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Amnesty International
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TURKEY: FAIR TRIAL FOR NINE INHABITANTS OF BALVEREN VILLAGE IN SOUTHEASTERN ANATOLIA

Turkey has a Kurdish ethnic minority of some 10 million people. The Kurdish population lives mainly in southeastern Turkey where eight provinces remain under a state of emergency, including Siirt province. In July 1987 a regional State of Emergency Governor with increased powers was appointed by the government to control a total of 11 provinces with a heavy military presence enforced by special units and gendarmerie. The reason for these measures was the armed activities from August 1984 of guerrillas of the Kurdish Workers' Party (PKK), who are seeking to establish an independent Kurdish state. Clashes between the security forces and the guerrillas have claimed a fast increasing number of lives on both sides and among the civilian population, reported to be between 1500 and 2000. Frequent allegations of torture and ill-treatment have come from this region.

Following the killing of five people on 23 June 1989 near Balveren village, Sirkak district in the province of Siirt, some 10 to 15 villagers were detained and interrogated at the Command of the 23rd Border Brigade in Sirkak including Mustafa Sidar, Yasin Istek (Islek), Mahmut Zeyrek, Halit Gökalp, Emin Altan, Abdullah Bayram, Ahmet Ibran, Ibrahim Bayik and Abdülvahap Sidar. They were held incommunicado until 25 July by which time some had been held for more than 30 days, the maximum legal detention period provided for in areas under emergency legislation. One of their fellow detainees, Salih Zeyrek, aged 19, later alleged that he and the others had been tortured:

"In the garden of the gendarmerie station I was put into a barrel and held there for 24 hours with the lid closed. In addition to the heat of July they burnt cotton wool and put it on top of the lid. I thought I would die any moment, but did not confess to the killings. The others were put into the barrel by turns. The ones not in the barrel were constantly beaten."

During their detention Amnesty International send appeals to Prime Minister Turgut Özal and the Regional Governor for Emergency Legislation, Hayri Kozakçioğlu, urging that none of the detainees should be ill-treated and that they be given immediate access to their lawyers and relatives. In these appeals six persons, Mustafa Sidar, Yasin Istek (Islek) Ibrahim Bayik, Ibrahim Eren, Mustafa Bayram and Ismail Bayram were named.

At the beginning of August, Amnesty International received a reply from the Regional Governor, Hayri Kozakçioğlu, stating that "Mustafa Sidar, Ibrahim Bayik, Abdullah Bayram and Yasin Istek had been charged with supporting the terrorist organization PKK and committed to prison; Ibrahim Eren had been interrogated between 15 and 17 July on charges of propaganda for that organization and Mustafa and Ismail Bayram had not been subjected

to any legal action". There was no reference to their treatment during incommunicado detention.

On 24 July the Turkish newspaper Cumhuriyet reported that on the 12th day of his detention Mustafa Sidar had been taken back to the village unable to walk on his own. On 6 August the same newspaper reported that Ibrahim Bayik, aged 15, had been beaten by gendarmes and members of a special unit. Ismail Bayram had been taken to the headquarters of the border brigade and forced to sign a statement without being allowed to read it. The inhabitants of Balveren village had told the reporter that Mustafa Sidar had confessed under torture to being in possession of a weapon. Thereupon the village had been searched every day. Mustafa's wife, Fatma, had been detained and returned to the village with a bleeding nose.

On the basis of this information Amnesty International issued further urgent appeals [EUR 44/91/89, 11 August 1989] to Prime Minister Turgut Özal and Minister of Justice, Mahmut Oltan Sungurlu, requesting an independent and impartial investigation into the torture allegations, asking to be informed of the findings and urging that statements extracted under torture not be used as evidence against the defendants. No reply to these appeals has been received so far.

