

The Independence of Judges and Lawyers in the Republic of Turkey



Report of a Mission

14 – 25 November 1999

Centre for the Independence
of Judges and Lawyers
Geneva, Switzerland

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- organizes support for judges and lawyers who are being harassed or persecuted.

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Centre for the Independence of Judges and Lawyers

81 A, avenue de Châtelaine
CH-1219 Châtelaine/Geneva
Switzerland

Tel: (4122) 979 38 00, fax: (4122) 979 38 01

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Report of a Mission
14-25 November 1999

by
Frank Orton
Justice Rodney Madgwick
Paul Richmond

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**Centre for the Independence
of Judges and Lawyers**
Geneva, Switzerland

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Glossary of Abbreviations

ANAP	Motherland Party (member of the present coalition government)
CIJL	Centre for the Independence of Judges and Lawyers
DSP	Democratic Left Party (member of the present coalition government)
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
GNA	Grand National Assembly (the Turkish Parliament)
HADEP	People's Democracy Party
HRA	Human Rights Association of Turkey
HRFT	Human Rights Foundation of Turkey
ICJ	International Commission of Jurists
MHP	Nationalist Action Party
NSC	National Security Council
PKK	Kurdistan Workers' Party
SSC	State Security Court

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between 14-25 November 1999

I – Introduction

This is the Report of a Mission sent by the Centre for the Independence of Judges and Lawyers (CIJL) to Turkey. The CIJL is a component of the International Commission of Jurists (ICJ) dedicated to promoting and protecting the independence of judges and lawyers throughout the world. The Mission's mandate was to assess (i) the extent and effectiveness of the independence of the judiciary and the role of lawyers; (ii) the effectiveness of judges and lawyers in eliminating the culture of impunity; and (iii) the role of international financial institutions and development agencies in promoting and protecting the independence of judges and lawyers in Turkey. The members of the Mission were Frank Orton (Sweden), former Vice-President of the Swedish Section of the International Commission of Jurists, former Judge and Ombudsman against Ethnic Discrimination (Head of the Delegation); Justice Rodney Madgwick (Australia), Judge of the Federal Court of Australia; and Paul Richmond (United Kingdom), Barrister, member of JUSTICE, the British Section of the International Commission of Jurists (The Mission's Rapporteur).

The Mission arrived in Turkey on Sunday 14 November 1999 and left on Thursday 25 November 1999. During that time we held meetings with judges, public prosecutors, lawyers, physicians, human rights advocates and government officials in Istanbul, Adana, Izmir, Diyarbakir and Ankara. A list of those whom we met is attached as an appendix to the Report in Annex D. The Mission received full co-operation from the Government of Turkey and we observed a willingness on the part of several of the interviewees to maintain and develop further the dialogue between the ICJ and themselves. We are grateful to all those who assisted us. We are particularly grateful to Mr. Niel Hicks and Ms. Ayliz Baskin of the New York-based Lawyers Committee for Human Rights for providing us with useful information and contacts in Turkey, and Ms. Caroline Schlar for arranging our meetings and acting as the Mission's interpreter.

On 20 April 2000, the CIJL sent a letter to the Permanent Mission of Turkey to the United Nations in Geneva, enclosing this report for the

Turkish Government's comments on the issues we have raised. We added that subject to the length of these comments, and if we were able to receive a response by 20 May 2000, they would be included in the published version of the report. As the CIJL prefers to publish the response *verbatim*, it requested that the comments be limited to 5,000 words. The Turkish Government, through its Permanent Mission in Geneva, requested an extension and was given until 15 June 2000 to forward their comments. On 26 June 2000, the government views were received. They have been included *verbatim* in Annex E.

This report does not discuss the overall human rights situation in Turkey. We have reported on questions such as torture, conditions of detention, disappearances or extra-judicial executions largely by looking at the procedure for investigating alleged violations of human rights, for prosecuting those against whom there is evidence, and for preventing or reducing future violations of human rights. This is because the Mission gave priority to matters in which judges and lawyers are likely to be directly involved, in particular, the state of legislation; the legal system; the legal protection of human rights; and the independence of the judiciary and the legal profession. We have, however, been concerned that our work should make a constructive contribution to the human rights situation of all people in Turkey.

Chapter II of the Report sets out a brief historical and constitutional background. In Chapter III, we report on the extent to which Turkey has complied with the European Convention on Human Rights and the other international human rights instruments to which it is a party. Chapter IV examines the legislative framework of emergency powers, in particular, decrees enacted under the Law on the State of Emergency. In Chapter V, we describe the organisation of the Turkish court system. Chapter VI focuses exclusively on the State Security Courts (SSCs). We examine their independence and the procedural irregularities as between SSCs and the ordinary courts. Chapter VII discusses the appointment, training and removal of judges and public prosecutors; their independence and workload. In Chapter VIII we discuss the ability of lawyers to perform their role within the Turkish legal system. Chapter IX considers the problem of holding the security forces accountable for their involvement in serious violations of human rights. In Chapter X we assess the role of financial institutions in promoting and protecting the independence of judges and lawyers.

Finally, our conclusions and recommendations are set forth in Chapter XI.

We have been able to report favourably on some aspects, such as the removal of military judges from the State Security Courts. In other respects – such as the many obstacles to the provision of effective legal representation and the almost complete failure of domestic procedures for the investigation, prosecution and punishment of state officials who commit acts of torture – we have been critical. We acknowledge that the present Government has shown concern for human rights and has taken, or is in the process of taking, steps to remedy the problems. There remains, however, much that needs to be done in order to improve standards of observance of human rights and to punish past infringements.

II - BACKGROUND

The Republic of Turkey is a country of 63.7 million people. It was established on 29 October 1923, under the leadership of Mustafa Kemal, better known as Kemal Ataturk. Ataturk's goal in creating the new republic was to build on the ruins of the 600-year-old Ottoman Turkey a new country and society patterned directly on Western Europe. Ataturk's ideological legacy – known as Kemalism – consisted of the "Six Arrows": republicanism, nationalism, populism, reformism, etatism, and secularism. These principles have been embodied in successive constitutions and appeals for both reforms and retrenchment have been made in their name.¹

In the late 1940's, Ataturk's long-time lieutenant and successor, Ismet Inonu (earlier known as Ismet Pashu), introduced democratic elections and opened the political system to multiparty activity. In 1950, the Republican People's Party (CHP) – Ataturk's party – was badly defeated at the polls by the new Democrat Party, headed by Adnan Menderes. The Menderes government attempted to redirect the economy, allowing for greater private initiative, and was more tolerant of traditional religious and social attitudes in the countryside. In their role as guardians of Ataturk's ideological legacy, military leaders became convinced in 1960 that the Menderes government had departed dangerously from the principles of the republic's founder, and overthrew it in a military coup. After a brief interval of military rule, a new liberal constitution was adopted for the so-called Second Republic, and the government returned to civilian hands.²

The 1960's witnessed coalition government led, until 1965, by the CHP under Inonu. A new grouping – the Justice Party organised under Suleyman Demirel and recognised as the successor to the outlawed Democrat Party – came to power in that year. In opposition, the new leader of the CHP, Bulent Ecevit, introduced a platform that

1 U.S. Library of Congress Country Study – Turkey.

2 *ibid.*

shifted Ataturk's party leftward. Political factionalism became so extreme as to prejudice public order and the smooth functioning of the government and economy.³

In 1971, the leaders of the armed forces demanded appointment of a government "above parties" charged with restoring law and order. A succession of non-party governments came to power, but, unable to gain adequate parliamentary support, each quickly fell during a period of political instability that lasted until 1974. Mr. Demirel and Mr. Ecevit alternated in office as head of government during the remainder of the 1970's, a period marked by the rise of political extremism and religious revivalism, terrorist activities, and rapid economic changes accompanied by high inflation and severe unemployment. The apparent inability of parliamentary government to deal with the situation prompted another military coup in 1980, led by Chief of Staff General Kenan Evren.⁴

During the period of military rule following the 1980 coup, a Consultative Assembly was established with a view to drafting a new Constitution. In July 1982, a fifteen-member Constitutional Committee of the Consultative Assembly produced a draft. The Constitution was approved following a public referendum on 7 November. This Constitution – with some later amendments – is the present Constitution of Turkey.

The 1982 Constitution replaced the Constitution of 1961, which had also been drafted following a military coup. Under the 1961 Constitution, an elaborate system of checks and balances had limited the authority of the government; the powers of the President were curtailed, and individual rights and liberties were given greater emphasis. In contrast, the 1982 Constitution expanded the authority of the President and circumscribed the exercise of fundamental human rights. The 1982 Constitution also limited the role and influence of political parties, which were governed by more detailed and restrictive regulations than under the 1961 document.

3 *ibid.*

4 *ibid.*

Article 1 of the 1982 Constitution establishes the form of the Turkish State as a Republic. Article 2 establishes that it is a democratic, secular and social State governed by the rule of law, bearing in mind the concepts of public peace, national solidarity and justice, respecting human rights, and loyal to the nationalism of Atatürk. These provisions are irrevocable, shall not be amended, nor shall their amendment be proposed, in accordance with Article 4.

The 1982 Constitution divides the power of the State among the three branches of government.⁵ The legislative branch consists of a parliament, the Grand National Assembly (GNA), composed of 550 members elected to five-year terms.⁶ The executive branch consists of the President, who is the Head of State and is elected to a non-renewable seven-year term by the GNA, and a Prime Minister, who is appointed by the President from among GNA deputies.⁷ The Prime Minister heads the Council of Ministers, members of which are nominated by the Prime Minister and appointed by the President.⁸ The judicial branch is stated to be independent of the legislature and the executive.⁹ In addition, the 1982 Constitution established the National Security Council (NSC), which functions as an advisory body for the President and the Council of Ministers. According to Article 118 of the Constitution, the NSC is composed of the Prime Minister, the Chief of the General Staff, the Ministers of National Defence, Internal Affairs, and Foreign Affairs, the Commanders of the Army, Navy and the Air Force, and the General Commander of the Gendarmerie, under the chairmanship of the President of the Republic. Through the NSC, the Turkish military continues to have far-reaching powers and a tremendous influence over the Government in a manner largely incompatible with the standards of democratic states. It needs to be stressed that the general belief in Turkey appears to be that no executive or legislative policy of importance is implemented without the support of the military and that the Army continues to exercise a profound and pervasive power. Until the Army is subjected to the complete control of democratically elected representatives of the Turkish people, the truth is that

5 Articles 7, 8 and 9.

6 Articles 75 and 77.

7 Articles 101 and 109.

8 Article 109.

9 Article 138.

Turkey is, in far-reaching ways, not a democratic State. Subject to its subordination to a large extent, to the will of the military, Turkey is organised, generally speaking, along the lines of a democracy. But, that qualification is a large one. Two parts of the Constitution – those dealing with fundamental rights and duties (Part II) and those dealing with the judiciary and the superior courts (Part III) and are set out in full in Annexes A and B.¹⁰

Before continuing the political history of the Republic of Turkey, we must look at the ethnic tensions that have dominated Turkey's internal affairs for the last fifteen years. Turkey's Kurds are predominantly concentrated in eleven provinces of the south-east of the country, the same area that their ancestors inhabited as long ago as the fifth century B.C. The Turkish government does not recognise the Kurdish people as an ethnic minority. Their very existence has been officially denied and their language suppressed as ethno-lingual diversity is perceived as a threat to the idea of a homogenous, unitarian state. Turkey's censuses do not list Kurds as a separate ethnic group and so consequently there are no reliable data on their numbers. However, estimates of the number of Kurds in Turkey have recently been placed at between 12 and 15 million. Because of the size of the Kurdish population, Kurdish claims for recognition of their ethnic and cultural rights have long been perceived a threat to Turkish national unity.

In 1978, Mr. Abdullah Ocalan founded the Kurdistan Workers' Party (PKK). In March 1984, the PKK initiated an armed struggle against Turkish government forces aimed at achieving its goal of a separate Kurdish state in south-eastern Turkey. A bitter conflict ensued which to date has seen around 3,000 villages forcibly evacuated and/or burned,¹¹ up to three million people internally displaced and tens of thousands of Kurds and Turkish soldiers, many of them conscripts,

10 In 1995 the Constitution was amended and the preamble, in addition to twenty provisions expressing the people's will to accept military rule, were abolished.

11 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. On 16 July 1999, *Ozgur Politika* quoted the results of an Investigation Commission of the Turkish Parliament mentioning 3,428 evacuated settlements, 905 of which were villages and 2,523 were smaller units.

killed. Both parties to the conflict have been responsible for gross violations of human rights. As the PKK launched its violent attacks, the Turkish government responded in a disproportionate manner which often violated basic human rights. There have been several challenges to the measures taken by Turkey before the European Court of Human Rights. Since 1998, the Court has found Turkey in violation of the European Convention on Human Rights in 37 cases. In 1987, a state of emergency was declared in nine south-eastern provinces that faced substantial PKK terrorist violence.

Returning to events after the adoption of the 1982 Constitution, a parliamentary election held in November 1983 enabled the Republic to return to civilian government under the leadership of Turgat Ozal. His one-party government promised to bring stability to the political process. In two subsequent parliamentary elections, in 1987 and 1991, Turkey demonstrated a commitment to pluralist politics and a peaceful transfer of power. The 1991 election ended the eight-year rule of Mr. Ozal's Motherland Party (ANAP) and brought the True Path Party to power, headed by Suleyman Demirel.

In the early 1990's, PKK violence mounted. As well as operating from inside Turkey itself, the PKK established guerrilla camps in Syria, Iran, and Iraq from which it not only attacked Turkish military and police outposts, but also targeted civilian community leaders and teachers.

In provinces under state of emergency legislation, the Turkish government introduced a village guard system. The village guards are forces of Kurdish villagers armed and paid by the Government to fight the PKK. The local population in the south-eastern provinces are pressured by the Government to join the village guards, and face reprisals if they do not.¹² On the other hand, the PKK punishes those who do join the village guards. Throughout the 1990's the Turkish army units

12 In *Akdivar v. Turkey* (16 September 1996) and *Mentes v. Turkey* (28 November 1997), the European Court of Human Rights found the Turkish Government in violation of the European Convention on Human Rights for the actions of the security forces in burning houses in an attempt to forcibly evacuate villages in the south-east which refused to join the village guard system.

and elite police¹³ appeared unable to defeat the PKK with military force alone, while the PKK appeared no closer to its goal of an independent Kurdish state.

Upon the death of Mr. Ozal in 1993, Mr. Demirel ascended to the Presidency, and Ms. Tansu Ciller became Turkey's first woman Prime Minister. Under Ms. Ciller's administration, the status of Turkey's Kurdish minority continued to be the country's most serious domestic problem. Although the PKK renounced its goal of a separate Kurdish state in 1993, instead demanding autonomy for Turkey's Kurdish population, reaching a political compromise proved difficult because the Turkish military insisted on a military solution. Both Ms. Ciller and Mr. Demirel were sensitive about past military interventions in domestic politics and hence neither were prepared to risk a civilian-military confrontation by challenging the military's assumption of almost a free hand in dealing with the security situation in south-eastern Turkey.

Increased numbers of security forces were mobilised against the Kurds in 1994 in a government campaign of mounting intensity. Kurdish villages continued to be forcibly evacuated and burned. The government claimed that this was done to prevent the villagers from harbouring PKK insurgents. Although militarily successful, these evacuations have caused considerable hardship to the villagers. By 1995, more than 220,000 soldiers, in addition to 50,000 gendarmerie and other security forces, were stationed in the south-east. Nevertheless, the progressive intensification of the military offensive against the PKK failed to repress the PKK's ability to mount deadly assaults.

The military campaign provoked criticism from both Kurdish and Turkish politicians. To curtail criticism, the military resurrected the Anti-Terror Law, which criminalised any activity – including speech – that supposedly threatened the integrity of the Turkish State. This resulted in the detention of tens of journalists, writers, and lawyers.

13 The law enforcement forces in Turkey are constituted by the National Police, affiliated to the Ministry of the Interior, and the Gendarmerie, affiliated to the armed forces. There are approximately 100,000 police officers and 200,000 gendarmes throughout the country. The National Police have responsibility for security in urban areas. In each rural province there is a Gendarmerie command area, and in each rural town a company.

Article 8 of the Anti-Terror Law defined terrorism in vague terms. It originally provided that:

“written and oral propaganda and assemblies, meetings and demonstrations aimed at damaging the indivisible unity of the State of the Turkish Republic with its territory and nation are forbidden, *regardless of the method, aim and ideas behind them*. Those conducting such activity are to be punished by a sentence of between two and five years’ imprisonment and a fine ...”¹⁴ (emphasis added)

In January 1995, faced with mounting European criticism, Ms. Ciller proposed to repeal Article 8 of the Anti-Terror Law which criminalised speech and publications. Article 8 was amended on 27 October 1995. The amendment removed from the text the phrase “regardless of method, aim and ideas behind them.” As a result, it is now necessary to prove before the court the intent to damage “the indivisible unity of the State.” In addition, the lower and upper limits of sentences prescribed under Article 8 were reduced from two years to one year and from five years to three years. While the amendment did not provide for an amnesty, it stated that the cases already decided under the provision would be reviewed within one month of its promulgation with the aim of cancelling or shortening the sentences or commuting them into fines. On 9 November 1995, the Ministry of Foreign Affairs announced that 85 individuals who were tried under Article 8 would be released. The on-going trials continued, however.¹⁵

An increase in the military offensive in northern Iraq brought further European criticism. In an effort to placate her European neighbours, Ms. Ciller proposed that the GNA adopt amendments to the

14 Former Article 8 of the 1991 Anti-Terror Law.

15 Despite challenges to the constitutionality of the Anti-Terror Law itself, the State Security Courts continued to uphold it. On 7 December 1995, at the trial of 99 intellectuals, writers, publishers and artists who were charged under the Anti-Terror Law for their contributions to a book entitled “Freedom of Thought,” the Istanbul State Security Court rejected the argument that the Anti-Terror Law was unconstitutional, and committed the 99 defendants to trial.

1982 Constitution that would strengthen democratic procedures.¹⁶ The National Assembly's adoption of the amendments in July 1995, coupled with the withdrawal of the last Turkish military units from Iraq, helped to ease some of the tension between Turkey and its erstwhile European friends.

In addition to the Kurdish question, another unresolved political conflict has pre-occupied Turkey's internal affairs in recent years. The place of resurgent Islam in political life has also been a cause of concern for the Turkish government as it is perceived to undermine the secular foundations of the modern Turkish state. The threat of the politicisation of Islam came to a head in 1996 with the formation of a new government under the leadership of Prime Minister Necmettin Erbakan of the pro-Islam *Refah* (Welfare) party. The military establishment used the NSC and its influence over state institutions such as the judiciary to initiate a series of measures to minimise the threat. In June 1997, in the face of the overt threat of the use of military force, Prime Minister Erbakan was forced to resign. After his forced resignation, the Erbakan Government was replaced in June 1997 by a new coalition headed by Mesut Yilmaz, leader of the secular conservative Motherland Party. On 7 July, Mr. Yilmaz presented his government to the GNA, forming a coalition government with the Democratic Left Party and the Democratic Turkey Party.

On 11 November 1997, as part of the intensive pressure campaign led by the military, with broad support from several segments of society that viewed "fundamentalism" as a threat to the secular republic, the Constitutional Court began hearing a case which was aimed at dissolving the Welfare Party of Mr. Erbakan. The suit was filed by the Chief Public Prosecutor, on the grounds that the party had a hidden agenda to promote Islamic fundamentalism and to subvert the secular nature of the Constitution. In January 1998, Turkey's highest court, the Constitutional Court, decided to dissolve the Islamist Welfare Party and banned Welfare's leader, Necmettin Erbakan, as well as several other politicians from the Welfare Party, from political activity for five

16 The proposed amendments included ending the ban on political activities by associations such as labour unions and professional groups, permitting civil servants and university students to organise, and making it more difficult for courts to strip parliamentary deputies of their immunity from prosecution.

years. In anticipation of the decision to ban the Welfare Party, a new Islamic party, *Fazilet* (Virtue), was formed.

During 1998, the military, acting as if they were the constitutional protectors of the state, continued to exert pressure on the political process, and in particular on political Islam, which the Chief of Staff described in March as the "number one enemy of the principles of modern Turkey." Some Islamist politicians, such as Istanbul mayor, Recep Tayyip Erdogan, were prosecuted for their statements on the role of religion in society. In April, Mr. Erdogan was convicted of promoting separatism and threatening the unity of the state. He was sentenced to one year of imprisonment and a lifetime ban from all political activities. The pro-Kurdish People's Democracy Party (HADEP) also faced intense surveillance and harassment by the security forces. In 1998, several HADEP offices, including its central office in Ankara, were raided, and party administrators and members were detained and tortured.

Throughout 1998, Turkey was governed by a minority coalition government led by the Motherland Party. Although the new government of Mesut Yilmaz was supported by the military and mainstream media, the new Prime Minister immediately came into conflict with the NSC when he called for a softer approach towards the Islamists. The minority coalition of Prime Minister Mesut Yilmaz finally collapsed after a no-confidence motion over corruption allegations and alleged links with organised crime. It was the fifth coalition government to collapse in three years.

Mr. Bulent Ecevit, leader of the Democratic Left Party (DSP) was then asked by President Demirel to form a new government. After he failed to do so, the independent deputy Mr. Yalim Erez was asked; he also failed to form a new administration. Consequently, Mr. Ecevit was asked again to try to form a coalition government; this time he succeeded in forming a minority administration with the backing of the majority of the Parliament. On 17 January 1999, the new government won a vote of confidence in the Parliament.

The armed conflict in the south-east lessened in intensity but both government forces and the PKK continued to commit serious human rights violations. The Government forcibly displaced non-combatants,

failed to resolve extrajudicial killings, tortured civilians, and abridged freedom of expression. The PKK meanwhile continued to execute civilians they suspected of co-operating with the security forces, targeting village officials, teachers, and other perceived representatives of the state.

On 15 February 1999, Turkish authorities apprehended the leader of the PKK, Mr. Abdullah Ocalan, on accusations of "treason and separatism". On 29 June 1999, following a trial on the island of Imrali, Mr. Ocalan was found guilty and sentenced to death. On 25 November 1999, the death sentence was upheld by the High Court of Appeals. Following his arrest, Mr. Ocalan called for an end to the armed conflict that had plagued the country for the last fifteen years. By all indications, the PKK appear to have acceded to their leaders request and there is now an air of optimism within Turkey that a peaceful political solution can be found. However, the situation remains fragile and as long as Mr. Ocalan remains under a sentence of death, it seems unlikely that there can be any form of lasting peace.

The April 1999 elections resulted in the formation of a majority coalition formed by Prime Minister Ecevit. This has finally brought the prospect of some political stability to the country. The new Government rests on a three-party coalition that covers a broad range of the political spectrum: the Democratic Left Party (DSP), the Motherland Party (ANAP), and the Nationalist Action Party (MHP). The coalition has a solid majority in Parliament: 352 out of a total of 550 seats.

III - INTERNATIONAL OBLIGATIONS

Turkey is a State Party to several international human rights treaties. These include the UN Convention on the Elimination of All Forms of Discrimination against Women;¹⁷ the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;¹⁸ the UN Convention on the Rights of the Child;¹⁹ the European Convention on the Protection of Human Rights and Fundamental Freedoms;²⁰ the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;²¹ and the four Geneva Conventions.²² Article 90 of the Turkish Constitution establishes that international treaties ratified by the government and approved by the Turkish Grand National Assembly have the force of law.²³

In addition to these binding international instruments ratified by Turkey, other international instruments are also relevant. The UN Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment²⁴ amplifies and reinforces the due-process rights and pre-trial detention safeguards contained in the European

17 Turkey acceded in December 1985.

18 Turkey ratified the Convention on 2 August 1988.

19 Turkey ratified the Convention on 4 April 1995.

20 Turkey has been a State Party since 1954.

21 Turkey signed and ratified the Convention on 26 February 1988.

22 In 1972 Turkey signed but did not ratify the International Convention on the Elimination of All Forms of Racial Discrimination. Turkey is not a State Party to the International Covenant on Civil and Political Rights or the International Covenant on Economic, Social and Cultural Rights.

23 Article 90 of the Turkish Constitution provides that:
"International agreements duly put into effect carry the force of law. No appeal to the Constitutional Court can be made with regard to these agreements on the ground that they are unconstitutional."

24 Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, General Assembly Resolution 43/173, UN GAOR, 43d Sess., Annex, Supp. No. 49, at 298, UN Doc. A/43/49 (1988).

Convention. Similarly, the UN Basic Principles on the Independence of the Judiciary²⁵ establish more detailed standards in the area of judicial independence, while the UN Basic Principles on the Role of Lawyers²⁶ elaborate on the right of access to counsel provided in the binding treaty documents. Although not formally binding, these instruments represent an authoritative set of internationally recognised standards adopted by consensus by the UN General Assembly. States are encouraged to implement the principles contained in these instruments in order to bring their practice closer to the standards envisaged in the Universal Declaration of Human Rights and the treaties derived from it.

As a State Party to certain of these Conventions, Turkey has to submit periodic reports to monitoring bodies. However, Turkey's second periodic report under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was due on 31 August 1993; the third periodic report was due on 31 August 1997. Turkey's initial report under the Convention on the Rights of the Child was due on 3 May 1997. It was finally submitted on 7 July 1999. Turkey has submitted its second and third periodic reports under the Convention on the Elimination of All Forms of Discrimination against Women as one document. This report was considered in January 1997. The fourth report was due on 19 January 1999.

There are several international human rights conventions to which Turkey has not yet acceded. Foremost among these are the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural

25 Basic Principles on the Independence of the Judiciary, adopted by Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan 1985, endorsed by General Assembly Resolution 40/32 of 29 November 1985 and Resolution 40/146 of 13 December 1985. See G.A. Res. 40/32, UN GAOR, 40th Sess., Supp. No. 53, at 204, UN Doc. A/40/53 (1985); Res. 40/146, UN GAOR, 40th Sess., Supp. No. 53, at 254, UN Doc. A/40/53 (1985).

26 Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana in 1990, and welcomed by the General Assembly in Resolution 45/121 of Dec. 14, 1990. G.A. Res. 45/121, 45th Sess., UN Doc. No. — (1990).

Rights, the Optional Protocol to the International Covenant on Civil and Political Rights and the Second Optional Protocol to the International Covenant on Civil and Political Rights. In addition, although a signatory, Turkey has yet to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

We recommend that Turkey accede or ratify as appropriate to the aforementioned international human rights instruments.

The European Convention on the Protection of Human Rights and Fundamental Freedoms (European Convention) is the primary international Convention to have actually been ratified by Turkey. Turkey has been a State Party to the European Convention since 1954, and on 22 January 1990 recognised the jurisdiction of the European Court of Human Rights. On 11 July 1997, Turkey ratified Protocol No. 11 to the Convention regarding the establishment of a new court system. The new European Court of Human Rights came into operation on 1 November 1998. This court is a single, permanent court, as opposed to the old system with the Commission on Human Rights and a part-time court.

A statement to the Council of Europe made on 10 February 1997 is perhaps indicative of Turkey's record before the European Court of Human Rights. The statement announced that Professor Bakir Caglar, who had defended the Government of Turkey in the European Court, had resigned from his post in despair over conditions in his home country. The statement read, "[a]fter four years he finds it impossible to continue representing Turkey against a background of repeated cases of human rights abuse by the Turkish authorities".²⁷ In the remainder of this Chapter we report on a selection of the cases to have been brought against Turkey in the European Court of Human Rights in recent years.²⁸

27 Statement to the Council of Europe by Mr. Lekberg and other. 10 February 1997, Doc. 7754.

28 The delegation notes that these cases reflect events that have taken place several years prior to the date of judgement, however, we observe that there is nothing to indicate that the situation has changed in the interim.

In 1997 and 1998, the 'old' European Court of Human Rights delivered 26 judgements regarding complaints lodged against Turkey. In 20 of these cases the court established that one or more violations of the convention had occurred. In 1999, the 'new' European Court of Human Rights delivered 18 judgements regarding complaints against Turkey. Violations of the Convention were established in all of the 18 judgements.

■ Article 2 – The right to life

Violations of Article 2 have been established in the cases of *Gulec v. Turkey*,²⁹ *Ergi v. Turkey*,³⁰ *Tanrikulu v. Turkey*,³¹ *Yasa v. Turkey*,³² *Cakici v. Turkey*³³ and *Ogur v. Turkey*.³⁴

• *Cakici v. Turkey*³⁵

On 8 November 1993, officers from the Hazro gendarmerie station conducted a co-ordinated operation aimed at locating and apprehending Ahmet Cakici in relation to his suspected involvement in the PKK kidnapping and murder of four teachers and an imam. The gendarmes took Mr. Cakici from the village of Citlibahce to Hazro where he spent the night. The following day, he was transferred to Diyarbakir provincial gendarmerie headquarters where, according to a fellow detainee, he was beaten and given electric shock treatment over a period of sixteen to seventeen days. Mr. Cakici was last seen by the detainee on or about 2 December 1993. Neither the Hazro gendarmerie station's custody records nor the Diyarbakir provincial gendarmerie headquarters' custody records contained any entries with respect to Ahmet Cakici, nor were there any other official records of his whereabouts or fate.

On 8 July 1999, the European Court of Human Rights found that Mr. Cakici had been taken into unacknowledged detention, ill-treated

29 *Gulec v. Turkey* (1999) 28 EHRR 121.

30 *Ergi v. Turkey* (App. no. 23818/94)(23 July 1998).

31 *Tanrikulu v. Turkey* (App. No. 23763/94)(8 July 1999).

32 *Yasa v. Turkey* (1999) 28 EHRR 408.

33 *Cakici v. Turkey* (App. no. 23657/94)(8 July 1999).

34 *Ogur v. Turkey* (App. no. 21594/93)(20 May 1999).

35 *Cakici v. Turkey* (App. no. 23657/94)(8 July 1999).

and disappeared in circumstances which disclosed a presumption that he had died.³⁶ The Court ruled that there had been a violation of Article 2 (right to life), Article 3 (right not to be subjected to torture), Article 5 (right to liberty and security) and Article 13 (right to an effective remedy) of his Convention rights.

In relation to Article 2, the Court commented:

"The Court reiterates that Article 2 of the Convention, which safeguards the right to life, ranks as one of the most fundamental provisions in the Convention and, together with Article 3 of the Convention, enshrines one of the basic values of the democratic societies making up the Council of Europe. The obligation imposed is not exclusively concerned with intentional killing resulting from the use of force by agents of the State but also extends, in the first sentence of Article 2(1), to imposing a positive obligation on States that the right to life be protected by law. This requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force. As Ahmet Cakici must be presumed dead following an unacknowledged detention by the security forces, the Court finds that the responsibility of the respondent State for his death is engaged. It observes that no explanation has been forthcoming from the authorities as to what occurred following his apprehension, nor any ground of justification relied on by the Government in respect of any use of lethal force by their agents. Liability for Ahmet Cakici's death is therefore attributable to the respondent State and there has accordingly been a violation of Article 2 on that account. Furthermore, having regard to the lack of effective procedural safeguards disclosed by the inadequate investigation carried out into the disappearance and the alleged finding of Ahmet Cakici's body, the Court finds

36 The Court drew a "very strong inference" of death during detention from the authorities' claim that Mr. Cakici's identity card was later found on the body of a dead terrorist. (*Cakici v. Turkey* (App. no. 23657/94)(8 July 1999, para. 85)).

that the respondent State has failed in its obligation to protect his right to life. Accordingly, there has been a violation of Article 2 of the Convention on this account also."³⁷

- *Ogur v. Turkey*³⁸

On 24 December 1990, Turkish security forces carried out an armed operation at a site belonging to a mining company some six kilometres from the village of Dagkonak in south-eastern Turkey. Musa Ogur, who worked at the mine as a night-watchman, was killed at about 6.30 a.m. as he was about to come off duty. It was alleged that, in violation of Article 2, Mr. Ogur was killed by a bullet fired by the security forces without any warning as he emerged alone from the night-watchmen's refuge and that no effective judicial investigation was made into the circumstances of his death. The Government maintained that the victim was a member of the PKK, that the security forces had been obliged to counter an attack from the night-watchmen's refuge and that Mr. Ogur was accidentally hit by a warning shot.

On 20 May 1999, the European Court of Human Rights delivered its judgement. The Court found that deficiencies in the planning and execution of the security forces operation were sufficient for it to conclude that the use of force against Musa Ogur was neither proportionate nor absolutely necessary in defence of any person from unlawful violence or to arrest the victim. There had therefore been a violation of Article 2 on that account. Furthermore however, the Court found that the subsequent investigation into the case by the authorities could not be regarded as capable of leading to the identification and punishment of those responsible for the events in question. There had therefore been a violation of Article 2 on this account also. In relation to this latter point the Court noted:

" The Court reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of

³⁷ *Cakici v. Turkey* (App. no. 23657/94) (8 July 1999, paras. 85-87).

³⁸ *Ogur v. Turkey* (App. no. 21594/93) (20 May 1999).

the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force. This investigation should be capable of leading to the identification and punishment of those responsible."³⁹

Among the various failings in the investigation identified by the Court was the absence of any proper post-mortem, the lack of any forensic examination of the cartridges or shotguns found at the scene, the fact that no members of the security forces were questioned at the scene, that there was no serious attempt to identify who had fired the fatal shot and that the expert report prepared at the public prosecutor's request contained findings that were either very imprecise or else unsupported by any established facts.

The Court also expressed "serious doubts" as to the ability of the administrative authorities concerned to carry out an independent investigation, as required by Article 2 of the Convention:

"The Court notes that the investigating officer appointed by the governor was a gendarmerie lieutenant-colonel and, as such, was subordinate to the same chain of command as the security forces he was investigating. As to the Administrative Council, whose responsibility it was to decide whether proceedings should be instituted against the security forces concerned, it was composed of senior officials from the province and was chaired by the governor, who, in this instance, was administratively in charge of the operation by the security forces. In this connection, the evidence of one of the members of the Sirnak Administrative Council should be noted, according to which, in practice, it was not possible to oppose the governor: either the members signed the decision prepared by him or they were replaced by other members who were willing to do so."⁴⁰

39 *Ogur v. Turkey* (App.no. 21594/93)(20 May 1999, para. 88).

40 *ibid.* para. 91.

■ *Article 3 – The right not be subjected to torture or inhuman or degrading treatment or punishment*

In 1997 and 1998, the European Court of Human Rights found the Turkish Government to have violated Article 3 of the European Convention of Human Rights in four cases: *Aydin v. Turkey*⁴¹; *Selcuck and Asker v. Turkey*⁴²; *Kurt v. Turkey*⁴³; and *Tekin v. Turkey*.⁴⁴ In 1999, one further violation of Article 3 was established: *Cakici v. Turkey*.⁴⁵

• *Tekin v. Turkey*⁴⁶

In February 1993, during a visit to his family in the hamlet of Yassitepe, Mr Salih Tekin, a Turkish citizen of Kurdish origin, was arrested by gendarmes on suspicion of threatening village guards.⁴⁷ He was taken to Derinsu gendarmerie headquarters where he was held for between two and four days until 19 February 1993. Mr. Tekin alleged that during his entire time in custody he was detained in a cell without any lighting, bed or blankets, in sub-zero temperatures, and fed with only bread and water. He claimed to have been assaulted in his cell by the gendarmes and left blindfolded while being aggressively interrogated. He stated that he would have died of cold had his three brothers not been permitted to enter his cell on the night of 18 February 1993 in order to wrap him in extra clothing.

On the morning of 19 February 1993, Mr. Tekin was taken to Derik district gendarmerie headquarters. He was released later that same day. Mr. Tekin alleged that he was again tortured at Derik through the application of cold water, electric shocks and beatings to the body and

41 *Aydin v. Turkey* (App. no. 23178/94)(25 October 1997).

42 *Selcuck and Asker v. Turkey* (1998) 26 EHRR 477.

43 *Kurt v. Turkey* (1999) 27 EHRR 373.

44 *Tekin v. Turkey* (App. No. 22496/93) (9 June 1998).

45 *Cakici v. Turkey* (App. No. 23657/94) (8 July 1999).

46 *Tekin v. Turkey* (App. No. 22496/93) (9 June 1998).

47 Village guards are forces of Kurdish villagers armed and paid by the Government to fight the PKK. The local population in the south-eastern provinces are pressured by the Government to join the village guards, and face reprisals if they do not. On the other hand, the PKK punishes those who do join the village guards.

soles of his feet, with the purpose of forcing him to sign a confession statement. He claimed that the district gendarmerie commander threatened him with death if he returned to the area. The Government contested that any ill-treatment had taken place at either Derinsu or Derik.

The European Court of Human Rights was unable to determine the precise details of Mr. Tekin's treatment in custody. It was satisfied however that Mr. Tekin had been kept in a cold and dark cell, blindfolded and treated in a way which left wounds and bruises on his body in connection with his interrogation. The Court commented:

"The Court notes that the Commission found that the applicant was held in a cold and dark cell, blindfolded, and treated, in connection with his interrogation, in a way which left wounds and bruises on his body. The Court has assessed these facts against the standards imposed by Article 3. It recalls that, in respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3. It considers that the conditions in which the applicant was held, and the manner in which he must have been treated in order to leave wounds and bruises on his body, amounted to inhuman and degrading treatment within the meaning of that provision. It follows that there has been a violation of Article 3."⁴⁸

- *Cakici v. Turkey*⁴⁹

In the case of *Cakici v. Turkey*, already referred to above, it was further alleged that Ahmet Cakici had been the victim of breaches by the respondent State of Article 3 of the Convention in that he had been subjected to serious ill-treatment, amounting to torture, while detained at Hazro and at Diyarbakir provincial gendarmerie headquarters. It was submitted that he had, *inter alia*, been beaten and subjected to electric shock treatment. The Government's submissions on this aspect

48 *Tekin v. Turkey* (App. No. 22496/93) (9 June 1998, paras. 52-54).

49 *Cakici v. Turkey* (App. no. 23657/94) (8 July 1999).

were restricted to their criticisms of the Commission's assessment of the facts and of its alleged failure to apply a strict standard of interpretation in keeping with the case-law regarding Article 3 of the Convention.

The Commission considered that the evidence of the detainee who had witnessed the after-effects of the ill-treatment of Ahmet Cakici and to whom Ahmet Cakici had spoken of being beaten and subjected to electric shocks, provided a sufficient basis for finding that Ahmet Cakici had been tortured. It expressed the consideration that in cases of unacknowledged detention and disappearance, independent, objective medical evidence or eyewitness testimony was unlikely to be forthcoming and that to require either as a prerequisite of a finding of a violation of Article 3 would undermine the protection afforded by that provision. The Court went on to comment:

"The Court notes that [the detainee's] evidence to the delegates was judged to be reliable and credible. This witness was detained in the same room as Ahmet Cakici for a period of sixteen to seventeen days and had the opportunity to see and talk to Ahmet Cakici. His evidence was that he saw bloodstains on Ahmet Cakici's clothing and that Ahmet Cakici was in a very poor physical condition. Ahmet Cakici told him that he had been beaten, that one of his ribs had been broken and his head split open. He was taken from the room in which they were held together and informed [the detainee] on his return that he had twice been given electric shocks, which treatment [the detainee] also stated that he received during interrogation. The Court shares the Commission's opinion that this evidence supports a finding to the required standard of proof, i.e. beyond reasonable doubt, that Ahmet Cakici was tortured during his detention. There has, consequently, been a violation of Article 3 of the Convention in respect of Ahmet Cakici."⁵⁰

50 *ibid.* para. 92.

■ *Article 5 – The right to liberty and security of the person*

Since 1995, the European Court of Human Rights has found that Turkey has violated Article 5 in seven cases: *Yagci and Sargi v. Turkey*⁵¹; *Mansur v. Turkey*⁵²; *Aksoy v. Turkey*⁵³; *Sakik and Others v. Turkey*⁵⁴; *Kurt v. Turkey*⁵⁵; *Demir and Others v. Turkey*⁵⁶; and *Cakici v. Turkey*.⁵⁷

• *Demir and Others v. Turkey*⁵⁸

On 22 January 1993, Mr. Demir (Chairman of the Idil branch of the People's Social Democrat Party (SHP)), was arrested by the Anti-Terror branch of the Idil Security police and placed in police custody. He was accused of being an active member of an illegal organisation, namely the PKK. On 18 February 1993, Mr Demir was eventually brought before the single judge of the Idil Criminal Court, who ordered him to be placed in pre-trial detention. On 14 November 1996, the State Security Court found Mr. Demir guilty under Article 168 of the Turkish Penal Code of being a member of an armed gang. The court sentenced him to twelve years and six months imprisonment.

Mr. Demir asked the European Court of Human Rights to hold that his detention in police custody had breached Article 5(3) of the European Convention. On 23 September 1998, the Court held that Mr. Demir's incommunicado detention in police custody for at least twenty-three days, during which time he had not appeared before a judge or other judicial officer, failed to satisfy the requirement of promptness laid down by Article 5(3).

51 *Yagci and Sargi v. Turkey* (1995) 20 EHRR 505.

52 *Mansur v. Turkey* (1995) 20 EHRR 535.

53 *Aksoy v. Turkey* (1997) 23 EHRR 553.

54 *Sakik and Others v. Turkey* (1998) 26 EHRR 662.

55 *Kurt v. Turkey*, (1999) 27 EHRR 373.

56 *Demir and Others v. Turkey* (App. Nos. 21380/93, 21381/93, 21383/93) (23 September 1998).

57 *Cakici v. Turkey* (App. no. 23657/94) (8 July 1999).

58 *Demir and Others v. Turkey* (App. Nos. 21380/93, 21381/93, 21383/93) (23 September 1998).

The Turkish government had sought to rely on the special difficulties encountered in the investigation of terrorist offences as justification for the extended period of Mr. Demir's detention. In this regard the Court noted:

"the Court has already accepted on a number of occasions that the investigation of terrorist offences undoubtedly presents the authorities with special problems. This does not mean, however, that the authorities have *carte blanche* under Article 5 to arrest suspects and detain them in police custody, free from effective control by the domestic courts and, in the final instance, by the Convention's supervisory institutions, whenever they consider that there has been a terrorist offence. Similarly, the requirements of the investigation cannot absolve the authorities from the obligation to bring any person arrested in accordance with Article 5(1)(c) "promptly" before a judge, as required by Article 5(3). Where necessary, it is for the authorities to develop forms of judicial control which are adapted to the circumstances but compatible with the Convention."⁵⁹

• *Cakici v. Turkey*⁶⁰

In *Cakici v. Turkey*, already referred to above, it was further alleged that the disappearance of Ahmet Cakici gave rise to multiple violations of Article 5. It was submitted that Ahmet Cakici was detained by the security forces on 8 November 1993, being taken to Hazro for one night and then to Diyarbakir provincial gendarmerie headquarters where he was detained until at least 2 December 1993, the date of his last known sighting. His detention was not recorded in the relevant custody records and was denied by the authorities, thus depriving him of the safeguards that should accompany detention. It was submitted that Mr. Cakici was not brought before a judicial officer within a reasonable time as required by Article 5(3), was denied access to a lawyer, doctor or relative, and was unable to challenge the lawfulness of his detention, as required by Article 5(4). It was further argued that there was no

⁵⁹ *ibid.* para. 41.

⁶⁰ *Cakici v Turkey* (App. no. 23657/94) (8 July 1999).

prompt and effective investigation by the authorities into the family's claim that Ahmet Cakici had been taken into custody, which, it was argued, constituted a separate violation of Article 5.

On 8 July 1999, the European Court delivered its judgement. In relation to Article 5 generally the Court noted:

"The Court has frequently emphasised the fundamental importance of the guarantees contained in Article 5 for securing the rights of individuals in a democracy to be free from arbitrary detention at the hands of the authorities. In that context, it has repeatedly stressed that any deprivation of liberty must not only have been effected in conformity with the substantive and procedural rules of national law but must equally be in keeping with the very purpose of Article 5, namely to protect the individual from arbitrary detention. To minimise the risks of arbitrary detention, Article 5 provides a corpus of substantive rights intended to ensure that the act of deprivation of liberty be amenable to independent judicial scrutiny and secures the accountability of the authorities for that measure. As the Court previously held in the Kurt case, the unacknowledged detention of an individual is a complete negation of these guarantees and discloses a most grave violation of Article 5. Given the responsibility of the authorities to account for individuals under their control, Article 5 requires them to take effective measures to safeguard against the risk of disappearance and to conduct a prompt and effective investigation into an arguable claim that a person has been taken into custody and has not been seen since."⁶¹

In relations to Mr. Cakici's detention, the Court ruled:

"The recording of accurate holding data concerning the date, time and location of detainees, as well as the grounds for the detention and the name of the persons

61 *ibid.* para 104.

effecting it, is necessary for the detention of an individual to be compatible with the requirements of lawfulness for the purposes of Article 5(1). The lack of records of this applicant discloses a serious failing, which is aggravated by the Commission's findings as to the general unreliability and inaccuracy of the records in question. The Court also shares the Commission's concerns with regard to the practices applied in the registration of holding data by the gendarme witnesses who appeared before the Commission's delegates – the fact that it is not recorded when a person is held elsewhere than the officially designated custody area or when a person is removed from a detention area for any purpose or held in transit. It finds unacceptable the failure to keep records which enable the location of a detainee to be established at a particular time. Further, the Court notes that, notwithstanding that the applicant's family brought it to the attention of the authorities that there were three eye-witnesses to the detention of Ahmet Cakici, no steps were taken to seek any evidence, beyond enquiring as to entries in custody records, until after the application was communicated to the Government by the Commission. The Court has already commented on the restricted number of enquiries which resulted even at that stage and on the lack of any investigation into the report that Ahmet Cakici's body had been found. There was neither a prompt nor a meaningful inquiry into the circumstances of Ahmet Cakici's disappearance. Accordingly, the Court concludes that Ahmet Cakici was held in unacknowledged detention in the complete absence of the safeguards contained in Article 5 and that there has been a particularly grave violation of the right to liberty and security of person guaranteed under that provision."⁶²

62 *ibid.* paras. 105-107.

