations – places a restriction on the membership or founding of associations by members of certain public institutions and by individuals convicted of certain crimes. Although some of the restrictions laid down in Article 4 were lifted in the reform that came into law in August 2003, Amnesty International remains concerned that it can nevertheless be used to restrict the right of individuals to freedom of association.

For example, in a letter dated 21 April 2003, the Police Headquarters of Ankara wrote to the headquarters of the İHD calling for the removal of Ragıp Zarakolu and Hasan Coşar from their positions in the İHD to which they had been elected at the organization's general congress on 16 and 17 November 2002. This demand was made on the basis that they had previously been sentenced to terms of imprisonment – Hasan Coşar had been imprisoned by a military court during the period of martial law in 1984 and Ragıp Zarakolu had been imprisoned under Article 159 of the TPC in 1993.

Until recently, the supervision and inspection of associations was carried out by an "associations desk" attached to each local police headquarters. Human rights activists claim that some police officers and prosecutors have targeted certain NGOs and searched for new ways to restrict their activities. The fact that the "association desks" were attached to local police headquarters supported the claims that the state viewed all associations as potentially criminal. Amnesty International therefore welcomed the introduction in August 2002 of a legal reform which called for the formation of a "Department of Associations" in the Ministry of the Interior and the transfer of certain functions and authorities to it. A further reform stipulated that the responsibility for inspecting associations should be transferred from police headquarters to a structure attached to the local governor's office in provinces, or to another junior state official in districts. However, Amnesty International is concerned at reports that officials responsible for inspecting associations under the previous arrangement have all been transferred to these new structures and considers that this requires stringent controls to ensure that the pattern of harassment does not go unchanged. Law No. 2908 on Associations can still be used to justify arbitrary searches of association. In the view of the Turkish Bar Association, such inspections should require a warrant and searches should require a judge's

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<sup>27</sup> Article 76 lays down terms of imprisonment of between one and three years and a fine and the possible closure of the association in question for those who establish an organization with goals stated in Article 5 or who carry out activities listed in Article 37 or act in contradiction with the official goals of the association.

decision.<sup>28</sup> Amnesty International believes that the structure responsible for inspecting associations should be entirely independent of security forces and be staffed by those with training in the relevant international standards, including the UN Declaration on Human Rights Defenders.

### **Press releases, demonstrations and other activities**

Activities which can be considered as essential to the role of human rights defenders – both in working against specific human rights abuses and in raising public awareness about human rights – are still heavily impeded by the authorities. Among these are the issuing of press releases and reports, and the holding of public meetings and demonstrations.

In January 2003, a law was passed repealing the requirement that all declarations and press releases be submitted for inspection by the highest local civilian authority (generally the governor) at least 24 hours in advance of their release. The new law states that declarations and publications can be seized by the highest local civilian authority if such materials are considered to contain certain broadly defined aims: namely those “...that are in character destructive to the internal and external security, and to the indivisible integrity of the state with its country and nation or that have a quality that incites the perpetration of a crime, or uprising or revolt; or that intends to reveal secret documents of the State or to denigrate or belittle the personality, principles and achievements of Atatürk or to violate the reputation and rights, and private and family life of others.” After such confiscation, the highest local civilian authority must forward this within 24 hours to the Court of First Instance where a decision must be given within 48 hours. Amnesty International is concerned that the broad and indistinct characterization of documents that can be seized in this way means that this law may be used to unnecessarily delay the issuing of press releases by 72 hours. This law is considered to apply only to press releases issued inside the premises of associations. If outside, the authorities will apply regulations regarding the carrying out of demonstrations or meetings.

This happened in the case of the head of the Hatay branch of the İHD and three other members of the organization who were charged under Law No. 2911 on Meetings and Demonstrations after they had read out a press statement, in front of their office building, against US preparations to attack Iraq. Their trial opened on 27 March 2003.