On 3 November the trial against nine villagers, who had been formally arrested on 25 July and committed to Diyarbakir Prison, started in Diyarbakir State Security Court. Mustafa Sidar, Yasin Istek (Islek) and Mahmut Zeyrek are charged under Article 125 of the Turkish Penal Code with "membership of an organization attempting to separate part of the State territory", an offence that carries the death penalty; Halit Gökalp and Emin Altan are charged under Article 168 of the Turkish Penal Code with "membership of an armed gang", an offence punishable by 10 to 15 years' imprisonment; Abdullah Bayram, Ahmet Ibran, Ibrahim Bayik and Abdülvahap Sidar are charged under Article 169 of the Turkish Penal Code with "supporting an armed gang", an offence that carries a penalty of between three and five years' imprisonment.

The prisoners are accused of having been involved in the killing of Nebi Yildiz, Ömer Inal and Hacı Yasar from Balveren village, and of Abdürrezak Atabey and Sekvan Çoban from the neighbourhood, in the name of the illegal Kurdish Workers' Party, PKK. The five civilians had been killed on 23 June 1989 when they were driving in a car on a road close to Balveren village. During this incident two pistols and an automatic machine gun were allegedly used. However, only one pistol is mentioned in the indictment. The security forces claim that it was found in the home of Mustafa Sidar, but he denies that it is his. Although the security forces have produced only one pistol, there are two separate reports, the first one issued by the gendarmerie and the second one by the police, which state that during searches of Mustafa Sidar's place on 10 and 12 July 1989 respectively the pistol was found. The first report specifies the weapon by giving brand name and serial number, the second lists only one pistol and a number of other items. Amnesty International believes that the existence of these two reports must cast doubt on the validity of the evidence concerning the pistol.

When Amnesty International talked to the defendants' lawyers in October, they said that no other evidence than these two reports and the statements by the defendants to the police existed. The lawyers were convinced that these statements had been extracted under torture. When they had visited their clients in prison for the first time, the lawyers had heard detailed accounts of how they were tortured and had seen traces of torture on their bodies. Some of the defendants had later obtained medical reports certifying abrasions and bruises.

During the hearing on 3 November all prisoners alleged that their statements to the police had been obtained "under force", an expression often used in court to indicate torture. They said that they were innocent and asked for their release. The court rejected their demands for release and adjourned the hearing to 29 December. No action was taken concerning the torture allegations of the defendants.

FAIR TRIALS FOR POLITICAL PRISONERS

International law does not specifically prohibit the trial of civilians by extraordinary courts, such as military or state security courts. It provides, however, that this may occur only in exceptional circumstances and that established legal procedures and safeguards should be fully respected. Turkey is a State Party to the European Convention on Human Rights; Article 6 of this Convention provides the basic standards for fair trial, in particular that everyone is entitled to a fair and public hearing within a reasonable time and by an independent and impartial tribunal.

The trial in Diyarbakir State Security Court has just started, but by the time of the next hearing the prisoners will have spent

almost half a year in prison and a verdict cannot be expected within the next few months. As in many other trials in state security courts this trial appears to be unduly protracted and does not comply with the requirement of being conducted "within a reasonable time".

Most important, however, is the fact that state security courts have not addressed the question of confessions extracted under torture. Article 13 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ratified by Turkey in August 1988, provides:

"Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given."

Article 15 of this Convention carries the following provision:

"Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made."

However, in only a very few cases have military and state security courts initiated investigations into allegations made before them that statements made to the police had been extracted under torture. Usually the allegations were either ignored or the court disclaimed responsibility for dealing with them. Military and state security courts have moreover accepted statements extracted under torture as evidence.

Even after Turkey ratified the United Nations Convention Against Torture, state security courts failed to apply Article 15 of the Convention, despite their positive duty to do so under to Article 90 of the Turkish Constitution. This article provides that any international convention that has been ratified becomes domestic law and cannot be challenged to be unconstitutional. In a trial of 13 alleged members of the illegal Turkish Communist Party Izmir State Security Court ruled on 29 November 1988 that according to Articles 2 and 4 of the United Nations Convention Against Torture the government had to take effective measures for the prevention of torture, but that the evaluation of evidence was left to the discretion of the court, according to Articles 163 and 254 of the Turkish Criminal Procedure Code.

Amnesty International is appealing that the nine defendants be granted a fair trial and is seeking assurances from the Turkish government that confessions extracted from them under torture are not used as evidence against them.