■ Article 6 – The right to a fair trial

Of the 12 cases in 1999 which involved a violation of the right to freedom of expression, it was held in six (*Gerger v. Turkey*,⁶³ *Karatas v. Turkey*,⁶⁴ *Baskaya and Okcuoglu v. Turkey*,⁶⁵ *Surek and Ozdemir v. Turkey*,⁶⁶ *Surek v. Turkey (no.2)*⁶⁷ and *Surek v. Turkey (no.4)*)⁶⁸ that the applicants had also been denied the right to have their cases heard by an independent and impartial tribunal within the meaning of Article 6(1) of the Convention because they had been tried by State Security Courts in which one of the bench of three judges was a military judge. Between 1997 and 1999, violations of Article 6 have also been established independently in 5 other cases: *Surek v. Turkey (no.1)*,⁶⁹ *Surek v. Turkey (no.3)*,⁷⁰ *Ciraklar v. Turkey*,⁷¹ *Incal v. Turkey*⁷² and *Zana v. Turkey*.⁷³

• *Gerger v. Turkey*⁷⁴

On 23 May 1993 a memorial ceremony was held in Ankara for Denis Gezmis and two of his friends, Yusuf Aslan and Huseyin Inan. Together they had started an extreme left-wing movement among university students at the end of the 1960's. They were sentenced to death for seeking to destroy the constitutional order by violence and executed in May 1972. Mr. Haluk Gerger, a journalist, was invited to speak at the ceremony, but was unable to attend and sent the organising committee a 'speech' which was read out in public at the ceremony.

63 *Gerger v. Turkey* (App. no. 24919/94)(8 July 1999).

64 *Karatas v. Turkey* (App. no. 23168/94)(8 July 1999).

65 *Baskaya and Okcuoglu v. Turkey* (App. nos. 23536/94 and 24408/94)(8 July 1999).

66 *Surek and Ozdemir v. Turkey* (App. nos. 23927/94 and 24277/94)(8 July 1999).

67 *Surek v. Turkey (no.2)* (App. no. 24122/94)(8 July 1999).

68 *Surek v. Turkey (no.4)* (App. no. 24762/94)(8 July 1999).

69 *Surek v. Turkey (no.1)* (App. no. 26682/95)(8 July 1999).

70 *Surek v. Turkey (no.3)* (App. no. 24735/94)(8 July 1999).

71 *Ciraklar v. Turkey* (App. no. 19601/92)(28 October 1998).

72 *Incal v. Turkey* (App. no. 22678/93)(9 June 1998).

73 *Zana v. Turkey* (1999) 27 EHRR 667.

74 *Gerger v. Turkey* (App. no. 24919/94)(8 July 1999).

As a result of his 'speech', Mr. Gerger was indicted on a charge of "disseminating propaganda against the unity of the Turkish nation and the territorial integrity of the State" contrary to section 8(1) of the Anti-Terror Law (Law no. 3713). On 9 December 1993, the Ankara State Security Court found Mr. Gerger guilty as charged and sentenced him to one year and eight months imprisonment and a fine of 208,333,333 Turkish liras. After completing his sentence, he was detained from 23 September to 26 October 1995 pursuant to section 5 of the Execution of Sentences Act (Law no. 647) before being ordered to pay an additional fine of 84,833,333 Turkish liras for the same offence.

The European Court of Human Rights held that Mr. Gerger's right to freedom of expression under Article 10 of the Convention had been violated.⁷⁵ Further, the Court found a violation of Article 6(1) in so far as the Ankara State Security Court was not "independent and impartial".

As to whether the manner in which the Ankara State Security Court functioned infringed Mr. Gerger's Article 6 right to a fair trial, the Court stated:

"... the Court sees no reason to reach a conclusion different from that in the cases of Mr. Incal and Mr. Ciraklar, both of whom, like the present applicant, were civilians. It is understandable that the applicant - prosecuted in a National Security Court⁷⁶ of disseminating propaganda aimed at undermining the territorial integrity of the State and national unity - should be apprehensive about being tried by a bench which included a regular army officer,

75 In relation to Article 10, the Court, in addition to having regard to the nature and severity of the penalty imposed, observed:

"... the applicant's message was read out only to a group of people attending a commemorative ceremony, which considerably restricted its potential impact on "national security, public "order" or "territorial integrity". In addition, even though it contained words such as "resistance", "struggle" and "liberation", it did not constitute an incitement to violence, armed resistance or an uprising; in the Court's view, this is a factor which it is essential to take into consideration." (para. 50).

76 The European Court translates Devlet Guvenlik Mahkemeleri (State Security Courts) as National Security Courts.

who was a member of the Military Legal Service. On that account he could legitimately fear that the Ankara National Security Court might allow itself to be unduly influenced by considerations which had nothing to do with the nature of the case. In other words, the applicant's fears as to that court's lack of independence and impartiality can be regarded as objectively justified."⁷⁷

- *Surek v. Turkey (no.1)*⁷⁸

The applicant was the major shareholder in *Deniz Basın Yayın Sanayi ve Ticaret Organizasyonu*, a Turkish limited liability company which owned a weekly review entitled *Haberde Yorumda Gerçek* (The Truth of News and Comments), published in Istanbul. In issue No. 23 dated 30 August 1992, two readers' articles, entitled '*Silahlar Özgürlüğü Engellemez*' ('Weapons cannot win against freedom') and '*Suç Bizim*' ('It is our fault'), were published.

In an indictment dated 21 September 1992, the Public Prosecutor at the Istanbul State Security Court, charged the applicant in his capacity as the owner of the review, as well as the review's editor, with "disseminating propaganda against the indivisibility of the State" and "provoking enmity and hatred among the people". The charges, which were brought under section 312 of the Turkish Penal Code and section 8 of the 1991 Anti-Terror Law, arose as a result of the articles published in the No. 23 issue.

In a judgment dated 12 April 1993, the State Security Court found the applicant guilty of an offence under section 8(1) of the 1991 Act. The Court concluded that the articles referred to eight districts in the south-east of Turkey as an independent state, "Kurdistan", described the PKK as a national liberation movement involved in a "national independence war" against the Turkish State and amounted to propaganda aimed at the destruction of the territorial integrity of the Turkish State. In addition, the Court found that the articles contained discriminatory statements on grounds of race. The Court first sentenced the

⁷⁷ *Gerger v. Turkey* (App. no. 24919/94) (8 July 1999, para. 61).

⁷⁸ *Surek v. Turkey (no.1)* (App. No. 26682/95) (8 July 1999).

applicant to a fine of 200,000,000 Turkish liras. However, having regard to the applicant's good conduct during the trial, it reduced the fine to 166,666,666 Turkish liras. The editor of the review was for his part sentenced to five months' imprisonment and a fine of 83,333,333 Turkish liras.

On 26 November 1993, the Court of Cassation ruled that the amount of the fine imposed by the State Security Court was excessive and set aside the applicant's conviction and sentence on that account. The Court remitted the case to the Istanbul State Security Court. In its judgment of 12 April 1994, the Istanbul State Security Court first sentenced the applicant to a fine of 100,000,000 Turkish liras but subsequently reduced the fine to 83,333,333 Turkish liras. As to the grounds for conviction, the Court, *inter alia*, reiterated the reasoning used in its judgment of 12 April 1993.

The applicant complained to the European Court that, *inter alia*, he had been denied a fair hearing in breach of Article 6(1) of the Convention on account of the presence of a military judge on the bench of the State Security Court which tried and convicted him. The Court agreed:

"It is understandable that the applicant – prosecuted in a National Security Court for disseminating propaganda aimed at undermining the territorial integrity of the State and national unity – should have been apprehensive about being tried by a bench which included a regular army officer, who was a member of the Military Legal Service. On that account he could legitimately fear that the Istanbul National Security Court might allow itself to be unduly influenced by considerations which had nothing to do with the nature of the case. In other words, the applicant's fears as to that court's lack of independence and impartiality can be regarded as objectively justified ... For these reasons the Court finds that there has been a breach of Article 6(1)."⁷⁹

79 *Surek v. Turkey* (no.1) (App. No. 26682/95) (8 July 1999, paras. 75-76).

■ *Article 10 – The right to freedom of expression*

On 8 July 1999, the European Court of Human Rights delivered judgement in the following thirteen cases: *Ceylan v. Turkey*,⁸⁰ *Arslan v. Turkey*,⁸¹ *Gerger v. Turkey*,⁸² *Polat v. Turkey*,⁸³ *Karatas v. Turkey*,⁸⁴ *Erdogdu and Ince v. Turkey*,⁸⁵ *Baskaya and Okcuoglu v. Turkey*,⁸⁶ *Okcuoglu v. Turkey*,⁸⁷ *Surek and Ozdemir v. Turkey*,⁸⁸ *Surek v. Turkey (no.1)*,⁸⁹ *Surek v. Turkey (no.2)*,⁹⁰ *Surek v. Turkey (no.3)*⁹¹ and *Surek v. Turkey (no.4)*.⁹² The Court held that there had been a violation of the right to freedom of expression, as guaranteed by Article 10 of the European Convention on Human Rights, in 11 of the 13 cases.⁹³ In addition to these 11 cases, 1998 and 1999 saw violations of Article 10 established in *Ozturk v. Turkey*⁹⁴ and *Incal v. Turkey*.⁹⁵ Most recently, on 16 March 2000, in the case of *Ozgur Gundem v. Turkey*,⁹⁶ Turkey was again found to have violated the Article 10 right to freedom of expression.

80 *Ceylan v. Turkey* (App. no. 23556/94)(8 July 1999).

81 *Arslan v. Turkey*(App. no. 23462/94)(8 July 1992).

82 *Gerger v. Turkey* (App. no. 24919/94)(8 July 1999).

83 *Polat v. Turkey* (App. no. 23500/94)(8 July 1999).

84 *Karatas v. Turkey* (App. no. 23168/94)(8 July 1999).

85 *Erdogdu and Ince v. Turkey* (App. nos. 25067/94 and 25068/94)(8 July 1999).

86 *Baskaya and Okcuoglu v. Turkey* (App. nos. 23536/94 and 24408/94)(8 July 1999).

87 *Okcuoglu v. Turkey* (App. no. 24226/94)(8 July 1999).

88 *Surek and Ozdemir v. Turkey* (App. nos. 23927/94 and 24277/94)(8 July 1999).

89 *Surek v. Turkey (no.1)* (App. no. 26682/95)(8 July 1999).

90 *Surek v. Turkey (no.2)* (App. no. 24122/94)(8 July 1999).

91 *Surek v. Turkey (no.3)* (App. no. 24735/94)(8 July 1999).

92 *Surek v. Turkey (no.4)* (App. no. 24762/94)(8 July 1999).

93 Only in the cases of *Surek v. Turkey (no.1)* (App. no. 26682/95)(8 July 1999) and *Surek v. Turkey (no.3)* (App. no. 24735/94)(8 July 1999) was a violation of Article 10 held not to have occurred.

94 *Ozturk v. Turkey* (App. no. 22479/93)(28 September 1999).

95 *Incal v. Turkey* (App. no. 22678/93)(9 June 1998).

96 *Ozgur Gundem v. Turkey* (App. no. 23144/93)(16 March 2000).

• *Ceylan v. Turkey*⁹⁷

Mr. Munir Ceylan, who was at the time the president of the petroleum worker's union, wrote an article entitled, 'The time has come for the workers to speak out - tomorrow it will be too late' in the 21-28 July 1991 issue of *Yeni Ülke* ("New Land"), a weekly newspaper in Istanbul. The article addressed the issue of human rights violations in south-east Turkey.

Mr. Ceylan was indicted on charges of "non-public incitement to hatred and hostility" contrary to Article 312(1) and (2) of the Turkish Penal Code. On 3 May 1993, the Istanbul State Security Court found Mr Ceylan guilty of an offence under Article 312(2) and (3) of the Turkish Penal Code and sentenced him to one year and eight months imprisonment plus a fine of 100,000 Turkish liras. As a result of his conviction, Mr. Ceylan also lost his office as president of the petroleum workers' union.

The European Court found that Mr. Ceylan's conviction violated Article 10 (freedom of expression) of the European Convention on Human Rights. Despite the articles virulent style and its acerbic criticism of the Turkish authorities' actions in the south-east of the country, the Court recalled that:

"... there is little scope under Article 10(2) of the Convention for restrictions on political speech or on debate on matters of public interest. Furthermore, the limits of permissible criticism are wider with regard to the government than in relation to a private citizen or even a politician. In a democratic system the actions or omissions of the government must be subject to the close scrutiny not only of the legislative and judicial authorities but also of public opinion. Moreover, the dominant position which the government occupies makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means are available for replying to the unjustified attacks and criticisms of its adversaries."⁹⁸

97 *Ceylan v. Turkey* (App. no. 23556/94)(8 July 1999).

98 *ibid.* para 34.

The Court considered it essential to take into consideration the fact that Mr. Ceylan was writing in his capacity as a trade-union leader, "a player on the Turkish political scene", and that the article in question, despite its virulence, did not encourage the use of violence or armed resistance. It also noted the nature and severity of the penalty imposed.

• *Arslan v. Turkey*⁹⁹

In an indictment of 12 December 1991, the public prosecutor of the Istanbul State Security Court accused Mr. Arslan and his publisher of disseminating propaganda against "the indivisible unity of the State" within the meaning of section 8(1) of the Anti-Terror Law. The charge followed the publication of the second edition of Mr. Arslan's book entitled "History in mourning, 33 bullets". On 28 January 1992, the Istanbul State Security Court found Mr. Arslan guilty of the offence charged and sentenced him to one year and eight months' imprisonment and a fine of 41,666,666 Turkish liras.

The European Court of Human Rights held that Mr. Arslan's conviction amounted to an interference with the exercise of his right to freedom of expression in violation of Article 10. The Court stated:

"Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society"."¹⁰⁰

⁹⁹ *Arslan v. Turkey* (App. No. 23462/94)(8 July 1999).

¹⁰⁰ *Arslan v. Turkey* (App. no. 23462/94)(8 July 1999, para. 44).

In considering the permissible restrictions upon freedom of expression in Article 10(2), the Court recalled:

“... there is little scope under Article 10(2) of the Convention for restrictions on political speech or on debate on questions of public interest. Furthermore, the limits of permissible criticism are wider with regard to the government than in relation to a private citizen or even a politician. In a democratic system the actions or omissions of the government must be subject to the close scrutiny not only of the legislative and judicial authorities but also of public opinion. Moreover, the dominant position which the government occupies makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means are available for replying to the unjustified attacks and criticisms of its adversaries.”¹⁰¹

In light of this, the European Court found that Mr. Arslan’s conviction was disproportionate to the aims pursued and not “necessary in a democratic society”. There had accordingly been a violation of Article 10 of the Convention

- *Ozgur Gundem v. Turkey*¹⁰²

Ozgur Gundem was a daily newspaper which, from 30 May 1992 until April 1994, published from its main office situated in Istanbul. During the period of its publication, journalists, distributors and others associated with the newspaper were subjected to serious attacks, harassment and intimidation. On 10 December 1993, a search and arrest operation at *Ozgur Gundem*’s premises resulted in the police taking into custody all those present in the building (107 persons in total) and seizing all the documents and archives. Over the course of its existence numerous prosecutions were brought against the newspaper alleging that offences had been committed by the publication of

¹⁰¹ *ibid.* para. 46.

¹⁰² *Ozgur Gundem v. Turkey* (App. No. 23144/93) (16 March 2000).

various articles.¹⁰³ The prosecutions resulted in many convictions, carrying sentences imposing fines, prison terms, orders of confiscation of issues of the newspaper and orders of closure of the newspaper for periods of between three days and a month.¹⁰⁴

The applicant complained to the European Court alleging that the Turkish authorities were either directly or indirectly responsible for the campaign of attacks and legal measures taken against the newspaper and its staff. Relying on Article 10, they complained that, as a result of government activity, the newspaper had been forced to cease publication. The Government maintained that *Ozgur Gundem* was an instrument of the PKK and espoused the aim of that organisation to destroy the territorial integrity of Turkey by violent means.

The European Court concluded that Turkey had failed to take adequate protective and investigative measures to protect *Ozgur Gundem's* exercise of its freedom of expression and that it had imposed measures on the newspaper, through the search and arrest operation of 10 December 1993 and through numerous prosecutions and convictions in respect of issues of the newspaper, which were disproportionate and unjustified in the pursuit of any legitimate aim. As a result of these cumulative factors, the newspaper ceased publication and there had accordingly been a breach of Article 10 of the Convention.

103 The prosecutions were brought under provisions rendering it an offence, *inter alia*, to publish material insulting or vilifying the Turkish nation, the Republic or other specific State officers or authorities (Turkish Penal Code, Art. 159), material provoking feelings of hatred and enmity on grounds of race, region or class (Turkish Penal Code, Art. 312), materials constituting separatist propaganda (Anti-Terror Law 1991, section 8), disclosing the names of officials involved in fighting terrorism (Anti-Terror Law 1991, section 6) or publishing the declarations of terrorist organisations (Anti-Terror Law 1991, section 6).

104 On 3 July 1993, *Ozgur Gundem* published a press release announcing that the newspaper was charged with offences which cumulatively were punishable by fines totalling TRL 8,617,441,000 and prison terms ranging between 155 years 9 months to 493 years and 4 months. During one period of 68 days in 1993, 41 issues of the newspaper were ordered to be seized. In twenty cases, closure orders were issued, three for a period of one month, 15 for a period of 15 days and two for 10 days. There were prosecutions in respect of 486 out of 580 editions of the newspaper and, pursuant to convictions by the domestic courts, journalists and editors together had imposed sentences totalling 147 years' imprisonment and fines reaching the sum of TRL 21 billion.

In relation to the Government's submission that *Ozgur Gundem* was an instrument of the PKK, the Court remarked:

"The Court recalls the key importance of freedom of expression as one of the preconditions for a functioning democracy. Genuine, effective exercise of this freedom does not depend merely on the State's duty not to interfere, but may require positive measures of protection, even in the sphere of relations between individuals ... The Court has noted the Government's submissions concerning its strongly-held conviction that *Ozgur Gundem* and its staff supported the PKK and acted as its propaganda tool. This does not, even if true, provide a justification for failing to take steps effectively to investigate and, where necessary, provide protection against unlawful acts involving violence. The Court concludes that the Government have failed, in the circumstances, to comply with their positive obligation to protect *Ozgur Gundem* in the exercise of its freedom of expression."¹⁰⁵

In relation to the police operation at the *Ozgur Gundem* premises on 10 December 1993, the Court noted:

"The Court finds that the operation, which resulted in newspaper production being disrupted for two days, constituted a serious interference with the applicants' freedom of expression. It accepts that the operation was conducted according to a procedure "prescribed by law" for the purpose of preventing crime and disorder within the meaning of the second paragraph of Article 10. It does not, however, find that a measure of such dimension was proportionate to this aim. No justification has been provided for the seizure of the newspaper's archives, documentation and library. Nor has the Court received an explanation for the blanket apprehension of every person found on the newspaper's premises, including the cook, cleaner and heating engineer. The presence of 40 persons

¹⁰⁵ *Ozgur Gundem v. Turkey* (App. No. 23144/93)(16 March 2000, paras. 43,45 and 46).

who were not employed by the newspaper is not, in itself, evidence of any sinister purpose or of the commission of any offence ... [T]he necessity for any restriction in the exercise of freedom of expression must be convincingly established. The Court concludes that the search operation, as conducted by the authorities, has not been shown to be necessary, in a democratic society, for the implementation of any legitimate aim."¹⁰⁶

In considering the legal measures taken by the authorities in respect of various issues of the newspaper, the Court referred to "the essential role played by the press for ensuring the proper functioning of democracy". It went on to comment:

"While the press must not overstep the bounds set, *inter alia*, for the protection of the vital interests of the State, such as the protection of national security or territorial integrity against the threat of violence or the prevention of disorder or crime, it is nevertheless incumbent on the press to convey information and ideas on political issues, even divisive ones. Not only has the press the task of imparting such information and ideas; the public has a right to receive them. Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders."¹⁰⁷

"The Court recalls that the dominant position enjoyed by the State authorities makes it necessary for them to display restraint in resorting to criminal proceedings. The authorities of a democratic State must tolerate criticism, even if it may be regarded as provocative or insulting."¹⁰⁸

"... the public enjoys the right to be informed of different perspectives on the situation in south-east Turkey, irrespective of how unpalatable those perspectives appear to the authorities. The Court is not persuaded that, even

106 *ibid.* paras. 49-50.

107 *ibid.* para. 58.

108 *ibid.* para. 60.

against the background of serious disturbances in the region, expressions which appear to support the idea of a separate Kurdish entity must be regarded as inevitably exacerbating the situation. While several of the articles were highly critical of the authorities and attributed unlawful conduct to the security forces, sometimes in colourful and pejorative terms, the Court nonetheless finds that they cannot be reasonably regarded as advocating or inciting the use of violence. Having regard to the severity of the penalties imposed, it concludes that the restrictions imposed on the newspaper's freedom of expression disclosed in these cases were disproportionate to the aim pursued and cannot be justified as "necessary in a democratic society."¹⁰⁹

■ *Article 11 – The right to freedom of association*

• *Freedom and Democracy Party (OZDEP) v. Turkey*¹¹⁰

In *Freedom and Democracy Party (OZDEP) v. Turkey*, the Turkish Constitutional Court had, on 14 July 1993, made an order dissolving the Freedom and Democracy Party (OZDEP) on grounds that the party's content and aims as set out in its programme sought to undermine the territorial integrity and secular nature of the State and the unity of the nation. In so doing, OZDEP was found to have violated both the Constitution and sections 78, 81 and 89 of Law no. 2820 on the Regulation of Political Parties.

OZDEP maintained that the fact that it had been dissolved and that its leaders had been banned from holding similar office in any other political party, infringed its right to freedom of association as guaranteed by Article 11 of the European Convention.

¹⁰⁹ *ibid.* para. 70.

¹¹⁰ *Freedom and Democracy Party (OZDEP) v. Turkey* (App. no. 23885/94) (8 December 1999).

On 8 December 1999, the European Court of Human Rights held that *OZDEP*'s dissolution amounted to an interference in the freedom of association of its members that was disproportionate to the aim pursued and unnecessary in a democratic society. Accordingly there had been a violation of Article 11 of the European Convention. The Court noted:

"Having analysed *OZDEP*'s programme, the Court finds nothing in it that can be considered a call for the use of violence, an uprising or any other form of rejection of democratic principles. That, in the Court's view is an essential factor to be taken into consideration. On the contrary, the need to abide by democratic rules when implementing the proposed political project was stressed in the programme. Among other things, it says that *OZDEP* "proposes the creation of a democratic assembly composed of representatives of the people elected by universal suffrage" and "favours a peaceful and democratic solution to the Kurdish problem subject to the strict application of international instruments such as the Helsinki Agreement, the European Convention on Human Rights and the Universal Declaration of Human Rights"¹¹¹

The Court also commented:

"... the Court has previously held that one of the principal characteristics of democracy is the possibility it offers of resolving a country's problems through dialogue, without recourse to violence, even when they are irksome. Democracy thrives on freedom of expression. From that point of view, there can be no justification for hindering a political group solely because it seeks to debate in public the situation of part of the State's population and to take part in the nation's political life in order to find, according to democratic rules, solutions capable of satisfying everyone concerned."¹¹²

111 *Freedom and Democracy Party (OZDEP) v. Turkey* (App. no. 23885/94)(8 December 1999, para. 40).

112 *ibid.* para. 44.

■ Article 13 - The right to an effective remedy

In a series of cases from Turkey, the European Court has found that whenever an individual dies in suspicious circumstances, disappears or an allegation of torture is 'arguable', the right to an effective remedy (Article 13) requires, without prejudice to the availability of any other remedy, a "thorough and effective investigation capable of leading to the identification and punishment of those responsible."

In 1997 and 1998 there were eight cases in which a violation of the right to an effective remedy was established: *Mentes v. Turkey*,¹¹³ *Selcuk v. Turkey*,¹¹⁴ *Aydin v. Turkey*,¹¹⁵ *Ergi v. Turkey*,¹¹⁶ *Kurt v. Turkey*,¹¹⁷ *Kaya v. Turkey*,¹¹⁸ *Tekin v. Turkey*,¹¹⁹ and *Yasa v. Turkey*.¹²⁰ These cases involved, variously, violations of the right to life (Article 2), the prohibition against torture (Article 3), the right to liberty and security (Article 5) and the right to respect for private and family life (Article 8). In 1999, in a further two cases, both involving violations of the right to life (Article 2), the right to an effective remedy was also found to have been disregarded: *Cakici v. Turkey*¹²¹ and *Tanrikulu v. Turkey*.¹²²

• *Aydin v. Turkey*¹²³

In *Aydin v. Turkey*,¹²⁴ the Court held that the detention, torture and rape of the applicant by members of the security forces violated Article 3. Moreover, the Court noted that:

113 *Mentes v. Turkey* (1998) 26 EHRR 595.

114 *Selcuk v. Turkey* (1998) 26 EHRR 477.

115 *Aydin v. Turkey* (1998) 25 EHRR 251.

116 *Ergi v. Turkey* (App. no. 23818/94) (23 July 1998).

117 *Kurt v. Turkey* (1999) 27 EHRR 373.

118 *Kaya v. Turkey* (1999) 28 EHRR 1.

119 *Tekin v. Turkey* (App. no. 22496/93) (9 June 1998).

120 *Yasa v. Turkey* (1999) 28 EHRR 408.

121 *Cakici v. Turkey* (App. no. 23657/94) (8 July 1999).

122 *Tanrikulu v. Turkey* (App. no. 23763/94) (8 July 1999).

123 *Aydin v. Turkey* (1998) 25 EHRR 251.

124 *Aydin v. Turkey* (1998) 25 EHRR 251.

"[a]rticle 13 imposes, without prejudice to any other remedy available under the domestic system, an obligation on the State to carry out a thorough and effective investigation of incidents of torture."¹²⁵

In the *Aydin* case, the Court held that the public prosecutor's failure to visit the scene of the alleged rape, to question the accused in the early stages of the investigation, or to ascertain whether the victim or her family members had been detained, all contributed to a violation of Turkey's obligation to provide an effective remedy. The Court noted especially that the prosecutor's "failure to look for corroborating evidence at the [gendarmierie] headquarters and his deferential attitude to the members of the security forces must be considered to be a particularly serious short-coming in the investigation."¹²⁶

• *Cakici v. Turkey*¹²⁷

Alleging a breach of Article 13, the applicant complained that he was deprived of an effective remedy in respect of the disappearance of his brother, Ahmet Cakici, as a direct victim himself. In submitting that a dilatory and superficial investigation had been conducted into the disappearance of his brother, he referred specifically, *inter alia*, to the failure of the public prosecutor to inspect directly the original custody records and the reliance of the public prosecutor in his decision of non-jurisdiction on the unsubstantiated report that Ahmet Cakici's body had been found after a terrorist clash.

The European Court agreed with the applicant's complaint, stating:

"The Court has confirmed the Commission's findings in the present case concerning the unacknowledged detention, ill-treatment and disappearance of the applicant's brother in circumstances that give rise to the presumption that he has died since those events. Given the fundamental importance of the rights in issue, the right to protection

125 *ibid* para. 103.

126 *ibid* para. 106.

127 *Cakici v. Turkey* (App. no. 23657/94) (8 July 1999).

of life and freedom from torture and ill-treatment, Article 13 imposes, without prejudice to any other remedy available under the domestic system, an obligation on States to carry out a thorough and effective investigation apt to lead to those responsible being identified and punished and in which the complainant has effective access to the investigation proceedings ... It follows that, in the instant case, the authorities had an obligation to carry out an effective investigation into the disappearance of the applicant's brother ... [T]he Court finds that the respondent State has failed to comply with this obligation, which failure undermined the effectiveness of any other remedies which might have existed. Consequently, there has been a violation of Article 13 of the Convention."¹²⁸

• *Tanrikulu v. Turkey*¹²⁹

Dr. Zeki Tanrikulu was shot on Kaymakam Hill on 2 September 1993. It was alleged that he was killed by State security forces or with their connivance and that no effective judicial investigation had been conducted into the circumstances of his murder. The European Court held that the material in the case file did not enable it to conclude beyond reasonable doubt that Dr. Zeki Tanrikulu was killed by security forces or with their connivance. However, it did conclude that there was a violation of Article 2 since the authorities had disregarded their essential responsibility to carry out an effective investigation into the circumstances of Dr. Tanrikulu's death. The Court identified various failings in the initial investigation carried out by the three police officers who had arrived at the scene shortly after the shooting. It found the sketch map they had prepared to be imprecise and uninformative. It found that the applicant's statement was not taken until more than a year after the incident took place and that no attempt had been made to speak to her sooner. It further found that no photographs had been taken of the scene and that very little forensic information had been gathered. The Court also doubted the expertise of the two physicians who had carried out the post-mortem.

¹²⁸ *ibid.* paras. 113-114.

¹²⁹ *Tanrikulu v. Turkey* (App. no. 23763/94) (8 July 1999).

It was also alleged that, as a result of the inadequate investigation, the applicant had not been afforded an effective remedy within the meaning of Article 13 of the Convention. The Government argued that criminal and administrative remedies existed capable of offering redress but that the applicant had failed to avail herself of them.

On 8 July 1999, the Court stated:

"Given the fundamental importance of the right to protection of life, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life and including effective access for the complainant to the investigation procedure. On the basis of the evidence adduced in the present case, the Court has not found it proved beyond reasonable doubt that agents of the State carried out, or were otherwise implicated in, the killing of the applicant's husband. As it has held in previous cases, however, that does not preclude the complaint in relation to Article 2 from being an "arguable" one for the purposes of Article 13. In this connection, the Court observes that it is not in dispute that the applicant's husband was the victim of an unlawful killing and she may therefore be considered to have an "arguable claim". The authorities thus had an obligation to carry out an effective investigation into the circumstances of the killing of the applicant's husband. For the reasons set out above, no effective criminal investigation can be considered to have been conducted in accordance with Article 13, the requirements of which are broader than the obligation to investigate imposed by Article 2. Consequently, there has been a violation of Article 13 of the Convention."¹³⁰

■ *Article 25 – The right to an individual petition*

In two cases before the European Court it has been established that applicants or their lawyers have been harassed because of their

130 *ibid.* paras. 117-119.

submission of complaints to the former Commission on Human Rights, and that therefore former Article 25 (right to an individual petition)¹³¹ has been violated: *Kurt v. Turkey*¹³² and *Ergi v. Turkey*.¹³³ In a further case, *Tanrikulu v. Turkey*,¹³⁴ it was established that a deliberate attempt was made on the part of the authorities to cast doubt on the validity of an application to the Commission (and thereby on the credibility of the applicant) in a bid to try and frustrate the applicant's successful pursuance of her claims.

- *Kurt v. Turkey*¹³⁵

From 23 to 25 November 1993, security forces carried out an operation in Agilli village in south-east Turkey. During this time, a number of houses were burnt down. On 24 November 1993, the villagers were gathered together by soldiers in the schoolyard while they looked for Uzeyir Kurt. The soldiers eventually found him and he was taken into custody. On the following day, Mr. Kurt's mother saw her son, surrounded by about 10 soldiers and 5 or 6 village guards. She saw bruises and swelling on his face as though he had been beaten. She then fetched him a jacket because he complained of feeling cold, but was not permitted to stay with him. She left her son and never saw him again.

Mr. Kurt's mother submitted an application to the European Commission concerning these events. The applicant was interviewed on several occasions by the authorities subsequent to the communication of her application by the Commission to the Government. On 9 December 1994, following an interview with the Bismail public prosecutor, she addressed statements to the Diyarbakir Human Rights Association repudiating all petitions made in her name. On 6 January and 10 August 1995, the applicant visited a notary for the purpose of drawing up a statement in which she purported to withdraw her application to the Commission.

131 Article 25 of the European Convention on Human Rights has now been replaced by Article 34.

132 *Kurt v. Turkey* (1999) 27 EHRR 373.

133 *Ergi v. Turkey* (App. no. 23818/94)(23 July 1998).

134 *Tanrikulu v. Turkey* (App. no. 23763/94)(8 July 1999).

135 *Kurt v. Turkey* (1999) 27 EHRR 373.

Proceedings were eventually reinstated and on 25 May 1998, the European Court delivered a judgement in which it found Turkey to have violated Articles 3, 5 and 13 of the European Convention. Additionally, the Court held that Turkey had failed to comply with its obligations under Article 25(1) of the Convention:

"The Court is not convinced that these two statements, made shortly after the communication of the application to the Government and in the wake of the interview with the public prosecutor, can be said to have been drafted on the initiative of the applicant. Nor is it satisfied that the two visits which the applicant made to the notary in Bismail on 6 January and 10 August 1995 were organised on her own initiative. As the Commission observed, the applicant was brought to the notary's office by a soldier in uniform and was not required to pay the notary for drawing up the statements in which she purported to withdraw her application to the Commission. It cannot be said that the arguments presented by the Government in this regard establish that there was no official involvement in the organisation of these visits. For the above reasons, the Court finds that the applicant was subjected to indirect and improper pressure to make statements in respect of her application to the Commission which interfered with the free exercise of her right of individual petition guaranteed under Article 25."¹³⁶

Additionally, steps were taken by the authorities to institute criminal proceedings against Ms. Kurt's lawyer in connection with statements he had made pertaining to her application. The court stated that it was not for the authorities to interfere with proceedings before the Commission which had been set in motion by an applicant through the threat of criminal procedures against an applicant's representative. Even though there was no follow-up to the threat to prosecute the applicant's lawyer, the threat itself must, the court ruled, be considered an interference with the applicant's right of individual petition and incompatible with Turkey's obligations under Article 25.

136 *ibid*, paras. 162-163.

• *Tanrikulu v. Turkey*¹³⁷

The applicant complained that she had been subject to serious interference with the exercise of her right of individual petition, in breach of former Article 25(1) of the Convention. The applicant submitted that the taking of her statement by the Chief Public Prosecutor at the Diyarbakir State Security Court, raised concerns on three separate grounds. First, the purpose of the meeting was to question the applicant about her complaint to the Commission. Second, the statement drawn up by the Chief Public Prosecutor did not appear to be an accurate record of what had been said. Third, the power of attorney which the applicant was shown, with a signature which she was asked to confirm was hers, was not the document sent by the Commission to the respondent Government.

On 8 July 1999, the European Court stated:

"The Court reiterates that it is of the utmost importance for the effective operation of the system of individual petition instituted by former Article 25 that applicants or potential applicants should be able to communicate freely with the Convention organs without being subjected to any form of pressure from the authorities to withdraw or modify their complaints. In this context, "pressure" includes not only direct coercion and flagrant acts of intimidation but also other improper indirect acts or contacts designed to dissuade or discourage applicants from pursuing a Convention remedy ... The Court is of the opinion that a deliberate attempt has been made on the part of the authorities to cast doubt on the validity of the application and thereby on the credibility of the applicant. The actions of the authorities described above cannot but be interpreted as a bid to try and frustrate the applicant's successful pursuance of her claims, thus constituting a negation of the very essence of the right of individual petition. In view of the foregoing, the Court considers that

137 *Tanrikulu v. Turkey* (App. no. 23763/94) (8 July 1999).

the respondent State has failed to comply with their obligations under former Article 25(1) of the Convention."¹³⁸

■ *Article 26 – Exhaustion of domestic remedies*

In several cases the Government has pleaded before the Commission and the Court that the applicant did not exhaust domestic remedies before filing the complaint. In response, the European Court has found the judicial system in the south-eastern provinces to be ineffective.

In the cases of *Aksoy v. Turkey*,¹³⁹ *Mentes and Others v. Turkey*¹⁴⁰ and *Selcuk and Asker v. Turkey*,¹⁴¹ the Court was of the opinion that although the rule of exhaustion of domestic remedies referred to in Article 26 obliges those seeking to bring their case against the State before an international judicial or arbitral organ to first use the remedies provided by the national legal system, there is no obligation under Article 26 to have recourse to remedies which are inadequate or ineffective. In addition, according to the "generally recognised rules of international law", there may be "special circumstances" which absolve the applicant from the obligation to exhaust the domestic remedies at his disposal; one such reason being the failure of the national authorities to undertake an investigation or offer assistance in response to serious allegations of misconduct or infliction of harm by State agents.

In the above-mentioned cases, the court was of the opinion that "special circumstances" did exist and that as a result, the non-exhaustion of domestic remedies did not preclude the complaint being brought before the Commission and the Court. The court stressed, however, that this should not be interpreted as a general statement that remedies are ineffective in the south-east of Turkey or that applicants are absolved from the obligation under Article 26 to have normal recourse to the system of remedies which are available and functioning.

138 *ibid.* paras. 130-133.

139 *Aksoy v. Turkey* (1997) 23 EHRR 553.

140 *Mentes and Others v. Turkey* (1998) 26 EHRR 595.

141 *Selcek and Asker v. Turkey* (1998) 26 EHRR 477.

III – LEGISLATION AND THE EMERGENCY

A. Introduction

As described in the historical outline in Chapter II, there has in effect been an armed conflict in Turkey since 1984, although this has mainly been confined to the south-east of the country and to isolated violent incidents in the major cities. In 1987, the Turkish Grand National Assembly (GNA) declared a state of emergency in nine provinces of south-eastern Turkey where the government faced violence. In October 1997, the GNA voted to lift the state of emergency in three provinces, but, as of the date of the mission, a state of emergency remained in effect in six others. In this Chapter we examine the framework of legislation which the Government has relied on to combat the PKK.

B. Article 15 of the European Convention on Human Rights

- "1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.
2. No derogation from Article 2, except in respect of death resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.
3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to

operate and the provisions of the Convention are again being fully executed."¹⁴²

Article 15 of the European Convention on Human Rights permits Member States to derogate from their obligations under the Convention and thereby restrict the exercise of certain rights and freedoms without being found to be in violation. Importantly however, any derogation may only take place "in time of war or other public emergency threatening the nation", and only "to the extent strictly required by the exigencies of the situation". This last requirement involves a determination of whether the circumstances are such that Article 15 is engaged and, if so, whether the measures taken in derogation of Convention obligations are proportionate to the need for them.

On 6 August 1990, the Permanent Representative of Turkey to the Council of Europe sent a notice informing the Secretary General of the Council of Europe of Turkey's intention to derogate from Articles 5, 6, 8, 10, 11 and 13 of the European Convention.¹⁴³ On 12 May 1992, the Permanent Representative of Turkey wrote to the Secretary General

142 European Convention on Human Rights, Art. 15.

143 The Notice of Derogation stated that:

"1. The Republic of Turkey is exposed to threats to its national security in South East Anatolia which have steadily grown in scope and intensity over the last months so as to [amount] to a threat to the life of the nation in the meaning of Article 15 of the Convention.

During 1989, 136 civilians and 153 members of the security forces have been killed by acts of terrorists, acting partly out of foreign bases. Since the beginning of 1990 only, the numbers are 125 civilians and 96 members of the security forces.

2. The threat to national security is predominantly [occurring] in provinces of South East Anatolia and partly also in adjacent provinces.

3. Because of the intensity and variety of terrorist actions and in order to cope with such actions, the Government has not only to use its security forces but also to take steps appropriate to cope with a campaign of harmful disinformation of the public, partly emerging from other parts of the Republic of Turkey or even from abroad and with abuses of trade-union rights.

4. To this end, the Government of Turkey, acting in conformity with Article 121 of the Turkish Constitution, has promulgated on May 10 1990 the decrees with force of law [nos.] 424 and 425. These decrees may in part result in derogating from rights enshrined in the following provisions of the European Convention [on] Human Rights and Fundamental Freedoms: Articles 5, 6, 8, 10, 11 and 13 ... "

limiting the scope of its Notice of Derogation to Article 5 of the Convention only.

Neither the Court nor the Commission have questioned the validity of Turkey's derogation from its obligations under Article 5. For example, in 1996 in *Aksoy v. Turkey*,¹⁴⁴ the Commission ruled that, "[i]n view of the grave threat posed by terrorism in this region, the Commission can only conclude that there is indeed a state of emergency in South-East Turkey which threatens the life of the nation."¹⁴⁵ However, the European Court has both limited the territorial scope of Turkey's derogation and declared that measures taken in derogation have not been strictly required by the exigencies of the situation.

In *Sakik and Others v. Turkey*,¹⁴⁶ the European Court of Human Rights limited the territorial scope of Turkey's derogation by restricting its effects to only those parts of south-east Turkey explicitly named in the Notice of Derogation. In this case the applicants complained of breaches of their Article 5(1), 5(3), 5(4) and 5(5) rights (liberty and security of the person). The complaints arose out of their arrest and detention in the city of Ankara on charges of "separatism" and "undermining the integrity of the State". The applicants complained in respect of the lawfulness and length of their detention in police custody, the impossibility of securing judicial review and the lack of a right to compensation.

The Government maintained that, as Turkey had exercised the right of derogation under Article 15 of the European Convention, it could not be held to have violated Article 5. The Court disagreed. In considering the applicability of the derogation notified under Article 15 of the Convention, the Court stated:

"In its *Aksoy v. Turkey* judgement the Court has already noted the unquestionably serious problem of terrorism in south-east Turkey and the difficulties faced by the State in taking effective measures against it. It held in that connection that the particular extent and impact of

144 *Aksoy v. Turkey* (1996) 23 EHRR 553.

145 *ibid.* para. 572.

146 *Sakik and Others v. Turkey* (1998) 26 EHRR 662.

Kurdish Workers' Party (PKK) activity in south-east Turkey had undoubtedly created, in the region concerned, a "public emergency threatening the life of the nation". It should be noted, however, that Article 15 authorises derogations from the obligations arising from the Convention only "to the extent strictly required by the exigencies of the situation". In the present case the Court would be working against the object and purpose of that provision if, when assessing the territorial scope of the derogation concerned, it were to extend its effects to a part of Turkish territory not explicitly named in the notice of derogation. It follows that the derogation in question is inapplicable *ratione loci* to the facts of the case."¹⁴⁷

In *Demir and Others v. Turkey*,¹⁴⁸ the European Court of Human Rights ruled that the applicant's incommunicado detention for between sixteen and twenty-three days, without the possibility of seeing a judge or other judicial officer, was not "strictly required by the exigencies of the situation" obtaining in the region where the state of emergency had been declared. In this case the applicants complained that their Article 5(3) right (liberty and security of the person) had been breached. The complaint arose out of their arrest and detention on charges of being active members of an illegal organisation, namely the PKK. The applicants complained in respect of the excessive length of their detention in police custody. The Government submitted that it could not be argued that there had been a breach of Article 5(3) on account of the derogation notified by Turkey under Article 15 of the Convention. The Court accepted that the PKK's violent activity in south-eastern Turkey had created a "public emergency threatening the life of the nation" there. However, in the Court's opinion, *inter alia*, the mere fact that the detention concerned was in accordance with domestic law or that an inquiry or investigation had not been completed, could not justify under Article 15 measures derogating from Article 5(3). Further, in respect of such lengthy periods of detention in police custody, it was not sufficient to refer in a general way to the difficulties caused by terrorism.

¹⁴⁷ *ibid.* paras. 38-39.

¹⁴⁸ *Demir and Others v. Turkey* (App. no. 21380/93, 21381/93 and 21383/93)(23 September 1998).

C. Emergency Regulations – the Constitutional Framework

Article 120 of the Turkish Constitution authorises the declaration of a state of emergency:

“[i]n the event of the emergence of serious indications of widespread acts of violence aimed at the destruction of the free democratic order established by the Constitution or of fundamental rights and freedoms, or serious deterioration of public order because of acts of violence ...”¹⁴⁹

According to the Constitution, a state of emergency may only be declared by the Council of Ministers, meeting under the chairmanship of the President of the Republic, after consultation with the National Security Council. A declaration of a state of emergency may relate to one or more regions or the entire country but in any case may not be for a period exceeding six months.¹⁵⁰ The decision to declare a state of emergency must be immediately submitted to the GNA for approval. The GNA may alter the duration of the state of emergency, extend the period for a maximum of four months each time at the request of the Council of Ministers, or lift the state of emergency.¹⁵¹

Article 15 of the Constitution provides that once a state of emergency has been declared, exercise of the fundamental rights and freedoms guaranteed by Chapter II may be restricted or suspended.¹⁵² Measures may be taken which derogate from the guarantees embodied in the Constitution, provided that obligations under international law are not violated. However, “the individual’s right to life, and the integrity of his material and spiritual entity, shall be inviolable and no one may be compelled to reveal his religion, conscience, thought or opinion, nor be accused on account of them”.¹⁵³ Offences and penalties may not be made retroactive, nor may anyone be held guilty until so proved by a court judgement.¹⁵⁴

149 Turkish Constitution, Art. 120.

150 *ibid.*

151 *ibid.*, Art. 121.