Other activities – such as the hanging of posters – can also be prevented or prohibited. Posters published by the İHD to commemorate Human Rights Day in December 2003 and distributed nationally were confiscated on the order of the Public Prosecutor in Van. The posters carried statements saying “Peace will win, everybody is equal, everybody is different” in Turkish and Kurdish. Only the posters in Kurdish were confiscated. The Van public prosecutor had asked for the confiscation on the basis that “...some of the posters contained Kurdish, that their being displayed would damage the indivisible integrity of the State and its

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<sup>28</sup> *Draft Law on Associations 2003*, Turkish Bar Association, Şen, p.17/18

Country and were in character damaging to the basic qualities of the Republic as laid down in the Constitution and that the aforementioned association [the Van branch of the İHD] was in this way trying to create minorities in the Turkish Republic on the basis of race, religion, sect and regional difference". Subsequently, the posters were also confiscated in Hakkari, Adıyaman and Mardin.



**Poster produced by the İHD for Human Rights Day 2003 stating "Peace will win!" in Kurdish. As a result, copies of the poster were confiscated in some provinces, offices of the İHD were raided and the head of the Siirt branch of the İHD is being prosecuted.**

gendarmerie station while collecting wild herbs in March 2001. Permission was refused in a letter from the Police Headquarters dated 14 March 2003 without any reason and the branch was informed that all announcements in the local radios or newspapers had to be stopped "...otherwise the necessary measures will be taken".

On the same day, the Siirt branch of the İHD was raided and searched by police officers. Since then, the trial against the head of this branch, Vetha Aydın, has opened. She was charged under Article 536 of the TPC for hanging the posters on billboards belonging to the municipality without permission from the governor. The prosecutor is asking for a sentence of two years' imprisonment for this action. While legal amendments (specifically the amendment of Article 4 of Law No. 2908 on Associations to remove limitations upon the promotion or use of non-Turkish languages and cultures and the amendment of Article 6 of the same law in January 2003 to allow for the use of "illegal languages" in the various activities of an association including publications, conferences and posters) should have allowed the İHD to carry out such activities, the authorities appear to have found new ways to impose restrictions. Two examples below further illustrate this concern.

The Bingöl branch of İHD applied to organize a painting contest on the topic of children's rights and environmental issues between March and May 2003. The competition had been organized to commemorate the death of Gazal Beru, an 11-year-old girl, who had been killed by dogs allegedly belonging to the local



The Human Rights Foundation of Turkey (Türkiye İnsan Hakları Vakfı - TİHV) is an independent human rights organization which was founded in Ankara in 1990. It investigates and documents human rights abuses in Turkey and its five centres are active in providing medical and psychiatric treatment and rehabilitation for the survivors of torture and ill-treatment. Since its foundation, the TİHV centres in Ankara, Istanbul, İzmir, Adana, and Diyarbakır have provided physical and mental health care for thousands of survivors of human right abuses. The organization has an international reputation for medical reports of a high standard on the effects on torture and ill-treatment and was one of the main contributors to the development of the Istanbul Protocol.<sup>29</sup> In 1998, TİHV was awarded the European Human Rights Prize of the Council of Europe for its "outstanding contribution to the protection of human rights in Turkey" and to "the struggle for the abolition of torture".

The Izmir branch of TİHV, together with the Turkish Medical Association and the Association of Forensic Science Practitioners, organized a training seminar on the Istanbul Protocol for forensic doctors in Izmir between 10 and 12 June 2003. On 12 June 2003, two plain-clothes police officers reportedly demanded to observe the seminar on the basis that that they had supposedly received information that "propaganda for illegal organizations was being carried out". The organizers of the seminar refused and wrote a complaint to the governor of Izmir. However, an initial investigation was opened against the doctors who attended the seminar on the basis that "...in the training, propaganda on behalf of PKK/KADEK had been carried out; the spiritual personality of the state had been insulted and the security forces had been slandered". Consequently, the statements of 42 doctors who attended the seminar were taken by inspectors from the governor's office.

Amnesty International has also received numerous complaints from local human rights organizations in Turkey that their press conferences, public actions and demonstrations are invariably heavily attended by police officers. In some instances it is reported that such a presence occasionally outnumbers members of the public and press. Public meetings invariably contain police officers recording and photographing participants. It is alleged that this is designed to intimidate human rights defenders and discourage others from becoming involved in such activities. It also reinforces the belief that security officers regard activities in defence of human rights as suspect and potentially criminal.