152 See Annexe A for the text of Chapter II.

153 *ibid.* Art. 15.

154 *ibid.*

By Article 148 of the Turkish Constitution, "no action shall be brought before the Constitutional Court alleging the unconstitutionality as to the form or substance of decrees having the force of law, issued during a state of emergency."¹⁵⁵

D. Emergency Regulations – the Statutory Framework

Once a state of emergency has been declared, procedures as to how fundamental rights and freedoms are to be restricted or suspended, how and by what means the measures necessitated by the situation shall be taken, what sort of powers are to be conferred on civil servants, what kind of changes are to be made in the status of officials and the procedure governing emergency rule are all regulated by statute, specifically the Law on the State of Emergency.¹⁵⁶ As and when necessary during the state of emergency, the Council of Ministers, meeting under the chairmanship of the President of the Republic, is empowered to issue decrees under the Law on the State of Emergency. These decrees may relate to any matter necessitated by the emergency and, once approved by the GNA, have the force of law.¹⁵⁷

Before looking at the Emergency Decrees themselves, we must comment on the constitutional and legislative framework. In addition to the above-mentioned limitations on the state of emergency prescribed by the European Court, it is in our opinion wrong that the constitutionality as to form or substance of decrees issued during a state of emergency cannot be called into question in a court of law.¹⁵⁸ Decrees issued during a state of emergency can and do confer extremely wide powers on Regional governors. These powers may be far more easily abused than their ordinary powers. While the delegation accepts that, in principle, such decrees may on occasion be legitimately required in a democracy, we believe that there should be a power to challenge such decrees on the ground, for example, that a particular decree is such that it cannot reasonably be regarded as necessary or expedient in the interests of public security.

¹⁵⁵ *ibid*, Art. 148.

¹⁵⁶ *ibid*, Art. 121.

¹⁵⁷ *ibid*.

¹⁵⁸ *ibid*, Art. 148.

We therefore recommend that Article 148 of the Turkish Constitution be amended so as to permit a decree issued under Article 121 to be challenged in the Constitutional Court.

We now turn to the Emergency Decrees themselves. There are three areas which are of particular concern to the delegation.

1. Regional Governors and the State of Emergency

Two principal decrees relating to the south-eastern region have been made under the Law on the State of Emergency. The first, Decree no. 285 (10 July 1987), established a Regional governorship of the state of emergency in ten of the eleven provinces of south-east Turkey. Under Article 4 (b) and (d) of the decree, all private and public security forces and the Gendarmerie Public Peace Command are at the disposal of the Regional governor. The second, Decree no. 430 (16 December 1990), has given far-reaching quasi-martial law powers to Regional Governors. Notably, not only have they been given authority over the ordinary governors of the provinces, but they have been empowered to put restrictions on the press, carry out warrantless searches and remove any person from their province who is deemed to be a threat to public order, including judges and lawyers.

Alongside these wide powers, Article 8 of Decree No. 430 of 16 December 1990 provides as follows:

"No criminal, financial or legal responsibility may be claimed against the State of Emergency Regional Governor or a Provincial Governor within a state of emergency region in respect of their decisions or acts connected with the exercise of the powers entrusted to them by this decree, and no application shall be made to any judicial authority to this end. This is without prejudice to the rights of individuals to claim indemnity from the State for damage suffered by them without justification"¹⁵⁹

¹⁵⁹ Decree No. 430 (16 December 1990) enacted under the Law on the State of Emergency, Art. 8.

Article 8 clearly enlarges the risk of impunity for the deeds of the governors. We consider that given the extraordinarily wide powers conferred upon Regional and Provincial governors and, in particular, the extent to which such powers may be exercised to restrict fundamental rights and liberties, it should be possible to hold the governors of the regions and provinces legally accountable for their decisions or actions. Impunity at the top is unlikely to encourage willing submission to the law at lower levels of the forces charged with maintaining law and order.

We therefore recommend that Article 8 of Decree No. 430 of 16 December 1990 be amended so that Regional and Provincial governors are not excluded from liability in respect of their decisions or acts connected with the exercise of the powers entrusted to them by virtue of the State of Emergency.

2. Police Impunity and the State of Emergency

Decree 285 (as amended by decrees Nos. 424, 425 and 430) modifies the application of the Anti-Terror Law in those areas which are subject to the state of emergency. Hence, the decision to prosecute members of the security forces is removed from the public prosecutor to local administrative councils. These councils are composed of civil servants under the influence of the Regional or Provincial governor, who is also the head of the security forces. Impunity remains a major problem in the south-eastern provinces. Robbing the ordinary organs of the state of their legitimate authority in these matters can only have the effect of encouraging a climate of impunity. We see no other justification for it.

We therefore recommend that Decree 285 be amended so that public prosecutors rather than local administrative councils in the State of Emergency regions have sole authority to investigate and prosecute all crimes committed by members of the security forces within the state of emergency regions.

3. *Detention under the Emergency Regulations*

Following the judgment of the European Court of Human Rights in the case of *Aksoy v. Turkey*¹⁶⁰ on 18 December 1996, Turkey amended its detention procedures on 6 March 1997. This amendment was announced as a measure to combat torture and ill-treatment. The amendment reduced the maximum terms of police detention without charge from 30 days to 10 days in provinces under state of emergency legislation.

We welcome the Turkish Government's decision to reduce the maximum pre-trial detention period in regions under a state of emergency. However, we are concerned that even the reduced period of 10 days detention without charge still represents an unjustifiable deprivation of liberty and is likely to conduce to the use of torture and ill-treatment as an investigative tool.

We therefore recommend that the Turkish Code of Criminal Procedure be amended so as to reduce the maximum terms of police detention without charge in provinces under state of emergency legislation to 48 hours.

The delegation also urges, following the PKK's recent decision to lay down its arms and seek a peaceful political solution, the GNA, in the near future, to lift the state of emergency in the remaining six provinces of south-east Turkey.

160 *Aksoy v. Turkey* (1996) 23 EHRR 553.

V – THE COURTS AND THEIR JURISDICTION

The judicial system of Turkey is composed of general law courts (criminal, civil and administrative), military courts and a constitutional court. This chapter examines the organisation, function and jurisdiction of these courts. Turkey also has a separate system of exceptional courts, known as State Security Courts. These form the subject matter of Chapter VI.

The Constitutional Court

Articles 146 to 155 of the Constitution (see Annex B) establish a Constitutional Court,¹⁶¹ the nation's highest court. It consists of eleven regular and four substitute members. The President of the Republic is charged with appointing two regular and two substitute members from the High Court of Appeals, two regular and one substitute member from the Council of State, and one member each from the Military High Court of Appeals, the High Military Administrative Court and the Audit Court. The President of the Republic also appoints one member from the teaching staff of the higher education institutions and three members and one substitute member from among senior administrative officers and lawyers.¹⁶²

According to Article 148 of the Constitution, the Constitutional Court examines the constitutionality of laws, decrees having the force of law and parliamentary procedural rules. It may do so at the request of either the President of the Republic or one-fifth of the members of the Turkish Grand National Assembly. We note however that there is no provision for the right of individual petition to the Court. We also

161 Constitution, Arts. 146 to 153.

162 *ibid*, Art. 146.

note that the Constitutional Court is precluded from considering decrees issued under a state of emergency, martial law, or in time of war.

We recommend that:

- (1) the Constitution be amended so as to permit individuals to petition the Constitutional Court on issues of constitutionality; and**
- (2) the Constitution be amended so as to permit decrees issued under a state of emergency, martial law, or in time of war to be challenged in the Constitutional Court.**

The Constitutional Court, in its capacity as the Supreme Court, also has exclusive jurisdiction to try the President of the Republic, members of the Council of Ministers and members of the judiciary for offences relating to their functions.¹⁶³

Any challenge to the constitutionality of a law must be made within sixty days of its promulgation.¹⁶⁴ Decisions of the Constitutional Court require the vote of an absolute majority of all its members, with the exception of decisions to annul a constitutional amendment, which require a two-thirds majority.¹⁶⁵ Decisions of the Constitutional Court on the constitutionality of legislation and government decrees are final.¹⁶⁶

General Law Courts

Ordinary Courts of First Instance

The majority of cases are handled by ordinary criminal, civil and administrative courts. At the lowest level of the judicial system are

163 *ibid*, Art. 148.

164 *ibid*, Art. 151. The delegation finds this provision, on face value, to be of questionable usefulness.

165 *ibid*, Art 149.

166 *ibid*, Art. 153.

justices of the peace who have jurisdiction over minor civil complaints and offences. Single judge criminal courts have jurisdiction over misdemeanours and petty crimes, with penalties ranging from small fines to brief prison sentences. Every organised municipality (a community having a minimum population of 2,000 persons) has at least one single-judge court, with the actual number of courts varying according to the local population. Three-judge courts of first instance have jurisdiction over major civil suits and serious crimes. Turkish courts have no jury system; judges render decisions after establishing the facts in each case based on evidence presented by lawyers and public prosecutors.

The High Court of Appeals

Established by virtue of Article 154 of the Constitution, the High Court of Appeals (also known as the Court of Cassation) is the only competent authority for reviewing decisions and verdicts of lower-level judicial courts, both civil and criminal.¹⁶⁷ Turkey has no intermediate appellate court as is common in many jurisdictions. Members of the High Court of Appeals are appointed by the High Council of Judges and Public Prosecutors (discussed below – Chapter VI) from among first grade judges and public prosecutors of the ordinary civil and criminal courts.¹⁶⁸ The First President, first deputy presidents and heads of division are elected by a Plenary Assembly of the High Court of Appeals from among its own members, for a term of four years. They may be re-elected at the end of their term of office.

The delegation was informed that the Minister of Justice proposes to establish a second instance court to hear appeals on the merits and on law. Once introduced, the High Court of Appeals will act as the final appellate court to determine appeals on points of law only.

167 *ibid*, Art. 154. The High Court of Appeals is not a single court. Rather, it is comprised of a number of individual Chambers which function independently of each other. Each Chamber has its own case-load.

168 *Ibid* Art. 154. Upon initial qualification, a judge or public prosecutor in Turkey is assigned to the fifth grade. As he or she gains in experience and ability, so promotion through the grades will follow. First grade judges and public prosecutors are supposed to be the most experienced and able in Turkey.

The Council of State

According to Article 155 of the Constitution, the Council of State is the final instance for reviewing decisions and judgements given by lower administrative courts.¹⁶⁹ It also has jurisdiction to consider original administrative disputes, and, if requested, give its opinions on draft legislation submitted by the Prime Minister and Council of Ministers, examine draft regulations and the conditions and contracts under which concessions are granted. Three-fourths of the judges of the Council of State are appointed by the High Council of Judges and Public Prosecutors from among first grade administrative judges and public prosecutors. The remaining one-fourth of the member judges are appointed by the President of the Republic. The President, Chief Public Prosecutor, deputy president, and heads of division of the Council of State are elected by a Plenary Assembly of the Council of State from among its own members for a term of four years. They may be re-elected at the end of their term of office.¹⁷⁰

The Jurisdictional Conflict Court

The Jurisdictional Conflict Court is empowered to determine disputes between general courts of law, and administrative and military courts concerning their jurisdiction.¹⁷¹

Military Courts

Military Courts of First Instance

Military courts of first instance hear cases involving military law and members of the armed forces. In addition, however, they hear cases in which civilians are alleged to have, for example, impugned the honour of the armed forces or undermined compliance with the

¹⁶⁹ *ibid*, Art 155.

¹⁷⁰ *ibid*.

¹⁷¹ *ibid*, Art 158.

draft¹⁷². No narrow view is taken of these matters. The delegation was informed that there are 11 offences under Turkish law which expose civilians to trial in a military court. This we find to be wholly unacceptable.

We therefore recommend that the jurisdiction of Turkish military courts be limited exclusively to trying military personnel for offences committed while on duty.

Military High Court of Appeals

Military courts have their own appeals system. Established by Article 156 of the Constitution, the Military High Court of Appeals is the last instance for reviewing decisions and judgements issued by military courts of first instance.¹⁷³ Members of the Military High Court of Appeals are appointed by the President of the Republic from among three candidates nominated for each vacant office by a Plenary Assembly of the Military High Court of Appeals from among first grade military judges. The President, Chief Public Prosecutor, second presidents and heads of division of the Military High Court of Appeals are appointed according to rank and seniority from among the members of the Military High Court of Appeals. Decisions of this court are final.

High Military Administrative Court of Appeals

The High Military Administrative Court of Appeals is the first and last instance for the judicial supervision of disputes arising from administrative acts involving military personnel or relating to military service.¹⁷⁴

172 For example, in July 1998, a military court convicted Yasar Kaplan and Murat Balibey, a journalist and editor-in-chief, respectively, of the radical Islamist newspaper 'Akit', to 14 months imprisonment for an article published reportedly "insulting the military".

173 Turkish Constitution, Art. 156.

174 *ibid*, Art. 157.

VI – THE STATE SECURITY COURT SYSTEM

A. Introduction

In addition to the Constitutional Court, general law courts and military courts, Turkey has a system of special courts, known as State Security Courts (SSCs). These courts are concerned solely with the adjudication of political and serious criminal cases deemed threatening to the security of the state. Most of the offences tried relate to the use of violence, drug smuggling, membership of illegal organisations, or espousing or disseminating prohibited ideas. SSCs sit in eight cities across Turkey.¹⁷⁵

SSCs were first introduced in 1973 in accordance with the Constitution in existence at that time.¹⁷⁶ The Constitutional Court annulled that law in 1976, ending the SSC jurisdiction for a time. Following the 1982 military take-over however, a new Constitution was promulgated in which the SSC system was reinstated. The current Constitution provides for State Security Courts in Article 143, which describes them as special courts:

“[E]stablished to deal with offences against the indivisible integrity of the State with its territory and nation, the free democratic order, or against the Republic whose characteristics are defined in the Constitution, and offences directly involving the internal and external security of the State.”¹⁷⁷

State Security Courts are comprised of a president, two regular and two substitute members, one public prosecutor and a sufficient number

175 There are SSCs in Ankara, Istanbul, Izmir, Diyarbakir, Adana, Konya, Trabzon and Van.

176 See Law no. 1773 (1973) in accordance with Article 136 of the 1962 Turkish Constitution.

177 Turkish Constitution, Art. 143.

of deputy public prosecutors.¹⁷⁸ On 18 June 1999, the Turkish parliament decided to amend Article 143 of the Constitution so as to exclude military judges from all SSCs. In light of this amendment, all members of the judicial panel are now civilian. All SSC members are appointed for a period of four years, although upon expiry of this period they may be re-appointed.¹⁷⁹

The competent authority to examine appeals against verdicts of the State Security Courts is the High Court of Appeals, through a department dealing exclusively with crimes against State security.¹⁸⁰

We feel compelled to comment at the outset of this chapter that we see no justification for the continuance of a different judicial regime, offering fewer protections for those deprived of their liberty due to political reasons, than the one in force for non-political cases. There is no reason why those concerned with upholding law and order ought not to be able to trust the personnel and procedures of the ordinary criminal courts.

We therefore recommend that State Security Courts be abolished and their functions transferred to the existing penal courts. Failing that, procedural safeguards for SSC defendants should be harmonised with those in ordinary criminal courts and brought into compliance with international norms, particularly the European Convention on Human Rights.

B. State Security Courts and Judicial Independence

1. Judicial Independence and the Removal of Military Judges

Prior to June 1999, SSC panels consisted of two civilian judges and one military judge. The presence of a military officer, exercising jurisdiction over civilians appearing before the court, had, since the court's

178 *ibid.*, Art. 143.

179 *ibid.*

180 *ibid.*

inception, been a target for sustained criticism from both internal and international bodies. Such criticism focused on the fact that the presence of a military judge on the SSC panel was contrary to the fundamental requirement of an independent and impartial tribunal.

Serious and legitimate concern in this regard centred firstly on the manner and term of appointment for military judges. Military judges, even while sitting on a SSC, remained under the oversight of their military superiors.¹⁸¹ They were appointed to a four-year term on the Court by a special committee of military members and their re-appointment depended on the committee's evaluation of the judge's performance and ability during that term.¹⁸² At the same time, the Ministers of Justice and Defence were responsible for determining the aptitude of the military judges for advancement in rank and salary.¹⁸³ This evaluation and appointment process gave rise to the potential for a clear conflict of interest. Put simply, it might be a rare military judge who, faced with the prospect of re-evaluation and re-appointment every four years, would not feel the pressure of those superior officers responsible for his evaluation. Strong concerns were also voiced that the independence of the court was threatened by the Turkish Military's central role in both law enforcement and politics.

Both the European Commission on Human Rights and the European Court of Human Rights found that the presence of a military judge on the State Security Court panel violated a defendant's right to an independent and impartial tribunal. In *Incal v. Turkey*,¹⁸⁴

181 See, eg., The Military Legal Service Act, Law No. 357, Sections 18, 29, and 38.

182 The Military Legal Services Act, Law No. 357, Additional Section 8 (translated in *Incal v. Turkey* (ECHR, 41/1997/825/1031), Judgement 9 June 1998. "Members of the National Security Courts belonging to the Military Legal Service shall be appointed by a committee composed of the personnel director and legal advisor of the General Staff, the personnel director and legal advisor attached to the staff of the arm in which the person concerned is serving and the Director of Military Judicial Affairs at the Ministry of Defence."

183 See The Military Legal Service Act, Law No. 357, Additional section 7 (translated in *Incal v. Turkey* (ECHR, 41/1997/825/1031), Judgment 9 June 1998.

184 *Incal v. Turkey* (Comm. Report 25.2.97).

the European Commission on Human Rights found that the Turkish State Security Courts violated Article 6(1) of the European Convention:

"The Commission is of the opinion, given the current legislation on the composition of the State Security Courts, that the appointment and assessment of military judges raises certain questions and may cast doubt on the image of independence they should project. In this respect, the Commission notes that military judges, being military officers, are accountable to their commanding officers ... Moreover, the fact that a military judge participates in a criminal procedure against a civilian, which in no way involves the internal discipline of the armed forces, indicates the exceptional nature of this procedure and could be viewed as an intervention by the armed forces in a non-military judicial domain, which, in a democratic country, should be beyond any suspicion of dependence or partiality."¹⁸⁵

On 9 June 1998, the European Court of Human Rights also concluded that the presence of a military judge on the State Security Court panel violated the principle of the independence and impartiality of the judiciary as safeguarded by Article 6(1) of the European Convention. In its verdict in *Incal v. Turkey*, the Court stated:

"[i]t follows that the applicant could legitimately fear that because one of the judges of the Izmir National 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 ... In conclusion, the applicant had legitimate cause to doubt the independence and impartiality of the Izmir National Security Court. There has accordingly been a breach of Article 6(1)."^{186 187}

185 *Incal v. Turkey* (Comm. Report 25.2.97, paras. 74-77).

186 *Incal v. Turkey* (ECHR 41/1997/825/1031, para 72), June 9, 1998.

187 The Court translates Devlet Guvenlik Mahkemeleri (State Security Courts) as National Security Courts.

In admitting the case of *Ciraklar v. Turkey*,¹⁸⁸ the European Commission on Human Rights stated that the SSCs "lack of independence and impartiality had been established". In its judgement of 28 October 1998 in the same case, the Court repeated its conclusions in *Incal v. Turkey*.

On 8 July 1999, the European Court of Human Rights delivered judgement in the following thirteen cases: *Ceylan v. Turkey*, *Arslan v. Turkey*, *Gerger v. Turkey*, *Polat v. Turkey*, *Karatas v. Turkey*, *Erdogdu and Ince v. Turkey*, *Baskaya and Okcuoglu v. Turkey*, *Okcuoglu v. Turkey*, *Surek and Ozdmir v. Turkey*, *Surek v. Turkey (no. 1)*, *Surek v. Turkey (no.2)*, *Surek v. Turkey (no.3)* and *Surek v. Turkey (no.4)*. The Court held that in 9 of the 13 cases the applicants had been denied the right to have their cases heard by an independent and impartial tribunal within the meaning of Article 6(1) of the Convention because they had been tried by State Security Courts, in which one of the bench of three judges was a military judge. The Court pointed out that in its *Incal v. Turkey* judgement of 9 June 1998 and its *Ciraklar v. Turkey* judgment of 28 October 1998 it had noted that the status of military judges sitting as members of State Security Courts made their independence and impartiality questionable: for example, the fact that they were servicemen who still belonged to the army, which in turn took its orders from the executive; the fact that they remained subject to military discipline; and the fact that decisions pertaining to their appointment were to a great extent taken by the administrative authorities and the army. The Court saw no reason to reach a conclusion different from its decision in those cases and held that there had been a breach of Article 6(1) in the nine cases before it.

The delegation welcomes the decision of the Turkish parliament on 18 June 1999 to amend Article 143 of the Constitution and thereby exclude military judges from all SSCs in order to comply with the European Court's judgments.

However, although the removal of the military officer from the judicial panel in SSC cases has improved the structural independence of the court, important deficiencies remain.

¹⁸⁸ *Ciraklar v. Turkey*, (App. No. 70/1997/854/1061)(28 October 1998).

2. SSCs and the 1982 Constitution

The delegation is concerned that since SSCs work in accordance with the 1982 Turkish Constitution, the authoritarian language of the Constitution and its implementation have tended to push the SSCs into the appearance, and in some cases the reality, of lack of independence of the executive or political arms of government. Such politicisation of the legal system is contrary to any notion of judicial independence and tends to undermine the basic rights and freedoms of all people in Turkey.

Both explicit provisions and the underlying tone of the 1982 Constitution favour national security and the indivisible integrity of the Turkish State at the expense of individual liberty. For example, Article 5 of the Constitution declares that:

“[t]he fundamental aims and duties of the State are: to safeguard the independence and integrity of the Turkish Nation, the indivisibility of the country, the Republic and democracy ...”¹⁸⁹

Furthermore, Article 13 of the Constitution declares:

“Fundamental rights and freedoms may be restricted by law, in conformity with the letter and spirit of the Constitution, with the aim of safeguarding the indivisible integrity of the State with its territory and nation, national sovereignty, the Republic, national security ...”¹⁹⁰

This constitutional emphasis on the notion that protection of the fundamental rights and freedoms of the individual is subordinate to protecting the “sacred Turkish State,”¹⁹¹ has, in our view, permeated to the core of the SSC system. In dealing with the offences that come before them, the SSCs have, by working in accordance with the

189 Turkish Constitution, Art. 5.

190 *ibid*, Art. 13. See also Art. 14 – “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, of endangering the existence of the Turkish State and Republic....”.

191 Turkish Constitution, pmbl. 1.1

Constitution, adopted objectives wholly inconsistent with the principles of the rule of law. Put simply, in their handling of political cases, SSCs have been tilted too far towards maintenance of national security at the expense of individual liberty. The ethos created for them and in some cases by them is that they exist, as their name implies, to vindicate "State security", rather than to adjudicate impartially as between State and citizens.

Nowhere is this more obvious than in cases involving the prosecution of individuals for the non-violent expression of their political beliefs. The sweeping language of the 1982 Constitution and the particular emphasis on national security that it contains, has created the possibility for SSC prosecutions to be used to stifle free debate and to punish legitimate political dissent. Authoritarian constitutional provisions that deny protection to thoughts and opinions contrary to Turkish national interests have resulted in the prosecution of many intellectuals, journalists and human rights activists for the exercise of their right to freedom of expression.¹⁹²

For example, the government regularly invokes the jurisdiction of the SSCs in order to punish political expressions of Kurdish identity. In 1998, *Ulkede Gundem* (Agenda in the Land), a newspaper advocating the recognition of Kurdish identity, was fined approximately \$12,000 and closed by the court for 312 days. In January 1998, the Istanbul State Security Court sentenced journalist Haluk Gerger to 20 months in prison for an article he wrote on the situation in the south-east. In March 1998, the Diyarbakir State Security Court sentenced Sefik Beyaz, former head of the Kurdish Institute, to one year of imprisonment and a fine of \$100 for "making separatist propaganda by playing Kurdish music" during his election campaign in 1995.

192 In a statement on 24th October 1998 the Istanbul branch of the Human Rights Association (HRA) called for the abolition of State Security Courts. Objecting to the way in which SSCs are used to punish non-violent political dissidents, the HRA stated: "Today more than 10,000 people have been tried in State Security Courts for expressing viewpoints that differ from the official line and for their political beliefs. There are still 6,000 dossiers containing lawsuits because of Article 312 of the Turkish Penal Code and Article 8 of the Anti-Terrorism Law." (Turkish Daily News, 24 Oct. 1998).

Muslims critical of the government have also been subject to sanctions. According to the preamble of the Constitution, "as required by the principle of secularism, there shall be no interference whatsoever of sacred religious feelings in State affairs and politics." Secularism, as interpreted by the SSCs, has provided a pretext for the prosecution of many non-violent Muslim political activists. In February 1998, 128 members of the *Aczmendi* religious group were sentenced to terms of twenty months to six years of imprisonment for "insulting Ataturk and disobeying security forces." They were originally arrested in 1996 for not following the regulations of the "modern dress reform" of Ataturk. In April 1998, the Diyarbakir SSC convicted Istanbul Mayor Recep Tayyip Erdogan, a prominent member of the pro-Islam Virtue Party, for a speech that he made in 1997 that was deemed to have "incited ethnic, racial, religious enmity," based on Article 312 of the Penal Code. He was sentenced to 10 months in prison and a lifetime ban from politics.

SSC prosecutions are not, however, limited to statements on Kurdish issues or the place of Islam in society. In March 1998, poet Can Yucel was sentenced to 1 year and 2 months imprisonment for "insulting the President". In July of the same year, editorial cartoonist, Dogan Guzel, was sentenced to 3 years in prison – later reduced to 16 months – "for insulting the state and armed forces" for four cartoons critical of the state. In August, playwright Mehmet Vahi Yazar was sentenced to 24 years in prison plus a fine "for insulting the military" based on Article 312 of the Penal Code for a play portraying the State as opposed to religion. The four actors who performed the play were sentenced to 16 years imprisonment plus fines.

These and other cases of a politically repressive nature tried before SSCs demonstrate the manner in which the SSC system adopts objectives wholly inconsistent with the principles, the appearance and the reality of an independent judiciary. In a very real sense, many SSC prosecutors and judges tend to see themselves as guardians of the state rather than the guardians of the rights of the Turkish people. In this way, the SSC, as an institution, is little more than a tool by which the state can ensure a continuing hold on power by resort to authoritarian, repressive measures.

We therefore recommend that:

- (1) the 1982 Constitution be revised with the aim of giving more emphasis to the protection of human rights and removing the language responsible for bringing State Security Courts into the political arena; and
- (2) the 1982 Constitution and/or legislation be amended to ensure that no-one be prosecuted for the non-violent expression of his or her political beliefs.

3. The appointment and promotion of SSC judges and public prosecutors

An equally serious threat to judicial independence in SSCs is the degree of executive influence over the process of appointing, promoting, transferring, and disciplining judges and prosecutors. However, due to the fact that concerns in this regard are not confined exclusively to the SSCs, but rather extend to all judges and prosecutors in Turkey, this issue is addressed comprehensively in Chapter VII.

C. Pre-trial *Incommunicado* Detention in SSC cases

The structural impediments to the independence of SSC judges and prosecutors are not the only reason for the significant gap in human rights standards between the operations of the ordinary penal courts and those of the SSCs. Procedural irregularities as between the two court systems mean that SSC defendants are offered far fewer protections than their counterparts appearing before the ordinary courts.

1. The period of pre-trial detention in SSC cases

The pre-trial detention period without charge is far longer in SSC cases than in ordinary penal prosecutions. The maximum detention period for those charged with individual ordinary crimes is 48 hours. Prior to March 1997, persons accused of crimes falling within the SSC

jurisdiction outside of the State of Emergency Region could be detained without charge for either seven days (for individual crimes) or 14 days (for crimes of a collective nature). Within a State of Emergency Region, the same pre-trial detention without charge could last 15 days (for individual crimes) or 30 days (for crimes of a collective nature).¹⁹³ On 6 March 1997, following the judgement of the European Court of Human Rights in the case of *Aksoy v. Turkey*,¹⁹⁴ the articles of the Turkish Code of Criminal Procedure governing pre-trial detention were amended so as to permit a reduced initial period of detention without charge for offences falling under the jurisdiction of the SSCs of four days. Upon the request of a prosecutor and decision of a judge, this four-day period may be extended to seven days outside of a State of Emergency Region and to 10 days within such a region.¹⁹⁵

Notwithstanding the welcome reduction in pre-trial detention periods, the delegation believes that further reductions would have a beneficial effect in terms of realising the detainee's right to security of the person.

We therefore recommend that legislation be amended so as to reduce the maximum pre-trial detention period in cases of kinds now falling within the jurisdiction of the SSCs to 48 hours.

2. Extension of the pre-trial detention period in SSC cases

The requirement that any extension to the initial custody period be both sought by a prosecutor and authorised by a judge, ought to prevent detainees from being deprived of their liberty for any longer than is strictly justified. In practice, however, in the case of SSC detainees, any such protection is largely illusory.

193 Law 2845.5.4 art. 16.

194 *Aksoy v. Turkey* (1996) 23 EHRR 553.

195 See Regulation on Apprehension, Police Custody and Interrogation, October 1998, Art. 14.

Firstly, by the very nature of the offences within the SSC jurisdiction, grounds for extension can almost always be made out – alleged involvement with terrorism is almost always considered a complex offence.¹⁹⁶ In practice, the police or gendarmerie¹⁹⁷ usually bring a request to extend the detention period for a prisoner on grounds that they need more time to complete the investigation. The Chief Prosecutor then decides whether the judge should consider the request. Generally, given the nature of the charge and/or number of defendants, the prosecutor simply forwards the request to the judge without intervening to assess the well-being of the detainee or subject the police request to any substantive scrutiny. The judge will then consider the request for extension but the detainee is rarely brought before the court or represented. In effect then, the decision as to whether or not to extend the detention period is taken solely upon the basis of the report requesting extension.

A further problem is that the custody time limits may simply not be observed. The delegation heard allegations that police record the date of arrest as later than the actual date of arrest so as to allow longer than the legally permitted period of detention. Furthermore, the custody time limits can be circumvented by subjecting the detainee to successive charges.

We therefore recommend that:

(1) necessary measures be taken to ensure that any request for the extension of police custody is subjected to substantive scrutiny by a public prosecutor; and

196 Turkish law defines 'terrorism' in broad and vague terms. Article 8 of the Anti-Terror Law provides that terrorism includes, "written and oral propaganda and assemblies, meetings and demonstrations aimed at damaging the indivisible unity of the State of the Turkish Republic with its territory and nation ..." Many of those accused before the State Security Courts are charged under this provision.

197 The law enforcement forces in Turkey are constituted by the National Police, affiliated to the Ministry of the Interior, and the Gendarmerie, affiliated to the armed forces. There are approximately 100,000 police officers and 200,000 gendarmes throughout the country. The National Police have responsibility for security in urban areas. In each rural province there is a Gendarmerie command area, and in each rural town a company.

(2) any detained person in respect of whom an extension of police custody is sought be systematically brought before the judge who examines the request.

3. *The interval between detention and access to legal counsel in SSC cases*

It is axiomatic that if a defendant is to mount a practical and effective defence, then he must be afforded the right to communicate with legal counsel. This right is not to be limited to the trial phase of criminal proceedings. The European Court of Human Rights has explicitly held that the right of access to legal counsel applies to the preliminary investigation phase of criminal proceedings.¹⁹⁸ The UN Basic Principles on the Role of Lawyers provide, in principle 7, that "[g]overnments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than 48 hours from the time of arrest or detention."¹⁹⁹

Yet, while the December 1992 amendments to Article 135 of the Turkish Penal Code afforded detainees accused of ordinary crimes the right to have a lawyer present during the entirety of their interrogation, detainees suspected of offences within the jurisdiction of the SSCs were afforded no such comparable right. Indeed, the Regulations on Apprehension, Police Custody and Interrogation introduced in October 1998 expressly provide for SSC detainees to be held without access to a lawyer for four days. After establishing the right of access to counsel in ordinary cases, Article 20 of the Regulations declares:

"In crimes falling within the scope of State Security Courts, the apprehended person may meet his lawyer only upon extension of the custody period by order of the judge."²⁰⁰

198 See *Imbrioscia v. Switzerland*, (1993) 275 Eur. Ct. H. R. at 133; *Murray v. United Kingdom*, (1996) 22 Eur. Ct. H. R. at 29.

199 UN Basic Principles on the Role of Lawyers, Principle 7.

200 Regulations on Apprehension, Police Custody and Interrogation, Art. 20 (Oct. 1998).

This means that SSC detainees are, in every case, liable to be denied access to counsel during the vital pre-trial interrogation phase when, among other things, statements are recorded which are subsequently presented to the court.

The delegation has serious misgivings about the fact that persons detained without charge on suspicion of having committed offences falling under the jurisdiction of the SSCs may be denied the right of access to a lawyer for four days and therefore precluded from receiving legal advice during the interrogation procedure. The possibility for a person taken into custody to have access to a lawyer as from the outset of their deprivation of liberty is a fundamental safeguard against infringement of their fundamental rights and liberties. Although we recognise that it may exceptionally be necessary to delay access to a lawyer for a certain period in the interests of justice, this should not result in protracted *incommunicado* detention as is presently the case.

We therefore recommend that:

- (1) all persons deprived of their liberty by the law enforcement agencies - regardless of the gravity of the offence of which they are suspected - should be granted, as from the outset of their custody, access to independent legal counsel; and**
- (2) when, exceptionally, access to counsel must be restricted, such restriction must be for good cause, regulated by a judge and be for the minimum duration possible.**

4. The interval between detention and presentation of the detainee before a judge in SSC cases

Every detained person has a right to be "brought promptly before a judge".²⁰¹ In determining the period between detention and judicial review, a period of two days has been held to comply with the

201 Article 5(3) ECHR.

Convention.²⁰² A period of six days has been held to be too long.²⁰³ 'Promptness' has been interpreted by the UN Human Rights Committee to mean that the period of custody before an individual is brought before a judge or other officer may not exceed "a few days".²⁰⁴

In addition to reducing pre-trial detention periods, the 1997 amendments to the Turkish Penal Code reset the time limit for detention without judicial supervision. According to the new legislation, a person who has been arrested on suspicion of an ordinary crime has to be brought before a competent judge within a maximum period of 24 hours. However, if the crime falls within the competence of the SSC, this period is increased to 48 hours.²⁰⁵ In SSC cases, the public prosecutor may, by a written order, prolong this period for up to four days, for reasons such as difficulty in gathering evidence or the large number of defendants. The period in which suspects must be brought before a judge may, at the request of the prosecutor and decision of the judge, be extended to seven days if the investigation is still not completed. For crimes falling within the competence of the SSC that are committed in regions where a state of emergency is in force, the 7 day period may be extended to 10 days.²⁰⁶

202 *Eguez v. France*, App. No. 9174/80, 40 Eur.Comm'n Dec. & Rep. 42, 58, 102 (1983).

203 *De Jong, Balget & van den Brink v. the Netherlands*, 77 Eur.Ct.H.R. (ser. A 1984).

204 Human Rights Committee, General Comment, No 8/16, July 27, 1982.

205 Article 13 of the 1998 Regulations provides that, "if a person apprehended for crimes committed by one or two persons is not released, he must be arraigned before the competent judge no later than 24 hours ... if the crime falls under the scope of the SSCs, this period is 48 hours."

206 Article 14 of the 1998 Regulations provides:

"For reasons such as difficulty in gathering evidence or the presence of a large number of defendants and similar reasons, the Public Prosecutor may prolong this period by a written order up to four days in cases of collective crimes, including for crimes falling under the scope of the State Security Courts.

In spite of the four-day extension, if the investigation is still not completed, upon the request of the Prosecutor and the decision of the Judge, the arraignment of suspects before the Judge may be extended to 7 days.

For crimes committed in emergency regions and falling under the scope of the State Security Courts, the 7 day period may be extended to 10 days upon request of the Prosecutor of the republic and decision of the Judge."

We recommend that all detainees be presented before a judge within a maximum of 24 hours, non-extendable, from the time of initial detention.²⁰⁷

5. *Informing relatives of detention of family members*

In addition to affording detainees suspected of ordinary crimes the right to have a lawyer present during interrogation, the December 1992 amendments to the Turkish Penal Code provided that relatives of ordinary detainees must be informed of the detention of their family member. No such corresponding right was afforded to SSC detainees however.

The October 1998 Regulations on Apprehension, Police Custody and Interrogation effectively exempted the authorities from the obligation of informing relatives in the cases of state security detentions. Article 9 states, in relevant part:

*"For crimes falling under the jurisdiction of the State Security Courts, the relatives will be informed through the same way if there is no harm to the outcome of the investigations."*²⁰⁸

Since there is no clear definition of what may cause "harm to the outcome of the investigation", Article 9 affords wide discretion to the security forces to withhold from relatives, on their own authority, the fact that a family member has been taken into custody. The delegation received complaints that in SSC cases, relatives frequently may either not know that a member of their family has been taken into detention or, if they do, where he has been detained.

207 This will result in the permitted interval between detention and presentation of a detainee before a judge being the same in both ordinary cases and SSC cases.

208 Article 9, Regulations on Apprehension, Police Custody and Interrogation (1998).

We recommend that:

- (1) in all cases, detainees be afforded the right to notify their next of kin of their situation within 24 hours of their detention; and**
- (2) any possibility to exceptionally delay the exercise of this right should be clearly defined in writing, strictly limited in time and require the authorisation of a public prosecutor.**

D. Coercive interrogation techniques and SSC prosecutions

There are many reports of widespread, and even systematic, torture during interrogation for security offences. The European Torture Committee has visited Turkey twice and concluded, "The existence and extent of the problem of torture and other forms of ill-treatment of criminal suspects by law enforcement officials – and more particularly by police officers – has been established beyond all doubt ..." ²⁰⁹

Turkish law states unequivocally that evidence obtained through coercive measures is inadmissible at trial. Article 13 of Law No. 3842, which was adopted in November 1992 amending the Code of Criminal Procedure, bans torture and other prohibited interrogation methods.²¹⁰ Further, Article 24, which was added to Article 254 of the Code, prohibits the use of evidence gathered illegally: "Evidence gathered illegally by the investigation and prosecution authorities cannot constitute a basis for a verdict." Article 135 of the Criminal Procedure Code provides that any statement by an accused should be based on his free will

²⁰⁹ Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 5 to 17 October 1997 (Ref.:CPT/Inf (99) 2 [EN] – 23 February 1999).

²¹⁰ Article 23 of the October 1998 Regulations on Apprehension, Police Custody and Interrogation also provides that, "the person under custody, (a) cannot be submitted to physical or emotional interventions which disrupt the free will, such as mistreatment, hampering free will, torture, administering medicine by force, tiring, misleading, use of physical force or violence, use of devices; (b) cannot be promised an illegal benefit."

and that interrogation may not employ any coercive treatment such as torture.

The delegation was informed by both the Minister of Justice and senior members of the judiciary that, in light of the foregoing legal provisions, statements coerced by torture cannot, under any circumstance, be used in legal proceedings. However, comments from some judges and public prosecutors within the SSC system indicate that there is a pervasive reluctance among members of the judiciary to accept that torture ever occurs. In practice then, given such judicial attitudes, notwithstanding the law on coerced testimony, information and confessions obtained through torture and ill-treatment are routinely admitted in SSCs across the country.²¹¹

By way of example, the President and Judge of one State Security Court in a large city, commented, "[i]f the statement was made under violence, we do not use it." However, he went on to remark, "[a]ccused do state that they have been under violence, but they do it to be released or for other reasons ... An accused person says everything to be released, including alleging bad treatment."²¹² Further, the Head Prosecutor of another large State Security Court, stated, "[i]f there has been bad treatment by the police, like insulting or beating the accused, then we see it as a crime. When statements are taken under torture, the statement has no value." He went on to note however, "[a]ccused use this procedure to pretend that they have been tortured. They pretend to have given statements under torture. The majority make false allegations."²¹³ Such statements are indicative of a presumptive belief on the part of SSC prosecutors that, despite overwhelming evidence to the contrary from non-governmental sources, coercive interrogation techniques are not used by the security forces. In many other countries, there has been a similar historical reluctance on the part of some judges to accept that official brutality or malpractice frequently occurs during the investigation process. The consequence is that convictions in SSCs

211 Such a practice directly contravenes Article 15 of the UN Convention against Torture.

212 Interview with Mr. Mustafa Sahin, President and Judge of the Adana State Security Court.

213 Interview with Mr. Nihat Cakar, Head Prosecutor of the Diyarbakir State Security Court.

continue, to an avoidable extent, to be based on torture induced confessions.

A further problem is that the investigation of any torture allegation made by a detainee falling within the jurisdiction of a SSC is conducted by the public prosecutor of the respective Heavy Penal Court. As a result, the trial of a detainee may proceed in the SSC system on the basis of an allegedly coerced testimony and a sentence of guilty may be handed down before a decision is taken in the Heavy Penal Court concerning the alleged torture. This, the delegation was informed, in fact occurs quite frequently. For example, in the infamous Manisa trial, in which students were tortured by police officers, the Izmir SSC relied on the students' torture-induced confessions to convict them prior to the trial of the perpetrators in the Heavy Penal Court.²¹⁴

We therefore recommend that steps be taken to encourage judges and prosecutors to accept that evidence is not infrequently extracted by coercive measures. Allegations of torture or inhuman or degrading treatment must be seriously investigated.

E. Conclusion

While we welcome the removal of military judges from the SSCs, the delegation remains concerned at the apparent lack of independence and partiality among SSC judges and prosecutors in Turkey. On the basis of information received, both before and during the mission, this would appear to stem in part from the precedence given in Turkish law to the rights of the state over the rights of the citizen, and in part from the degree of executive influence over the process of appointing, promoting, transferring, and disciplining judges and prosecutors.

The delegation also has serious misgivings about the procedural irregularities as between the ordinary penal courts and the SSCs. In particular, the period of protracted pre-trial detention, the interval between detention and access to legal counsel and the length of time

214 See Chapter VIII for a detailed commentary on the Manisa case.

permitted in law between initial detention and presentation of the detainee before a judge. All of these periods of time, which are longer in SSC cases, have a negative bearing on the overall fairness of the proceedings before SSCs.

In consequence, the delegation must report that, notwithstanding the aforementioned progress, the structure and scope of activity of the SSCs continues to raise serious questions regarding Turkey's obligation to protect a defendant's right to a fair trial.

To repeat what was stated at the outset of this Chapter, we see no valid justification for the continuance of a different judicial regime, offering fewer protections for those deprived of their liberty due to political reasons, than the one in force for non-political cases. There is no reason why those concerned with upholding law and order ought not be able to trust the personnel and procedure of the ordinary criminal courts.

We therefore recommend that State Security Courts be abolished and their functions transferred to the existing criminal courts. Failing that, procedural safeguards for SSC defendants should be harmonised with those in ordinary criminal courts and brought into compliance with international norms.

VII – THE JUDICIARY AND PUBLIC PROSECUTORS

A. Introduction

A fair and equitable system of administration of justice and the effective protection of human rights and fundamental freedoms depend on the independence and impartiality of the judiciary. Such independence implies freedom from interference by both the executive and the legislature with the exercise of the judicial function. In criminal proceedings, independence of prosecutors is widely recognised as a necessary complement, practically speaking, to judicial independence.

This chapter begins by reviewing Turkey's international and domestic legal obligations to protect the judiciary against undue pressure and restrictions in the exercise of their functions. We then address the various limitations imposed upon the independence of judges and prosecutors in Turkey. Finally, we examine the role of public prosecutors in securing a fair trial.

B. Turkey's legal obligations to the judiciary

1. *Turkey's obligations under international law*

Independence of the judiciary is recognised in the UN Basic Principles on the Independence of the Judiciary ("Principles on the Judiciary").²¹⁵ The Principles on the Judiciary were endorsed by the UN General Assembly in November 1985. The Assembly later specifically welcomed the Principles and invited governments "to respect them and to take them into account within the framework of their national legislation and practice".²¹⁶

215 Basic Principles on the Independence of the Judiciary, 29 November 1985, A/RES/40/32.

216 UN Resolution A/RES/40/146, 13 December 1985.

The Principles are the international community's authoritative statement of acceptable practices with regard to the independence of the judiciary. According to Special Rapporteur Joinet, French Expert of the UN Sub-Commission on Human Rights, the Basic Principles, "general though they are, represent the first intergovernmental standards spelling out the minimum standards of judicial independence and are the acknowledged yardstick by which the international community measures that independence."²¹⁷ As such, they form an important part of the growing body of international jurisprudence protecting fundamental human rights.

The twenty Basic Principles set forth core standards for the independence of the judiciary and the freedom of expression and association of judges, as well as rules regarding the qualification, selection, training, conditions of service, tenure, immunity, discipline, suspension and removal of judges. They also emphasise that the independence of the judiciary should be guaranteed by the state and enshrined in the Constitution or law of the country.

Article 6(1) of the European Convention on Human Rights also guarantees a fair and public hearing, "by an independent and impartial tribunal established by law".²¹⁸ The requirement of independence has been interpreted to mean that the courts must be independent of both the executive and the parties.²¹⁹ To ascertain whether a court meets the requirements of independence, regard must be had to the manner of appointment of its members and the duration of their term of office,²²⁰ the existence of guarantees against outside pressures,²²¹ and the question whether the body presents 'an appearance of independence'.²²²

217 E/CN.4/Sub.2/1990/35, para. 15.

218 Art. 6(1) European Convention on Human Rights and Fundamental Freedoms.

219 *Ringeissen v. Austria*, (1979-80) 1 EHRR 455 at para. 95.

220 *Le Compte, Van Leuven and De Meyere v. Belgium*, (1982) 4 EHRR 1.

221 *Piersack v. Belgium*, (1983) 5 EHRR 169 at para. 27.

222 *Delcourt v. Belgium*, (1979-80) 1 EHRR 355 at para. 31; *Campbell and Fell v. United Kingdom* (1985) 7 EHRR 165 at para. 78.

2. Domestic constitutional guarantees of judicial independence

Various provisions of the Turkish Constitution guarantee judicial independence. Article 9 of the Constitution declares: "[j]udicial power shall be exercised by independent courts on behalf of the Turkish Nation."²²³ Under Article 138, judges are protected from instructions, recommendations or suggestions that may influence them in the exercise of their judicial power.²²⁴ Further, no legislative debate may be held concerning the exercise of judicial power in a pending trial and both legislative and executive organs are required to comply with court decisions without alteration or delay.²²⁵ Finally, Article 139 of the Constitution provides judges with security of tenure, although certain legitimate exceptions are authorised.²²⁶

²²³ Turkish Constitution, art. 9.

²²⁴ Article 138 of the Constitution states that:

"Judges shall be independent in the discharge of their duties; they shall give judgement in accordance with the Constitution, law, and their personal conviction conforming with the law.

No organ, authority, office, or individual may give orders or instructions to courts or judges relating to the exercise of judicial power, or send them circulars, make recommendations or suggestions.

No question shall be asked, debate held, or statement made in the Legislative Assembly relating to the exercise of judicial power concerning a case under trial.

Legislative and executive organs and the administration shall comply with court decisions; these organs and the administration shall neither alter them in any respect, nor delay their execution."

²²⁵ *ibid.*

²²⁶ Article 139 of the Constitution states that:

"Judges and public prosecutors shall not be dismissed, or retired before the age prescribed by the Constitution; nor shall they be deprived of their salaries, allowances or other rights relating to their status, even as a result of the abolition of court or post.

Exception indicated in law relating to those convicted for an offence requiring dismissal from the profession, those who are definitely established as unable to perform their duties on account of ill health; and those determined unsuitable to remain in the profession, are reserved."

C. Limitations upon the independence of the judiciary

1. *Appointment and promotion of judges and public prosecutors*

Article 159 of the Turkish Constitution establishes the High Council of Judges and Public Prosecutors ('High Council'), a body of executive and judicial personnel that oversees the judiciary. The High Council is responsible for the appointment of all judges and public prosecutors to criminal, civil and administrative courts, including State Security Courts. It is also authorised to transfer, promote and discipline judges and prosecutors.^{227 228}

The Minister of Justice is the President of the High Council and his under-secretary is an *ex-officio* member. Of the rest of the High Council, the President of the Republic appoints three members from a list nominated by the High Court of Appeals from its ranks and two members from a list nominated by the Council of State. All appointments are for four-year terms but members may be re-elected at the end of their term of office.²²⁹

227 Article 159 of the Turkish Constitution states:

"The Supreme Council of Judges and Prosecutors shall deal with the admission of judges and public prosecutors of courts of justice and of administrative courts into the profession, appointments, transfers to other posts, the delegation of temporary powers, promotion, and promotion to the first category, the allocation of posts, decisions concerning those whose continuation in the profession is found to be unsuitable, the imposition of disciplinary penalties and removal from office."

228 In addition to the High Council, it should also be noted that the President of the Republic also has authority to appoint judges. The President appoints members of the Constitutional Court, one-fourth of the judges of the Council of State, the Chief Public Prosecutor and Deputy Chief Public Prosecutor of the High Court of Appeals, the members of the Military High Court of Appeals, and members of the High Military Administrative Court of Appeals.

229 Turkish Constitution, Art. 159.

- *"It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary."*²³⁰

The most important issue faced by any judiciary in terms of objective independence and impartiality is protection from interventions of the executive. Yet, the membership structure of the High Council is such that it cannot be said to be independent from political influence. The delegation received numerous complaints, from a variety of sources, that the presence of the Minister of Justice and his under-secretary, results in the High Council, a supposed judicial organ, being effectively dependent upon the Ministry of Justice. Among other things, the Minister of Justice provides the facilities and administrative support to the High Council.

Aside from the composition of the Council itself, the influence of the executive is exacerbated by the fact that the High Council does not have its own secretariat. The Council is entirely dependent upon a personnel directorate and inspection board of the Ministry of Justice for its administrative tasks.

- *"A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure."*²³¹

This dependency on the Ministry of Justice casts a further shadow over the High Council's independence. Whenever a complaint is made against a judge, it is the Justice Ministry that undertakes the investigation and collection of evidence in relation to that complaint before presenting its findings to the High Council. Because of its reliance on the Ministry, it was suggested to us, we think quite properly, that the High Council may be unconsciously influenced by Ministry of Justice attitudes and actions. In so far as the High Council's Secretariat is dependent upon the Ministry of Justice, we consider that complaints against judges and public prosecutors in their professional capacity are, in vio-

230 Principle 1 of the UN Basic Principles on the Independence of the Judiciary.

231 *ibid*, Principle 17.

lation of Principle 17, not processed 'fairly under an appropriate procedure'.

- *"Any method of judicial selection shall safeguard against judicial appointments for improper motives."*²³²

In terms of appointment, promotion and discipline, the careers of all judges and prosecutors in Turkey are determined by the High Council. However, the potential for undue political influence of the Ministry of Justice in the High Council gives rise to a clear potential for partiality and prejudice in decisions relating to personnel. The ultimate consequence of such a state of affairs is the politicisation of judges and prosecutors, a notion abhorrent to the principles of judicial independence. In so far as there presently exists a practical capacity for unjustified political and executive influence over the appointment of judges, we consider that, contrary to Principle 10, the present system of judicial selection in Turkey fails to adequately safeguard against appointment for improper motives.

- *"The judiciary shall decide matters before it impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason."*²³³

The delegation received numerous complaints that the High Council may, at any time, 'transfer' judges and public prosecutors, against their will, to work in a less attractive region of Turkey. There was a general consensus among our respondents that such a transfer may take place at any time on grounds that the judge or prosecutor is not 'performing adequately'. However, while certain officials whom we met characterised this power of transfer as nothing more than a measure for ensuring administrative efficiency, others indicated that it may be applied in a more sinister fashion. Put simply, we received credible allegations that judges and prosecutors who are critical of the Turkish political establishment may be deemed to be performing inad-

232 *ibid*, Principle 10.

233 *ibid*, Principle 2.

equately and hence transferred. The result, we were informed, is that in trials concerning crimes with a political element, a judge will look at the law, but his or her interpretation may be biased to suit the interests of the state.

Given our concerns in relation to what appeared to be a clear example of undue executive influence over the functioning of the judiciary, the delegation asked a judge whom we met whether he could provide us with concrete examples of members of the judiciary being transferred for arbitrary reasons. The reply received was indicative of the level of political pressure under which Turkish judges function. He commented:

"I cannot give the practical examples that you ask for because if I do then they will make an investigation of me. If I was in a higher court then maybe I could but at my level, if I do then I will be questioned as to why I did it."

The delegation asked another judge whether an aggrieved judge could send a private letter of complaint to the High Council. The reply received was:

"The second day after receiving the letter we would be sent to another region to work. It is certain that if you tell the name of one of our fellow judges to the Ministry of Justice then he will have problems the next day. Judges and prosecutors will not speak."

We regard the fact that a judge can, at any time, be transferred to a less attractive region as a clear violation of Principle 2 of the UN Basic Principles on the Independence of the Judiciary as set forth above.²³⁴ Such possibility of removal can only result in a tendency for judges and prosecutors to have undue regard for ruling administrative and political policies, especially in matters of national security, rather than exercise their own independent judgment.

234 Other relevant provisions in this regard include Principle 13: "Promotion of judges, wherever such a system exists, should be based on objective factors, in particular ability, integrity and experience" and Principle 18: "Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties."

- *"Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review."*²³⁵

Under the Turkish Constitution, there can be no appeal to any judicial body against a decision of the High Council.²³⁶ Instead, any objection to a decision of the Council must be raised before an eleven-person panel composed of the seven original Council members and four additional members. Given the composition of this panel, it is perhaps unsurprising that many judges and prosecutors in Turkey regard such review of a High Council decision as futile. The result is that, in the knowledge that they lack an independent judicial review board, at least some judges and public prosecutors are further disposed to follow an official line rather than exercise their own independent judgement.

A legal system under the influence of political power cannot work independently. The delegation is concerned that the High Council of Judges and Public Prosecutors, as presently constituted, fails to satisfactorily separate the powers of the judiciary and the executive. We are of the opinion that the High Council is so closely connected with the executive as to call into question the independence of the judiciary.

The delegation learnt that proposals to limit executive influence over the functioning of the High Council are under serious consideration. The Minister of Justice informed the delegation that the present government intends to retain the Minister of Justice as head of the High Council, but to remove his voting rights. It also proposes to remove the under-secretary from the Council altogether. The Minister of Justice also informed the delegation that the present government intends to introduce judicial inspectors attached to the High Council rather than to the Ministry of Justice. We were informed that a constitutional amendment will be required in order to effect these reforms and that it is hoped that this will take place within the next three years.

While we welcome such reform proposals as concrete measures that will, if and when enacted, strengthen the independence of the Turkish

235 Principle 20 of the UN Basic Principles on the Independence of the Judiciary.

236 Article 159 of the Turkish Constitution.

judicial system as a whole, we do not think that they go far enough. We question the justification for permitting the Minister of Justice to retain his position on the Council in the absence of any voting rights. His continued presence can only detract from the 'appearance of independence' identified by the European Court of Human Rights as being essential to an independent judiciary.²³⁷ We also consider that the inability of judges and prosecutors to appeal decisions of the Council to an independent appellate body is a matter that ought to be remedied. Finally, in an effort to further distance the High Council from the executive, we consider that judges and prosecutors themselves, rather than the President of the Republic, should be empowered to elect their representatives on the High Council.

We therefore recommend that:

- (1) article 159 of the Turkish Constitution be amended so as to remove the Minister of Justice and his under-secretary from the High Council of Judges and Public Prosecutors;**
- (2) the High Council be provided with its own adequately-funded Secretariat and premises;**
- (3) decisions of the High Council adverse to a judge or prosecutor be appealable to an independent judicial body comprised of members of the judiciary other than those responsible for the taking of the original decision;**
- (4) the President be absolved of his power to appoint members of the High Council and judges and prosecutors themselves be empowered to elect their representatives on the High Council.**

²³⁷ *Delcourt v. Belgium*, (1979-80) 1 EHRR 355 at para. 31; *Campbell and Fell v. United Kingdom* (1985) 7 EHRR 165 at para. 78.

2. *Freedom of expression and association of judges and prosecutors*

- *"Judges should be free to form and join associations of judges or other organisations to represent their interests, to promote their professional training and to protect their judicial independence."*²³⁸

Judges and public prosecutors in Turkey have no right to organise and form associations. We consider that members of the judiciary, like any other citizen, should be able to form and join an association that could represent their collective interests, enable them to express their opinions, and take positions on matters pertaining to their functions and to the administration of justice. Such an association would be able to organise assemblies, conferences, or general or specialised meetings for the entire judiciary or sections of it, and issue reports and communicate their views in an appropriate manner. The opportunity for dialogue and consultation between judges and prosecutors that such a judicial association would permit, could only assist in reinforcing judicial independence.

The delegation observed strong support among many judges and public prosecutors for the creation of a judicial association. We were pleased to be informed by the Minister of Justice that a draft Bill has been prepared that, if and when enacted, will enable judges and public prosecutors to establish their own union.

We therefore recommend that the draft Bill to enable judges and public prosecutors to organise and form associations be enacted as soon as possible.

- *"Provided impartiality and independence of the judiciary is not compromised, judges are entitled to freedom of expression."*²³⁹

While we accept that in order to avoid any impression of partisanship, judges and prosecutors should be careful about commenting on

238 Principle 9 of the UN Basic Principles on the Independence of the Judiciary.

239 *ibid*, Principle 8.

controversial issues and expressing public criticism or approval of the government, they should still be permitted to express themselves freely on other matters such as law reform.

A first instance judge informed the delegation that if judges at his level criticise the independence of the judiciary then an investigation will be opened against them and a trial may follow. However, the limits of freedom of expression are perhaps best illustrated by the case of Mete Gokturk.

Mete Gokturk

On 14 October 1996, Mete Gokturk, a prosecutor within the Istanbul State Security Court, published an article in the newspaper *Yeni Yuzyil* in which he commented on the lack of independence among the Turkish judiciary. The publication of the article was followed by a television programme in which Mr. Gokturk repeated his criticisms of the Turkish legal system. As a result of his comments, the Ministry of Justice launched an investigation against him. Following this investigation, the Chief Public Prosecution Office of the Supreme Court accused Mr. Gokturk of "insulting the judiciary" in contravention of Article 159 of the Turkish Penal Code. He was put on trial and a prison term of up to 12 years was sought. The Supreme Court decided that it had "non-jurisdiction" on the grounds that his words were not related to his office, and therefore it should be considered a personal offence. The case file was sent to Beyoglu Heavy Penal Court. On 26 September 1997, the court acquitted Mr. Gokturk on the grounds that there was no element of deliberation in his actions. Despite being acquitted in the courts, the High Council imposed a disciplinary punishment in the form of a block on any future promotion. Mr. Gokturk petitioned for a review of this decision by the 11-member panel but the review failed. As a result of his statements about the need for reform of the Turkish legal system, Mr. Gokturk was subsequently put on trial again. He was later acquitted.

3. The case-load of judges and public prosecutors

- *"It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions."*²⁴⁰

Both judges and public prosecutors in Turkey are grossly overloaded with work. For a population of 63.7 million people, there are 4000 judges and 3000 public prosecutors. This lack of personnel is accompanied by inadequate administrative support facilities within the courts.

According to the Adana Bar Association, an ordinary court in Adana is required to hear 45 cases in one day, each case involving several witnesses. One prosecutor has to handle at least 1,000 cases per year. The Court of Appeals and the Constitutional Court apparently handle over 500,000 cases in a year. Judges also told us that they are overloaded with files. One judge informed the delegation that in his court there are 2,000 trials a year and that everyday he has to consider 70 cases. Mr. Ethem Ucan, President and Judge of the Diyarbakir State Security Court told the delegation that in his court he presides over 600 cases a year.

The Istanbul Branch of the Human Rights Foundation, a non-governmental organisation, estimated that there should be three or four times the number of judges in Turkey that there are now. They suggested that the situation is only deteriorating. We were told that whereas in 1980, for every 10 cases handled by a court in Europe, a Turkish court would handle 50 cases, in 1999, for every 10 cases handled by a court in Europe, a Turkish court had to handle 400.

The unfortunate reality is that in some cases this gross disproportion between the number of cases and the number of judges and prosecutors is solved by way of inadequate reading of case files and restrictions upon the accused's opportunity to present a defence. According to Professor Dr. Bakir Caglar,²⁴¹ the standard amount of

²⁴⁰ *ibid*, Principle 7.

²⁴¹ Professor Bakir Caglar defended the Government of Turkey in the European Court of Human Rights in Strasbourg for four years. In 1997 he resigned from his post in despair over human rights abuses in his home country.

time spent deciding any one case in the Cassation Court is 5 minutes. One prominent lawyer told the delegation: "A couple of days ago I heard from a judge in a State Security Court that if he had had more time, he would have listened more to the statements of the people on trial, but there was not enough time."

The root of the problem would appear to be the lack of financial support provided to the court system. The Minister of Justice informed the delegation that he was aware of the burdensome case-load of judges and prosecutors and agreed that more personnel should be appointed. However, without the means of financing new appointments, there would appear to be little that he can do to remedy the situation.

We therefore recommend that:

- (1) the proportion of the budget allocated to the administration of justice be substantially increased so as to facilitate the appointment of additional judges and public prosecutors;**
- (2) judges be consulted in the preparation of the budget and the judiciary be responsible for its internal allocation and administration.**

4. Training and education

Prospective judges are required to undertake a four-year academic course of legal education within a university faculty of law. Having successfully completed such a course, the Ministry of Justice opens competition for judicial appointments. Successful applicants are required to undertake a further two years of vocational training. Having completed the vocational stage, a young judge may start working as an assistant in an ordinary penal court. After two years as an assistant, the judge can expect to be assigned his or her own cases. Initially, they will preside over minor cases but, as the judge gains in experience, so his or her practice will develop accordingly.

The Minister of Justice informed the delegation that there are very few opportunities for in-service training of judges and

prosecutors and that as a result, a draft Bill has been prepared for the establishment of a judicial academy. The academy will offer continual professional training to judges, prosecutors and lawyers. The delegation strongly supports this proposal.²⁴²

C. The role of public prosecutors in securing a fair trial

The importance of independent prosecutorial supervision during the pre-trial interrogation period cannot be overstated. The risk of a detainee's rights being irrevocably infringed is at its greatest during the first days of detention. Not only is this the period when the majority of the interrogation takes place, but it is also the period when the detainee is denied the protection of access to legal counsel. In light of these facts, independent prosecutors can and should play an important role in ensuring that the rights of detainees undergoing criminal investigation are upheld.

In Turkey's inquisitorial criminal justice system, public prosecutors are in fact empowered to oversee the investigation, indictment, and prosecution of any case. The law gives prosecutors far-reaching authority to both collect and present evidence and safeguard the rights of defendants, including those detained for pre-trial interrogation. They are expressly empowered to conduct the preparatory investigation, determine the jurisdiction for the case and supervise the security forces during the pre-trial investigation period.²⁴³ However, the delegation received numerous complaints that, in practice, public prosecutors are too often either not informed about the fact of detention or else, possibly through overwork, exercise little or no supervision over the security forces during the pre-trial investigation period.

242 The delegation wishes to express its hope that the judicial academy will be under the overall control of judges, public prosecutors and lawyers themselves rather than the Ministry of Justice. This would serve to underline the notion of independence.

243 By Article 154 of the Turkish Criminal Procedure Code, police officers are obliged to execute orders of the prosecutor concerning the legal procedure.

The security forces are responsible for capturing suspects and deciding whether to detain them. They may detain on the basis of suspicion alone, without any form of prosecutorial authorisation.²⁴⁴ The reality is that the same security forces are then routinely left to make the determination as to whether a detainee will be prosecuted with a SSC offence or an ordinary crime. As we have seen, this is a decision that has far-reaching implications in terms of the subsequent investigation, prosecution and trial. Having made this determination, the detaining security forces are then left to conduct the interrogation of the suspect and collect the evidence. Once the security forces have collected the evidence they require, the file eventually comes to the public prosecutor to decide whether there will be a trial or not. According to the Ankara Human Rights Association (HRA), in 99% of criminal cases the prosecutor does not know anything about the accused or the evidence before the file is put to him. The security forces undertake the investigation and the prosecutor makes a decision on the basis of evidence placed before him by them.

The root of the problem would appear to be lack of personnel. A Head Prosecutor of a large Ordinary Court, admitted: "We have 12,000 investigations a year. There are 12 prosecutors. If we have too much work we leave it to the police or gendarmes to lead the investigation. They can have files without the control of a prosecutor." However, there is a further, more problematic obstacle in the way of effective prosecutorial supervision. Although public prosecutors are theoretically empowered to order the police to conduct investigations, in practice, they have little control over the security forces. One reason for this stems from the fact that while public prosecutors are dependent upon the Ministry of Justice, the police depend upon the Ministry of Internal Affairs. This separation of the two forces results in an unwillingness on the part of the security forces to respond full-heartedly to commands or requests from a public prosecutor. Instead, the police take their orders, including those relating to criminal investigations, from

244 Article 5 (a) (2) of the October 1998 *Regulation on Apprehension, Police Custody and Interrogation* authorises members of the security forces to take into detention: "Suspects, where there are strong traces, indication, circumstantial evidence and proof that they have committed or have attempted to commit a crime."

persons responsible to the General Directorate of the Police and the Ministry of Internal Affairs.

The preponderance of the influence of the security forces over the pre-trial investigation period and the associated diminution in the authority of the prosecutor over the criminal investigation process, invites abuse and violations of human rights. The delegation considers that public prosecutors should be empowered to take independent action to carry out their full function as envisaged in Turkish law, including fulfilling their obligation to safeguard the well being of suspects during pre-arraignment detention.

Many of those whom we interviewed advocated the creation of a specialised juridical police force as the most effective way of breaking the control of the security forces over the pre-trial period. The officers of such a force would be affiliated directly to a public prosecutor and be under the overall control of the Ministry of Justice rather than the Ministry of Internal Affairs. It would enable the detaining authority to be separated from the interrogating authority. While the existing police force would undertake administrative duties and effect arrests, all criminal investigations would be undertaken by the juridical police force under the leadership of a public prosecutor.

The Minister of Justice informed the delegation that the government is committed to establishing a juridical police force. He stated that such a development is foreseen in the country's five-year development programme. However, we observe that, absent decisive political leadership, it is likely to be some time before any such plan comes to fruition. For one, while the Ministry of Justice is in favour of such a police force, the Ministry of Internal Affairs and General Directorate of the Police continue to oppose the idea. Additionally, even if the latter were to agree, it is as yet undecided as to whether the force should be a separate organisation under the control of the Ministry of Justice or a public prosecutor or a special unit within the existing police force.

In an effort to empower prosecutors to fulfil their role in supervising the period of pre-trial detention, in June 1999, Prime Minister Ecevit issued a Circular authorising prosecutors to carry out unannounced inspections of detention facilities in order to monitor the

well-being of criminal suspects in detention. The delegation welcomes the provisions of this Circular, however, we are concerned that practical obstacles to its implementation mean that the power to conduct such inspections will not, on its own, be sufficient to resolve the problem.

The delegation received numerous complaints that public prosecutors labour under a heavy case-load, have limited human resources, and an inefficient administrative system. We were told that they are virtually unable to carry out their ordinary duties of preparing cases for trial, let alone take on additional duties safeguarding the rights of defendants and overseeing the conduct of the security forces. By way of example, the Deputy Head Prosecutor of the Istanbul State Security Court told the delegation, "We see accused people in custody. I think that the time we have to spend seeing the accused in custody should be diminished. The public prosecutor has a duty to go to custody during the interrogation procedure but this is supplementary work for the prosecutor." We also received indications that in practice, custody visitation is not presently taking place on the scale envisaged by the Circular. The Head Prosecutor of the Istanbul Ordinary Court told the delegation, "In a typical week a public prosecutor will go to the police cells in order to observe perhaps two times or once in fifteen days. There is no systematic visitation of custody."

We therefore recommend that:

- (1) additional resources be provided to public prosecutors so as to enable them to carry out their duties in full; and**
- (2) a juridical police force be established under the direct control of public prosecutors.**

D. Conclusion

Despite various constitutional guarantees of judicial independence, the delegation remains seriously concerned that judges in Turkey are not truly free to decide matters before them impartially in accordance with their assessment of the facts and their understanding of the law.

In reality, both judges and public prosecutors face restrictions, influence, pressure, threats and interference in the exercise of their professional duty. We urge the Turkish government to strengthen the judiciary by institutional measures and to give autonomy to them from any other part of the government.

VIII – LAWYERS, LEGAL SERVICES AND HUMAN RIGHTS ADVOCATES

A. Introduction

The independence of practising lawyers and the fearless and conscientious fulfilment of their professional duties is a necessary complement to the impartiality of the judiciary. Not only is such independence a vital safeguard for the attainment of justice, liberty and respect for the rule of law, it is also an essential guarantee for the promotion and protection of the human rights of all persons in any society.

This chapter begins by briefly reviewing Turkey's legal obligations to protect practising lawyers against undue restrictions and pressure in the exercise of their functions. We then examine the various obstacles faced by Turkish lawyers in providing effective legal representation to their clients. Within this section we document examples of the state-sponsored or state-tolerated harassment and intimidation suffered by members of the Turkish legal profession in the exercise of their professional duties. Finally, a section is devoted to the role of human rights advocates in securing international human rights and fundamental freedoms.

B. Turkey's legal obligations to lawyers

The importance of the role of the legal profession in safeguarding fundamental rights and liberties is recognised in the UN Basic Principles on the Role of Lawyers ("Principles on Lawyers").²⁴⁵ The Principles on Lawyers were adopted by the UN General Assembly in September 1990 as an authoritative statement of acceptable practices with regard to the role of lawyers. The Principles on Lawyers begin with a declaration of the importance of effective legal representation to

²⁴⁵ Basic Principles on the Role of Lawyers, 7 September 1990, A/CONF. 144/28/Rev. 1.

the protection of the fundamental rights of all persons.²⁴⁶ The Principles then set out 29 core standards which pay special attention to the following issues: provision for effective access to legal assistance for all groups within society; the right of the accused to counsel and legal assistance of their own choosing; education of the public on the role of lawyers; training and qualifications of lawyers, and the prevention of discrimination with respect to entry into the legal profession; the role of governments, bar associations and other professional associations; the right of lawyers to undertake representation of clients or causes without fear of repression or persecution; and lawyers' obligations to keep communications with their clients confidential. Articles of particular relevance to the situation in Turkey are set out in detail below.

In its resolution 45/121 of December 1990, the General Assembly "welcomed" the Basic Principles on the Role of Lawyers and invited governments "to be guided by them in the formulation of appropriate legislation and policy directives and to make efforts to implement the principles contained therein ... in accordance with the economic, social, legal, cultural and political circumstances of each country." In resolution 45/166 of December 1990, the General Assembly welcomed the Basic Principles, inviting governments "to respect them and to take them into account within the framework of their national legislation and practice."

A legal obligation to protect the role of lawyers is implicit within the right to a fair trial as guaranteed by Article 6 of the European Convention on Human Rights and Fundamental Freedoms.²⁴⁷

246 The Preamble states, "adequate protection of human rights and fundamental freedoms to which all persons are entitled, be they economic, social and cultural, or civil and political, requires that all persons have effective access to legal services provided by an independent legal profession." *Ibid*, at 118.

247 The relevant paragraphs of Article 6 state as follows:

"1. In the determination of civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ...

According to Strasbourg jurisprudence, legal representation must be 'practical and effective' rather than 'theoretical and illusory'.²⁴⁸

C. Limitations upon the role of lawyers in Turkey

The guarantee of a fair trial depends on the ability of lawyers to provide effective legal representation to and on behalf of their clients. In Turkey, however, numerous obstacles serve to seriously undermine the extent to which members of the legal profession are able to perform their professional duties. This is true both during the pre-trial interrogation phase and during trials themselves.

1. *Limitations on the role of lawyers prior to trial/hearing*

- *"Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence."*²⁴⁹

It is axiomatic that rights for persons deprived of their liberty are of little value unless the persons concerned are aware of their existence. Consequently, it is imperative that persons taken into police custody are expressly informed, without delay and in a language they understand, of all their rights, including their right to legal advice and representation.

247...

3. Everyone charged with a criminal offence has the following minimum rights:

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require."

248 *Artico v. Italy* (1981) 3 EHRR 1.

249 Principle 5 of the UN Basic Principles on the Role of Lawyers.

An initial obstacle faced by Turkish lawyers in fulfilling their professional duties is that many detainees remain ignorant of their right to legal representation. In 1992, reform of Article 135 of the Turkish Criminal Procedure Code conferred upon detainees suspected of offences within the jurisdiction of the ordinary courts the right to be informed of their right to legal assistance. In an effort to implement this provision, Turkish authorities drew up an information sheet setting out the rights of ordinary criminal suspects. In his Circular of 3 December 1997, the Prime Minister subsequently directed, "persons who are taken into custody shall be informed of the rights granted to them by law; it is mandatory that they be given a copy of the information sheet which has been drawn up for that purpose at the commencement of their detention".²⁵⁰ Further, Article 6 of the October 1998 Regulations on Apprehension, Police Custody and Interrogation provides that an individual is to be immediately informed of his rights upon apprehension. However, notwithstanding these movements in the right direction, the delegation learnt that, in practice, the information sheet is not given systematically to detained person taken into custody and that in some cases, detainees are simply instructed to sign the waiver form. In consequence, a large number of detainees still receive no information about their rights.

For detainees suspected of offences within the jurisdiction of the State Security Courts, the situation is even worse. According to Turkish Law, the authorities are under no obligation to inform them of their rights and no information sheet is made available. In practice then, persons detained on suspicion of, for example, terrorism or drugs smuggling, are routinely not informed of the fact that they possess the right to be assisted by a lawyer.

Indicative of the scale of the problem, the delegation was informed that each year there are approximately 25,000 arrests in Istanbul. Of these 25,000 arrested persons, only 7,000 contact a lawyer from the Bar Association (which provides a well thought of free service of an initial consultation with a lawyer whilst in custody). Although some of the remaining 18,000 arrested persons undoubtedly secure the services of a lawyer otherwise than through the Bar Association's legal aid

250 Prime Minister's Circular (3 Dec 1997).

programme, one may still conclude that, on these figures, each year several thousand detained persons either choose not to have a lawyer, are not informed of their right to a lawyer, or are refused access to a lawyer. Of the 7,000 that do request a lawyer, the vast majority are accused of ordinary crimes rather than crimes falling within the jurisdiction of the State Security Courts.

We recommend that steps be taken to monitor and enforce existing requirements that all persons be immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.

- *"Governments ... shall promote programmes to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms. Special attention should be given to assisting the poor and other disadvantaged persons so as to enable them to assert their rights and where necessary call upon the assistance of lawyers."*²⁵¹

The delegation received reports that, far from assisting detainees to exercise their right to legal advice and representation, pressure from the security forces aimed at preventing detainees from requesting or sustaining a request for legal counsel remains a common occurrence in detention centres throughout Turkey. Detainees are routinely psychologically and physically mistreated by members of the security forces (see Chapter IX). This creates an environment where it is easy to dissuade a detainee, who may be ignorant of his rights under the law, from insisting on access to a lawyer.

We recommend that appropriate steps be taken to ensure that law enforcement officials do not seek to dissuade detained persons from exercising their right of access to a lawyer.

251 Principle 4 of the UN Basic Principles on the Role of Lawyers.

- *"Any such persons who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services."*²⁵²

In Turkey, even if a detainee is aware of his right to legal advice and representation and is not dissuaded from wishing to exercise that right, he may be precluded from doing so if he cannot afford the services of a suitably qualified lawyer.

If a person detained on suspicion of an ordinary crime is not able to appoint a lawyer, then the Bar Association must, by law, provide free counsel when such a request is made to the court.²⁵³ Costs are borne by the association. However, this duty to provide a lawyer does not extend to detainees and defendants in State Security Court cases.²⁵⁴ The delegation was informed that, as a consequence, many SSC defendants are forced to appear before the courts without any form of legal representation.

We therefore recommend that the exception in Article 19 of the October 1998 Regulations relating to crimes falling within the jurisdiction of the State Security Courts be abolished and that all detained persons with insufficient means, regardless of the offence of which they are suspected, be afforded, upon request, access to free counsel.

252 Principle 6 of the UN Basic Principles on the Role of Lawyers.

253 Article 19 of the October 1998 Regulation on Apprehension, Police Custody and Interrogation provides:

"Except for crimes falling under the scope of the State Security Courts, if the person is not able to appoint a lawyer, upon his request, the Bar will appoint one for him. Such a request will be communicated to the Bar immediately by the security forces."

254 *ibid.*

- "Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention."²⁵⁵

The right of access to a lawyer when in police detention has been implied into Article 6 of the European Convention by the Commission and the Court since it is "fundamental to the protection of [an accused person's] defence"²⁵⁶. Although Article 6(3)(c) guarantees everyone charged with a criminal offence the right to legal assistance, in *Imbrioscia v. Switzerland*,²⁵⁷ the European Court made it clear that there is nothing in Article 6(3)(c) to prevent it from applying to pre-trial proceedings. It is implicit in the Court's judgement in *Imbrioscia* that if the accused requests access to a lawyer, or a lawyer applies for access to his client, save in exceptional circumstances, the state authorities should not prevent such access.

Under the 1992 amendments to Article 136 of the Turkish Penal Code, persons detained for ordinary crimes are entitled to immediate access to a lawyer and may meet and confer with that lawyer at any time. However, on the basis of information received both prior to and during the mission, we are concerned that this right is not being properly applied in practice. In particular, access to a lawyer may only be allowed at a relatively late stage of the period of police detention, often just prior to the taking of a formal statement.

In SSC cases, however, even if the detainee is both aware of his right to legal representation and able to afford the services of a suitably qualified lawyer, protracted pre-trial incommunicado detention without access to legal counsel remains a major problem. The Turkish Penal Code permits an initial period of detention without charge in SSC cases of four days.²⁵⁸ This four-day period represents a vitally important stage within the overall trial process. Not only does the majority of

255 Principle 7 of the UN Basic Principles on the Role of Lawyers.

256 *Bonzi v. Switzerland* (1978) 12 DR 185 at 190.

257 *Imbrioscia v. Switzerland* (1994) 17 EHRR 441.

258 Upon the request of a prosecutor and decision of a judge, this four-day period may be extended to seven days outside of a State of Emergency Region and to ten days within such a region.

police interrogation take place during this period, but it is also the point at which a prosecutor normally takes a formal statement from the accused that is subsequently presented to the trial court. Notwithstanding these facts, Article 20 of the 1998 Regulations on Apprehension, Police Custody and Interrogation explicitly excludes SSC detainees from the right of access to counsel during this initial phase of the proceedings. After establishing the right of access to counsel in ordinary cases, the article makes it clear that:

"In crimes falling under the scope of State Security Courts, the apprehended person may meet his lawyer only upon extension of the custody period by order of the judge."²⁵⁹

Article 22 of the Regulations further restricts the right of access to counsel during this initial phase for state security detainees. The article states:

"Points (d) and (e) of the first paragraph [dealing with the right to legal aid and access to counsel during the initial phase] cannot be applied to a person interrogated for crimes falling under the scope of State Security."²⁶⁰

The delegation was informed on numerous occasions that excluding lawyers from the investigation process for crimes within the jurisdiction of the SSCs is justified on the basis that they may disrupt the interrogation.²⁶¹ Yet, in *Murray v. United Kingdom*,²⁶² despite the government's assertion that access to a lawyer had been denied to

259 Article 20 of the Regulations on Apprehension, Police Custody and Interrogation (Oct. 1998).

260 *ibid*, Art. 22.

261 For example, Muzater Galcin, Deputy Head Prosecutor of the Istanbul State Security Court stated, "...defendants in terrorist trials and mafia trials are related to organisations and in order not to disrupt the interrogations, the interrogators prefer not to allow collaboration with a lawyer. When people are accused of being in a terrorist organisation or drugs business, the aim is to not let them communicate within their organisation and for this reason the presence of a lawyer is not allowed."

262 *Murray v. United Kingdom* (1996) 22 ECHR 29.

prevent interference with the course of police investigations, the Court held that:

“ ... the concept of fairness enshrined in article 6 requires that the accused has the benefit of the assistance of a lawyer already at the initial stages of police interrogation. To deny access to a lawyer for the first 48 hours of police questioning, in a situation where the right of the defence may well be irretrievably prejudiced, is – whatever justification for the denial – incompatible with the rights of the accused under article 6.”²⁶³

The delegation has serious misgivings about the fact that persons suspected of offences falling under the jurisdiction of the SSCs are denied the right of access to a lawyer for four days and as such denied legal assistance during the interrogation procedure. The possibility for a person taken into custody to have access to a lawyer as from the outset of their deprivation of liberty is a fundamental safeguard against infringement of their rights and liberties. Although we recognise that it may exceptionally be necessary to delay access to a lawyer for a certain period in the interests of justice, this should not result in protracted incommunicado detention as is presently the case.

We therefore recommend that:

(1) all persons deprived of their liberty by the law enforcement agencies – regardless of the gravity of the offence of which they are suspected – be granted, as from the outset of custody, access to independent legal counsel; and

(2) the law enforcement agencies be reminded that, by virtue of Article 136 of the Turkish Penal Code, the right of access to a lawyer in ordinary cases applies as from the outset, and throughout, the period of police custody.

²⁶³ *ibid* para. 66.

- *"It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time."*²⁶⁴

Although the European Convention does not contain an explicit right to disclosure in criminal proceedings, the European Court has read such a right into the fair trial guarantees under article 6(1) and the more specific requirement under article 6(3)(b) that everyone charged with a criminal offence "have adequate time and facilities for the preparation of the defence." For example, in *Edwards v. United Kingdom* the Court held that, "it is a requirement of fairness under Article 6 ... that the prosecution must disclose to the defence all material evidence for or against the accused."²⁶⁵

The delegation was informed that in the case of ordinary crimes, defence lawyers have been given powers to examine all documents and evidence from the beginning of the investigation. Although they may occasionally not have access to the public prosecutor's file until after the indictment has been handed down, they are at least able to examine the file prior to trial. In State Security Court cases however, it is apparently not uncommon for lawyers to be denied access to detainees' files during the period of extended pre-trial detention. Indeed, by the time the lawyer sees the files, the case has often already come to court. In cases involving violations of the Anti-Terror Law, "insulting the President", or "defaming Turkish citizenship", defence lawyers have claimed to have been denied access to files which the State claims deal with national intelligence or security matters. This inability to access files takes on added significance in the civil law system, where the pre-trial work is such a critical stage of the prosecution.

We recommend that lawyers representing detainees charged with offences now within the jurisdiction of the SCCs be afforded access to their client's files during the period of pre-trial detention. Any exceptions should be minimal, clearly defined in writing and adjudicated upon by a judge.

264 Principle 21 of the UN Basic Principles on the Role of Lawyers.

265 *Edwards v. United Kingdom*, (1992) 15 EHRR 417.

■ *"All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials."*²⁶⁶

■ *"Governments should recognise and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential."*²⁶⁷

After the first four days of incommunicado detention in SSC cases, the judge, at the request of the prosecutor, may approve an extension of the detention period. At that point, the detainee is permitted to contact a lawyer. However, even once this stage in proceedings is reached, lawyers throughout Turkey face obstacles in providing effective legal advice and representation.

Article 20 of the October 1998 Regulations provides that, "the apprehended person may meet with the lawyer at any time and in an environment where others will not hear the conversation". Notwithstanding this guarantee however, the delegation received reports that defence lawyers must apply to the court for permission to visit detainees. Although judges usually grant such permission, attorneys are apparently often reluctant to visit their clients for fear of harassment. Alternatively, the security forces may simply deny that the lawyer's client is in the detention centre. According to lawyers involved in SSC cases, even when the attorney does meet with his client, the meeting is always in the presence of the police. Therefore, it is difficult to convey the necessary legal advice. The meeting usually lasts for no longer than 10 minutes.

The European Court has held that Article 6(3)(c) guarantees confidentiality of communication between a detained person and his lawyer:

"... an accused's right to communicate with his advocate out of the hearing of a third person is one of the basic

266 Principle 8 of the UN Basic Principles on the Role of Lawyers.

267 *ibid*, Principle 22.

requirements of a fair trial in a democratic society and follows from article 6(3)(c) of the Convention. If a lawyer were unable to confer with his client and receive confidential instructions from him without such surveillance, his assistance would lose much of its usefulness, whereas the Convention is intended to guarantee rights that are practical and effective."²⁶⁸

We therefore recommend that all detained persons be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without interception or censorship and in full confidentiality.

2. Limitations on the lawyers' role during the trial/hearing

- *"Governments shall ensure that lawyers (a) are able to perform all of their professional functions without ... hindrance."*²⁶⁹

Lawyers face further obstacles beyond the difficulties encountered at the pre-trial detention stage. The ability of lawyers to conduct an effective defence is restricted by the fact that State Security Courts routinely limit the period of time in which trial preparation may be undertaken. For example, even in a trial involving several defendants, the defence may find themselves limited to 15 days preparation. If they fail to meet this deadline then they forfeit the right to put forward a defence. Additionally, defence lawyers are unable to examine witnesses themselves. Instead, they may only suggest possible questions to the judge. The judge may then decline to ask the question at all or else ask it in such a way as to negate its effectiveness in establishing the defence case.

Turkish courts generally do not have any accurate mechanism for recording what is said by the parties during the course of the hearing or trial. A typist using a manual typewriter is employed to generate an

²⁶⁸ *S v. Switzerland* (1991) 14 EHRR 670, para. 48.

²⁶⁹ Principle 16 of the UN Basic Principles on the Role of Lawyers.

account of what is said in the courtroom, however, the typist records only that which the judge or public prosecutor dictates to him. The prosecutor has a right to summarise his own argument using his own words. Defence lawyers however are barred from dictating their defence argument directly into the record. Instead, defence lawyers must rely on the judge to summarise the testimony of witnesses, statements of defendants, and arguments of defence counsel. Although during the hearing, the defence lawyer can object to the judge's summary, acceptance of this objection is within the judge's discretion. After the hearing is over, the defence lawyer has no right to object to how his argument was summarised in the record.

We therefore recommend that:

- (1) legislative guarantees of an adequate opportunity for defendants (and their lawyers) to prepare their cases be enacted;**
- (2) defendants or their lawyers be permitted to examine and cross-examine witnesses themselves; and**
- (3) all court proceedings be sound-recorded (the cost of this can be quite modest)**

■ *"No court or administrative authority before whom the right to counsel is recognised shall refuse to recognise the right of a lawyer to appear before it for his or her client unless that lawyer has been disqualified in accordance with national law and practice and in conformity with these principles."*²⁷⁰

In Turkey, the law as presently constituted allows a judge to exclude the defendant and the lawyer if the peace of the courtroom will be disturbed. The judge need not give any reasons for doing so. The delegation was informed that not infrequently lawyers are both threatened with exclusion and actually excluded from hearings, particularly in SSC cases.

²⁷⁰ *ibid*, Principle 19.

A further matter brought to the attention of the delegation was that female Muslim lawyers are forbidden from wearing headscarves in court. This is seen as necessary to prevent religiosity menacing the continuance of secularism in government. Although, as we understand it, it is not illegal to wear a headscarf in Turkey, if female Muslims lawyers wish to do so, they can expect to be denied their rights of audience. According to the "Lawyers Association" in Istanbul, there are approximately 200 women in this situation in Istanbul alone. That the State might respect such persons' religious observance in this non-disruptive way would obviously not imply any obligation on the part of the State to permit disruption of secularism by other religious observance.

We therefore recommend that:

- (1) no lawyer be denied the right to appear in court on behalf of their client except for gross misbehaviour which would make the continuance of the proceedings impossible should the lawyer continue to appear;
- (2) no defendant be excluded from the courtroom except on grounds of disorderly behaviour;
- (3) female lawyers be permitted to appear in court attired as they wish, subject only to general norms of seamliness – these would permit Muslim women to wear headscarves.

- *"Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority."*²⁷¹

The proper administration of justice demands that lawyers be free to act upon their convictions without fear of personal consequences to themselves. Yet, in Turkey, statements made by defence lawyers in the course of defending their clients may result in prosecution. Although this is particularly true in hearings before the State Security Courts, given that the boundaries of the lawyer's immunity are indistinct and that judges have broad latitude, it is a problem faced by all lawyers in all courts in Turkey.

For example, on 19 February 1999, a hearing took place in Izmir Heavy Penal Court in a case against Ms. Bettil Duran, a lawyer, on charges of "insulting the members of the court board". The accusation against her was that during a hearing held on 10 December 1997 she had stated, "Torture has become an international problem. There are many provisions banning torture, but you do not apply them." The prosecution has asked for a sentence of between one and three years imprisonment for Ms. Duran. That she should be put in such peril indicates a gross over-reaction to a merely vigorous reminder to a court of its duty, as an advocate saw it.

The enthusiastic use of the power to punish for contempt conflicts with two universally recognised international human rights – the right to a fair trial and the right to freedom of expression. There can be no fair hearing and legal representation cannot be effective unless a party's advocate is free to advance all arguments and lead admissible evidence which can reasonably be said to support the client's case. The use of contempt powers in a manner that obstructs the measured and reasonable presentation of a litigant's case cannot be justified as necessary in a democratic society.

271 *ibid*, Principle 20.

We recognise that it may, on occasion, be necessary to take action against a legal representative in order to protect the authority or impartiality of the judiciary or public order, however, even in such circumstances, care must be taken to see that the response is proportionate. Where professional lawyers are considered to have over-stepped the mark, it will often be sufficient to allow the disciplinary body of the profession to investigate and, if necessary, to impose a penalty.²⁷² If the court is entitled to, and does impose punishment itself, it must observe the principle of proportionality.