Law enforcement officials habitually demonstrate few of the skills required to deal with the policing of demonstrations and public meetings, many of which are unlawful but peaceful. Furthermore, police regularly use disproportionate force against demonstrators,

<sup>29</sup> The *Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the "Istanbul Protocol") is the first set of international guidelines for documentation of torture and its consequences. It became a United Nations official document in 1999.

severely beating them, singling them out and chasing them and continuing to kick and beat them even as they lay on the ground or after apprehension. Since many such demonstrations are staged by those involved in human rights issues, heavy-handed policing of demonstrations must be regarded as another means by which they are intimidated and harassed in their activities.

### **International cooperation and fundraising**

The reform package that passed into law on 11 January 2003 amended Article 11 of the Law on Associations, removing the requirement for Turkish NGOs to obtain permission from the entire Council of Ministers, after referral by the Minister of the Interior and approval by the Foreign Minister, before taking part in international activities or to be members of international organizations. This permission was also required for organizations that had their headquarters abroad and which wanted to open an office in Turkey. In March 2002, Amnesty International was notified that it had been given permission to open a branch in Turkey. Permission had previously not been given because some ministers – including the Minister for Agriculture – in the previous government had refused to approve it.

However, Article 92 of the Turkish Civil Code still states that permission is needed from the Minister of the Interior following approval by the Ministry of Foreign Affairs for foreign associations to operate and open branches in Turkey.

Article 43 of the Law on Associations requires that members of foreign organizations and associations can only be invited to Turkey if at least seven days' advance notice is given to the governor of the province where the association's headquarters are and where the activities to which the visitors were invited are to be held. Similarly, any member or representative of an association who goes abroad in response to the invitation of a foreign organization or association needs to notify the authorities. These notifications should state the purpose of the invitation, the date, the place, the name and address of the relevant association or organization and information about the individual invited or attending.

Law No. 3334 on the Establishment of Organizations with an International Character has also not been amended. The law allows for the founding of organizations with an international character, for cooperation in international activities with such international organizations, and for the opening of offices in Turkey by international organizations. However, this law again requires that such initiatives are approved by the Council of Ministers after referral by the Minister of the Interior and approval by the Minister of Foreign Affairs. Article 2 of the law allows for the temporary suspension of such organizations' activities "...in situations where the organizations are understood to be engaged in activities which are not in accordance with our laws or our national interest". Furthermore, such cooperation and activities must be limited to scientific and technological fields. Financial cooperation is not included in such cooperation. In the past this law was used to prosecute individuals who passed information about human rights violations in Turkey to Amnesty International.

With regard to the transfer of funds from abroad, Article 60 of the Law on Associations still requires that the receipt of funds from organizations or individuals in foreign countries is subject to the permission of the Ministry of the Interior. This can unnecessarily restrict the funding of organizations and impede their work. Referring to this, the Council of Europe's Commissioner for Human Rights Alvaro Gil-Robles stated in his report on his visit to Turkey:

*We all know that the defence of human rights is an activity that unfortunately often requires a degree of international financial solidarity, and that there must be complete transparency as to the source and the use of such funds. While it is understandable that the authorities should have a duty to protect the security of their fellow-citizens, including by monitoring funds coming into the country, there are ways of doing this that limit as far as possible the inconvenience that may result for the parties concerned, which leads the Commissioner to call on the Turkish authorities to demonstrate greater receptiveness, openness and understanding in their work with associations, including in the financial field.<sup>30</sup>*

Such a demonstration must include alterations to Law No. 2860 on the Collection of Assistance which lays down heavy restrictions on the ability of NGOs to raise funds and must be considered an obstacle to the work of human rights defenders as the example below illustrates.

On 12 November 2003, an Amnesty International delegate observed the first session of the trial in Ankara of TİHV board members. The prosecution alleged that TİHV had violated Law No. 2860 by collecting donations through an internet appeal. Furthermore, the indictment alleged that TİHV had violated regulations on foundations by (without seeking permission from the Council of Ministers) translating and distributing its reports to international human rights observers; and by meeting and providing information to the UN Special Rapporteur on Extrajudicial Executions, the Council of Europe's Commissioner for Human Rights and other human rights observers. The trial is ongoing.