We therefore recommend that:

- (1) all lawyers be afforded civil and penal immunity for statements made in good faith when appearing in court; and**
- (2) if they do not already do so, professional guidelines and judicial/prosecutorial education should recognise considerable latitude for advocates, burdened with the knowledge that dire consequences may befall their clients if they fail, in the heat of battle.**

D. Harassment and intimidation of lawyers

- *"Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not*

²⁷² Thus, in *Schopfer v. Switzerland* (1999) 4 BHRC 623 ECHR the European Court of Human Rights recently held that Article 10 had not been violated when a Swiss lawyer's professional association fined him Swiss Francs 500 because he had held a press conference at which he had criticised the public prosecutor in a pending case. The Court confirmed that lawyers are free to comment on the administration of justice, but because of their special role in the administration of justice it is legitimate to expect them to observe greater discretion. The Court noted that the lawyer in the case had addressed his remarks at a press conference and had not exhausted available remedies for his grievances within the pending case and the judicial process. A further factor which influenced the court was the modest amount of the penalty.

suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognised professional duties, standards and ethics."²⁷³

■ "Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities."²⁷⁴

■ "Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions."²⁷⁵

Lawyers in Turkey are on occasions subjected to harassment, intimidation, and violence merely for providing legitimate professional legal services to their clients. Lawyers who repeatedly conduct defences before the State Security Courts are, at least in some cases, considered to share the political views of their clients and, as such, termed "terrorist lawyers" by the police, the public prosecutors and the courts. Lawyers who appear in trials before the State Security Courts in cases of torture and extra-judicial killings are in some quarters qualified as "public enemies". Lawyers who publicly comment on the human rights practices of Turkey or the Kurdish situation tend to be regarded, in some official circles, as enemies of the state and branded separatists.

At its most severe, the systematic harassment and intimidation of lawyers takes the form of arrest and detention. Lawyers may be deprived of their liberty for prolonged periods of time.²⁷⁶ During this period they may be subjected to physical and emotional abuse and torture. Equally as concerning is the fact that lawyers may be exposed to prolonged and repeated criminal prosecution for their work. Less

273 *ibid*, Principle 16.

274 *ibid*, Principle 17.

275 *ibid*, Principle 18.

276 For example, the Diyarbakir Bar Association informed the delegation that on the occasion of Abdullah Ocalan's arrest earlier in the year, eight of their members had been arrested. The lawyers were kept in police custody for seven days but were not questioned. At the expiry of the custody time limit, the Head Prosecutor of the State Security Court decided not to prosecute the lawyers and ordered their release. The Bar Association stated that their members were detained for no other reason than because the authorities feared that there may be violence and they equated these lawyers as PKK sympathisers and hence potential ringleaders.

severe, but nevertheless equally objectionable forms of harassment include disrespectful or threatening treatment of lawyers in the performance of their duties by members of the security forces, including unnecessary searches,²⁷⁷ verbal abuse and interception of telephone calls.²⁷⁸

Independent justice means that all lawyers, apart from those engaged in criminal acts or conspiracies, should be able to function without pressure. Yet, as the following cases demonstrate, harassment and intimidation of lawyers is systematic throughout Turkey. The consequence in many cases is an effective diminution of the opportunity for access to counsel as lawyers are deterred from defending cases.

The Diyarbakir 25 Lawyers Trial

In November and December 1993, 25 lawyers practising in the Diyarbakir State Security Court were arrested, detained, tortured and then prosecuted after defending alleged members of the outlawed PKK.²⁷⁹ The lawyers were charged under Articles 168 and 169 of the Turkish Penal Code with membership of the PKK and aiding and abetting the PKK respectively. These charges exposed them to prison terms of between four and a half and 22 years.

277 The Izmir Bar Association informed the delegation that certain of their members regularly appear in cases before the Izmir State Security Court and that as a result the police on duty in front of the court know them well. According to the Bar Association, when attending court these lawyers are harassed by the police through, for example, particularly intrusive searches. When they go to prison to visit political prisoners they are harassed at the entrance by, for example, setting the metal detectors so that they will detect the slightest piece of metal. All this is apparently done to create difficulties.

278 The Diyarbakir Bar Association stated that their member's telephones are currently being tapped pursuant to a decree issued in September 1999. The decree authorises the security forces to tap the phone lines of individuals who are working for the advantage of criminal groups, however, due to the vague terminology employed, the authorities are able to bring defence lawyers appearing before the State Security Courts within its ambit.

279 The lawyers are Sabahattin Acar, Husniye Olmez, Tahir Elci, Mesut Bestas, Meral Danis Bestas, Vedat Erten, Mehmet Selim Kurbanoglu, Imam Sahin, Aruz Sahin, Mehmet Arif Altunkalem, Fuat Hayri Demir, Baki Demirhan, Mehmet Gazanfer Abbasioglu, Nevzat Kaya, Sinasi Tur, Niyazi Cem, Mehmet Bicen, Zafer Gur, Sinan Tanrikulu, Feridun Celik, Abdullah Akin, Edip Yildiz, Favzi Veznadaroglu, Cebaz Leygara, Sedat Aslantas.

While in detention, the lawyers were questioned about their activities as defence lawyers, for example, as to why they attended hearings on behalf of suspected PKK and why they denounced human rights abuses. Without exception, all of the lawyers claimed that they were tortured and ill-treated throughout the interrogation procedure. They complained variously of being continually blindfolded, beaten, deprived of food and water, subjected to death threats and mock executions, forced to strip naked in frigid conditions and hosed with cold water. Nevertheless, the Turkish authorities have ignored the lawyer's complaints and to this day no investigation has been initiated into any of the alleged abusers.

Originally 16 lawyers were indicted; although the number subsequently increased to 25. The first hearing was on 17 February 1994, followed by hearings throughout the year, and in 1995-1996. Subsequently, the number of lawyers indicted decreased to 20. A hearing held on 21 January 1997 was adjourned to 8 April 1997 because the military judge of the court had been replaced and his successor was not yet familiar with the case. On 8 April 1997, the hearing was again adjourned because four defendants were added to the list.

In October 1999, the public prosecutor declared his opinion that nine of those accused of being members of the PKK should be sentenced to 20 years imprisonment. For the rest, he called for a minimum of four and a half years in prison for supporting the PKK. Generally, when a prosecutor expresses an opinion on sentencing, the actual sentence passed by the judge is about the same. After six years, the trial continues.

The Aydin Lawyers

On 21 April 1998, a trial in which members of the security forces were charged with killing Zenfel Kaya during a ten-day period of detention concluded in the town of Aydin. The court sentenced the accused police officers to six years imprisonment for the killing.

The delegation was informed that throughout the trial, the lawyers in the case suffered serious episodes of intimidation. As the case against the policemen accused of murdering Zenfel Kaya proceeded,

the lawyers were apparently subjected to overt and constant harassment by police officers and other sympathisers present at the hearing.

We were told that as soon as the sentence was declared, 44 off-duty police officers who had been sitting in the public gallery stood up and began to shout. They entered the body of the courtroom and proceeded to viciously attack both the lawyers and the judge. The police also beat the journalists in the courtroom and stopped them from recording by smashing their cameras. After some time, official security forces in uniform entered the courtroom. The uniformed police drove the lawyers into a corner of the room where they were beaten. Three or four lawyers managed to jump into the area where the judge was sitting but the rest were beaten as they were forced out of the courtroom. Both uniformed and off-duty officers beat the lawyers.

The disorder apparently continued outside the courtroom and because the lawyers could not leave the Palace of Justice, they asked the prosecutor to protect them. The prosecutor escorted the lawyers to awaiting cars in an attempt to shield them from further attacks. Nevertheless, while getting into the cars, both uniformed and off-duty police officers continued to attack the lawyers. One of the uniformed police officers hit the prosecutor. The prosecutor turned back and saw the man who had hit him. The prosecutor ordered other police to detain the man but they refused.

The Izmir Bar Association brought a complaint in order to obtain permission to prosecute the officers concerned. Permission was granted for only six of the 44. The trial, which is presently closed to the public, has to date taken 2 years and still continues. Meanwhile, the accused police officers remain on duty.

Kamil Tekin Surek²⁸⁰

Mr. Surek, a lawyer, was expelled from the Bayrampaea Security Directorate, by Security Director Kemal Yazici, when he went to meet

280 This case and those that follow are reported in "Attacks on Justice: 'The Harassment and Persecution of Judges and Lawyers'", March 1997-February 1999, published by the International Commission of Jurists, Geneva.

his client, Sahin Bayar, a reporter for the newspaper Emek who had been detained on 29 July 1997. Mr. Surek said that Kemal Yazici, who approached him while he was talking to his client shouted at him, "traitor, enemy of the state, separatist!" Mr. Surek stated, "I am here because the Code of Criminal Procedure gives me the right to be here. It is my duty to come here." Mr Surek was forcibly driven out of the building by the Security Director.

Cihan Tokat, Mustafa Ayzit and Hidir Cicek

Mr. Tokat, Mr. Ayzit and Mr. Cicek, lawyers from the Istanbul Bar Association, were put on trial in November 1996 by the Istanbul State Security Court Prosecution Office under Article 169 of the Turkish Penal Code on allegations that they were "couriers between prisoners and illegal organisations". The trial ended in acquittals on 27 October 1998.

Hasan Dougan

On 6 May 1997, Mr. Dougan, a lawyer, was detained when he answered a summons to appear before the State Security Prosecutor in Malatya, a provincial town in eastern Turkey and intervened with the Government of Turkey on 15 May 1997. He was held on suspicion of support for the Kurdish Workers' Party (PKK), a violation of Article 169 of the Turkish Penal Code.

On 5 May, Mr. Dougan had been involved in a heated argument with a judge in the Malatya State Security Court while defending one of his clients, who had retracted a confession he claimed had been made under duress. The allegations against Mr. Dougan arose from the evidence of an informer, a convicted prisoner co-operating with the authorities in the hope of receiving more favourable treatment. According to Turkish law, "confessors" can obtain a reduction of sentence if they implicate others in their confessions. The allegations of being a member of the terrorist organisation PKK were based on the fact that Mr. Dougan is a lawyer defending clients politically unpopular with the government.

Apparently, during the trial in May 1997, his client Mr. Ismail Yilmaz told the court that he wished to dismiss Mr. Hasan Dougan because the lawyer would constantly force him to deny his previous confessions made to the court, and suggested that he insist on being transferred to the dormitory of political offenders. On the grounds of Mr. Yilmaz's testimony, the Public Prosecutor lodged an indictment against Mr. Dougan.

The Prosecutor's indictment asserts that Mr. Dougan is a member of the PKK. It emphasises his service as a courier to the organisation, and also the fact that he provided shelter to members of the organisation. The indictment was established through reliance on testimonies of some of the prisoners who had been Mr. Dougan's previous clients, and on letters found on members of the PKK, which stated that Mr. Dougan was paid by the PKK for his services in the court. Hearings on the case took place on 17 June 1997, 4 September 1997, 2 October 1997, 4 November 1997 and 2 December 1997. Mr. Dougan was released after a court hearing on 7 August 1997.

Murat Celik

Mr. Celik, a lawyer, was beaten by police officers during the funeral of Serpil Polat, who had set herself on fire at Sakarya Prison on 17 February 1999. On 18 February, while he had been carrying out the funeral proceedings, a police officer had taken him to the office of a certain Atilla Cinar, where the latter had punched him saying, "Why do you deal with these funeral things? Can a dead person have a lawyer?" Murat Celik said that later seven or eight police officers inside the room, including Anti-Terror Branch Director Sefik Kul, had attacked him, and added that he had been taken out of the building while being beaten.

Efkan Bolac, Metin Narin and Alper Tuaga Saray

These lawyers were detained by the police, along with their office staff, on 7 January 1997. The lawyers were accused of "aiding an illegal organisation". The accusation was based on the testimony of Mustafa

Duyar, a member of the Revolutionary People's Liberation Party-Front (DHKP-C), and one of the assassins who killed Ozdernir Sabanci, a leading businessman of the country, Haluk Gorgun, an executive of his company, and secretary Nilgun Hasefe on 9 January 1996. In addition, the houses of the lawyers were raided. The detainees, except Mr. Narin, were released later and an arrest warrant in absentia was issued in respect of lawyer Ahmet Duzgun Yuksel. Mr. Narin was released on 3 June 1997. Later, Metin Narin was put on trial under Article 169 of the Turkish Penal Code and accused of "aiding an illegal organisation." Ahmet Duzgun Yuksel is in Germany where he has been granted refugee status.

Yusuf Alatas

Mr Alatas, a lawyer, was threatened by police officers while he was entering the building of the Ankara State Security Court on 12 December 1996. He was put on trial on charges of "insulting the police". During the hearing in September 1997, Presiding Judge Ihsan Akcin withdrew on the grounds that he could not make an impartial judgement because he had been one of those who approved the permission given by the Department of Punitive Affairs of the Ministry of Justice for Mr. Alatas' prosecution. On 2 December 1997 Mr. Alatas was sentenced to two months in prison. The prison term was later commuted into a fine and temporary suspension.

Sinan Tanrikulu

On 27 February 1995, Mr. Tanrikulu, a lawyer and member of the Diyarbakir branch of the Human Rights Association, was detained along with ten others. Mr. Tanrikulu represented Mahmut Sakar, Abdullah Cager, Nimetullah Gunduz, Halit Temli, Hayri Veznedargoglu and Huseyin Yildiz against charges in connection with the HRA's publication of the State Emergency Report in 1992. Each of the eleven detainees were held incommunicado in Diyarbakir gendarmerie for ten days before being brought before the State Security Court on 9 March 1995. At the hearing, Mr. Tanrikulu claimed he was being prosecuted because he was a defence advocate in the State

Security Court. All were accused of being members of the PKK and of criticising the state by sending false petitions to Europe. In 1996 he was acquitted and released.

We therefore recommend that:

- (1) at first instance, the Bar Association have the primary competence to conduct disciplinary proceedings against lawyers on its own initiative or at the request of a litigant, an appeal to lie from a decision of the Bar Association's disciplinary committee to an appropriate appellate body;**
- (2) if one does not already exist, the Bar Association establish and enforce in accordance with the law a code of professional conduct for lawyers. Any disciplinary proceedings be determined in accordance with the code of professional conduct and in light of the UN Basic Principles on the Role of Lawyers;**
- (3) where, exceptionally, resort to civil procedures in respect of alleged professional misconduct would not provide an adequate remedy, criminal prosecution of lawyers in respect of their professional activities should only occur where (a) there is evidence which is both clear and credible and (b) where the alleged wrongdoing involves some serious impediment to the administration of justice;**
- (4) all pending prosecutions against lawyers be reviewed at the highest level of the appropriate prosecuting authority to consider the adequacy of the evidence favouring conviction and the extent to which, despite a formal sufficiency of evidence, there is any real prospect of conviction.**

E. Freedom of expression and association

- *"Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration*

*of justice and the promotion and protection of human rights and to join or form local, national or international organisations and attend their meetings, without suffering professional restrictions by reason of their lawful action of their membership in a lawful organisation."*²⁸¹

1. Freedom of expression

Lawyers perform a vital social function in representing and articulating rights and grievances in society and as such they are entitled to the same freedom of expression as other citizens. In particular, they must be afforded the right to take part in public discussion on matters concerning the law and the administration of justice and they must not be subjected to any professional restrictions by reason of their beliefs. Yet, as the following cases demonstrate, lawyers in Turkey are routinely subjected to criminal prosecution for commenting on matters of law, the administration of justice or their country's human rights practices.

Eren Keskin²⁸²

On 6 February 1997, Eren Keskin, a lawyer and Deputy Chairperson of the Human Rights Association, was sentenced to one year and 40 days in prison by the Istanbul State Security Court for an interview published in the journal *Median Sun* in March 1995. She was accused of "making separatist propaganda" under Article 8 of the Anti-Terror Law.

Ercan Demir

At least sixteen cases have been launched against Mr. Demir, a lawyer and chairperson of the HRA Izmir Branch. He is accused of violating the Law on Public Meetings and Demonstrations in thirteen

281 Principle 23 of the UN Basic Principles on the Role of Lawyers.

282 This case and those that follow are reported in "Attacks on Justice: 'The Harassment and Persecution of Judges and Lawyers'", March 1997-February 1999, published by the International Commission of Jurists, Geneva.

cases, as well as violating Law No. 2908 and violating the Anti-Terror Law in one case and several official investigations. He was sentenced to one year and six months in prison on 10 September 1997 as a result of a press statement he issued concerning hunger strikes in prisons, which had caused the deaths of twelve prisoners in 1996.

Kemal Kirlangic

On 7 February 1999, the Izmir Public Prosecution Office launched a trial against Mr. Kirlangic, a lawyer, under Article 159 of the Turkish Penal Code on accusations that he "insulted the laws" in his book '*Sanik Yasular*' (Laws on Trial). The Izmir State Security Court Prosecution Office had previously launched an investigation against the book, and had decided not to prosecute. Meanwhile, the Izmir Public Prosecutions Office reportedly applied to the court to confiscate the book, but this demand was rejected.

Ercan Kanar

More than 30 cases have been launched against Mr. Kanar, a lawyer and chairperson of the HRA Istanbul Branch. At least 25 of the cases launched against him have ended in acquittals. He was sentenced to 10 months in prison under Article 159 of the Turkish Penal Code in two cases launched against him for two articles published in the newspapers *Ozgur Gundem* and *Yeni Politika* in 1994 and 1995. The prison terms given to him were suspended. He was also sentenced to six months in prison for a speech he made as a lawyer in a trial against sixteen police officers charged with killing four persons in Tuzla on 7 October 1998. This prison term has been commuted to a fine.

Ahmet Zeki Okcuoglu

On 13 June 1997, Mr. Okcuoglu, a lawyer, was imprisoned after the Supreme Court upheld a 10-month prison term given to him by the Istanbul Heavy Penal Court No.2 for an article he published in the

newspaper *Azadi* in 1993. He was indicted for "insulting the State" under Article 159 of the Turkish Penal Code. He served the prison term and was then released.

Sedat Aslantas and Husnu Ondul

The two lawyers and members of the HRA were arrested for publishing "A cross-section of the burned villages", which allegedly contained separatist propaganda. They were tried on 19 December 1994 and acquitted on 11 January 1995. The State Security Court in Ankara asked for a retrial, but the acquittals were confirmed in May 1995. The prosecution filed a complaint under Article 159 of the Turkish Penal Code, claiming that security officers had been insulted by statements made in the book. Mr. Aslantas has brought the case before the European Commission on Human Rights. It was declared admissible on 15 September 1997.

These cases demonstrate the absence of freedom expression afforded to lawyers in Turkey.²⁸³ Lawyers should be able to take part in public discussion of matters concerning the law and the administration of justice. They should be able to propose and recommend well considered law reforms and inform the public about such matters. Any interference with the lawyer's ability to do so, such as through criminal prosecution for non-violent speech and advocacy, serves only to undermine the role of lawyers in society and the independence of the legal profession.

We therefore recommend that the prosecution of lawyers for the legitimate expression of their professional and political beliefs and for commenting on the administration of justice be avoided.

283 Although there is considerable evidence that non-lawyers also lack the ability to express themselves freely, the gross lack of freedom of speech for citizens generally is not, as such, a matter that we had time, or the terms of reference, to investigate.

2. Freedom of association

Bar Associations and other professional associations of lawyers have a vital role to play in striving to protect their members and uphold and defend their independence against improper restrictions or infringements. Unlike judges and public prosecutors, lawyers in Turkey are permitted to organise and join autonomous lawyers' associations ('Bar Associations')²⁸⁴ recognised by law.

However, although Turkish Bar Associations appear outwardly free to represent their member's interests, one important deficiency remains. We consider that in so far as decisions of the Bar Association are regularly subject to approval of the Ministry of Justice, they remain over-regulated by the State.

At present, whenever a Bar Association makes a decision, for example as to discipline or registration, the lawyer concerned has a right to appeal against that decision to the Union of Turkish Bars. If the Union of Turkish Bars upholds the Bar Association's decision, then the individual lawyer may appeal to the Ministry of Justice. Upon approval of the Ministry of Justice, the decision becomes final. If the Union of Turkish Bar's decision is not approved by the Ministry of Justice, then the Union may bring a lawsuit in the Council of State. In practice, as we were given to understand, this system means that if a Bar Association wishes to discipline one of its members, such a course of action must be approved by the Ministry of Justice.

In so far as the Ministry of Justice has a final say on decisions taken by Bar Associations and the procedures for performing their profession, such Associations remain dependent upon and under the control of the Ministry of Justice. This is not acceptable by international

²⁸⁴ Having joined a Bar Association, lawyers may, of course, additionally join other legally oriented associations such as the Contemporary Lawyers Association (CLA). Founded in 1974, the CLA promotes legal reform aimed at both improving the role of defence lawyers in legal proceedings and reducing the incidence of human rights violations in Turkey. The CLA presently has approximately 2,500 members throughout the country.

standards. Governmental control, where it ever existed, has generally been superseded by professional self-regulation, if necessary with the injection into the regulatory process of non-lawyers to represent the public interest. There can be no objection to concurrent arrangements whereby persons aggrieved by the alleged behaviour of lawyers can invoke an *investigation* by a public official not acting at political direction, with the final decision being given by a self-regulatory body. Governmental control of the kind that exists in Turkey could only be justified if self-regulation had manifestly failed; in Turkey, it has not been tried.

We recommend that guardianship of the Ministry of Justice over the Bar Associations be removed with a view to ensuring that such associations are free and independent and that lawyers can, within acceptable limits, regulate themselves.

The Minister of Justice informed the delegation that, although according to law Bar Associations are under the financial and administrative regulation of the State, in practice there is no intervention in their work. Notwithstanding this however, Professor Dr. Eralp Ozgen, President of the Union of Turkish Bar Associations, informed the delegation that the Parliamentary Commission of Justice has proposed a draft law which, when enacted, will remove the authority of the Ministry of Justice over the Bar Associations. Under the new system, the appeal to the Union of Turkish Bars will be the final appeal. Decisions of the Bar Associations will not go before the Ministry of Justice. We welcome this development as a positive step towards securing the independence of lawyers.

F. Intimidation and harassment of human rights advocates

1. Turkey's legal obligations to human rights advocates

Human rights advocates, including lawyers acting as such, play an important role in securing protection of international human rights and fundamental freedoms. So important is this role that it is recognised in the UN Declaration on the Right and Responsibility of Human Rights

Defenders ("Defenders Declaration").²⁸⁵ The Defenders Declaration was adopted by the UN General Assembly on 10 December 1998 as the international community's authoritative statement of acceptable practices with regard to the role of human rights defenders. The Declaration imposes upon States an obligation not only to permit human rights advocacy but to ensure a climate in which human rights advocates are protected from harassment and violence as a result of their work.

Notable among the Declaration's provisions are Article 9 which emphasises the right "to complain about the policies and actions of individual officials and government bodies with regard to violations of human rights and fundamental freedoms" and Article 10 which emphasises the right to "participate in peaceful activities against violations of human rights and fundamental freedoms." The Defenders Declaration also obliges States to:

"take all necessary measures to ensure the protection by the competent authorities of everyone, individual 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 their legitimate exercise of the rights referred to in this Declaration."

In addition to the Defenders Declaration, the European Convention on Human Rights and Fundamental Freedoms imposes an obligation on Turkey to protect the rights of free speech (Article 10) and freedom of assembly (Article 11) of all persons.

2. Limitations on the role of human rights advocates

Human rights defenders in Turkey face many of the same restrictions as we found in relation to defence lawyers acting narrowly in that role. Individual advocates are harassed, intimidated, indicted and

²⁸⁵ The full title of the Defenders Declaration is "Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms."

imprisoned for their non-violent statements criticising government policies in sensitive areas. In addition, human rights organisations are closely scrutinised, their publications are banned and their branch offices are raided and forced to close down.

An array of vague and broadly worded security laws permit prolonged prosecutions of human rights activists and the repeated closure of human rights organisations. The most commonly employed provisions include Law 2908 of the Law of Associations (prohibiting "disseminating separatist propaganda" and "inciting enmity between people through racial and regional discrimination"), Art. 8(1) of the Anti-Terror Law (banning "disseminating separatist propaganda"), and Turkish Penal Code Art. 312(2) (forbidding "inciting enmity between people"). The government justifies prosecutions under these Articles on grounds that they are directed against statements or activities which promote terrorist activity, question the territorial integrity of the state, or question the republic's secular foundations. We consider however that the application of the aforementioned laws to a wide range of peaceful political expression cannot be sustained under Article 10(2) of the European Convention on Human Rights.

We therefore recommend that a clear delineation of what constitutes acceptable and unacceptable expression should be established in statutory law based on the language of the European Convention on Human Rights, and the judgements of the European Court of Human Rights.

The official attitude towards human rights advocacy in Turkey was demonstrated to the delegation during the course of its mission. On 15 November 1999, 115 human rights defenders who had planned to protest the arrival of President Clinton in Turkey were detained in Ankara. The protesters were detained on 15 November and released at 11 o'clock the following evening. According to the Contemporary Lawyers Association, these human rights advocates are presently awaiting trial on charges of organising an illegal protest and resisting arrest.

The case of Akin Birdal provides a notorious example of the manner in which human rights advocates are subjected to harassment through prolonged illegitimate prosecution.

Akin Birdal

From 1995 to the present, Mr. Birdal, Former Chair of the Human Rights Association in Ankara, has been prosecuted in over 21 actions. He has been convicted in three. The Konya SSC sentenced Mr. Birdal to one year of imprisonment under Article 312 of the Turkish Penal Code for a speech he made in a meeting during a "1995 Peace Week" held in Mersin. Additionally, he has been sentenced to three months in prison in connection with a poster discussing a campaign against disappearances. This sentence was subsequently commuted to a fine. In July 1998, the Ankara SSC sentenced Mr. Birdal to a further term of one years imprisonment for "inciting hatred" in a speech he made on "World Peace Day" in 1996. The speech called for a peaceful end to the Kurdish conflict. The Court of Appeals affirmed this conviction on 28 October 1998. Mr. Birdal was released on 25 September 1999 for medical reasons.

In addition to these three convictions, Mr. Birdal has been acquitted in a further seven actions. Individually, he has been tried and acquitted in connection with a written statement made in a book published by the HRA, a speech made on 10 December 1996 during Human Rights Week, a speech made on 17 June 1997 in Ankara and a speech made in connection with the "Peace Journey" in Golbasi on 2 September 1997. Mr. Birdal has also been tried and acquitted along with three other HRA members in connection with the HRA's 1993 Regional Report entitled 'A Cross-Section of the Burnt Out Villages'. Along with 17 members of the HRA's executive board, Mr. Birdal was also tried and acquitted in connection with a special edition of a bulletin entitled 'The Sole Solution is Peace'. Finally, on 23 February 1998, together with 10 members of the HRA, he was acquitted on charges of disseminating separatist propaganda and inciting racist and ethnic enmity for speeches made during Human Rights Week in which he condemned human rights violations. At the time of the mission, there were several other charges still pending against Mr. Birdal, all related to his writings and public speeches.²⁸⁶

²⁸⁶ In May 1998, Mr. Birdal was in his office in Ankara when two men with whom he was meeting pulled out guns and fired 14 shots at him. Six bullets entered his body and he was hospitalised in a critical condition.

Dr. Alp Ayan, Gunseli Kaya and others

On 26 September 1999, a mass killing in the Ankara Central Prison resulted in the deaths of 10 prisoners and the wounding of several others. The funeral of one of the victims, Nevzat Ciftci, was held in Helvacı Village in Aliaga, Izmir on 30 September 1999. A group of people attended in order to participate in the funeral procession along a deserted village road. As they attempted to enter the village, they were stopped by the local gendarmerie, beaten and then detained. A total of 76 people were initially detained and 14 of these, most of whom were members of the Human Rights Association, were remanded in custody. Among the remanded persons were Gunseli Kaya, secretary of the Izmir Representative Office of the Human Rights Foundation of Turkey (HRFT) and Dr. Alp Ayan, psychiatrist of the HRFT Izmir Treatment and Rehabilitation Centre.²⁸⁷

The minutes prepared by the gendarmes accused the detainees who participated in the funeral ceremony, "of resisting the gendarmes and of making propaganda at the funeral of a member of an illegal organisation." The minutes claimed that Dr. Alp Ayan and Gunseli Kaya, who are renowned human rights defenders, were "identified to be provocateurs". Aliaga Public Prosecution Office issued a decision of non-authorisation on the accusations in question, and referred 68 of the detainees to the Izmir SSC. The SSC issued a ruling of non-authorisation, adducing that the case was not under its jurisdiction. The ruling of the SSC concluded that the detainees should be put on trial under Article 526 of the Turkish Penal Code (TPC), which makes it an offence to "disobey an order issued for the protection of public order, provided that the order in question is given in a manner in conformity with the laws and regulations". This provision requires imprisonment terms of between 3 and 6 months. Following a hearing at Aliaga Principal Criminal Court that lasted until 06.15 a.m. on 3 October 1999, it was decided that Dr. Alp Ayan, Gunseli Kaya and 12 others would be prosecuted on remand under Article 32(3) of the Law on Meetings and Demonstrations. This provision requires an imprisonment term of

287 The names of the other 12 remanded defendants are as follows: Haydar Cenar, Mihdi Perinçek, Birol Karaaslan, Hacay Yılmaz, Turgut Yenidünya, Erkan Polat, Sinan Yaman, Cihan Erkul, Cem Pekdemir, Ahmet Uzuner, Zafer Dogan and Urfan Güleser.

between 3 and 5 years for those who react to the decision of the security forces to dispel a meeting or demonstration with "coercion, violence, threat, attack or resistance." It was also decided that they should be prosecuted under Article 7(2) of the Anti-Terror Law, which requires an imprisonment term of between 1 and 5 years for those who aid "members of a terrorist organisation and disseminate the propaganda of that organisation." It was further decided that the other 54 detainees would be prosecuted on the same charges but without being remanded. The trial commenced at Aliaga Penal Court of First Instance on 20 January 2000.

Taken together, these two cases illustrate the manner in which elements of the Turkish authorities are able to employ legal mechanisms to harass, intimidate and obstruct individual human rights advocates in the performance of their legitimate works. However, Turkish law also enables the authorities to pursue human rights organisations.

The delegation was informed that the Human Rights Association (HRA), a non-governmental organisation with nearly 16,000 members and 58 local branches across Turkey, has, in recent years, been under persistent pressure and suffered numerous acts of harassment at the hands of the authorities. The state has brought over 100 court actions against the HRA and over 300 HRA executives have been prosecuted in these actions. Governors of various provinces have issued closure orders against HRA branches and 13 branches in the south-eastern region have had to stop operating because of repression, persecution and threats against their executives.²⁸⁸ HRA publications have been confiscated and 11 members and executives of the Association have been assassinated by death squads.

In addition to the HRA, a number of other organisations have been targeted for harassment or closure. For example, in April 1998, the Government closed the Mersin Migrants' Association, an organisation founded by ethnic Kurds to assist displaced Kurdish migrants. The

²⁸⁸ Branches of the Human Rights Association in Diyarbakir, Izmir, Mardin, Sanliurfa, Balikesir, Malatya, Kirsehir, Urfa, Adana and Konya have been closed down for periods of a few days to several months in recent years.

closure notice cited the discovery of unauthorised publications and activities inconsistent with the association's charter. Prior to its closure, the Association – the first NGO of its kind in the south-east – assisted thousands of Kurdish migrants who fled villages in south-east Turkey to the southern port of Mersin. It provided medical and legal services to migrant families, negotiated wage contracts for migrant labourers, and served as an ombudsman for Kurdish migrants with the government. The government has also taken steps against the pro-Islamic Mazlum Dar, a leading human rights group emphasising religious freedom. It has repeatedly had its offices searched, its property seized and its members prosecuted. The Human Rights Foundation of Turkey (HRFT), which operates torture rehabilitation centres across Turkey and serves as a clearing house for human rights information, reported that they had been prosecuted for publishing books on the issue of torture and that several of their branches had also been shut down. The Diyarbakir branch of the HRFT informed the delegation that, by court order, the security forces routinely listen to their telephones.

G. Conclusion

The right to justice and a fair trial is a fundamental right recognised by all relevant international treaty documents and instruments. The right to effective legal representation by an independent legal profession is a basic element in the administration of good justice.

To enable any legal profession to effectively perform its proper role in the defence of individual rights, lawyers must be able to counsel and represent their clients in accordance with their established professional standards and judgement without any restriction, influence, pressure, threat or undue interference from any quarter. Yet, during the course of our mission, we observed numerous obstacles within the Turkish legal system that appear to serve little purpose other than to exalt agents of the State to an unnecessary degree and to seriously undermine the extent to which members of the legal profession are able to perform their professional duties. Such a state of affairs is unacceptable in any country that professes to respect the rule of law.

We are particularly concerned that Turkish lawyers continue to face harassment and intimidation as a result of their work. Every person and every group of persons has the right to call upon the services of a lawyer to represent his or their interests or case within the limit of the law, and the lawyer has the duty to act, to the best of his abilities, towards this end. In consequence, neither the authorities nor the public should associate the lawyer with his client or with his client's case, however popular or unpopular it may be.

It is also of concern that, like defence lawyers, human rights advocates and human rights organisations in Turkey continue to suffer official and officially tolerated harassment, intimidation, and obstruction in the performance of their legitimate works. In recognition of the importance of human rights advocacy in securing observance of international human rights standards, we urge the Government of Turkey to ensure a climate in which human rights advocates are protected from harassment and violence as a result of their work.

IX - TORTURE AND POLICE IMPUNITY

A. Introduction

In this chapter we begin by briefly documenting Turkey's domestic and international obligations to protect detainees from torture. We then outline the use and prevalence of torture in Turkey. The major part of the chapter then examines in some detail the failure of domestic procedures for the investigation, prosecution, and punishment of individuals who commit acts of torture and the resulting climate of impunity. A section is also devoted to the role of the medical profession in detecting and preventing the incidence of torture.

B. Protection of detainees against torture

1. *Turkey's obligations under international law*

Turkey is a party to most of the international and regional human rights instruments under which the State has an obligation to eliminate the use of torture and provide an effective means of redress for victims of torture and ill-treatment at the hands of public officials.

As was stated earlier, the most important instruments to have been ratified by Turkey are the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;²⁸⁹

²⁸⁹ Article 2 of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment calls on "[e]ach State Party ... [to] take effective legislative, administrative, judicial or other measure to prevent acts of torture in any territory under its jurisdiction." Article 4 requires that acts of torture be defined as criminal under domestic law and punishable by appropriate penalties. Article 13 provides that "[e]ach State Party shall ensure that any individual who alleges he has been subjected to torture ... has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities." Article 14 adds an obligation to provide redress and adequate compensation to torture victims.

the Convention on the Rights of the Child; the European Convention for the Protection of Human Rights and Fundamental Freedoms,²⁹⁰ and the European Convention for the Prevention of Torture. It must be emphasised that Article 90 of the Turkish Constitution provides that:

“International agreements duly put into effect carry the force of law. No appeal to the Constitutional Court can be made with regard to these agreements on the ground that they are unconstitutional.”

2. Domestic constitutional and statutory prohibition against torture

The domestic law of Turkey formally meets some of these international obligations by prohibiting and criminalising torture and ill-treatment by State officials. Article 17 of the Constitution provides that “[n]o one shall be subjected to torture or ill-treatment incompatible with human dignity”.²⁹¹ The Turkish Penal Code also criminalises the use of torture. Article 243, as recently amended, establishes that an official who “tortures an accused person or resorts to cruel, inhuman or degrading treatment in order to make him confess his offence, shall be punished by heavy imprisonment for up to eight years and shall be disqualified from the civil service either temporarily or for life”.²⁹² Article 245, as recently amended, applies to ill-treatment by the police and provides that “[t]hose authorised to use force and all police officers who, while performing their duty or executing their superiors’ orders, threaten or treat badly or cause bodily injury to a person or who actually beat or wound a person in circumstances other than prescribed by

290 Article 3 of the European Convention on Human Rights and Fundamental Freedoms provides that “[n]o one shall be subjected to torture or to inhumane or degrading treatment or punishment.” Article 5 provides that “Everyone is entitled to liberty and security of person.” Article 13 of the European Convention addresses the issue or remedy: “Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

291 Turkish Constitution, Art. 17. Article 38 states that “No one shall be compelled to make a statement that would incriminate himself or his legal next of kin, or to present such incriminating evidence. *Ibid* Art. 38.

292 Turkish Penal Code, Art. 243.

laws and regulations, shall be punished by imprisonment for six months to five years and shall be temporarily disqualified from the civil service".²⁹³

The delegation welcomes the amendments to Articles 243 and 245 of the Turkish Penal Code increasing the length of custodial sentences for those found guilty of torture and other related offences.

Other legal measures protecting against abuse by police officers include Articles 181 and 228 of the Penal Code. Article 181 provides, "[w]here a government official, by abuse of his duty of failure to adhere to legal procedures and conditions, deprives a person of his personal liberty he shall be punished by imprisonment for not less than one year and no more than three years." Similarly, Article 228 provides, "[a] public officer who, by misuse of his authority, and in violation of laws and regulations, takes an arbitrary action regarding a person or a public officer or orders or causes others to order such an action, shall be punished by imprisonment for three months to one year; and if the offender had a special purpose for taking such action, the punishment shall be increased by not more than one third ..."

C. The use and prevalence of torture in Turkey

Despite these domestic and international prohibitions on torture, the delegation remains convinced that torture of detainees in police custody continues to be a serious problem in Turkey.

While most (but, regrettably, by no means all) authorities that we interviewed conceded that there are some cases of torture committed by State agents, all denied that police brutality is either systematic or routine. Instead, any incidents of torture were characterised as isolated occurrences, not supported by the Government and the product of inadequate discipline among individual anti-terror police. Without exception, the authorities also maintained that the number of complaints of torture has diminished in recent years, however, they were

²⁹³ *Ibid*, Art. 245.

notably unable to provide any empirical evidence in support of this assertion.

In contrast, the delegation received a great deal of credible information from non-governmental sources, both before and during the mission, alleging that the situation had not improved at all, or had improved but little, with torture continuing to be a widespread and systematic practice. We were informed that the practice of torture continues both as a tool for investigation and as a means of reinforcing the power of the police over the people by frightening and manipulating the whole of society. The Human Rights Foundation of Turkey (HRFT), a domestic non-governmental organisation committed to the documentation and prevention of torture and to the treatment of torture victims, reported that in 1997, 537 people applied to their Treatment and Rehabilitation Centres as victims of torture.²⁹⁴ In 1998, the corresponding figure stood at 706 and during 1999, 900 applications were received. The Human Rights Association (HRA), a non-governmental organisation, reported that during the period January to September 1999, it had observed 138 people exposed to torture or alleged torture.

Of course, disturbing as these figures are, they cannot be said to represent the total number of torture victims. Although it is doubtless true that not all torture claims are valid, it is also fair to say that, for a variety of reasons, the majority of genuine cases remain unreported.²⁹⁵ For example, torture victims are reluctant to report to the authorities when they know that legal proceedings are rarely initiated against law enforcement officers who commit torture and that even when proceedings are initiated, they rarely result in the conviction of the perpetrators. Even in the exceptional cases in which a law enforcement officer is sentenced, the sentence tends to be very lenient. Also, in some cases, the torture victims, particularly sexually abused women, feel so humiliated and/or in fear of social consequences should their dishonouring become known, that it is very difficult for them to admit and denounce the torture inflicted on them. Further, only individuals who are

294 Human Rights Foundation of Turkey, *State of Human Rights in Turkey*, 8 (1997).

295 For example, the Human Rights Foundation of Turkey (HRFT) reports that when 30 students were tortured in Davulter, Aydin, in October 1997, only one of them lodged an official complaint with the public prosecutor.

familiar with the rehabilitation centres will in fact contact them. Finally, the perception of what constitutes torture is also relevant. The delegation was informed that often only the most brutal of physical torture is considered as such by the victim. For example, a lawyer and Board Member of the Human Rights Association of Izmir told the delegation:

"Yesterday a 17 year old boy was detained in front of the Kurdish building. He had previously been imprisoned for taking part in a demonstration to protest the arrest of Ocalan. The police who detained him took him to the Anti-Terror headquarters and allegedly asked him what kinds of activities were planned if the Ocalan decision was upheld. When I asked him if he was tortured he said, "No, they only blindfolded me and laid me down and smashed my head on the wall from time to time."²⁹⁶

According to the HRFT, coercive techniques commonly employed by the Turkish security forces include: deprivation of food and water, blindfolding, stripping, hosing with pressurised cold water, beating (including on the soles of the feet and genitalia), suspension by the hands and arms, squeezing of testicles, electric shock, sleep deprivation, solitary confinement, forced standing in front of air-conditioning units, insults, threats and vaginal and anal rape with truncheons.²⁹⁷ The pattern of torture appears to have changed in recent years, with practices becoming more sophisticated in some areas. We were informed that techniques have been developed which are designed to inflict pain and suffering without leaving physical signs that could incriminate the interrogators.

296 Interview with Mr. Suat Cetinkay, Lawyer and Board Member of the Human Rights Association of Izmir.

297 According to the Human Rights Foundation report for 1998, 97.3 percent of victims were faced with insults, 89.9 percent were threatened with physical abuse and 87.8 percent were beaten. During torture, 75 percent of victims' eyes were covered, 49.7 percent were sexually harassed, 45.2 percent were electrocuted and 26.2 percent were suspended in the air. The report also reveals that 19 of the 673 torture victims upon which the report was based (33 of 706 applicants provided incomplete information) were raped. The torture victims also indicated that they were tortured by more than one method, and half of them stated that they were tortured by all of the aforementioned methods.

D. Legal proceedings in respect of torture and the culture of impunity

It is axiomatic that one of the most effective means of preventing torture and ill-treatment by law enforcement officials lies in the diligent examination by the competent authorities of all complaints of such treatment brought before them and, where appropriate, exposure and the imposition of a suitable penalty. Such actions would have a significant dissuasive effect. The delegation is concerned however that domestic procedures for the investigation, prosecution and punishment of individuals who commit acts of torture and ill-treatment are seriously inadequate, both in law and in practice.

1. *The jurisdictional hurdle*

The first step in the impunity available to those who torture and ill-treat detainees is that, under Turkish law, civil servants, including police officers, cannot be prosecuted without the permission of administrative authorities. The 1913 Temporary Law on the Procedure for the Investigation of Civil Servants ('Civil Servants Law') provides that an administrative board, rather than public prosecutors, shall make the initial determination as to whether civil servants shall be charged with a crime or simply disciplined by their superiors.²⁹⁸ Administrative boards may be constituted at the municipal or the regional level and are composed of local representatives of the national bureaucracy. They are not standing councils, but are convened on an ad hoc basis when the need arises. If the board determines that prosecution is warranted, it refers the case to the appropriate criminal court along with its recommendation as to the crime of which the civil servant should be accused. Only then will the public prosecutor commence his involvement in the investigation and prosecution of the case. It must be emphasised that the state prosecutor has no involvement whatsoever in either the administrative board's investigation or its decision on

298 See Temporary Law on the Procedures for Investigation of Civil Servants, Art. 4 (noting that following a preliminary investigation, "the relevant boards will decide if there is a need to prosecute the civil servant or not").

whether or not to bring charges. Indeed, if the prosecutor is the first to receive an allegation of police misconduct, then he is required to hand that information over to the administrative board directly.

The rationale behind the Civil Servants Law is that civil servants acting in their official capacities should be afforded some degree of immunity against unfounded prosecutions. However, this procedural protection has the effect, at best, of frustrating and delaying the investigation and prosecution of cases of police misconduct and, at worst, removing them from the judicial process entirely.

The Civil Servants Law contributes to the climate of impunity among the security forces in a number of ways. First, it is highly questionable whether a body composed of civil servants who may often lack legal training is the appropriate body to determine whether allegations of wrongdoing by other civil servants should be prosecuted. Because administrative boards are themselves composed of civil servants, they cannot be assumed to function independently. In a very real sense, they enable officials acting in bad faith or simply of an authoritarian bent of mind to either ignore or treat as disciplinary matters, serious crimes committed by their colleagues that ought properly to be prosecuted.

Secondly, even if the officials act in good faith, and can surmount an official *esprit de corps*, confusion over the scope of the administrative procedure is liable to create delay. In order for the decision as to whether or not to prosecute to be removed to an administrative body, the individual concerned must be a civil servant, he must have committed a crime that is not excluded from the scope of the law,²⁹⁹ and the crime must have been committed in the course of the civil servant's duties.³⁰⁰ However, the civil servant status of members of the security forces depends upon the context in which the act complained of takes place. Although classified as civil servants, members of the security

299 Excluded crimes generally involve public corruption, for example, bribery or embezzlement.

300 See Civil Servants Law, Art. 1. (procedures cover "crimes committed in the course of the civil servant's duties or for crimes stemming from his responsibilities as a civil servant").

forces are only covered by the Civil Servants Law when acting within the scope of their ordinary law enforcement duties, that is, in their administrative capacity. Whenever they act under the direction of a public prosecutor, they are said to be acting in a judicial rather than an administrative capacity and are not then covered by the administrative protections of the law.³⁰¹ Confusion over the jurisdictional boundaries of the administrative process is liable to create delay.

A good example of this jurisdictional hurdle in practice is seen in the case involving the killing of 10 prisoners in Diyarbakir Prison on 24 September 1996, when special team members, gendarmes and prison wardens put down a prison riot. During the operation, 10 prisoners were beaten to death and at least 46 were wounded, most of them by blows to the head. It was reported that there were skull fractures in all of the dead prisoners due to blows by truncheons, rifle butts and clubs, and that traces of heavy blows were observable all over their bodies. Cases are currently pending against 29 gendarmes and 36 police officers for the use of excessive force and manslaughter. However, the prosecutor dismissed counts against 30 or so prison guards on the basis of limited questioning of the wounded prisoners. Each prisoner was reportedly asked only who had injured him and not whether he had seen others harmed. Since most were unable to identify the perpetrators who had attacked them, charges could not be brought.

The prosecutor decided to bring cases against 65 police and gendarmes. However, he also determined that they had been carrying out administrative functions rather than a judicial function, despite the fact that the police had been sent in by the prosecutor and the crimes had been committed in a detention centre under his purview. Thus, the cases were referred to an administrative body. The administrative body, however, found that they had been performing a judicial function because the forces had been called in by the prosecutor. The prosecutor was therefore compelled to proceed with the case in the Heavy Penal Court in Diyarbakir, but the court declined to hear the case on

301 The delegation observed a general confusion among several of our interviewees as to the application of the Civil Servants Law. The conception among many was that the law afforded absolute protection to members of the security forces. In contrast, others interpreted the law as affording no protection at all to the security forces.

the grounds that it was an administrative case and therefore within the jurisdiction of the administrative board. As a result, the penal chamber of the Court of Cassation had to resolve the dispute; it determined that the case was not administrative and referred it back to the Heavy Penal Court in Diyarbakir. The first hearing in the case was not held until June 1997, nine months after the killings took place. The trial is still continuing.

Prosecution of members of the security forces is undermined by further delays inherent to the administrative process. The Civil Servants Law imposes no clear time limits on the investigation by the administrative board.³⁰² It may be many weeks or months before a decision on whether or not to prosecute is forthcoming. Even if the board ultimately determines that prosecution is appropriate, this delay may be legally or factually fatal to the case – statutes of limitation may be exceeded and evidence lost or destroyed.

Even if the administrative board decides that the case falls within the jurisdiction of the judiciary and so sends the case to a public prosecutor, the court is not bound by the board's jurisdictional determination. The court may, as in the case of the Diyarbakir prison killings, return the case to the administrative board for additional review if it so wishes. A prosecutor who is reluctant to take responsibility for pursuing a claim against a member of the security forces may repeat this process any number of times until the resulting delay makes it impossible to prosecute the defendant effectively.

Finally, another important failure of the system is the lack of effective judicial review when prosecution is denied. Article 5 of the Civil Servants Law provides that "[i]f the board decides not to prosecute the civil servant, it prepares a report that includes an explanation for not prosecuting and sends it to the civil servant's head of administration and to the claimant, if any. The head administrator and the claimant have the right to object to this decision within five days. In any case,

302 Article 2 of the Law on the Procedures for Investigation of Civil Servants imposes no time limit on the preliminary investigation. Article 5 states that the board will review the investigative report within one week but imposes no time limit on further investigation.

the decision not to prosecute is automatically sent to the higher investigatory board for review." In *Aksoy v. Turkey*,³⁰³ the European Court of Human Rights found that the overall procedure was so inadequate that it relieved the applicant of his obligation to exhaust domestic remedies before applying to the Commission.

The Minister of Justice informed the delegation that in an effort to accelerate the process, the government has formulated draft proposals to amend the Civil Servants Law. Under article 7 of the proposed amendment currently before Parliament, the administrative body would be required to give its decision as to whether the case should be formally investigated by the public prosecutor within 30 days from the date of the alleged crime. This 30 day period, would, if necessary, be able to be extended once only for a period not longer than 15 days. If no decision was forthcoming by that time, authorisation to investigate would automatically be considered to have been granted.

While we welcome the government's efforts to address the problem of delay under the current procedure, the delegation observes two serious failings in the proposed amendment. First, notwithstanding the proposed time limits, an accused police officer retains a right of appeal to an administrative court against any decision to open an investigation against him. There is no time limit for such an appeal and so this right may be exercised in an effort to simply reintroduce the delay that is inherent to the present procedure. Secondly, the proposed amendment simply fails to address the problematic issue of whether a body composed of civil servants who may lack legal training is the appropriate body to determine whether allegations of wrongdoing by other civil servants should be prosecuted. The proposed amendment will do nothing to grant any extra power to public prosecutors to independently launch investigations into allegations of torture. Any prosecution will still require authorisation from an administrative board and there is nothing to suggest that this board will necessarily be any more independent under the new regime than the old.

303 *Aksoy v. Turkey*, ECHR (100/1995/606/695) para. 52.

The Civil Servants Law was undemocratically introduced in 1913, during the failing Ottoman Empire. The minions of such failing empires are prone to self-glorification and quick to find reason to grant themselves and their fellows impunity for official excesses. If this law ever had any justification, now it simply has none that we could discover. In other countries, a statutory exemption from liability for persons acting in good faith and within their powers is ample protection for officials and strikes a suitable balance between the competing interests.

We therefore recommend that:

- (1) the 1913 Temporary Law on the Procedure for the Investigation of Civil Servants be abolished; and**
- (2) public prosecutors rather than provincial administrative boards be given sole discretion to investigate and prosecute all crimes committed by members of the security forces.**

2. *Prosecutorial reluctance to investigate and bring charges*

A further obstacle in the way of police accountability is the apparent lack of will on the part of some public prosecutors to investigate and initiate legal proceedings against members of the security forces. Article 153 of the Turkish Code of Criminal Procedure requires a prosecutor who has received a complaint of torture to initiate an investigation in order to determine whether there are grounds for prosecution. According to Article 163 of the Criminal Procedure Code, if the investigation supports the allegations of torture, then the prosecutor is required to charge those responsible. If the prosecutor determines that, following a thorough investigation, legal proceedings are not warranted, then he should inform the detainee of this fact and the detainee may then appeal the prosecutor's decision to the Chief Justice of the Criminal Court.³⁰⁴ The Chief Justice may then order a prosecution if he deems it appropriate in any given case.³⁰⁵

304 Turkish Code of Criminal Procedure, Art. 165.

305 *ibid.*

However, notwithstanding these provisions and despite official statements to the contrary, through our interviews we learned of a serious failing in this procedure, namely the demonstrable reluctance on the part of some prosecutors to investigate claims of torture.³⁰⁶ There would appear to be three separate reasons for this.

First, some prosecutors simply appeared unwilling to credit the truthfulness of complaints of torture, instead preferring to credit the accounts offered by the security forces. A common response that the delegation received from judges and prosecutors as explanation for victims' complaints was that detainees allege torture in order to either simply discredit the police or to avoid being punished. For example, Mr. Galip Cengiz, President and Judge of the Izmir State Security Court commented, "Accused persons use the procedure to pretend that they have been tortured. They pretend to have given statements under torture. The majority make false allegations." Mr. Mustafa Sahin, President and Judge of the Adana State Security Court remarked, "Accused persons do state that they have been under violence but they do it to be released or for other reasons ... An accused person says everything to be released, including alleging bad treatment." Mr. Vural Savas, Chief Prosecutor of the Republic of Turkey stated, "Most of the time people who confess to the police are scared of being punished and so they complain of torture." Such deferential attitudes towards members of the security forces constitute a particularly serious shortcoming in the investigation and prosecutions of those responsible for torture and ill-treatment. Of course, a good many accused persons everywhere will make false allegations of many kinds, including against their interrogators, to escape a finding of guilt. But, unpalatable as it may be, there can be no doubt that Turkey is not immune from the universal tendency of some law-enforcement officers to be brutal and, at least, overzealous. Moreover, there is strong reason to think that institutional aids to impunity, including the blinkered refusal to face that reality, make the position in Turkey worse rather than better than average. Public prosecutors must react expeditiously and effectively when

306 The Diyarbakir Bar Association informed the delegation that there have been no trials of alleged torturers in the last two years in Diyarbakir. They stated that their applications to the court are simply refused and that even if a prosecutor does forward a report about a complaint, he will not follow it up.

confronted with complaints of police brutality. They should take an objective view of the matter under consideration rather than seeking to defend the police in all cases.³⁰⁷

Another possible reason for the pervasive reluctance of prosecutors to investigate allegations of torture is that they themselves rely heavily on the police in order to apprehend suspects and conduct preliminary criminal investigations. They are in a very real sense their partners. Perhaps unsurprisingly then, the fear of alienating the police through a formal investigation into allegations of brutality may play heavily on their minds.

Also relevant is the issue of lack of prosecutorial resources referred to in Chapter VII. Although it is the prosecutor's duty to investigate all allegations of torture and ensure that those responsible are brought to justice, in practice lack of resources means that complaints are simply referred to the police to investigate themselves. Such an investigation will usually be neither effective, timely, nor independent.

Paragraph 16 of the Guidelines on the Role of Prosecutors provides:

"When the prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice."

The failure of some prosecutors to investigate vigorously the widespread allegations of torture that they receive is thus a clear breach of their professional duties.

307 In *Aydin v. Turkey*, ECHR (57/1996/676/866) para. 106, the Court cited the deferential attitude of the prosecutor toward members of the security forces as "a particularly serious shortcoming in the investigation".

We therefore recommend that:

- (1) a nation-wide education programme aimed at instructing public prosecutors on (i) the prevalence of torture and the details of its practice in Turkey; and (ii) methods of detecting and preventing such torture, should be instituted;
- (2) additional resources should be provided to prosecutors so as to ensure effective, timely, and independent investigation and prosecution of torture allegations;
- (3) we recommend the creation of a juridical police force under the direct control of prosecutors as an appropriate measure;
- (4) prosecutors should be required to maintain comprehensive records of every torture claim that is made to them and the eventual disposition of those claims.

3. Deficiencies in the trial and sentencing stage

Even if the aforementioned pre-trial obstacles are overcome and a prosecution is brought, there is still no guarantee that members of the security forces will be held accountable for their actions.

First, the fundamental conflict of interest inherent in the police conducting investigations of their colleagues means that difficulties are encountered in developing a case against members of the security forces.

The problem is compounded by Article 15 of the Anti-Terror Law which provides that "officials engaged in fighting terrorism ... shall be tried without being detained."³⁰⁸ Indeed, the delegation was informed that not only are members of the security forces not detained, but they are in fact frequently permitted to remain on duty while under investigation and prosecution. The usual kinds of provisions in other

308 Anti-Terror Law, Art. 15(1).

countries are that (a) the seriousness of the crime charged is highly relevant to a determination of whether an accused person should have bail; (b) official status is not *per se* a relevant factor, and (c) officials charged with serious crimes are stood down – whether with or without pay in practice tends to depend on the strength of the evidence.

Three problems arise from Turkish law and practice: First, alleged torturers are afforded access to evidence against them, which may be tampered with. Second, the defendant is afforded access to potential witnesses. Adverse witnesses may be intimidated and harassed, while sympathetic witnesses may be coached. Third, the perpetrators of torture remain at liberty to continue the abuse for which they are being prosecuted. The fact that many of the agents who are prosecuted remain in service during the protracted proceedings can only be interpreted by them, their colleagues and the public at large as evidence of substantial institutional support for their alleged misconduct.

We therefore recommend that where credible evidence exists implicating members of the security forces in human rights violations, those officers should, pending trial, be immediately removed from any duty that involves them in the process of pre-trial detention. They should instead be assigned to alternative duties of an administrative nature.

We have already noted the belief widely shared among judges and prosecutors that defendants routinely allege torture in an attempt to discredit the police or avoid punishment. This attitude is not only relevant in terms of the reluctance of prosecutors to initiate investigations as addressed above however. It also means that, as a practical matter, the testimony of victims tends to be given little credence in the courts. In consequence, supplementary physical evidence of torture is always required in order to support a conviction. Problems of collecting and presenting such physical evidence are addressed fully below.

Proceedings may be prolonged and delayed by the inability to gain access to and present important evidence. By Article 15(1) of the Anti-Terror Law, defendant police officers are not required to be present in court, even for the purposes of identification. Although victims may request that the court detain the defendant and compel his attendance, such requests are routinely denied. This may be because the defendant

has been transferred to a posting in another town. Again, there is scant justification for putting officials in a privileged category. In such circumstances, a local prosecutor may take the defendant's testimony and transmit it to the court. However, the local prosecutor may well be unfamiliar with the case and may not even have the case file before him. Of course, such statements will not be subject to cross-examination.

According to lawyers representing torture victims, most torture prosecutions of members of the security forces end in acquittal. Even when prosecution does lead to a conviction, as the following examples illustrate, the sentences handed down tend to be incommensurate with the gravity of the offence.

Metin Goktepe

A notorious example of the climate of impunity that prevails in Turkey is the trial on the killing of journalist Metin Goktepe. Mr. Goktepe was beaten to death in detention on 8 January 1996 after he was apprehended while trying to cover the funeral of Riza Boybas and Orhan Ozen, prisoners who were also beaten to death in an incident in Umraniye Prison, Istanbul on 4 January 1996. Although the authorities first claimed that Mr. Goktepe had not been detained, it was later officially accepted that he had been killed in detention as a result of the beatings inflicted upon him.

The trial of the 11 police officers accused of killing Mr. Goktepe began several months later. As is common in such cases, the file of the trial was transferred to provinces outside Istanbul (Aydin and Afyon) for "security reasons". The accused police officers were arrested in July 1997, but only after extreme public pressure and initiatives by the Prime Minister and the President of the Republic. However, four of the police officers were released from pre-trial detention in September 1997. Six of the police officers accused of murder were eventually acquitted, while the five others were sentenced to seven years and six months in prison on 19 March 1998. The court reduced the sentences from the intended 12 years because of the 'good behaviour' of the defendants during the proceedings. On 17 July 1998, the High Court of

Appeals overturned both the convictions and the acquittals and remanded the case to the trial court with instructions to correct for certain irregularities in the original proceedings. On 20 August 1998, the retrial in connection with the murder of Metin Goktepe began in the Afyon Heavy Penal Court. Five of the remanded officers were released pending their re-trial.

Yelda Ozcan

By way of further example, in May 1998 the High Court upheld the verdict of Beyolu Penal Court of First Instance No. 1, which had fined a police chief, Cemalettin Turan, for torturing Yelda Ozcan, a member of the Human Rights Association, after she was detained by the police in Istanbul on 4 July 1994. The court had sentenced the police chief to three months in prison and suspended him from duty for three months on 26 December 1996. However, the prison term was commuted to a fine amounting to approximately \$1.50.

Songul Yildiz and torture of a woman

The sentences passed on two policemen named Nezih Karakus and Ahmet Seckin who were on trial for torturing Songul Yildiz, an executive member of the Democracy and Peace Party (DBP) Seyhan District Organisation, Adana, when she was detained on 14 December 1996, were reprieved. In their hearings at the Adana Heavy Penal Court on 26 November 1997, Songul Yildiz identified Ahmet Seckin, and said that Seckin had tortured her. The prosecutor stated his opinion, and demanded that the two policemen should be sentenced under Article 243 of the Turkish Penal Code relating to the offence of torture. Then, the court board announced its decision, and first sentenced the policemen to 1 year in prison, and dismissed them from public service for 3 months. The sentence was commuted to 10 months in prison and dismissal from public service for 2 months and 15 days. The sentences were reprieved on the grounds that the police officers were of "good conduct," and had "committed an offence for the first time".

Ibrahim Okkali and torture of a child

In February 1998, Izmir Heavy Penal Court No. 2 concluded the retrial of police chief, Irfan Demirel, and a police constable, Mustaf Yilmaz, who were claimed to have tortured a 12-year-old boy named Ibrahim Okkali when he was detained on 27 November 1995 in Izmir on accusations of "stealing money." In the first trial they were each fined a trivial amount of money on 30 October 1996, however, the Supreme Court decided that the police officers should have been put on trial for the crime of torture and overturned the verdict in December 1997. In this line, the court decided unanimously to agree with the decision of the Supreme Court and sentenced the accused police officers to one year in prison, commuted this prison term into 10 months and then suspended it.

E. The role of the medical profession in detecting and preventing torture

Routine examination of persons taken into police custody can be both a significant safeguard against ill-treatment and provide the necessary physical evidence upon which to base a successful prosecution. However, in order to be effective, doctors must enjoy formal and de facto independence, have a mandate which is sufficiently broad in scope and have been provided with specialised medical training in the detection and investigation of torture.

Information gathered during the mission indicates that problems persist in connection with the lack of forensic training and equipment of medical personnel, the issuing of inaccurate medical certificates for persons in detention, and the lack of independence among medical professionals conducting examinations and appearing as expert witnesses.

1. Lack of expertise in torture cases

The delegation heard concerns about the lack of expertise of many doctors exercising forensic duties and the consequential compromise in

the quality of medical examinations of torture victims. The root of the problem was stated to be deficiencies in the training of general practitioners and a shortage of doctors wishing to specialise in the field of forensic medicine.

According to Dr. Gursel Cetin, Head of the Society of Forensic Medicine Specialists, there are just 184 forensic medicine specialists practising in the whole of Turkey. Only 20 of the 43 medical schools in Turkey offer forensic medicine as a field of specialisation. It was reported that even in the schools that do offer such training, most courses either do not address the issue of torture or else medical students choose not to study the subject. The resulting shortage of specialists means that, particularly in rural areas where the situation is most acute, general practitioners must often carry out the duties of forensic doctors. However, as forensic medicine does not form part of their general training, they do not have any expertise or knowledge about the diagnosis of torture, or how to carry out forensic examinations and prepare reports. They are therefore often unable to detect more subtle evidence of torture.

We therefore recommend that:

- (1) whenever a victim requests a medical examination, he or she be promptly examined by a suitably qualified medical practitioner, even if he or she is in detention;
- (2) initiatives be undertaken so as to increase the number of forensic doctors qualified in forensic medicine;
- (3) guidelines be established as to how doctors should comprehensively examine victims of torture;
- (4) it be ensured that doctors involved in the examination of detainees receive adequate forensic training (and continuing education) in identifying signs of torture.

2. Issuing of medical certificates

In practice, in order for an investigation into an allegation of torture to be opened, the alleged victim must, in the absence of any eyewitness testimony, be able to support his or her claim with a medical

certificate. The accuracy of such certificates is therefore of decisive significance in terms of the potential impunity of perpetrators of torture.

Article 10 of the October 1998 Regulations on Apprehension, Police Custody and Interrogation, establishes that if an apprehended person is to be taken into custody or if he is apprehended by the use of force, he must be given a medical examination immediately upon arrival in custody. Medical authorities must also determine his state of health in the event of a change of location or liberation. The delegation is concerned that the Regulations do not go far enough.

We recommend that in addition to present arrangements for the medical examination of detainees, persons held for lengthy periods by the law enforcement agencies be examined on a regular basis, at least every 48 hours, by a forensic doctor.

Various Circulars issued by the Ministry of Health, as well as standards set by the Turkish Medical Association, define how the examinations should be conducted.³⁰⁹ Notwithstanding these requirements, the delegation received complaints to the effect that, due to the circumstances in which medical examinations take place, false reports are a common occurrence.³¹⁰ The central reason for the production of false medical reports was stated to be the direct involvement of the alleged perpetrators of torture in the process of obtaining the certificates.

309 According to these Circulars and standards, the examining physician should record all physical and psychological complaints, including the victim's account of the circumstances under which the injuries were suffered. The physician should conduct a thorough physical examination including the genital region and should make use of x-rays and laboratory tests where necessary. The information should be recorded on a separate forensic report signed by the physician. The examination should take place outside the presence of the police in order to encourage candid communication between the victim and the physician. (Human Rights Foundation of Turkey, *Treatment and Rehabilitation Centres Report – 1996*).

310 Dr. Turkan Baykal, Head of the Human Rights Foundation of Izmir, told the delegation, "I have seen thousands of reports but nothing in accordance with these standards. The official reports are always brief and unacceptable. They just have one line saying that there is no evidence of beating." (Interview with Dr. Turkan Baykal).

As a first obstacle, by altering the date of detention, security forces may delay a victim's medical examination. Since physical signs of torture may fade or disappear, this has the effect of making it difficult or impossible for the doctor to confirm the victim's allegations of abuse. Even if tortured detainees are presented for examination in good time, members of the security forces commonly accompany the victim to a doctor of their choice, and they tend to select doctors who they know will be amenable to providing a medical report that will not record any signs of torture. In the worst cases, doctors do not see the victim at all, but merely issue a certificate to the officials without any physical examination having taken place. In other cases, the doctor will perform a cursory visual check rather than a thorough physical examination or simply not report their findings.

Further, despite the Ministry of Health Circular of 13 July 1995 which provided for forensic examinations to be carried out in the absence of law enforcement officials, the alleged perpetrators routinely remain in the examination room when doctors examine detainees. Even if a doctor does suspect torture, the officer's presence reduces the likelihood that he will make a thorough investigation. It also greatly reduces the likelihood that the victim will report the abuse to the doctor for fear that he will be tortured again.

We therefore recommend that:

- (1) police bringing a detainee to a medical examination should never be those involved in the arrest or questioning of the detainee or the investigation of the incident provoking the detention;**
- (2) forensic examination is always conducted out of the sight and hearing of law enforcement officials, unless the doctor concerned requests otherwise, for written reasons, in a particular case;**
- (3) independent medical examinations be granted immediately upon request.**

Even if the report describes a detainee's physical injuries accurately, it may not draw any medical inference that these could be the result of torture. Additionally, completed medical certificates are generally

handed to the accompanying police officer for delivery to a public prosecutor. However, if the officer disagrees with a report then he may destroy it and either attempt to force the examining doctor to alter his findings or find another doctor willing to issue a false certificate. By way of example, the Society of Forensic Medicine Specialists informed the delegation that while undertaking a medical examination on a detained person, one of their students had asked the police officer to leave the room. When he had finished the examination, the student reported that he had found evidence of torture. He handed the medical report to the police officer and told him what his findings were. The police officer took the report, opened it, read it and went back inside the examination room. He took his gun out, placed it on the table in front of the doctor and said to him, "I see you have made some spelling mistakes. You must change them immediately or our Head Office will not accept the report."³¹¹

We therefore recommend that medical certificates not be handed to the police or to the detainee while in the presence of the police, but be made available immediately to the prosecutor who should promptly furnish a copy to the detainee and/or his/her lawyer.

Additionally, we were informed that doctors who refuse to issue false medical reports are, as a result, often subject to a variety of pressures. Doctors may be intimidated by threats of professional repercussions for reporting torture. As state employees, medical professionals conducting official examinations of detainees fear loss of their jobs if they report torture. Their career prospects may be adversely affected, either through some form of exile or by failure to be considered for key appointments. Conversely, doctors who prove willing to issue false certificates are protected by the authorities, even when they are the subject of disciplinary measures by their professional organisation.

311 Interview with Gursel Cetin (Head of the Society of Forensic Medicine Specialists) and Sebnem Korur (Former Head of the Society of Forensic Medicine Specialists).

Alternatively, medical personnel may be subject to more pervasive forms of intimidation. The delegation received reports of doctors being detained, tortured and prosecuted as a consequence of issuing accurate medical certificates in accordance with their professional responsibilities.

Dr. Eda Guven

On 23 November 1997, the gendarmerie brought six detainees to the Incirlioiva Health Centre in Aydin for medical examination. They were examined by Dr. Eda Guven while the gendarmes were present in the examination room. According to the HRFT she stated: "At first, I wanted the gendarmes to leave the room. I asked two suspects, who were taken into the room by the gendarmes, whether they had problems with their health. They simply answered "no". I told them to leave the room. Then I called two other suspects to come into the room for examination. The gendarmes were still present in the room. I asked one of the detainees if he had any problems. There was a trace of a blow to his face. He did not reply to me. At that time I told the gendarmes to leave the room. I asked him again. He was full of fear. He told me, "They will beat us. The gendarmes said to us they would beat us again if we talked about what they did." I had already seen the traces of torture on their faces. I wrote down all the traces of torture in the report". Having issued medical reports certifying that torture had been inflicted on four of the detainees, the soldiers attempted to pressurise Dr. Guven into altering her reports but she refused.

On 10 March 1998, having ordered the gendarmes out of the examination room, having found that four of the six suspects under detention showed signs of maltreatment and having refused to be intimidated by the gendarmes into amending her report, Dr. Guven was prosecuted under Article 240 of the Turkish Penal Code for "abusing duty and violating the law on civil servants." The Prosecutor of the Incirlioiva Penal Court of First Instance, Eyup Baysal, requested that the court impose a custodial sentence of up to three years. On the first day of the trial, the court acquitted her on the basis of 'insufficient evidence'. In September 1998, four of the gendarme officers were charged with attempting to manipulate the results of a medical examination. They were later convicted and punished by a small fine.

Dr. Zeki Uzun³¹²

On 19 October 1999, police officers from the Anti-Terror Branch (ATB) raided the surgery of Dr. Zeki Uzun, showed him a list of names that included several of his former patients, and forcibly detained him for interrogation. While being taken to the ATB, Dr. Uzun was subjected to both verbal and physical abuse in the police vehicle.

Dr. Uzun was accused of aiding illegal organisations as a result of the political persuasions of some of his patients whom he had treated in previous years in accordance with the rules on medical ethics and the requirements of the medical profession. During the period of his interrogation, Dr. Uzun, blind-folded all the time, was beaten, struck around the head and chest, subjected to death threats, insulted, had his testicles kicked and squeezed and had a bag wrapped around his head in order to deprive him of air.

At 2 o'clock in the morning on 20 October 1999, the second day of his detention, Dr. Uzun was taken handcuffed to his home in Balcova and a search was carried out there without a warrant. When Dr. Uzun questioned whether the police officers had a warrant to search his property, he was again subjected to physical and verbal abuse. They next took him, again handcuffed, to his surgery where maltreatment continued in front of his employees and family members. The surgery was searched – patients files in the computer were examined without permission and private information on patients was read and taken.

During the six days of his detention at the ATB, Dr. Uzun was kept in solitary confinement and constantly deprived of sleep. Although he was taken to the Izmir Atatürk Training Hospital, he was not examined or allowed to speak to the duty doctor. Despite this, a medical report was issued to the effect that he had not been tortured.

³¹² Dr. Zeki Uzun is a gynaecologist and obstetrician at the Konak Maternity Hospital in Izmir. He is a member of the Izmir Branch of the Turkish Medical Association Commission of Medical Examinations and Reports and for the last six years he has been actively involved in the examination and treatment of torture victims at the Izmir Treatment and Rehabilitation Centre of the Human Rights Foundation of Turkey.

The public prosecutor referred his case to the State Security Court, which released him on 25 October 1999 at the end of a hearing which ended late at night.

We therefore recommend the strengthening of practical measures to protect doctors who report torture from harassment and intimidation.

3. The independence of medical experts

Forensic doctors are accountable to both their own association, the Council of Forensic Medicine (CFM), and to the Ministry of Health. The CFM provides official expert witnesses for legal proceedings throughout Turkey. However, the CFM in fact operates under the auspices of the Ministry of Justice. The Minister of Justice is responsible for the appointment of the president of the CFM, as well as the chairpersons of specialist boards, such as that responsible for torture-related issues. There are therefore extremely close ties between forensic doctors and the administrative authorities. If the CFM, as an organisation, cannot be said to be independent of the Ministry of Justice, then neither can the doctors who compose its membership. Supposedly independent medical experts appearing in torture cases throughout Turkey may therefore be subject to the pervasive influence of persons in the Ministry of Justice.

By way of example of the lack of independence of medical experts, the Head of the Society of Forensic Medicine Specialists informed the delegation that she had written a report on a deceased person in which she diagnosed that torture had taken place. As a result of the contents of her report, the Ministry of Justice decided to remove her from the Council of Forensic Medicine. In other words, her services as an expert witness were terminated.

We therefore recommend that the influence of the Ministry of Justice over the Council of Forensic Medicine be removed so that medical personnel required to carry out examination of detainees are free from bureaucratic or political influence.

4. Independent medical examinations and alternative forensic reports

Given the prevalence of false official medical reports as outlined above, it is vitally important that victims of torture be afforded the possibility of examination by independent medical professionals of their own choice. However, the delegation heard concerns that requests for independent, private medical examinations arranged by the victim's lawyers or family are often either denied or else the reports themselves are ruled inadmissible.

We therefore recommend that:

- (1) detainees be permitted to promptly obtain medical examinations from independent doctors;**
- (2) such reports be admissible as evidence;**
- (3) the educational measures on torture elsewhere recommended for judges and prosecutors should include accounts of failure of the system such as we have set out.**

Manisa

The 'Manisa case', as it has become known, demonstrates, perhaps more than any other, the many obstacles encountered in investigating and prosecuting members of the security forces who commit acts of torture.

On 26 December 1995, 16 teenagers were arrested and detained by the Anti-Terror Department of the Manisa Security Directorate. They were held until 5 January 1996, when they were arraigned on charges of being members of an illegal organisation and acting on behalf of that organisation. Twelve of the youths were subsequently released pending trial after spending between 2 months and 26 months in custody. The trial on the first charge took place in Izmir State Security Court. The trial on the second, which was based on accusations of distributing leaflets and displaying posters without permission, took place in the Manisa Penal Court. On 14 March 1997, the Manisa Penal Court

acquitted the youths. The State Security Court initially convicted the students. After their convictions were reversed on appeal, the case was remanded to the State Security Court where it is still pending.

The children claimed that they were heavily tortured while in detention. Following their detention, two brief family visits enabled the youths to inform their families of their claims that they had been tortured. The families immediately filed a torture complaint with the public prosecutor and the students were sent for a medical examination at the request of the families. The students report that, during their medical examination, the police stood either next to them or near enough to hear the conversations during the examination. No one asked the police to leave. The students also claim that the doctors failed to conduct a physical examination and did not ask them any questions about their physical complaints or the trauma they might have suffered. The most that occurred was that the doctor looked at them from a distance fully-clothed. The medical certificates issued included no confirmation that torture had taken place.

On 11 January 1996, attorneys of the youths contacted the Izmir Branch of the Human Rights Foundation of Turkey (HRFT) and the Izmir Medical Chamber (IMC) stating that the youths had been gravely tortured while in detention and had serious health problems as a result. Furthermore, they stated that the "official forensic reports" prepared while the students were in detention did not reflect what happened in reality and concealed the torture. The IMC attempted to independently medically examine the students but was denied access to them. However, based on the official forensic reports, questionnaires used to record the students' accounts of torture and hospital records, the IMC was able to conclude that the students had been subjected to a range of torture techniques. Among the techniques reported were beating, hosing with cold water, deprivation of clothing, electrical shocks to the genitals, anal rape with a truncheon, squeezing of the testicles, and psychological harassment and humiliation.

Despite this report, the prosecutor refused to open a case against the police. Subsequent medical examinations conducted for the IMC and the Izmir Branch of the Human Rights Foundation of Turkey (HRFT) following the students' release from detention revealed deformation in their ears from cold water spray, injuries from the squeezing

of the boys' testicles and tuberculosis. The IMC and HRFT prepared "alternative forensic reports" based upon their detailed physical and psychological examination of the children. Once again, despite this medical evidence, the prosecutor refused to open a case. Finally, after intense media coverage and pressure from a Member of Parliament from the region, who appealed to the President, the prosecutor opened a case against the police on 4 June 1996, six months after the alleged incidents of torture.

While the trials proceeded against the students in the State Security Court and the Penal Court, the trial of the police began in the Manisa Heavy Penal Court. In the cases before the Penal Court, the students were acquitted when the Court found that there was no conclusive evidence other than the police statements that the defendants had committed the offences. The State Security Court, however, relied upon the allegedly coerced statements and reached a conviction before the trial against the police had been concluded.

The 10 defendant police officers, who were never arrested, did not attend the hearings in the trial against them. Instead, they remained on duty. Moreover, the court accepted an argument that identification of the accused police should be through photographs rather than in person, on the basis that the identity of the officers involved in anti-terror work should be protected. On 11 March 1998, the police officers were acquitted by the Heavy Penal Court due to insufficient medical evidence of torture. The public prosecutor had not presented the IMC/HRFT report to the Court.

Both the conviction of the children and the acquittal of the police were appealed. The appeal of the students' conviction is still pending, but on 12 October 1998, the High Court of Appeals overturned the verdict of acquittal of the police, noting that there were clear signs of physical and psychological violence as diagnosed and documented by the reports of the IMC/HRFT. The case was returned to the Manisa Heavy Penal Court for further proceedings. On 27 January 1999, in a five-minute hearing, the Court simply announced that, notwithstanding the decision of the Court of Appeals, it had decided to reinstate its earlier decision of acquittal. The Court held that since the IMC and HRFT were not "official institutions", they could not issue medical reports and that due to the period of time between detention and the

preparation of the reports, the IMC/HRFT reports were not valid. The Court also based its decision on the fact that the IMC/HRFT had presented psychological rather than physical evidence of torture.

The Turkish Medical Association (TMA) prepared a new report evaluating the final decision of the Court and taking into account all of the facts of the previous report. In its report, the TMA pointed out that it was authorised to prepare expert reports in relation to medical ethics and scientific evaluation. The importance and validity of psychological evaluation in investigating torture allegations and detailed information about late findings of torture was also given. The TMA emphasised the validity of the IMC/HRFT reports.

On 15 June 1999, the General Assembly of the Appeals Court, after taking into account the TMA report, determined that the youths were tortured while in detention and that the police officers responsible should be punished. This decision is final and cannot be appealed.

According to the HRFT, notwithstanding the decision of the General Assembly of the Appeals Court in the Manisa case, the Chief of the Manisa Police Department has been promoted and designated as Chief of the Ankara Police Department. He is still working in this position. The police officers who were convicted of inflicting torture are still continuing their work in the Manisa Anti-Terror Department and the physicians who issued the "official forensic reports" are still in practice in public hospitals and health centres.

F. Training and supervision of law enforcement officials

Although extremely important, the various legal and technical measures suggested in the foregoing paragraphs will not alone be sufficient to reduce the incidence of torture and other forms of ill-treatment to an achievable minimum. The most effective safeguard against police brutality is for the law enforcement officials themselves to reject resort to such methods. Inherent in such a development must be a move away from an over-reliance on information and confessions obtained via interrogations, which we were repeatedly told is a Turkish tradition, and a move towards the use of more acceptable (and reliable) methods

of crime investigation. Further, law enforcement officials must be required to maintain clear records of the apprehension and custody of the individuals.

We therefore recommend that:

- (1) police and gendarmerie establishments be regularly inspected – including on an unannounced basis – by competent administrative authorities to provide control and supervision of law enforcement authorities;**
- (2) all members of police and gendarmerie, at all levels, receive appropriate professional training, incorporating the principles of human rights;**
- (3) records of all members of the security forces coming into contact with detainees should be scrupulously maintained, and be available to detainees and their legal representatives;**
- (4) all questioning by police and gendarmerie should be automatically audio and videotaped;**
- (5) political and administrative leadership at the highest levels should be directed at branding brutality by law enforcement officers as unacceptable behaviour that should be outlawed.**

G. Conclusion

Despite widespread reports of torture, especially in cases involving enforcement of the Anti-Terror Law, investigation, prosecution and punishment of members of the security forces is rare. The failure of Turkish governments to enforce domestic and international prohibitions on torture has led to a climate of official impunity that encourages abuse of detainees during the detention period.

This climate of impunity remains probably the single largest obstacle to reducing human rights abuses in Turkey. Yet the delegation learnt that the government of Turkey is in the process of preparing an amnesty law that would, among other things, facilitate the release of the few state officials who have been imprisoned for acts of torture.

The delegation wishes to express its concern that such an amnesty would fail to reflect a proper balance between the interests of the State in the particular circumstances in which the amnesty is declared and the general need to enforce the law in order to protect the right to not be subjected to torture or inhuman or degrading treatment or punishment.

X – FINANCIAL INSTITUTIONS

"The World Bank, through its activities and its renewed commitment to human rights, will play a key role in the promotion of human rights and in the building and strengthening of national human rights capacities in the countries in which it operates."³¹³

The World Bank is a specialised agency of the United Nations, devoted to economic and social development in its member countries. Historically, it has been less than forthcoming about articulating its role in promoting human rights within the countries in which it operates. Indeed, provisions of its Articles of Agreement that state that, in all its decisions, "only economic considerations shall be relevant" have, in the past, enabled the World Bank to avoid adequately confronting the issue of human rights.

Today however, the World Bank has begun to recognise that it has a unique role to play in the promotion of human rights. Through its economic and social approach to development, the Bank now expressly states that it aims to create an environment in which all individuals can enjoy their human rights. Through its support of primary education, health care and nutrition, sanitation, housing, and the environment, the Bank says that it has helped hundreds of millions of people attain crucial economic and social rights. In other areas, the Bank is eager to highlight its contributions which it says have been necessarily less direct, but perhaps equally significant. By helping to fight corruption, improve transparency and accountability in governance, strengthen judicial systems, and modernise financial sectors, the Bank says it has contributed to building environments in which people are better able to pursue a broader range of human rights.³¹⁴

313 Mary Robinson, UN High Commissioner for Human Rights - Foreword to *Development and Human Rights: The Role of the World Bank*.

314 *Development and Human Rights: The Role of the World Bank*.

In several countries, where issues of judicial independence or other inadequacies of the legal system have been shown to be an obstacle to economic development, the World Bank has shown a preparedness to assist to fund specific remedial projects. In Turkey however, there have been no such projects. Mr Chhibber, Director of the World Bank in Turkey, frankly informed us that the Bank's officers do not perceive such problems to be apparent in Turkey. Indeed, in relation to the practices of civil, as distinct from criminal courts, the perception is that, from a financier's viewpoint, the courts are, if anything, too prone to disregarding legitimate government policies and too critical of governmental prudential regulation of business.

Likewise, it appears that such shortcomings as there are in human rights in Turkey are not perceived as a sufficiently large obstacle to economic process to warrant the Bank's investment in financially assisting remedial projects. The correctness of this view is, in our opinion, debatable. The international reputation of the Turkish police and the undemocratic influence of the military can hardly aid the tourist industry. The authoritarian limitations on free speech can hardly encourage the growth of the new information industries. More broadly, the prospects of an enduring and stable environment for economic enterprise are diminished by lack of freedom and disrespect for human rights. However, it appeared to us that the Bank's present view is firmly held.

The World Bank claims that it is mainstreaming human rights into its activities and at the same time it continues to administer major judicial reform projects in many countries of the world.³¹⁵ Since, as this Report has demonstrated, there are serious problems with the administration of justice in Turkey, we consider that the World Bank (and other international financial institutions) could adopt an important role in protecting the independence of the judges and lawyers who practise there. There would appear to be a strong case for tying future assistance to tangible legislative and administrative progress in eliminating normative and structural dysfunctions as to the rule of law.

315 For example, the World Bank has implemented, or is in the process of implementing, major judicial and legal reform projects in Albania, Argentina, Armenia, Bangladesh, Ecuador, Georgia, Morocco, Peru, Sierra Leone, Sri Lanka, West Bank and Gaza, and Yemen.

We believe that the World Bank should reconsider its approach with regard to its programme in Turkey. We therefore invite the World Bank and other financial institutions to pay special attention to the need to improve human rights protection in Turkey. We recommend that financial institutions give some priority to judicial and legal reform with the aim of strengthening the independence of the judiciary in Turkey.

XI – CONCLUSIONS AND RECOMMENDATIONS

The delegation recognises that in recent years the Turkish governments have taken certain legal and administrative measures in order to comply with Turkey's international human rights obligations and to prevent or limit the possibilities of various kinds of human rights violations occurring. Notably, we welcome the removal of military judges from State Security Courts, the reduction in pre-trial detention periods and the increase in penalties for members of the security forces convicted of involvement in torture. We also welcome the fact that revision of the 1913 Civil Servants Law is high on the parliamentary agenda, that proposals to limit executive influence over the functioning of the High Council are under serious consideration, and that measures to empower public prosecutors to fulfil their role in the pre-trial investigation process are being discussed. If enacted, such amendments to the existing legal regime will only improve respect for human rights in Turkey.

The delegation also recognises the apparent determination of the present Turkish Government to improve respect for fundamental human rights and liberties. Whereas previous governments have been accused of lacking the necessary political resolution to improve the human rights situation in Turkey, there are encouraging indications in relation to the present administration.

However, despite some important first steps in the right direction and a climate of optimism for the future, there remains, as we have demonstrated in this report, much that needs to be done before the country's human rights performance is brought into line, not only with its international obligations and commitments, but also with the popular aspirations and demands of the Turkish people.

Turkey has only had a modern system of government for just over 50 of its 76 years of existence. The *internalisation* of respect for human

rights, as conceived in modern international law and practice, appears to be thin. The undue limits on free speech do not bespeak a confident modern democracy. Likewise, we were told that the development of "civil society", as measured, for example, by the extent of popular participation in voluntary associations of all kinds, is comparatively lacking. It is these and kindred cultural and political problems that must be addressed before the improvements in official procedures and precepts, which we recommend, are likely to issue in general improvements on the ground.

There is a widespread rigidity in ideologies prevailing among judges and prosecutors which in large measure helps to explain the occurrence of many of the alarming cases mentioned in this report. We refer to what might be called a kind of ossification of Atatürkism. For instance, in investigating why women lawyers could not wear Muslim head-dress in courts if they wished, we were told that if you gave Islamic radicals (as they were perceived) an inch, they would take a mile, and the secular foundations of the State, a key Atatürk tenet, would be threatened. It is apparent that in Turkey, although its people are overwhelmingly Moslems, there are sufficiently different conceptions of what Islam authentically demands to warrant the country being viewed as "multi-cultural" in the sense that there are religious or "communal" tensions. In many countries, not dissimilar issues have had to be faced. Solutions that involve the dominant culture giving one or more inches but arranging effective safeguards against the recipients taking a mile are daily being found.

We became aware of a certain understandable over-sensitivity to criticism of Turkish institutions on the part of many judges, prosecutors and lawyers. Turkey has a poor international reputation for respect for human rights. Yet it is the case that all elements of the legal profession are highly educated and the judges and prosecutors are, at the outset of their careers, well trained. Further, when Turkey does promulgate a standard on an issue of civil liberty, it often does so in an impressive way. An example is the adoption of a rule of evidence that quite prohibits the use in criminal cases of illegally obtained evidence, rather than, as is common, giving the courts a discretion as to whether to receive or reject it. Further still, Turkey numbers among her lawyers people of a talent, sophistication, character and courage equal to those to be found anywhere, and Turkish human rights advocates have, not

infrequently, exhibited monumental courage, determination and insight.

Finally, no country on earth is perfect (each of our own countries, for example, has at least had episodes of lamentable lack of respect for human rights). Why then, Turkish judges and lawyers ask, should Turkey be chosen for criticism?

We can only answer for ourselves. In the first place, the making of suggestions for change is the subtext of a mission such as ours. We have also tried to offer praise and encouragement in particular instances where it is due. We would add more generally that there are many people, lawyers and others in Turkey, committed to bringing about a greater degree of democracy and a greater level of respect for human rights. Secondly, we acknowledge that there is much for Turkey to be proud of in relation to its judiciary. For example, nobody suggested to us that there is any serious corruption by way of venality on the part of judges or prosecutors. Thirdly, constructive criticism is more valuable than uncritical bonhomie. Fourthly, we believe our criticisms to be moderate and well justified. Fifthly, we have striven to remember that, as outsiders, we must have missed many nuances and we have sought to err on the side of conservatism.

Finally, however, not all of the sensitivity is justified. It is the reformers – the human rights activists and others - who impressed us as having the greater degree of insight into their nation's problems. Turkey is a matter of international concern because, whatever certain of her legal precepts may hold, respect for human rights and civil liberties is, in reality, poor. Police brutality and torture exists at a level well above the unavoidable. That people can be even prosecuted, let alone imprisoned, for offences such as "insulting the law", "insulting the State" or "insulting the Army" betokens an authoritarian state with scant respect for free speech. In a democratic society, the law, the State and the Army exist to serve the people, not to require reverence from them. The challenge for Turkish lawyers and judges is to translate their theoretical aspirations into practical change for the better. Resentment of international criticism is not a substitute for the hard work and self-reinvention that that implies. Against this background, we therefore set forth the following recommendations:

Chapter III – International Obligations

1. Turkey should accede to the following international human rights conventions: International Convention on the Elimination of All Forms of Racial Discrimination; International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Optional Protocol to the International Covenant on Civil and Political Rights; Second Optional Protocol to the International Covenant on Civil and Political Rights. In addition, Turkey should ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

Chapter IV – Legislation and the Emergency

2. Article 148 of the Turkish Constitution should be amended so as to permit a decree issued under Article 121 to be challenged in the Constitutional Court.
3. Article 8 of Decree No. 430 of 16th December 1990 should be amended so that Regional and Provincial governors are not excluded from liability in respect of their decisions or acts connected with the exercise of the powers entrusted to them by virtue of the State of Emergency.
4. Decree 285 should be amended so that public prosecutors rather than local administrative councils in the State of Emergency regions have sole authority to investigate and prosecute all crimes committed by members of the security forces within the state of emergency regions.
5. The Turkish Code of Criminal Procedure should be amended so as to reduce the maximum terms of police detention without charge in provinces under state of emergency legislation to 48 hours.
6. The delegation urges, following the PKK's recent decision to lay down its arms and seek a peaceful political solution, the GNA, in the near future, to lift the state of emergency in the remaining six provinces of south-east Turkey.

Chapter V – The Courts and Their Jurisdiction

7. The Constitution should be amended so as to permit individuals to petition the Constitutional Court on issues of constitutionality.
8. The Constitution should be amended so as to permit decrees issued under a state of emergency, martial law, or in time of war to be challenged in the Constitutional Court.
9. The jurisdiction of the Turkish military courts should be limited exclusively to trying military personnel for offences committed while on duty.

Chapter VI – The State Security Court System

10. State Security Courts should be abolished and their functions transferred to the existing penal courts. Failing that, procedural safeguards for SSC defendants should be harmonised with those in ordinary penal courts and brought into compliance with international norms, particularly the European Convention on Human Rights.
11. The 1982 Constitution should be revised with the aim of giving more emphasis to the protection of human rights and removing the language responsible for bringing the State Security Courts into the political arena.
12. The 1982 Constitution and/or legislation should be amended so as to ensure that no-one is prosecuted for the non-violent expression of his or her political beliefs.
13. Legislation should be amended so as to reduce the maximum pre-trial detention periods in cases of kinds now falling within the jurisdiction of the SSCs to 48 hours.
14. Necessary measures should be taken to ensure that any request for the extension of police custody is subjected to substantive scrutiny by a public prosecutor.