### **Professional sanctions**

Human rights defenders can also be targeted in their professional capacity for their work as human rights defenders. This can take the shape of sanctions from professional associations – including suspension from their area of work. For example, in November 2002, the Istanbul Bar Association decided to implement a controversial decision by the Turkish Union of Bar Associations to suspend human rights defender Eren Keskin's licence as a lawyer for one year. This decision resulted from a suspended sentence issued in 1997 by an Istanbul State Security

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<sup>30</sup> Report by Council of Europe's Commissioner for Human Rights, p. 15, CommDH (2003) 15, Strasbourg, 19 December 2003.

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Court under Article 8 of the Anti-Terror Law for using the word "Kurdistan" in an interview that she had given to the newspaper *Medya Güneşi* in 1995.

The UN Declaration on Human Rights Defenders embraces “everyone” working for the promotion of human rights. This naturally includes members of trade unions promoting workers’ rights. Public workers in Turkey – including teachers and health workers - can be fined, dismissed, suspended from work or transferred as a disciplinary measure, as “punishment” for involvement in human rights or trade union activities. Several public officials and trade union members were dismissed and suspended as a result of their involvement in anti-war protests in 2003.

For example, following a police raid on the Diyarbakır branch of TİHV on 7 September 2001, Dr Recai Aldemir and Dr Emin Yüksel who volunteered there and who also work in public health institutions - were transferred to medical duties 90 and 75 kilometres away from Diyarbakır respectively as an apparent disciplinary measure. Dr Emin Yüksel successfully appealed against this decision – however, Dr Recai Aldemir did not and was forced to stop his work at the branch. A trial was also later opened against the doctors for "misuse of their duties as public servants" since they had supposedly been present at the TİHV office during the raid which took place during the working hours for public servants. However, other volunteers at TİHV attest that Dr Recai Aldemir was not present at the office at the time of the raid. Furthermore, the working hours for doctors are different from other public servants because they have to work weekend and night shifts. Nevertheless, in a decision of 6 December 2003, Dr Recai Aldemir was sentenced to three months’ imprisonment. This sentence was suspended while Dr Emin Yüksel was acquitted.

### **Expulsion or suspension of students**

Students active in anti-war or human rights activities can find themselves under pressure from their universities on account of their activities. Involvement in protests or other actions can result in suspension or even expulsion from university for some students. After November 2001 hundreds of students, parents and teachers were detained in relation to petitions for classes on Kurdish or for the right to school education in Kurdish. Dozens of them complained of torture or ill-treatment. Many students were imprisoned for several months pending trial on charges of “aiding and abetting illegal organizations”. Many others were suspended for signing such petitions – in one case this suspension took place during students’ final examinations.

On 6 November 2003, protests were arranged by university students in several cities against the Higher Education Council (YÖK).<sup>31</sup> Police officers beat participants in the demonstration in Kızılay square in Ankara and used excessive force to disperse demonstrators in Istanbul, Tunceli, Antep and Hatay and at a demonstration organized in Izmir on 8

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<sup>31</sup> YÖK is the institution that controls higher education and which was established by the military in the 1980s.

November 2003. Subsequent to this students were expelled or suspended from their universities because they were allegedly involved in the protests. For example, student Ismail Karak from Gaziantep University was reportedly suspended for one term “because he had participated in the protests against YÖK and beaten a drum”. On 15 and 19 January 2004 police officers again reportedly beat and used excessive force to disperse a demonstration organized to protest against these expulsions and investigations.

### **Surveillance and bugging**

Nearly all human rights activists complain that they are kept under surveillance by different members of the security services and regularly followed to their homes or private meetings. Such activities clearly create uncertainty on the part of human rights defenders. For example, when Amnesty International delegates visited the İHD branch in Siirt in June 2002 and 2003, delegates noted that a plainclothes member of the police force was on duty outside the association’s offices in order to observe who entered. According to members of the İHD, this surveillance was a permanent presence. Similarly there are widespread reports that the telephones of human rights organizations are “tapped” and that the correspondence – both electronic and paper – is read by members of the security forces. In terms of communications, in September and October 2003, human rights organizations began to complain that their e-mail addresses were being used to send pornographic and abusive messages to contacts.