15. Any detained person in respect of whom an extension of police custody is sought should be systematically brought before the judge who examines the request.
16. All persons deprived of their liberty by the law enforcement agencies – regardless of the gravity of the offence of which they are suspected – should be granted, as from the outset of their custody, access to independent legal counsel.
17. When, exceptionally, access to counsel must be restricted, such restriction must be for good cause, regulated by a judge and be for the minimum duration possible.
18. All detainees should be presented before a judge within a maximum of 24 hours, non-extendable, from the time of initial detention.
19. In all cases, detainees should be afforded the right to notify their next of kin of their situation within 24 hours of their detention.
20. Any possibility to exceptionally delay the exercise of the right to notify one's next of kin should be clearly defined in writing, strictly limited in time and require the authorisation of a public prosecutor.
21. Steps should be taken to encourage judges and prosecutors to accept that evidence is not infrequently extracted by coercive measures. Allegations of torture or inhumane or degrading treatment must be seriously investigated.

Chapter VII – The Judiciary and Public Prosecutors

22. Article 159 of the Turkish Constitution should be amended so as to remove the Minister of Justice and his under-secretary from the High Council of Judges and Public Prosecutors.
23. The High Council should be provided with its own adequately-funded Secretariat and premises.
24. Decisions of the High Council adverse to a judge or prosecutor should be appealable to an independent judicial body comprised of

members of the judiciary other than those responsible for the taking of the original decision.

25. The President of the Republic should be absolved of his power to appoint members of the High Council, and judges and prosecutors themselves should be empowered to elect their representatives on the High Council.
26. The draft Bill to enable judges and public prosecutors to organise and form associations should be enacted as soon as possible.
27. The proportion of the budget allocated to the administration of justice should be substantially increased so as to facilitate the appointment of additional judges and public prosecutors.
28. Judges should be consulted in the preparation of the budget and the judiciary should be responsible for its internal allocation and administration.
29. The draft Bill for the establishment of a judicial academy that will offer continual professional training to judges, prosecutors and lawyers should be enacted as soon as possible.
30. Additional resources should be provided to public prosecutors so as to enable them to carry out their duties in full.
31. A juridical police force should be established under the direct control of public prosecutors.

Chapter VIII – Lawyers, Legal Services and Human Rights Advocates

32. Steps should be taken to monitor and enforce existing requirements that all persons be immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.
33. Appropriate steps should be taken to ensure that law enforcement officials do not seek to dissuade detained persons from exercising their right of access to a lawyer.

34. The exception in Article 19 of the October 1998 Regulations relating to crimes falling within the jurisdiction of the State Security Courts should be abolished and all detained persons with insufficient means, regardless of the offence of which they are suspected, should be afforded, upon request, access to free counsel.
35. All persons deprived of their liberty by the law enforcement agencies – regardless of the gravity of the offence of which they are suspected – should be granted, as from the outset of custody, access to independent legal counsel.
36. The law enforcement agencies should be reminded that, by virtue of Article 136 of the Turkish Penal Code, the right of access to a lawyer in ordinary cases applies as from the outset, and throughout, the period of police custody.
37. Lawyers representing detainees charged with offences now within the jurisdiction of the SSCs should be afforded access to their client's files during the period of pre-trial detention. Any exceptions should be minimal, clearly defined in writing and adjudicated upon by a judge.
38. All detained persons should be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without interception or censorship and in full confidentiality.
39. Legislative guarantees of an adequate opportunity for defendants (and their lawyers) to prepare their cases should be enacted.
40. Defendants or their lawyers should be permitted to examine and cross-examine witnesses themselves.
41. All court proceedings should be sound-recorded.
42. No lawyer should be denied the right to appear in court on behalf of their client except on grounds of gross misbehaviour which would make the continuance of the proceedings impossible should the lawyer continue to appear.

43. No defendant should be excluded from the courtroom except on grounds of disorderly behaviour.
44. Female lawyers should be permitted to appear in court attired as they wish, subject only to the general norms of seemliness – these would permit Muslim women to wear headscarves.
45. All lawyers should be afforded civil and penal immunity for statements made in good faith when appearing in court.
46. If they do not already do so, professional guidelines and judicial/prosecutorial education should recognise considerable latitude for advocates, burdened with the knowledge that dire consequences may befall their clients if they fail, in the heat of battle.
47. At first instance, the Bar Association should have the primary competence to conduct disciplinary proceedings against lawyers on its own initiative or at the request of a litigant, an appeal to lie from a decision of the Bar Association's disciplinary committee to an appropriate appellate body.
48. If one does not already exist, the Bar Association should establish and enforce in accordance with the law a code of professional conduct for lawyers. Any disciplinary proceedings should be determined in accordance with the code of professional conduct and in light of the UN Basic Principles on the Role of Lawyers.
49. Where, exceptionally, resort to civil procedures in respect of alleged professional misconduct would not provide an adequate remedy, criminal prosecution of lawyers in respect of their professional activities should only occur where (a) there is evidence which is both clear and credible and (b) where the alleged wrongdoing involves some serious impediment to the administration of justice.
50. All pending prosecutions against lawyers should be reviewed at the highest level of the appropriate prosecuting authority to consider the adequacy of the evidence favouring conviction and the extent to which, despite a formal sufficiency of evidence, there is any real prospect of conviction.

51. Prosecution of lawyers for the legitimate expression of their professional and political beliefs and for commenting on the administration of justice should be curtailed.
52. Guardianship of the Ministry of Justice over the Bar Associations should be removed with a view to ensuring that such associations are free and independent and that lawyers can, within acceptable limits, regulate themselves.
53. A clear delineation of what constitutes acceptable and unacceptable expression should be established in statutory law based on the language of the European Convention on Human Rights, and the judgements of the European Court of Human Rights.

IX – Torture and Police Impunity

54. The 1913 Temporary Law on the Procedure for the Investigation of Civil Servants should be abolished.
55. Public prosecutors rather than provincial administrative boards should be given sole discretion to investigate and prosecute all crimes committed by members of the security forces.
56. A nation-wide education programme aimed at instructing public prosecutors on (i) the prevalence of torture and the details of its practice in Turkey; and (ii) methods of detecting and preventing such torture, should be instituted.
57. Additional resources should be provided to prosecutors so as to ensure effective, timely, and independent investigation and prosecution of torture allegations. We recommend the creation of a juridical police force under the direct control of prosecutors as an appropriate measure.
58. Prosecutors should be required to maintain comprehensive records of every torture claim that is made to them and the eventual disposition of those claims.

59. Where credible evidence exists implicating members of the security forces in human rights violations, those officers should, pending trial, be immediately removed from any duty that involves them in the process of pre-trial detention. They should instead be assigned to alternative duties of an administrative nature.
60. Whenever a victim requests a medical examination, he or she should be promptly examined by a suitably qualified medical practitioner, even if he or she is in detention.
61. Initiatives should be undertaken so as to increase the number of forensic doctors qualifies in forensic medicine.
62. Guidelines should be established as to how doctors should comprehensively examine victims of torture.
63. It should be ensured that doctors involved in the examination of detainees receive adequate forensic training (and continuing education) in identifying signs of torture.
64. In addition to present arrangements for the medical examination of detainees, persons held for lengthy periods by the law enforcement agencies should be examined on a regular basis, at least every 48 hours, by a forensic doctor.
65. Police bringing a detainee to a medical examination should never be those involved in the arrest or questioning of the detainee or the investigation of the incident provoking the detention.
66. Forensic examination should always be conducted out of sight and hearing of law enforcement officials, unless the doctor concerned requests otherwise, for written reasons, in a particular case.
67. Independent medical examinations should be granted immediately upon request.
68. Medical certificates should not be handed to the police or to the detainee while in the presence of the police, but should be made available immediately to the prosecutor who should promptly fur-

nish a copy to the detainee and/or his/her lawyer.

69. Practical measures to protect doctors who report torture from harassment and intimidation should be strengthened.

70. The influence of the Ministry of Justice over the Council of Forensic Medicine should be removed so that medical personnel required to carry out examination of detainees are free from bureaucratic or political influence.

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71. Detainees should be permitted to promptly obtain medical examinations from independent doctors.

72. Reports of independent medical examinations should be admissible as evidence.

73. Educational measures on torture (as elsewhere recommended for judges and prosecutors) should include accounts of the failures of the system such as we have set out.

74. Police and gendarmerie establishments should be regularly inspected – including on an unannounced basis – by competent administrative authorities so as to provide control and supervision of law enforcement authorities.

75. All members of the police and gendarmerie, at all levels, should receive appropriate professional training, incorporating the principles of human rights

76. Records of all members of the security forces coming into contact with detainees should be scrupulously maintained, and be available to detainees and their legal representatives.

77. All questioning by police and gendarmerie should be automatically audio and videotaped.

78. Political and administrative leadership at the highest levels should be directed at branding brutality by law enforcement officers as unacceptable behaviour that should be outlawed.

Chapter X – Financial Institutions

79. The World Bank should reconsider its approach with regard to its programme in Turkey. We invite the World Bank and other financial institutions to pay special attention to the need to improve human rights protection in Turkey. We recommend that financial institutions give some priority to judicial and legal reform with the aim of strengthening the independence of the judiciary in Turkey.

ANNEXES

ANNEX A

The Constitution of the Republic of Turkey

(Extracts)

PART II – FUNDAMENTAL RIGHTS AND DUTIES

Chapter one : GENERAL PROVISIONS (Articles 12 - 16)

I. Nature of Fundamental Rights and Freedoms

ARTICLE 12. Everyone possesses inherent fundamental rights and freedoms which are inviolable and inalienable.

The fundamental rights and freedoms also include the duties and responsibilities of the individual towards society, his family, and other individuals.

II. Restriction of Fundamental Rights and Freedoms.

ARTICLE 13. Fundamental rights and freedoms may be restricted by law, in conformity with the letter and spirit of the Constitution, with the aim of safeguarding the indivisible integrity of the state with its territory and nation, national sovereignty, the Republic, national security, public order, general peace, the public interest, public morals and public health, and also for specific reasons set forth in the relevant articles of the Constitution.

General and specific grounds for restrictions of fundamental rights and freedoms shall not conflict with the requirements of the democratic order of society and shall not be imposed for any purpose other than those for which they are prescribed.

The general grounds for restriction set forth in this article shall apply for all fundamental rights and freedoms.

III. Prohibition of Abuse of Fundamental Rights and Freedoms

ARTICLE 14. 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, of endangering the existence of the Turkish State and Republic, of destroying fundamental

rights and freedoms, of placing the government of the state under the control of an individual or a group of people, or establishing the hegemony of one social class over others, or creating discrimination on the basis of language, race, religion or sect, or of establishing by any other means a system of government based on these concepts and ideas.

The sanctions to be applied against those who violate these prohibitions, and those who incite and provoke others to the same end shall be determined by law.

No provision of this Constitution shall be interpreted in a manner that would grant the right of destroying the rights and freedoms embodied in the Constitution.

IV. Suspension of the Exercise of Fundamental Rights and Freedoms

ARTICLE 15. in times of war, mobilization, martial law, or state of emergency the exercise of fundamental rights and freedoms can be partially or entirely suspended, or measures may be taken, to the extent required by the exigencies of the situation, which derogate the guarantees embodied in the Constitution, provided that obligations under international law are not violated.

Even under the circumstances indicated in the first paragraph, the individual's right to life, and the integrity of his material and spiritual entity shall be inviolable except where death occurs through lawful acts of warfare and execution of death sentences; no one may be compelled to reveal his religion, conscience, thought or opinion, nor be accused on account of them; offenses and penalties may not be made retroactive, nor may anyone be held guilty until so proven by a court judgment.

V. Status of Aliens

ARTICLE 16. The fundamental rights and freedoms of aliens may be restricted by law in a manner consistent with international law.

Chapter two: THE RIGHTS AND DUTIES OF THE INDIVIDUAL (Articles 17 - 40)

I. Personal Inviolability, Material and Spiritual Entity of the Individual

ARTICLE 17. Everyone has the right to life and the right to protect and develop his material and spiritual entity.

The physical integrity of the individual shall not be violated except under medical necessity and in cases prescribed by law; he shall not be subject to scientific or medical experiments without his consent.

No one shall be subjected to torture or ill-treatment; no one shall be subjected to penalty or treatment incompatible with human dignity.

The cases of carrying out of death penalties under court sentences, the act of killing in self-defense, the occurrences of death as a result of the use of a weapon permitted by law as a necessary measure in cases of: apprehension, or the execution of warrants of arrest, the prevention of escape of lawfully arrested or convicted persons, the quelling of a riot or insurrection, the execution of the orders of authorized bodies during martial law or state of emergency are outside of the provision of paragraph 1.

II. Prohibition of Forced Labor

ARTICLE 18. No one shall be required to perform forced labor. Unpaid compulsory work is prohibited.

The term forced labor does not include work required of an individual while serving a court sentence or under detention, services required from citizens during a state of emergency, and physical or intellectual work necessitated by the requirements of the country as a civic obligation, provided that the form and conditions of such labor are prescribed by law.

III. Personal Liberty and Security

ARTICLE 19. Everyone has the right to liberty and security of person.

No one shall be deprived of his liberty except in the following cases where procedure and conditions are prescribed by law; execution of sentences restricting liberty and the implementation of security measures decided by courts, order or as a result of an obligation upon him designated by law; execution of an order for the purpose of the educational supervision of a minor or for bringing him before the competent authority; execution of measures taken in conformity with the relevant legal provision for the treatment, education or correction in institutions of a person of unsound mind, an alcoholic or drug addict or vagrant or a person spreading contagious diseases, when such persons constitute a danger to the public; apprehension or detention of a person who

enters or attempts to enter illegally into the country or concerning whom deportation or extradition order has been issued.

Individuals against whom there are strong indications of having committed an offence can be arrested by decision of judge solely for the purposes of preventing escape, or preventing the destruction or alteration of evidence as well as in similar other circumstances which necessitate detention and are prescribed by law. Apprehension of a person without a decision by a judge shall be resorted to only in cases when a person is caught in the act of committing an offence or in cases where delay is likely to thwart justice; the conditions for such apprehension shall be defined by law.

Individuals arrested or detained shall be promptly notified, and in all cases in writing, or orally, when the former is not possible, of the grounds for their arrest or detention and the charges against them; in cases of offences committed collectively this notification shall be made, at the latest, before the individual is brought before the judge.

The person arrested or detained shall be brought before a judge within forty-eight hours and within fifteen days in the case of offences committed collectively, excluding the time taken to send him to the court nearest to the place of seizure. No one can be deprived of his liberty without the decision of a judge after the expiry of the above specified periods. These periods may be extended during state of emergency, under martial law or in time of war.

Notification of the situation of the person arrested or detained shall be made to the next of kin, except in cases of definite necessities pertaining to the risks of revealing the scope and subject of the investigation compelling otherwise.

Persons under detention shall have the right to request to be tried within a reasonable time or to be released during investigation or prosecution. Release may be made conditional on the presentation of an appropriate guarantee with a view to securing the presence of the person at the trial proceedings and the execution of the court sentence.

Persons deprived of their liberty under any circumstances are entitled to apply to the appropriate judicial authority for speedy conclusion of proceedings regarding their situation and for their release if the restriction placed upon them is not lawful.

Damages suffered by persons subjected to treatment contrary to the above provisions shall be compensated for according to law, by the state.

IV. Privacy and Protection of Private Life

A. Privacy of the Individual's Life

ARTICLE 20. Everyone has the right to demand respect for his private and family life. Privacy of individual and family life cannot be violated. Exceptions necessitated by judiciary investigation and prosecution are reserved.

Unless there exists a decision duly passed by a judge in cases explicitly defined by law, and unless there exists an order of an agency authorized by law in cases where delay is deemed prejudicial, neither the person nor the private papers, nor belongings of an individual shall be searched nor shall they be seized.

B. Inviolability of Domicile

ARTICLE 21. The domicile of an individual shall not be violated. Unless there exists a decision duly passed by a judge in cases explicitly defined by law, and unless there exists an order of an agency authorized by law in cases where delay is deemed prejudicial, no domicile may be entered or searched, or the property therein seized.

C. Freedom of Communication

ARTICLE 22. Everyone has the right to freedom of communication.

Secrecy of communication is fundamental.

Communication shall not be impeded nor its secrecy be violated, unless there exists a decision duly passed by judge in cases explicitly defined by law, and unless there exists an order of an agency authorized by law in cases where delay is deemed prejudicial.

Public establishments or institutions where exceptions to the above may be applied will be defined by law.

V. Freedom of Residence and Movement

ARTICLE 23. Everyone has the right to freedom of residence and movement.

Freedom of residence may be restricted by law for the purpose of preventing offences, promoting social and economic development, ensuring sound and orderly urban growth, and protecting public property; freedom of movement may be restricted by law for the purpose of investigation and prosecution of an offence, and prevention of offences. A citizen's freedom to leave the country may be restricted on account of the national economic situation, civic obligations, or criminal investigation or prosecution.

Citizens may not be deported, or deprived of their right of entry into their homeland.

VI. Freedom of Religion and Conscience

ARTICLE 24. Everyone has the right to freedom of conscience, religious belief and conviction.

Acts of worship, religious services, and ceremonies shall be conducted freely, provided that they do not violate the provisions of Article 14.

No one shall be compelled to worship, or to participate in religious ceremonies and rites, to reveal religious beliefs and convictions, or be blamed or accused because of his religious beliefs and convictions.

Education and instruction in religion and ethics shall be conducted under state supervision and control. Instruction in religious culture and moral education shall be compulsory in the curricula of primary and secondary schools. Other religious education and instruction shall be subject to the individual's own desire, and in the case of minors, to the request of their legal representatives.

No one shall be allowed to exploit or abuse religion or religious feelings, or things held sacred by religion, in any manner whatsoever, for the purpose of personal or political influence, or for even partially basing the fundamental, social, economic, political, and legal order of the State on religious tenets.

VII. Freedom of Thought and Opinion

ARTICLE 25. Everyone has the right to freedom of thought and opinion.

No one shall be compelled to reveal his thoughts and opinions for any reason or purpose; nor shall anyone be blamed or accused on account of his thought and opinions.

VIII. Freedom of Expression and Dissemination of Thought

ARTICLE 26. Everyone has the right to express and disseminate his thought and opinion by speech, in writing in pictures or thought other media, individually or collectively. This right includes the freedom to receive and impart information and ideas without interference from official authorities. This provision shall not preclude subjecting transmission by radio, television, cinema, and similar means to a system of licensing.

The exercise of these freedoms may be restricted for the purposes of preventing crime, punishing offenders, withholding information dully classified as a state secret, protecting the reputation and rights and the private and family life of others, or protecting professional secrets as prescribed by law, or ensuring the proper functioning of the judiciary.

No language prohibited by law shall be used in the expression and dissemination of thought. Any written or printed documents, phonograph records, magnetic or video tapes, and other means of expression used in contravention of this provision shall be seized by a duly issued decision of a judge or, in cases where delay is deemed prejudicial, by the competent authority designated by law. The authority issuing the seizure order shall notify the competent judge of its decision within twenty-four hours. The judge shall decide on the matter within three days.

Provisions regulating the use of means of disseminating information and ideas shall not be interpreted as a restriction of the freedom of expression and dissemination unless they prevent the dissemination of information and thoughts.

IX. Freedom of Science and Arts

ARTICLE 27. Everyone has the right to study and teach freely, explain, and disseminate science and arts and to carry out research in these fields.

The right to disseminate shall not be exercised for the purpose of changing the provisions of Articles 1, 2, and 3 of this Constitution.

The provisions of this article shall not preclude regulation by law of the entry and distribution of foreign publications in the country.

X. Provisions Relating to the Press and Publication

A. Freedom of the Press

ARTICLE 28. The press is free, and shall not be censored. The establishment of a printing house shall not be subject to prior permission and to the deposit of a financial guarantee.

Publication shall not be made in any language prohibited by law.

The State shall take the necessary measures to ensure the freedom of the press and freedom of information.

In the limitation of freedom of the press, Articles 26 and 27 of the Constitution are applicable.

Anyone who writes or prints any news or articles which threaten the internal or external security of the state or the indivisible integrity of the state with its territory and nation, which tend to incite offence, riot or insurrection, or which refer to classified State secrets and anyone who prints or transmits such news or articles to others for the above purposes, shall be held responsible under the law relevant to these offences. Distribution may be suspended as a preventive measure by a decision of judge, or in the event delay is deemed prejudicial by the competent authority designated by law. The authority suspending distribution shall notify the competent judge of its decision within twenty-four hours at the latest. The order suspending distribution shall become null and void unless upheld by the competent judge within forty-eight hours at the latest.

No ban shall be placed on the reporting of events, except by a decision of judge issued to ensure proper functioning of the judiciary, within the limits to be specified by law.

Periodical and non-periodical publications may be seized by a decision of judge in cases of ongoing investigation or prosecution of offences prescribed by law; and, in situations where delay could endanger the indivisible integrity of the State with its territory and nation, national security, public order or public morals and for the prevention of offence by order of the competent authority designated by law. The authority issuing the seizure order shall notify the competent judge of its decision within twenty-four hours at the latest. The seizure order shall become null and void unless upheld by the competent court within forty-eight hours at the latest.

The general common provisions shall apply when seizure and confiscation of periodicals and non-periodicals for reasons of criminal investigation and prosecution take place.

Periodicals published in Turkey may be temporarily suspended by court sentence if found guilty of publishing material which contravenes the indivisible integrity of the State with its territory and nation, the fundamental principles of the Republic, national security and public morals. Any publication which clearly bears the characteristics of being the continuation of the suspended periodical is prohibited; and shall be seized by a decision of judge.

B. Right to Publish Periodicals and Non-periodicals

ARTICLE 29. Publication of periodicals or non-periodicals shall not be subject to prior authorization or to the deposit of a financial guarantee.

To publish a periodical it shall suffice to submit the information and documents prescribed by law to the competent authority designated by law. If the information and documents submitted are found to be in contravention of law, the competent authority shall apply to the appropriate court for suspension of publication.

The publication of periodicals, the conditions of publication, the financial resources and rules relevant to the profession of journalism shall be regulated by law. The law shall not impose any political, economic, financial, and technical conditions obstructing or making difficult the free dissemination of news, thought, or beliefs.

Periodicals shall have equal access to the means and facilities of the State, other public corporate bodies, and their agencies.

C. Protection of Printing Facilities

ARTICLE 30. A printing press or its annexes duly established as a publishing house under law shall not be seized, confiscated, or barred from operation on the grounds of being an instrument of crime, except in cases where it is convicted of offences against the indivisible integrity of the State with its territory and nation, against the fundamental principles of the Republic or against national security.

*D. Right to Use Mass Media other than the Press which Are Owned
by Public Corporations.*

ARTICLE 31. Individuals and political parties have the right to use mass media and means of communication other than the press owned by public corporations. The conditions and procedures for such use shall be regulated by law.

The law shall not impose restrictions preventing the public from receiving information or forming ideas and opinions through these media, or preventing public opinion from being freely formed, on grounds other than the general restrictions set forth in Article 13.

E. Right of Rectification and Reply

ARTICLE 32. The right of rectification and reply shall be accorded only cases where personal reputation and honor is attacked or in cases of unfounded allegation and shall be regulated by law.

If a rectification or reply is not published, the judge will decide, within seven days of appeal by the individual involved, whether this publication is required.

XI. Rights and Freedoms of Assembly

A. Freedom of Association

ARTICLE 33. Everyone has the right to form associations without prior permission.

Submitting the information and documents stipulated by law to the competent authority designated by law shall suffice to enable and association to be formed. If the information and documents submitted are found to contravene the law, the competent authority shall apply to the appropriate court for the suspension of activities or dissolution of the association involved.

No one shall be compelled to become or remain a member of an association. The formalities, conditions, and procedures governing the exercise of freedom of association shall be prescribed by law.

Associations shall not contravene the general grounds of restriction in Article 13, nor shall they pursue political aims, engage in political activities, receive support from or give support to political parties, or take joint action with labor unions, with public professional organizations or with foundations.

Associations deviating from their original aims or conditions of establishment, or failing of fulfill the obligations stipulated by law shall be considered dissolved.

Associations may be dissolved by decision of judge in cases prescribed by law. They may be suspended from activity by the competent authority designated by law pending a court decision in cases where delay endangers the indivisible integrity of the State with its territory and nation, national security or sovereignty, public order, the protection of the rights and freedoms others, or the prevention of crime.

Provisions of the first paragraph of this article shall not prevent imposition of restrictions on the rights of Armed Forces and Security Forces officials and civil servants to form associations, or the prohibition of the exercise of this right.

This article shall apply equally to foundations and other organizations of the same nature.

B. Right to Hold Meetings and Demonstration Marches

ARTICLE 34. Everyone has the right to hold unarmed and peaceful meetings and demonstration marches without prior permission.

The competent administrative authority may determine a site and route for the demonstration march in order to prevent disruption of order in urban life.

The formalities, conditions, and procedures governing the exercise of the right to hold meetings and demonstration marches shall be prescribed by law.

The competent authority designated by law may prohibit a particular meeting and demonstration march, or postpone it for not more than two months in situations where there is a strong possibility that disturbances may arise which would seriously upset public order, where the requirement of national security may be violated, or where acts aimed at destroying the fundamental characteristics of the Republic may be committed, in cases where the law forbids all meetings or demonstration marches in districts of province for the same reasons, the postponement may not exceed three months.

Associations, foundations, labor unions, and public professional organizations shall not hold meetings or demonstration marches exceeding their own scope and aims.

XII. Right of Property

ARTICLE 35. Everyone has the right to own and inherit property.

These rights may be limited by law only in view of public interest.

The exercise of the right to own property shall not be in contravention of the public interest.

XIII. Provisions Relating to the Protection of Rights.

A. Freedom to Claim Rights

ARTICLE 36. Everyone has the right of litigation either as plaintiff or defendant before the courts through lawful means and procedure.

No court shall refuse to hear a case within its jurisdiction.

B. Guarantee of Lawful Judge

ARTICLE 37. No one may be tried by any judicial authority other than the legally designated court.

Extraordinary tribunals with jurisdiction that would in effect remove a person from the jurisdiction of his legally designated court shall not be established.

C. Principles Relating to Offences and Penalties

ARTICLE 38. No one shall be punished for any act which did not constitute a criminal offence under the law in force at the time it was committed; no one shall be given a heavier penalty for an offence that the penalty applicable at the time when the offence was committed.

The provisions of the above paragraph shall also apply to the statute of limitations on offences and penalties and on the results of conviction.

Penalties, and security measures in lieu of penalties, shall be prescribed only by law.

No one shall be held guilty until proven guilty in a court of law.

No one shall be compelled to make a statement that would incriminate himself or his legal next of kin, or to present such incriminating evidence.

Criminal responsibility shall be personal.

General confiscation shall not be imposed as penalty.

The Administration shall not impose any sanction resulting in restriction of personal liberty. Exceptions to this provision may be introduced by law regarding internal order of the Armed Forces.

No citizen shall be extradited to a foreign country on account of an offence.

XIV. Right to Prove an Allegation

ARTICLE 39. In libel and defamation suits involving allegations against persons in the public service in connection with their functions or services, the defendant has the right to prove the allegations. A plea for presenting proof shall not be granted in any other case unless proof would serve the public interest or unless the plaintiff consents.

XV. Protection of Fundamental Rights and Freedoms

ARTICLE 40. Everyone whose constitutional rights and freedoms are violated has the right to request prompt access to the competent authorities.

Damages incurred by any person through unlawful treatment by holders of public office shall be compensated by the state. The state reserves the right of recourse to the official responsible.

Chapter three: SOCIAL AND ECONOMIC RIGHTS AND DUTIES (Articles 41 - 65)

I. Protection of the Family

ARTICLE 41. The family is the foundation of Turkish society.

The State shall take the necessary measures and establish the necessary organization to ensure the peace and welfare of the family, especially the protection of the mother and children, and for family planning education and application.

II. Right and Duty of Training and Education

ARTICLE 42. No one shall be deprived of the right of learning and education.

The scope of the right to education shall be defined and regulated by law.

Training and education shall be conducted along the lines of the principles and reforms of Atatürk, on the basis of contemporary science and education methods, under the supervision and control of the state. Institutions of training and education contravening these provisions shall not be established.

The freedom of training and education does not relieve the individual from loyalty to the Constitution.

Primary education is compulsory for all citizens of both sexes and is free of charge in state schools.

The principles governing the functioning of private primary and secondary schools shall be regulated by law in keeping with the standards set for state schools.

The State shall provide scholarships and other means of assistance to enable students of merit lacking financial means to continue their education. The State shall take necessary measures to rehabilitate those in need of special training so as to render such people useful to society.

Training, education, research, and study are the only activities that shall be pursued at institutions of training and education. These activities shall not be obstructed in any way.

No language other than Turkish shall be taught as mother tongue to Turkish citizens at any institutions of training or education. Foreign languages to be taught in institutions of training and education and the rules to be followed by schools conducting training and education in a foreign language shall be determined by law. The provisions of international treaties are reserved.

III. Public Interest

A. Utilization of the Coasts

ARTICLE 43. The coasts are under the sovereignty and at the disposal of the state.

In the utilization of the sea coast, lake shores or river bank, and of the coastal strip along the sea and lakes, public interest shall be taken into consideration with priority.

The width of coasts, and coastal strips to be determined according to the purpose of utilization, and the conditions and possibilities of such utilization by individuals shall be determined by law.

B. Land Ownership

ARTICLE 44. The State shall take the necessary measures to maintain and develop efficient land cultivation, to prevent its loss through erosion, and to provide land to farmers with insufficient land of their own, or no land. For this purpose, the law may define the size of appropriate land units, according to different agricultural regions and types of farming. Providing of land to farmers with no or insufficient land shall not lead to a fall in production, or to the depletion of forests and other land and underground resources.

Lands distributed for this purpose shall neither be divided nor be transferred to others, except through inheritance, and shall be cultivated only by farmers, to whom they have been distributed, and their heirs. The principles relating to the recovery by the state of the land thus distributed in the event of loss of these conditions shall be prescribed by law.

C. Protection of Agriculture, Animal Husbandry, and Persons Engaged in these Activities

ARTICLE 45. The State shall assist farmers and livestock breeders in acquiring machinery, equipment and other inputs in order to prevent improper use and destruction of agricultural land, meadows and pastures and to increase crop and livestock production in accordance with the principles of agricultural planning.

The State shall take necessary measures to promote the values of crop and livestock products, and to enable producers to be paid their real value.

D. Expropriation

ARTICLE 46. The State and public corporations shall be entitled, where the public interest requires it, to expropriate privately owned real estate wholly or in part or impose administrative servitude on it in accordance with the principles and procedures prescribed by law, provided that compensation is paid in advance.

The method and procedure for calculating compensation for expropriation shall be prescribed by law. In determining the compensation, the law shall take into account tax declarations, current value established by official assessment at the time of expropriation, unit prices and construction costs for real estate, and other objective criteria.

The procedure for taxing and difference between the sum due in compensation and the value declared in the tax declaration shall be prescribed by law.

Compensation shall be paid in cash and in advance. However, the procedure to be applied in paying compensation for land expropriated in order to carry out land reform, major energy and irrigation projects, and housing and resettlement schemes and afforestation, and to protect the coasts and to build tourist facilities shall be regulated by law. In the previous cases where the law may allow payment in installments, the payment period shall not exceed live years; whence payment shall be made in equal installments and an interest rate equivalent to the highest interest paid on the public debt shall be paid for the remainder of installments.

Compensation for land expropriated from the small farmer who cultivates his own land shall in all cases be paid in advance.

E. Nationalization

ARTICLE 47. Private enterprises performing public service may be nationalized when this it required by the exigencies of public interest.

Nationalization shall be carried out on the basis of real value. The methods and procedures for calculating real value shall be prescribed by law.

IV. Freedom to Work and Conclude Contracts

ARTICLE 48. Everyone has the freedom to work and conclude contracts in the field of his choice. The establishment of private enterprises is free.

The State shall take measures to ensure that private enterprises operate in accordance with national economic requirements and social objectives and in conditions of security and stability.

V. Provisions Relating to Labour

A. Right and Duty to Work

ARTICLE 49. Everyone has the right and duty to work.

The State shall take the necessary measures to raise the standard of living of workers, to protect them in order to improve the general

conditions of labour, to promote labour, and to create suitable economic conditions for prevention of unemployment.

The State shall take facilitating and protecting measures in order to secure labour peace in worker-employer relations.

B. Working Conditions and Right to Rest and Leisure

ARTICLE 50. No one shall be required to perform work unsuited to his age, sex, and capacity.

Minors, women and persons with physical or mental disabilities, shall enjoy special protection with regard to working conditions.

All workers have the right to rest and leisure.

Rights and conditions relating to paid weekends and holidays, together with paid annual leave, shall be regulated by law.

C. Right to Organize Labour Unions

ARTICLE 51. Workers and employers have the right to form labour unions and employers associations and higher organizations, without prior permission, in order to safeguard and develop their economic and social rights and the interests of their members in their labour relations.

In order to form unions and their higher bodies, it shall suffice to submit the information and documents prescribed by law to the competent authority designated by law. If this information and documentation is not in conformity with law, the competent authority shall apply to the appropriate court for the suspension of activities or the dissolution of the union or the higher body.

Everyone shall be free to become a member of or withdraw from membership in a union.

No one shall be compelled to become a member, remain a member, or withdraw from membership of a union.

Workers and employers cannot hold concurrent memberships in more than one labour union or employers association.

Employment in a given work-place shall not be made conditional on being, or not being member of a labour union.

To become an executive in a labour union or in higher organizations of them it is a prerequisite condition that the workers should have held the status of a labourer for at least ten years.

The status, the administration, and the functioning of the labour unions and their higher bodies should not be inconsistent with the characteristics of the Republic as defined in the Constitution, or with democratic principles.

D. Activities of Labour Unions

ARTICLE 52. Labour unions, in addition to being under the general restrictions set forth in Article 13. also shall not pursue a political cause, engage in political activity, receive support from political parties or give support to them, and shall not act jointly for these purposes with associations, public professional organizations, and foundations.

The fact of engaging in labour union activities in a workplace shall not justify failure to perform one's work.

The administrative and financial supervision of labour unions by the state, and their revenues and expenditures, and the method of payment of membership dues to the labour union, shall be regulated by law.

Labour unions shall not use their revenues beyond the scope of their professional aims, and shall keep all their funds in State bank.

VI. Collective Bargaining, Right to Strike, and Lockout

A. Right of Collective Bargaining

ARTICLE 53. Workers and employers have the right to conclude collective bargaining agreements in order to regulate reciprocally their economic and social position and conditions of work.

The procedure to be followed in concluding collective bargaining agreements shall be regulated by law.

More than one collective bargaining agreement at the same place of work for the same period shall not be concluded or put into effect.

B. Right to Strike, and Lockout

ARTICLE 54. Workers have the right to strike if a dispute arises during the collective bargaining process. The procedures and conditions

governing the exercise of this right and the employer's recourse to a lockout, the scope of both actions, and the exceptions to which they are subject shall be regulated by law.

The right to strike, and lockout shall not be exercised in a manner contrary to the principle of goodwill to the detriment of society, and in a manner damaging national wealth.

During strike, the labour union is liable for any material damage caused in a work-place where the strike is being held, as a result of deliberate negligent behaviour by the workers and the labour union.

The circumstances and places in which strikes and lockouts may be prohibited or postponed shall be regulated by law.

In cases where a strike or a lockout is prohibited or postponed, the dispute shall be settled by the Supreme Arbitration Board at the end of the period of postponement. The disputing parties may apply to the Supreme Arbitration Board by mutual agreement at any stage of the dispute.

The decisions of the Supreme Arbitration Board shall be final and have the force of collective bargaining agreement.

The organization and functions of the Supreme Arbitration Board shall be regulated by law.

Politically motivated strikes and lockouts, solidarity strikes and lockouts, occupation of work premises, labour go-slows, production decreasing, and other forms of obstruction are prohibited.

Those who refuse to go on strike, shall in no way be barred from working at their work-place by strikers.

VII. Guarantee of Fair Wage

ARTICLE 55. Wages shall be paid in return for work.

The State shall take the necessary measures to ensure that workers earn a fair wage suitable for the work they perform and that they enjoy other social benefits.

In determining the minimum wage, the economic and social conditions of the country shall be taken into account.

VIII. Health, the Environment and Housing

A. Health Services and Conservation of the Environment

ARTICLE 56. Everyone has the right to live in a healthy, balanced environment.

It is the duty of the State and the citizens to improve the natural environment, and to prevent environmental pollution.

To ensure that everyone lead their lives in conditions of physical and mental health and to secure cooperation in terms of human and material resources through economy and increased productivity, the State shall regulate central planning and functioning of the health services.

The State shall fulfill this task by utilizing and supervising the health and social assistance institutions, in both the public and private sectors.

In order to establish widespread health services general health insurance may be introduced by law.

B. Right to Housing

ARTICLE 57. The State shall take measures to meet the needs for housing, within the framework of a plan which takes into account the characteristics of cities and environmental conditions and supports community housing projects.

IX. Youth and Sports

A. Protection of Youth

ARTICLE 58. The State shall take measures to ensure the training and development of youth into whose keeping our State, independence, and our Republic are entrusted, in the light of contemporary science, in line with the principles and reforms of Atatürk, and in opposition to ideas aiming at the destruction of the indivisible integrity of the State with its territory and nation.

The State shall take necessary measures to protect youth from addiction to alcohol, drug addiction, crime, gambling, and similar vices, and ignorance.

B. Development of Sports

ARTICLE 59. The State shall take measures to develop to physical and

mental health of Turkish citizens of all ages, and encourage the spread of sports among the masses.

The State shall protect successful athletes.

X. Social Security Rights

A. Right to Social Security

ARTICLE 60. Everyone has the right to social security.

The State shall take the necessary measures and establish the organization for the provision of social security.

B. Persons Requiring Special Protection in the Field of Social Security

ARTICLE 61. The State shall protect the widows and orphans of those killed in war and in the line of duty, together with the disabled and war veterans, and ensure that they enjoy a decent standard of living.

The State shall take measures to protect the disabled and secure their integration into community life.

The aged shall be protected by the State. State assistance to the aged, and other rights and benefits shall be regulated by law.

The State shall take all kinds of measures for social resettlement of children in need of protection.

To achieve these aims the State shall establish the necessary organizations or facilities, or arrange for their establishment by other bodies.

C. Turkish Nationals Working Abroad

ARTICLE 62. The State shall take the necessary measures to ensure the family unity, the education of the children, the cultural needs, and the social security of Turkish Nationals working abroad, and shall take the necessary measures to safeguard their ties with the country and to help them on their return home.

XI. Conservation of Historical, Cultural and Natural Wealth

ARTICLE 63. The State shall ensure the conservation of the historical, cultural and natural assets and wealth, and shall take supporting and promoting measures towards this end.

Any limitations to be imposed on such assets and wealth which are

privately owned and the compensation and exemptions to be accorded to the owners of such, as a result of these limitations, shall be regulated by law.

XII. Protection of Arts and Artists

ARTICLE 64. The State shall protect artistic activities and artists. The State shall take the necessary measures to protect, promote and support works of art and artists, and encourage the spread of art appreciation.

XIII. The Extent of Social and Economic Rights

ARTICLE 65. The State shall fulfill its duties as laid down in the Constitution in the social and economic fields within the limits of its financial resources, taking into consideration the maintenance of economic stability.

Chapter four: POLITICAL RIGHTS AND DUTIES (Articles 66 - 74)

I. Turkish Citizenship

ARTICLE 66. Everyone bound to the Turkish State through the bond of citizenship is a Turk.

The child of a Turkish father or a Turkish mother is a Turk. The citizenship of a child of a foreign father and a Turkish mother shall be defined by law.

Citizenship can be acquired under the conditions stipulated by law, and shall be forfeited only in cases determined by law.

No Turk shall be deprived of citizenship, unless he commits an act incompatible with loyalty to the motherland.

Recourse to the courts, against the decisions and proceedings related to the deprivation of citizenship, shall not be denied.

II. Right to Vote, to be Elected and to Engage in Political Activity

ARTICLE 67. In conformity with the conditions set forth in the law, citizens have the right to vote, to be elected, and to engage in political activities independently or in a political party, and to take part in a referendum.

Elections and referendums shall be held under the direction and supervision of the judiciary, according to the principles of free, equal, secret, direct, universal suffrage, and public counting of the votes.

All Turkish citizens entering the age of 20 in the year of election and referendum shall have the right to vote in elections and take part in a referendum the months and days of the age not taken into account. (*)

The exercise of these rights shall be regulated by law.

Conscripts serving in the Armed Services, students in military schools, and detainees and convicts in prisons cannot vote.

III. Provisions Relating to Political Parties

A. Forming Parties. Membership and Withdrawal From Membership in a Party

ARTICLE 68. Citizens have the right to form political parties, and to join and withdraw from them in accordance with the established procedure. To become a member of a party one must be over 21 years of age.

Political parties are indispensable elements of the democratic political system.

Political parties shall be founded without prior permission and shall pursue their activities in accordance with the provisions set forth in the Constitution and law.

The statutes and programs of political parties shall not be in conflict with the indivisible integrity of the state with its territory and nation, human rights, national sovereignty, and the principles of the democratic and secular Republic.

Political parties whose aim is to support and to set up the domination of a class or group, or any kind of dictatorship cannot be formed.

Political parties shall not organize and function abroad, shall not form discriminative auxiliary bodies such as women's or youth branches, nor shall they establish foundations.

Judges and prosecutors, members of higher judicial organs, members of the teaching staff at institutions of higher education, members of the Higher Education Council, civil servants in public organizations and

corporations, and other public servants who are not considered to be labourers by virtue of the services they perform, students, and members of the Armed Forces, shall not become members of political parties.

B. Principles to be Observed by Political Parties

ARTICLE 69. Political parties shall not engage in activities outside the lines of their statutes and programs, and shall not contravene the restrictions set forth in Article 14 of the Constitution; those that contravene them shall be dissolved permanently.

Political parties shall not have political ties and engage in political cooperation with associations, unions, foundations, cooperatives, and public professional organizations and their higher bodies in order to implement and strengthen their party policies, nor shall they receive material assistance from these bodies.

The internal functioning and the decisions of political parties shall not be contrary to the principles of democracy.

The auditing of political parties shall be carried out by the Constitutional Court.

The Office of the Chief Public Prosecutor shall examine, with priority, the conformity of the status and programs of new parties and of the status of their founders in view of the Constitution and the law; and shall also follow their activities.

The dissolution of political parties shall be decided by the Constitutional Court after the filing of a suit by the Office of the Chief Public Prosecutor of the Republic.

The founding members and administrators at every level of a political party which has been permanently dissolved shall not become founding members, administrators, or comptrollers of a new political party; nor shall any new political party be founded, the majority of whose members are former members of a political party previously dissolved.

Political parties shall not receive assistance in kind or cash from foreign states, international organizations, associations and groups in foreign countries, nor shall they take orders from these bodies, or participate in their decisions and activities which are prejudicial to the independence

and territorial integrity of Turkey. Political parties contravening the provisions of this paragraph shall also be dissolved permanently.

The formulation and activities, supervision, and dissolution of political parties shall be regulated by law within the above mentioned provisions.

IV. Right to Enter the Public Service

A. Entry into the Public Service

ARTICLE 70. Every Turk has the right to enter the public service.

No criteria other than the qualifications for the office concerned shall be taken into consideration for recruitment into the public service.

B. Declaration of Assets

ARTICLE 71. Declaration of assets by persons entering public service, and the frequency of such declaration, shall be determined by law. Those serving in the legislative and executive organs shall not be exempted from this requirement.

V. National Service

ARTICLE 72. National service is the right and duty of every Turk. The manner in which this service shall be performed, or considered as performed, either in the Armed Forces or in the public service shall be regulated by law.

VI. Obligation to Pay Taxes

ARTICLE 73. Everyone is under the obligation to pay taxes according to his financial resources, in order to meet public expenditures.

An equitable and balanced distribution of the tax burden is the social objective of fiscal policy.

Taxes, fees, duties, and other such financial impositions shall be imposed, amended, or revoked by law.

The Council of Ministers may be empowered to amend the percentages of exemption, exceptions and reductions in taxes, fees, duties and other such financial impositions, within the minimum and maximum limits prescribed by law.

VII. Right of Petition

ARTICLE 74. Citizens have the right to apply in writing to the competent authorities and to the Turkish Grand National Assembly with regard to requests and complaints concerning themselves or the public.

The result of the application concerning himself shall be made known to the petitioner in writing.

The way of exercising this rights shall be determined by law.

ANNEX B

The Constitution of the Republic of Turkey (Extracts)

PART III

JUDICIAL POWER

Chapter one: LEGISLATIVE POWER (Articles 75 - 100)

I. The Turkish Grand National Assembly

A. Composition

ARTICLE 75. The Turkish Grand National Assembly shall be composed of four-hundred and fifty deputies elected by universal suffrage by the nation. (*)

B. Eligibility to be a Deputy

ARTICLE 76. Every Turk over the age of 30 is eligible to be a deputy.