### **Public denunciations and threats**

Even if it is difficult to prove a direct link between statements made by state officials denouncing the legitimate work of human rights organizations and activists and subsequent attacks and threats against human rights activists, Amnesty International is concerned that such statements create a climate in which such attacks may occur. They also undermine the position of human rights organizations in the public eye. Ill-founded or vague, defamatory statements by those in positions of authority denigrating human rights work create a climate of official and public hostility towards issues of human rights and can give rise to mistaken and dangerous perceptions that attacks against human rights defenders are not merely justified, but even desirable.

For example, in early February 2001 Eren Keskin - in her capacity as deputy head of the İHD - travelled as part of a delegation to Silopi, in the southeastern province of Şırnak, to investigate the "disappearance" of two members of a Kurdish political party.<sup>32</sup> Immediately afterwards, the governor of Şırnak reportedly said on television that "...this woman from the İHD came and stirred everything up". After this she received an increased number of telephone death threats on her mobile, at her law firm's office and at the İHD office in Istanbul. On 15 November 2001 an individual named Zeki Genç forced his way into the latter office carrying a pistol, a large knife and a parcel that he claimed was a bomb (although it was

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<sup>32</sup> For further information see Urgent Action 26/01, EUR 44/007/2001, and follow-ups.



later confirmed not to be). He fired in the air and told all those present to lie on the ground, saying "I will kill you all. I am not alone - I have friends". A group of İHD members, including Eren Keskin, barricaded themselves in a room. Others managed to wrestle the intruder to the ground and disarm him. Police officers reportedly took an excessively long time to reach the İHD office after they were called. Although the trial against Zeki Genç was opened at Beyoğlu Criminal Court for this attack, the court ordered that he be released on 18 July 2002 and he is now reportedly on the run.

## Conclusion and recommendations

The broad formulations stated in the Constitution and in many other laws which continue to be used to restrict the rights to freedom of expression, association and assembly encourage the arbitrary abuse of such laws by state officials. The abundance of regulations which restrict the activities of all NGOs in Turkey give further pretexts for state officials wishing to frustrate the work of human rights defenders. In some cases, the application of such regulations appears completely arbitrary and dependent upon the attitude of individual judges, governors, police officers in a province.

Amnesty International urges Turkey to grant human rights defenders, be they individuals or non-governmental organizations, the necessary guarantees to enable them to contribute to the promotion and defence of human rights, and to respect the freedom and personal safety of their members. To this end, Amnesty International calls on the government of Turkey:

- to ensure that the principles contained in the UN Declaration on Human Rights Defenders are fully incorporated into national law and mechanisms for the protection of human rights, and are fully implemented in practice;
- to amend, reform or repeal laws or regulations which can be used to violate the rights to freedom of expression, association and assembly. These include Article 159 of the TPC, Article 312/2 of the TPC, Article 536 of the TPC, Law No. 2908 on Associations, Law No. 2860 on Foundations and Law No. 2911 on Meetings and Demonstrations;
- to commit itself explicitly and publicly to promoting respect for human rights and protecting human rights defenders, and acknowledge the legitimacy of the work of human rights defenders;
- to take effective action and measures to ensure that state officials at every level of the state apparatus, including law enforcement officials, respect the legitimacy of the work of human rights defenders and allow them to carry out this work without hindrance or harassment;
- to undertake an urgent review of all outstanding prosecutions of people for the peaceful exercise of their rights to freedom of expression, association and assembly with a view to ensuring that no one remains under prosecution for acts which are guaranteed under international protection in line with international law or standards;

- to closely monitor investigations opened against human rights defenders and take effective action to sanction state officials who abuse the judicial system (and/or the government administrative system) to the detriment of human rights defenders with the intention of harassing them or curtailing their legitimate activities for the defence of human rights;
- to adopt integrated programs for the protection of human rights defenders such as thorough criminal investigations into attacks and threats against human rights defenders, and preventative measures including education for security force agents on the rights of human rights defenders to carry out legitimate activities.
- to ensure that state institutions and individual officials refrain from adopting ‘creative’ ways of persecuting human rights defenders by breaching of Constitutional provisions or laws protecting human rights defenders, or through an excessively broad interpretation thereof;
- to take effective action to ensuring all public servants abstain from making unsubstantiated allegations against human rights defenders or other statements denouncing their legitimate activities. Statements of this nature must be publicly countered and appropriate measures applied to sanction those responsible.