Persons who have not completed their primary education, who have been deprived of legal capacity, who have failed to perform compulsory military service, who are banned from public service, who have been sentenced to a prison term totaling one year or more excluding involuntary offences, or to a heavy imprisonment; those who have been convicted for dishonourable offences such as embezzlement, corruption bribery, theft, fraud, forgery, breach of trust, fraudulent bankruptcy; and persons convicted of smuggling, conspiracy in official bidding tender, or purchases, of offences related to the disclosure of State secrets, of involvement in ideological and anarchistic activities, and incitement and encouragement of such activities, shall not be elected deputies, even if they have been pardoned.

Judges and prosecutors, members of the higher judicial organs, members of the teaching staff at institutions of higher education, members of the Higher Education Council, employees of public institutions and agencies who have the status of civil servants, other public employees not regarded as labourers on account of the duties they perform, and

members of the Armed Forces shall not stand for election or be eligible to be a deputy unless they resign from office.

C. Election Term of the Turkish Grand National Assembly

ARTICLE 77. Elections for the Turkish Grand National Assembly shall be held every five years.

The Assembly may decide to hold new elections before the termination of this period, and new elections may also be decided upon according to decision, taken in accordance with the conditions set forth in the Constitution, by the President of the Republic. A deputy whose term of office expires may be eligible for re-election.

In the event of a decision to hold new elections, the powers of the Assembly shall continue until the election of a new Assembly.

*D. Deferment of Elections to the Turkish Grand National Assembly,
and By-elections*

ARTICLE 78. If the holding of new elections is found impossible because of war, the Turkish Grand National Assembly may decide to defer elections for a year.

If the grounds for deferment do not disappear this measure may be repeated under the procedure for deferment.

By-elections shall be held when vacancies arise in the membership of the Turkish Grand National Assembly. By-elections shall be held once in every election term and cannot be held until 30 months have elapsed from the date of the previous general elections. However, in cases where the number of vacant seats reaches five percent of the total number of seats, by-elections shall be held within three months.

By-elections shall not be held within one year before general elections.

E. General Administration and Supervision of the Elections

ARTICLE 79. Elections shall be held under the general administration and supervision of the judicial organs.

The Supreme Election Council shall execute all the functions to ensure the fair and orderly conduct of the elections from the beginning to the end of polling, carry out investigations and take final decisions on all irregularities, complaints and objections concerning the elections

during and after the polling, and verify the election returns of the members of the Turkish Grand National Assembly. No appeal shall be made to any authority against the decisions of the Supreme Election Council.

The functions and powers of the Supreme Election Council and other election councils shall be determined by law.

The Supreme Election Council shall be composed of seven regular members and four substitutes. Six of the members shall be elected by the Plenary Assembly of the High Court of Appeals, and five members shall be elected by the Plenary Assembly of the Council of State from amongst its own members, by secret ballot and by an absolute majority of the total number of members. These members shall elect a Chairman and Vice-Chairman from amongst themselves, by absolute majority and secret ballot.

Amongst the members elected to the Supreme Election Council by the High Court of Appeals and by the Council of State, two members from each group shall be designated, by lot, as substitute members. The Chairman and Vice-Chairman of the Supreme Election Council shall not take part in this procedure.

The general conduct and supervision of a referendum on legislation amending the Constitution shall be subject to the same provisions as those relating to the election of deputies.

F. Provisions Relating to Membership

ARTICLE 80. Members of the Turkish Grand National Assembly represent, not merely their own constituencies or constituents, but the Nation as a whole.

1. Oath-Taking

ARTICLE 81. Members of the Turkish Grand National Assembly, on assuming office, shall take the following oath:

"I swear upon my honour and integrity, before the great Turkish Nation, to safeguard the existence and independence of the State, the indivisible integrity of the country and the Nation, and the absolute sovereignty of the Nation; to remain loyal to the supremacy of law, to the democratic and secular Republic, and to Atatürk's principles and reforms; not to deviate from the ideal

according to which everyone is entitled to enjoy human rights and fundamental freedoms under peace and prosperity in society, national solidarity and justice, and loyalty to the Constitution."

2. Activities Incompatible with Membership

ARTICLE 82. Members of the Turkish Grand National Assembly shall not hold office in state departments and other public corporate bodies and their subsidiaries; in corporations and enterprises affiliated with the state and other public corporate bodies; in the executive or supervisory organs of enterprises and corporations where there is direct or indirect participation of the state and public corporate bodies; in the executive and supervisory organs of public benefit associations, whose special resources of revenue and privileges are provided by law; in the executive and supervisory organs of foundations which enjoy tax exemption and receive financial subsidies from the state; and in the executive and supervisory organs of labour unions and public professional organizations, and in the enterprises and corporations in which the above-mentioned unions and associations or their higher bodies have a share; nor can they be appointed as representatives of the above-mentioned bodies or be part to a business contract, directly or indirectly, and be arbitrators of representatives in their business transactions.

Members of the Turkish Grand National Assembly shall not be entrusted with any official or private duties involving recommendation, appointment, or approval by the executive organ. Acceptance by a deputy of a temporary assignment given by the Council of Ministers on a specific matter, and not exceeding a period of six months, is subject to the approval of the Assembly.

Other functions and activities incompatible with membership in the Turkish Grand National Assembly shall be regulated by law.

3. Parliamentary Immunity

ARTICLE 83. Members of the Turkish Grand National Assembly shall not be liable for their votes and statements concerning parliamentary functions, for the views they express before the Assembly, or unless the Assembly decides otherwise on the proposal of the Bureau for that sitting, for repeating or revealing these outside the Assembly.

A deputy who is alleged to have committed an offence before or after election, shall not be arrested, interrogated, detained or tried unless the Assembly decides otherwise. This provision shall not apply in cases where a member is caught in the act of committing a crime punishable by a heavy penalty and in cases subject to Article 14 of the Constitution if an investigation has been initiated before the election. However, in such situations the competent authority shall notify the Turkish Grand National Assembly immediately and directly.

The execution of a criminal sentence imposed on a member of the Turkish Grand National Assembly either before or after his election shall be suspended until he ceases to be a member; the statute of limitations does not apply during the term of membership.

Investigation and prosecution of a re-elected deputy shall be subject to the renewed waiver of immunity by the Assembly.

Political party groups in the Turkish Grand National Assembly shall not hold discussions or take decisions regarding parliamentary immunity.

4. Loss of Membership

ARTICLE 84. The loss of membership by deputies shall be decided by an absolute majority of the total number of members in respect of deputies who resign, who are convicted of an offence precluding election to the Turkish Grand National Assembly, who are deprived of their legal capacity, who resign from their party in order to join another party, or take up a ministerial post in the Council of Ministers other than a provisional ministerial post during the election period who assume a function incompatible with membership, or who failed to attend without excuse, five meetings in a period of one month.

A deputy who resigns from his party shall not be nominated as a candidate in the following elections by the central organs of any party existing at the time of his resignation.

The membership of a deputy, whose acts and statements are cited in a judgement of the Constitutional Court as having caused the dissolution of a political party and that of other deputies who belonged to the party on the date when the action for dissolution was brought, shall end date when the Presidency of the Turkish Grand National Assembly is notified of the dissolution order.

5. Application for Annulment

ARTICLE 85. If the Turkish Grand National Assembly decides to waive the parliamentary immunity of a member or disqualify him from membership, the member concerned or any member of the Turkish Grand National Assembly, may, within a week of the decision, appeal to the Constitutional Court for the decision to be annulled on the grounds that it is contrary to the Constitution or to the Rules of Procedure of the Assembly. The Constitutional Court shall decide on the appeal within fifteen days.

6. Salaries and Allowances

ARTICLE 86. The salaries and allowances of the members of the Turkish Grand National Assembly shall be regulated by law. The monthly amount of the salary shall not exceed the salary of the most senior civil servant; the travel allowance shall not exceed half of that salary.

The salaries and allowances paid to the members of the Turkish Grand National Assembly shall not necessitate the suspension of payments of pensions and similar benefits by social security agencies.

A maximum of three months salaries and allowances may be paid in advance.

II. Functions and Powers of the Turkish Grand National Assembly

A. General Provisions

ARTICLE 87. The functions and powers of the Turkish Grand National Assembly comprise the enactment, amendment, and repeal of laws; the supervision of the Council of Ministers and the Ministers; authorization of the Council of Ministers to issue governmental decrees having force of law on certain matters; debating and approval of the budget draft and the draft law of the final accounts; making decisions regarding printing of currency and declaration of war; ratifying international agreements, deciding on the proclamation of amnesties and pardons excluding those who have been convicted for activities set out in Article 14 of the Constitution; confirming death sentences passed by the courts; and exercising the powers and executing the functions envisaged in the other articles of the Constitution.

B. Introduction and Debate of the Laws

ARTICLE 88. The Council of Ministers and deputies are empowered to introduce laws.

The procedure and principles relating to the debating of draft bills and proposals of law in the Turkish Grand National Assembly shall be regulated by the Rules of Procedure.

C. Promulgation of Laws by the President of the Republic

ARTICLE 89. The President of the Republic shall promulgate the laws adopted by the Turkish Grand National Assembly within fifteen days.

He shall, within the same period, refer to the Turkish Grand National Assembly for further consideration laws which he deems unsuitable for promulgation, together with a statement of his reasons. Budget laws shall not be subject to this provision.

If the Turkish Grand National Assembly adopts in its unchanged form the law referred back, the President of the Republic shall promulgate it; if the Assembly amends the law which was referred back, the President of the Republic may again refer back the amended law to the Assembly.

Provisions relating to Constitutional amendments are reserved.

D. Ratification of International Treaties

ARTICLE 90. The ratification of treaties concluded with foreign states and international organizations on behalf of the Republic of Turkey, shall be subject to adoption by the Turkish Grand National Assembly by law approving the ratification.

Agreements regulating economic, commercial and technical relations, and covering period of no more than one year, may be put into effect through promulgation, provided they do not entail any financial commitment by the state, and provided they do not infringe upon the status of individuals or upon the property rights of Turkish citizens abroad. In such cases, these agreements must be brought to the knowledge of the Turkish Grand National Assembly within two months of their promulgation.

Agreements in connection with the implementation of an international treaty, and economic, commercial, technical, or administrative agreements which are concluded depending on an authorization given by law shall not require approval by the Turkish Grand National Assembly. However, agreements concluded under the provision of this paragraph and affecting the economic, or commercial relations and private rights of individuals shall not be put in to effect unless promulgated.

Agreements resulting in amendments to Turkish laws shall be subject to the provisions of the first paragraph.

International agreements duly put into effect carry the force of law. No appeal to the Constitutional Court can be made with regard to these agreements, on the ground that they are unconstitutional.

E. Authorization to Enact Decrees Having Force of Law

ARTICLE 91. The Turkish Grand National Assembly may empower the Council of Ministers to issue decrees having force of law. However, the fundamental rights, individual rights and duties included in the First and Second Chapter of the Second Part of the Constitution and the political rights and duties listed in the Fourth Chapter, cannot be regulated by decrees having force of law except during periods of martial law and states of emergency.

The empowering law shall define the purpose, scope, principles, and operative period of the decree having force of law, and whether more than one decree will be issued within the same period.

Resignation or fall of the Council of Ministers, or expiration of the legislative term shall not cause the termination of the power conferred for the given period.

When approving a decree having force of law before the end of the prescribed period, the Turkish Grand National Assembly shall also state whether the power has terminated or will continue until the expiry of the said period.

Provisions relating to the decrees having force of law issued by the Council of Ministers meeting under the chairmanship of the President of the Republic in time of martial law or states of emergency, are reserved.

Decrees having force of law shall come into force on the day of their publication in the Official Gazette. However, a later date may be indicated in the decree as the date of entry into force.

Decrees are submitted to the Turkish Grand National Assembly on the day of their publication in the Official Gazette.

Laws of empowering and decrees having force of law which are based on these, shall be discussed in the committees and in the plenary session of the Turkish Grand National Assembly with priority and urgency.

Decrees not submitted to the Turkish Grand National Assembly on the day of their publication shall cease to have effect on that day and decrees rejected by the Turkish Grand National Assembly shall cease to have effect on the day of the publication of the decision in the Official Gazette. The amended provisions of the decrees which are approved as amended shall go into force on the day of their publication in the Official Gazette.

*F. Declaration of State of War and Authorization
to Permit the Use of Armed Forces*

ARTICLE 92. The power to authorize the declaration of the state of war in cases deemed legitimate by international law and, except where required by international treaties to which Turkey is a party or by the rules of international courtesy, to send Turkish Armed Forces to foreign countries and to allow foreign armed forces to be stationed in Turkey, is vested in the Turkish Grand National Assembly.

If the country is subjected, while the Turkish Grand National Assembly is adjourned or in recess, to sudden armed aggression and it thus becomes imperative to decide immediately on the use of armed forces, the President of the Republic can decide on the use of the Turkish Armed Forces.

III. Provisions Relating to the Activities
of the Turkish Grand National Assembly

A. Convening and Adjournment

ARTICLE 93. The Turkish Grand National Assembly shall convene of its own accord on the first day of September each year.

The Assembly may be in recess for a maximum of three months in the course of a legislative year. During an adjournment and recess it may be summoned by the President of the Republic either on his own initiative or at the request of the Council of Ministers.

The President of the Assembly may also summon the Assembly either on his own initiative or at the written request of one-fifth of the members.

If the Turkish Grand National Assembly is convened during an adjournment or recess, it shall not adjourn or go into recess again before having given priority consideration to the matter requiring the summons.

B. Bureau of the Assembly

ARTICLE 94. The Bureau of the Assembly of the Turkish Grand National Assembly shall be composed of the President, the Deputy Presidents, Secretary Members, and Administrative Members elected from among the Assembly members.

The Bureau of the Assembly shall be so composed as to ensure proportionate representation to the number of members of each political party group in the Assembly. Political party groups shall not nominate candidates for the Presidency.

Two elections to the Bureau of the Turkish Grand National Assembly shall be held in the course of one legislative term. The term of office of those elected in the first round is two years and the term of office of those elected in the second round is three years.

The candidates from among the members of the Assembly for the President of the Turkish Grand National Assembly shall be announced, within ten days of the convening of the Assembly, to the Bureau of the Assembly. Election of the President shall be held by secret ballot, in the first two ballots, a two-thirds majority of the total number of members, and in the third ballot an absolute majority of the total number of members is required. If the absolute majority cannot be obtained in the third ballot a fourth ballot shall be held between the two candidates who have received the greatest number of votes in the third ballot; the member who receives the greatest number of votes in the fourth ballot shall be elected President. The election of the President, shall be completed within

ten days of the expiry of the period for the nomination of candidates.

The quorum required for election, the number of ballots and its procedure, the number of Deputy Presidents, Secretary Members and Administrative Members, shall be stipulated by the Rules of Procedure of the Assembly.

The President and Deputy President of the Turkish Grand National Assembly cannot participate in the activities of the political party or party group of which they are a member nor in debates, within or outside the Assembly, except in cases required by their functions; the President and the Deputy President who is presiding over the session shall not vote.

C. Rules of Procedure, Political Party Security Affairs

ARTICLE 95. The Grand National Assembly of Turkey shall carry out its activities in accordance with the provisions of the Rules of Procedure drawn up by itself.

The provisions of the Rules of Procedure shall be drawn up in such a way as to ensure the participation of each political party group in all the activities of the Assembly in proportion to its number of members. Political party groups shall only be constituted if they have at least twenty members.

All security and administrative services of the Turkish Grand National Assembly regarding all buildings, installations, annexes and its grounds shall be organized and directed by the Office of the President of the Assembly.

Sufficient forces to ensure security and other such services shall be allocated to the Office of the President of the Assembly by the relevant authorities.

D. Quorums Required for Sessions and Decisions

ARTICLE 96. Unless otherwise stipulated in the Constitution, the Turkish Grand National Assembly shall convene with at least one-third of the total number of members and shall take decisions by an absolute majority of those present; however, the quorum for decisions can, under no circumstances, be less than a quarter plus one of the total number of members.

Members of the Council of Ministers may delegate a minister to vote on their behalf in sessions of the Turkish Grand National Assembly which they are unable to attend. However, a minister shall not cast more than two votes including his own.

E. Publicity and Publication of Debates

ARTICLE 97. Debates held in the Plenary session of the Turkish Grand National Assembly shall be public and shall be published verbatim in the Journal of Records.

The Turkish Grand National Assembly may hold closed sessions in accordance with the provisions of its Rules of Procedure; the publication of debates of such sessions shall be subject to the decision of the Turkish Grand National Assembly.

Public proceedings of the Assembly may be freely published through all means, unless a decision to the contrary is adopted by the Assembly upon a proposal of the Bureau of the Assembly.

IV. Ways of Collecting Information and Supervision by the Turkish Grand National Assembly

A. General Provisions

ARTICLE 98. The Turkish Grand National Assembly shall exercise its supervisory power by means of questions, Parliamentary inquiries, general debates, interpellation and Parliamentary investigations.

A question is a request for information addressed to the Prime Minister or ministers to be answered orally or in writing on behalf of the Council of Ministers.

A Parliamentary inquiry is an examination conducted to obtain information on a specific subject.

A general debate is the consideration of a specific subject relating to the community and the activities of the state at the plenary sessions of the Turkish Grand National Assembly.

The form of presentation, content, and scope of the motions concerning questions, Parliamentary inquiries and general debates, and the procedures for answering, debating and investigating them, shall be regulated by the Rules of Procedure.

B. Interpellation

ARTICLE 99. A motion for interpellation may be tabled either on behalf of a political party group, or by the signature of at least twenty deputies.

The motion for interpellation shall be circulated in printed form to the members within three days of its being tabled; inclusion of a motion of interpellation in the agenda shall be debated within ten days of its circulation. In this debate, only one of the signatories to the motion, one deputy from each political party group, and the Prime Minister or one minister on behalf of the Council of Ministers, may take the floor.

Together with the decision to include the motion of interpellation on the agenda, the date for debating will also be decided; however, the debate shall not take place less than two days after the decision to place it on the agenda and shall not be deferred more than seven days.

In the course of the debate on the motion of interpellation, a motion of no-confidence with a statement of reasons tabled by deputies or party groups, or the request for a vote of confidence by the Council of Ministers, shall be put to vote only after a fully day has elapsed.

In order to unseat the Council of Ministers or a minister, an absolute majority of the total number of members shall be required in the voting, in which only the votes of no-confidence shall be counted.

Other provisions concerning interpellations, provided that they are consistent with the smooth functioning of the Assembly, and with the above-mentioned principles shall be designed by the Rules of Procedure.

C. Parliamentary Investigation

ARTICLE 100. Parliamentary investigation concerning the Prime Minister of other ministers may be requested with a motion tabled by at least one-tenth of the total number of members of the Turkish Grand National Assembly. The Assembly shall consider and decide on this request within one month at the latest.

In the event of a decision to initiate an investigation, this investigation shall be conducted by a commission of fifteen members chosen by lot on behalf of each party from among three times the number of members the party is entitled to have on the commission, representation

being proportional to the parliamentary membership of the party. The commission shall submit its report on the result of the investigation to the Assembly within two months. If the investigation is not completed within the time allotted, the commission shall be granted a further and final period of two months.

The Assembly shall debate the report with priority and, if found necessary, may decide to bring the person involved before the Supreme Court. The decision to bring a person before the Supreme Court shall be taken only by an absolute majority of the total number of members.

Political party groups in the Assembly shall not hold discussions or take decisions regarding Parliamentary investigations.

Chapter two: EXECUTIVE (Articles 101 - 137)

I. President of the Republic

A. Qualifications and Impartiality

ARTICLE 101. The President of the Republic shall be elected for term of office of seven years by the Turkish Grand National Assembly from among its own members who are over 40 years of age and who have completed their higher education or from among Turkish citizens who fulfill these requirements and are eligible to be deputies.

The nomination of a candidate for the Presidency of the Republic from outside the Turkish Grand National Assembly shall require a written proposal by at least one-fifty of the total number of members of the Assembly.

The President of the Republic cannot be elected for a second time.

The President-elect, if a member of a party, shall sever his relations with his party and his status as a member of the Turkish Grand National Assembly shall cease.

B. Election

ARTICLE 102. The President of the Republic shall be elected by a two-thirds majority of the total number of members of the Turkish Grand National Assembly and by secret ballot. If the Turkish Grand National Assembly is not in session, it shall be summoned immediately to meet.

The election of the President of the Republic shall begin thirty days before the term of office of the incumbent President of the Republic expires or ten days after the Presidency falls vacant, and shall be completed within thirty days of the beginning of the election. Candidates shall be declared to the Bureau of the Assembly within the first ten days of this period, and elections shall be completed within the remaining twenty days.

If a two-thirds majority of the total number of members cannot be obtained in the first two ballots, between which there shall be at least three-day interval, a third ballot shall be held and the candidate who receives the absolute majority of votes of the total number of members shall be elected President of the Republic. If an absolute majority of votes of the total number of members is not obtained in the third ballot, a fourth ballot will be held between the two candidates who receive the greatest number of votes in the third ballot; if the President of the Republic cannot be elected by an absolute majority of the total number of members in this ballot, new general elections for the Turkish Grand National Assembly shall be held immediately.

The term of office of the incumbent President of the Republic shall continue until the President-elect takes office.

C. Oath

ARTICLE 103. On assuming office, the President of the Republic shall take the following oath before the Turkish Grand National Assembly:

"In my capacity as President of the Republic I swear upon my honour and integrity before the Turkish Grand National Assembly and before history to safeguard the existence and independence of the State, the indivisible integrity of the country and the nation and the absolute sovereignty of the nation, to abide by the Constitution, the rule of law, democracy, the principles and reforms of Atatürk and the principles of the secular Republic, not to deviate from the ideal according to which everyone is entitled to enjoy human rights and fundamental freedoms under conditions of national peace and prosperity and in a spirit of national solidarity and justice, and to do my utmost to preserve and exalt the glory and honour of the Republic of Turkey and perform without bias the functions that I have assumed."

D. Duties and Powers

ARTICLE 104. The President of the Republic is the Head of the State. In this capacity he shall represent the Republic of Turkey and the unity of the Turkish Nation; he shall ensure the implementation of the Constitution, and he regular and harmonious functioning of the organs of State.

To this end, the duties he shall perform, and the powers he shall exercise, in accordance with the conditions stipulated in the relevant articles of the Constitution are as follows:

a. Those relating to legislation:

- To deliver, if he deems if necessary, the opening address of the Turkish Grand National Assembly on the first day of the legislative year,
- To summon the Turkish Grand National Assembly to meet, when necessary,
- To promulgate laws,
- To return laws to the Turkish Grand National Assembly to be reconsidered,
- To submit to referendum, if he deems it necessary legislation regarding the amendment of the Constitution.
- To appeal to the Constitutional Court for the annulment in part or entirety of certain provisions of laws, decrees having force of law, and the Rules of Procedure of the Turkish Grand National Assembly on the grounds that they are unconstitutional in form or in content,
- To call new elections for the Turkish Grand National Assembly.

b. Those relating to the executive functions:

- To appoint the Prime Minister and to accept his resignation.
- To appoint and dismiss Ministers on the proposal of the Prime Minister,
- To preside over the Council of Ministers or to call the Council of Ministers to meet under his chairmanship whenever he deems it necessary,

- To accredit representatives of the Turkish State to foreign states and to receive the representatives of foreign states to the Republic of Turkey,

- To ratify and promulgate international treaties,

To represent the Office of the Commander-in-Chief of the Turkish Armed Forces on behalf of the Turkish Grand National Assembly,

- To appoint the Chief of the General Staff,
- To call the National Security Council to meet,
- To preside over the National Security Council,
- To proclaim martial law or state of emergency, and to issue decrees having force of law, in accordance with the decisions of the Council of Ministers under his chairmanship,
- To sign decrees,
- To remit, on grounds of chronic illness, disability, or old age, all or part of the sentences imposed on certain individuals,
- To appoint the members and the chairman of the State Supervisory Council,
- To instruct the State Supervisory Council to carry out enquiries, investigations and inspections,
- To appoint the members of the Higher Education Council,
- To appoint rectors of universities.

c. Those relating to the judiciary:

To appoint the members of the Constitutional Court, one-fourth of the members of the Council of State, the Chief Public Prosecutor and the Deputy Chief Public Prosecutor of the High Court of Appeals, the members of the Military High Court of Appeals, the members of the Supreme Military Administrative Court and the members of the Supreme Council of Judges and Public Prosecutors.

The President of the Republic shall also exercise powers of election and appointment, and perform the other duties conferred on him by the Constitution and laws.

E. Presidential Accountability and Non-accountability

ARTICLE 105. All Presidential decrees except those which the President of the Republic is empowered to enact by himself without the signatures of the Prime Minister and the minister concerned, in accordance with the provisions of the Constitution and other laws, shall be signed by the Prime Minister, and the ministers concerned. The Prime Minister and the ministers concerned shall be accountable for these decrees.

No appeal shall be made to any legal authority, including the Constitutional Court, against the decisions and orders signed by the President of the Republic on his own initiative.

The President of the Republic may be impeached for high treason on the proposal of at least one-third of the total number of members of the Turkish Grand National Assembly, and by the decision of at least three-quarters of the total number of members.

F. Deputation for the President of the Republic

ARTICLE 106. In the event of a temporary absence of the President of the Republic on account of illness, travel abroad or similar circumstances, the President of the Turkish Grand National Assembly shall serve as Acting President of the Republic and exercise the powers of the President of the Republic until the President of the Republic resumes his functions, and in the event that the Presidency falls vacant as a result of death or resignation or for any other reason, until the election of a new President of the Republic.

G. General Secretariat of the President of the Republic

ARTICLE 107. The establishment, the principles of organization and functioning, and the appointment of personnel of the General Secretariat of the Presidency of the Republic shall be regulated by Presidential decrees.

H. State Supervisory Council

ARTICLE 108. The State Supervisory Council which shall be established attached to the Office of the Presidency of the Republic with the purpose of performing and furthering the regular and efficient functioning of the administration and is observance of law, will be empowe-

red to conduct upon the request of the President of the Republic all enquiries, investigations and enterprises in which those public bodies and organizations, all enterprises in which those public bodies and organizations share more than half of the capital, public professional organizations, employers associations and labour unions at all levels, and public benefit associations and foundations.

The Armed Forces and all judicial organs are outside the jurisdiction of the State Supervisory Council.

The members and the Chairman to be designated from among the members of the State Supervisory Council shall be appointed by the President of the Republic from among those with the qualifications set forth in the law.

The functioning of the State Supervisory Council, the term of office of its members, and other matters relating to their status shall be regulated by law.

II. Council of Ministers

A. Formation

ARTICLE 109. The Council of Ministers shall consist of the Prime Minister and the ministers.

The Prime Minister shall be appointed by the President of the Republic from among the members of the Turkish Grand National Assembly.

The ministers shall be nominated by the Prime Minister and appointed by the President of the Republic, from among the members of the Turkish Grand National Assembly, or from among those eligible for election as deputies; and they can be dismissed, by the President of the Republic, upon the proposal of the Prime Minister when deemed necessary.

B. Taking Office and Vote of Confidence

ARTICLE 110. The complete list of members of the Council of Ministers shall be submitted to the Turkish Grand National Assembly. If the Turkish Grand National Assembly is in recess, it shall be summoned to meet.

The Government Programme of the Council of Ministers shall be read by the Prime Minister or by one of the ministers before the Turkish

Grand National Assembly within a week of the formation of the Council of Ministers, following which a vote of confidence shall be taken. Debate on the vote of confidence shall begin two full days after the reading of the programme and the vote shall be taken one full day after the end of debate.

C. Vote of Confidence While in Office

ARTICLE 111. If the Prime Minister deems it necessary, and after discussing the matter in the Council of Ministers he may ask for a vote of confidence in the Turkish Grand National Assembly.

The request for a vote of confidence shall not be debated before one full day has elapsed from the time it was submitted to the Turkish Grand National Assembly and shall not be put to vote until one full day has passed after debate.

A request for a vote of confidence shall be rejected only by an absolute majority of the total number of members.

D. Functions and Political Responsibilities

ARTICLE 112. The Prime Minister, as Chairman of the Council of Ministers, shall ensure co-operation among the ministers, and supervise the implementation of the government's general policy. The members of the Council of Ministers are jointly responsible for the implementation of this policy.

Each minister shall be responsible to the Prime Minister and shall also be responsible for the conduct of affairs under his jurisdiction and for the acts and activities of his subordinates.

The Prime Minister shall ensure that the ministers exercise their functions in accordance with the Constitution and the laws and shall take corrective measures to this end.

The members of the Council of Ministers who are not deputies shall take their oath before the Turkish Grand National Assembly as written in Article 81, and during their term of office as ministers they shall abide by the rules and conditions to which deputies are subject and shall enjoy Parliamentary immunity.

They receive the same salaries and allowances as members of the Turkish Grand National Assembly.

E. Formation of Ministries, and Ministers

ARTICLE 113. The formation, abolition, functions, powers and organization of the ministries shall be regulated by law.

A minister may act for another if a ministry is vacant or if the minister is on leave or absent for a valid reason. However, a minister shall not act for more than one other minister.

A minister who is brought before the Supreme Court by decision of the Turkish Grand National Assembly, shall lose his ministerial status. If the Prime Minister is brought before the Supreme Court, the Government shall be considered to have resigned.

If a ministry falls vacant for any reason, an appointment shall be made to it within fifteen days.

F. Provisional Council of Ministers During Elections

ARTICLE 114. The Ministers of Justice, Internal Affairs and Communications shall resign prior to general elections to the Turkish Grand National Assembly.

Three days before the beginning of the elections or in the event of a decision to hold new elections before the end of the election term, within five days of this decision, the Prime Minister shall appoint independent persons from within or outside of the Turkish Grand National Assembly to these Ministries.

In the event of a decision to hold new elections under Article 116, the Council of Ministers shall resign and the President of the Republic shall appoint a Prime Minister to form a Provisional Council of Ministers.

The Provisional Council of Ministers shall be composed of members of the political party groups in proportion to their parliamentary membership with the exception of the ministers of Justice, Internal Affairs, and Communications, who shall be independent persons appointed from within or outside the Turkish Grand National Assembly.

The number of members to be taken from political party groups shall be determined by the President of the Turkish Grand National Assembly, and shall be communicated to the Prime Minister. Party members who do not accept the ministerial posts offered them, or who resign subsequently, shall be replaced by independent persons from within or outside of the Grand National Assembly of Turkey.

The Provisional Council of Ministers shall be formed within five days of the publication in the Official Gazette of the decision to hold new elections.

The Provisional Council of Ministers shall not be subject to a vote of confidence.

The Provisional Council of Ministers shall remain in office for the duration of the elections, and until the new Assembly convenes.

G. Regulations

ARTICLE 115. The Council of Ministers may issue regulations governing the mode of implementation of laws or designating matters ordered by law, provided that they do not conflict with existing laws and are examined by the Council of State.

Regulations shall be signed by the President of the Republic and promulgated in the same manner as laws.

H. Calling Elections for the Turkish Grand National Assembly by the President of the Republic

ARTICLE 116. In cases where the Council of Ministers fails to receive a vote of confidence under Article 110 or is compelled resign by a vote of no-confidence under Articles 99 or 111, and if a new Council of Ministers cannot be formed within forty-five days or the new Council of Ministers fails to receive a vote of confidence, the President of the Republic, in consultation with the President of the Turkish Grand National Assembly, may call new elections.

If a Council Ministers cannot be formed within forty-five days of the resignation of the Prime Minister without being defeated by a vote of confidence, or also within forty-five days of elections for the Bureau of the President of the Turkish Grand National Assembly of the newly elected Turkish Grand National Assembly, the President of the Republic may likewise, in consultation with the President of the Turkish Grand National Assembly, call new elections.

The decision to call new elections shall be published in the Official Gazette and the election shall be held thereafter.

III. National Defence

1. Offices of Commander-in-Chief and Chief of the General Staff

ARTICLE 117. The Office of Commander-in-Chief is inseparable from the spiritual existence of the Turkish Grand National Assembly and is represented by the President of the Republic.

The Council of Ministers shall be responsible to the Turkish Grand National Assembly for national security and for the preparation of the Armed Forces for the defence of the country.

The Chief of the General Staff is the commander of the Armed Forces, and, in time of war exercises the duties of Commander-in-Chief on behalf of the President of the Republic.

The Chief of the General Staff shall be appointed by the President of the Republic on the proposal of the Council of Ministers; his duties and powers shall be regulated by law. The Chief of the General Staff shall be responsible to the Prime Minister in the exercise of his duties and powers.

The functional relations and the scope of jurisdiction of the Ministry of National Defence with regard to the Chief of the General Staff and the Commanders of the Armed Forces shall be regulated by law.

2. National Security Council

ARTICLE 118. The National Security Council shall be composed of the Prime Minister, the Chief of the General Staff, the Ministers of National Defence, Internal Affairs, and Foreign Affairs, the Commanders of the Army, Navy and the Air Force and the General Commander of the Gendarmerie, under the chairmanship of the President of the Republic.

Depending on the particulars of the agenda, Ministers and other persons concerned may be invited to meetings of the Council and their views be heard.

The National Security Council shall submit to the Council of Ministers its views on taking decisions and ensuring necessary coordination with regard to the formulation, establishment, and implementation of the national security policy of the State. The Council of Ministers shall give priority consideration to the decisions of the National Security Council concerning the measures that it deems necessary for the preservation of the existence and independence of the State, the integrity and indivisibility of the country, and the peace and security of society.

The agenda of the National Security Council shall be drawn up by the President of the Republic taking into account the proposals of the Prime Minister and the Chief of the General Staff.

In the absence of the President of the Republic, the National Security Council shall meet under the chairmanship of the Prime Minister.

The organization and duties of the General Secretariat of the National Security Council shall be regulated by law.

IV. Procedure Governing Emergency Rule

A. States of Emergency

1. Declaration of a State of Emergency on Account of a Natural Disaster or Serious Economic Crisis.

ARTICLE 119. In the event of natural disaster, dangerous epidemic diseases or a serious economic crisis, the Council of Ministers, meeting under the chairmanship of the President of the Republic, may declare a state of emergency in one or more regions or throughout the country for a period not exceeding six months.

2. Declaration of a State of Emergency on Account of Widespread Acts of Violence and Serious Deterioration of Public Order.

ARTICLE 120. In the event of the emergence of serious indications of widespread acts of violence aimed at the destruction of the free democratic order established by the Constitution or of fundamental rights and freedoms, or serious deterioration of public order because of acts of violence, the Council of Ministers, meeting under the chairmanship of the President of the Republic, after consultation with the National Security Council, may declare a state of emergency in one or more regions or throughout the country for a period not exceeding six months.

3. Rules Relating to the States of Emergency

ARTICLE 121. In the event of a declaration of a state of emergency under the provisions of Articles 119 and 120 of the Constitution this decision shall be

published in the Official Gazette and shall be submitted immediately to the Turkish Grand National Assembly for approval. If the Turkish

Grand National Assembly is in recess, it shall be summoned immediately. The Assembly may alter the duration of the state of emergency, extend the period for a maximum of four months each time at the request of the Council of Ministers, or may lift the state of emergency.

The financial, material, and labour obligations which are to be imposed on citizens in the event of the declaration of state of emergency under Article 119, and, applicable according to the nature of each kind of state of emergency, the procedure as to how fundamental rights and freedoms shall be restricted or suspended in line with the principles of Article 15, how and by what means the measures necessitated by the situation shall be taken, what sort of powers shall be conferred on public servants, what kind of changes shall be made in the status of officials, and the procedure governing emergency rule, shall be regulated by the Law on State of Emergency.

During the state of emergency, the Council of Ministers meeting under the chairmanship of the President of the Republic, may issue decrees having force of law on matters necessitated by the state of emergency. These decrees shall be published in the Official Gazette, and shall be submitted to the Turkish Grand National Assembly on the same day for approval; the time limit and procedure for their approval by the Assembly shall be indicated in the Rules of Procedure.

B. Martial Law, Mobilization and State of War

ARTICLE 122. The Council of Ministers, under the chairmanship of the President of the Republic, after consultation with the National Security Council, may declare martial law in one or more regions or throughout the country for a period not exceeding six months, in the event of widespread acts of violence which are more dangerous than the cases necessitating a state of emergency and which are aimed at the destruction of the free democratic order or the fundamental rights and freedoms embodied in the Constitution; or in the event of war, the emergence of a situation necessitating war, an uprising, or the spread of violent and strong rebellious actions against the motherland and the Republic, or widespread acts of violence of either internal or external origin threatening the indivisibility of the country and the nation. This decision shall be published immediately in the Official Gazette, and shall be submitted for approval to the Turkish Grand National Assembly, on the same day. If the Turkish Grand National Assembly is

in recess, it shall be summoned immediately. The Turkish Grand National Assembly may, when it deems necessary, reduce or extend the period of martial law or lift it.

During the period of martial law, the Council Ministers meeting under the chairmanship of the President of the Republic may issue decrees having force of law on matters necessitated by the state of martial law.

These decrees shall be published in the Official Gazette and shall be submitted for approval to the Turkish Grand National Assembly on the same day. The time limit and procedure for their approval by the Assembly shall be indicated in the Rules of Procedure.

Extension of the period of martial law for a maximum of four months each time, shall require a decision of the Turkish Grand National Assembly. In the event of state of war, the limit of four months does not apply.

In the events of martial law, mobilization and state of war, the provisions to be applied and conduct of affairs, the relations with the administration, the manner in which freedoms are to be restricted or suspended and the obligations to be imposed on the citizens in a state of war or in the event of emergence of a situation necessitating war shall be regulated by law.

The Martial Law Commanders shall exercise their duties under the authority of the Office of the Chief of the General Staff.

V. Administration

A. Fundamentals of the Administration

1. Integral Unity and Public Legal Personality of the Administration

ARTICLE 123. The administration forms a whole with regard to its structure and functions, and shall be regulated by law.

The organization and functions of the administration are based on the principles of centralization and local administration.

Public corporate bodies shall be established only by law, or on the authority expressly granted by law.

ARTICLE 124. The Prime Ministry, the ministries, and public corporate bodies may issue by-laws in order to ensure the application of laws and regulations relating to their particular fields of operation, provided

that they are not contrary to these laws and regulations. The law shall designate which by-laws are to be published in the Official Gazette.

B. Recourse to Judicial Review

ARTICLE 125. Recourse to judicial review shall be open against all actions and acts of the administration.

The acts of the President of the Republic in his own competence, and the decisions of the Supreme Military Council are outside the scope of judicial review.

In suits filed against administrative acts, statute of limitations shall start from the date of written notification.

Judicial power is limited to the verification of the conformity of the actions and acts of the administration with law. No judicial ruling shall be passed which restricts the exercise of the executive function in accordance with the forms and principles prescribed by law, which has the quality of an administrative action and act, or which removes discretionary powers.

If the implementation of an administrative act would result in damages which are difficult or impossible to compensate, and at the same time this act is clearly unlawful, then a stay of execution may be decided upon, stating the reasons therefore.

The law may restrict the issuing of stay of execution orders in cases of state of emergency, martial law, mobilization and state of war, and for reasons of national security, public order and public health.

The administration shall be liable to compensate for damages resulting from its actions and acts.

C. Organization of the Administration.

1. Central Administration

ARTICLE 126. In terms of central administrative structure, Turkey is divided into provinces of the basis of geographical situation and economic conditions, and public service requirements; provinces are further divided into lower steps of administrative districts.

The administration of the provinces is based on the principle of devolution of wide powers.

Central administrative organizations comprising several provinces may be established to ensure efficiency and coordination of public services. The functions and powers of this organization shall be regulated by law.

2. Local Administrations

ARTICLE 127. Local administrative bodies are public corporate entities established to meet the common local needs of the inhabitants of provinces, municipal districts and villages, whose decision-making organs are elected by the electorate described in law, and whose principles of structure are also determined by law.

The formation, duties and powers of the local administration shall be regulated by law in accordance with the principle of local administration.

The elections for local administrative bodies shall be held every five years in accordance with the principles set forth in Article 67 of the Constitution. Special administrative arrangements may be introduced for larger urban areas.

The procedures dealing with objections to the acquisition by elected organs of local government of their status as an organ, and their loss of such status, shall be resolved by the judiciary. However as a provisional measure, the Minister of Internal Affairs may remove from office those organs of local administration or their members against whom investigation or prosecution has been initiated on grounds of offences related to their duties, pending judgement.

The central administration has the power of administrative trusteeship over the local governments in the framework of principles and procedures set forth by law with the objective of ensuring the functioning of local services in conformity with the principle of the integral unity of the administration, securing uniform public service, safeguarding the public interest and meeting local needs, in an appropriate manner.

The formation of local administrative bodies into a union with the permission of the Council of Ministers for the purpose of performing specific public services; and the functions, powers, financial and security arrangements of these unions, and their reciprocal ties and relations

with the central administration, shall be regulated by law. These administrative bodies shall be allocated financial resources in proportion to their functions.

D. Provisions Relating to Public Servants

1. General Principles

ARTICLE 128. The fundamental and permanent functions required by the public services that the State, state economic enterprises and other public corporate bodies are assigned to perform, in accordance with principles of general administration, shall be carried out by public servants and other public employees.

The qualifications of public servants and other public employees, procedures governing their appointments, duties and powers, their rights and responsibilities, salaries and allowances, and other matters related to their status shall be regulated by law.

The procedure and principles governing the training of senior administrators shall be specially regulated by law.

2. Duties and Responsibilities, and Guarantees During Disciplinary Proceedings

ARTICLE 129. Public servants and other public employees are obliged to carry out their duties within loyalty to the Constitution and the laws.

Public servants, other public employees and members of public professional organizations or their higher bodies shall not be subjected to disciplinary penalty without their being granted the right of defense.

Disciplinary decisions shall be subject to judicial review, with the exception of warnings and reprimands.

Provisions concerning the members of the Armed Forces, judges and prosecutors are reserved.

Actions for damages arising from faults committed by public servants and other public employees in the exercise of their duties shall be brought only against the administration in accordance with the procedure and conditions prescribed by law, and subject to recourse to them.

Prosecution of public servants and other public employees for alleged offences shall be subject, except in cases prescribed by law, to the permission of the administrative authority designated by law.

E. Institutions of Higher Education and their Higher Bodies

1. Institutions of Higher Education

ARTICLE 130. For the purpose of training manpower under a system of contemporary education and training principles and meeting the needs of the nation and the country, universities comprising several units will be established by the State and by law as public corporations having autonomy in teaching, assigned to educate, train at different levels after secondary education, and conduct research, to act as consultants, to issue publications and to serve the country and humanity.

Institutions of higher education, under the supervision and control of the State, can be established by foundations in accordance with the procedures and principles set forth in the law provided that they do not pursue lucrative aims.

The law shall provide for a balanced geographical distribution of universities throughout the country.

Universities, members of the teaching staff and their assistants may freely engage in all kinds of scientific research and publication. However, this shall not include the liberty to engage in activities directed against the existence and independence of the State, and against the integrity and indivisibility of the nation and the country.

Universities and units attached to them are under the control and supervision of the State and their security is ensured by the State.

University rectors shall be appointed by the President of the Republic, and faculty deans by the Higher Education Council, in accordance with the procedures and provisions of the law.

The administrative and supervisory organs of the universities and the teaching staff may not for any reason whatsoever be removed from their office by authorities other than those of the competent organs of the university or by the Higher Education Council.

The budgets drawn up by universities, after being examined and approved by the Higher Education Council shall be presented to the Ministry of National Education, and shall be put into effect and supervised in conformity with the principles applied to general and subsidiary budgets.

The establishment of institutions of higher education and their organs, their functioning and elections, their duties, authorities and responsibilities, the procedures to be followed by the State in the exercise of the right to supervise and inspect the universities, the duties of the teaching staff, their titles, appointments, promotions and retirement, the training of the teaching staff, the relations of the universities and the teaching staff with public institutions and other organizations, the level and duration of education, admission of students into institutions of higher education, attendance requirements and fees, principles relating to assistance to be provided by the State, disciplinary and penalty matters, financial affairs, personnel rights, conditions to be conformed with by the teaching staff, the assignment of the teaching staff in accordance with inter-university requirements, the pursuance of training and education in freedom and under guarantee and in accordance with the requirements of contemporary science and technology, and the use of financial resources provided by the State to the Higher education Council and the universities, shall be regulated by law.

Institutions of higher education established by foundations shall be subject to the provisions set forth in the Constitution for State institutions of higher education, as regards the academic activities, recruitment of teaching staff and security, excepting the financial and administrative matters.

2. Superior Bodies of Higher Education

ARTICLE 131. The Higher Education Council shall be established, to plan, organize, administer, and supervise the education provided by institutions of higher education, to orient the activities of teaching, education and scientific research, to ensure the establishment and development of these institutions in conformity with the objectives and principles set forth by law, to ensure the effective use of the resources allotted to the universities, and to plan the training of the teaching staff.

The Higher Education Council is composed of members appointed by the President of the Republic from among the candidates who are nominated by the Council of Ministers. The Chief of the General Staff and the universities, and in accordance with the numbers, qualifications and procedure prescribed by law, priority being given to those who have served successfully as faculty members of rectors, and of members directly appointed by the President of the Republic himself.

The organization, functions, authority, responsibility and operating principles of the Council shall be regulated by law.

3. Institutions of Higher Education Subject to Special Provisions

ARTICLE 132. Institutions of Higher Education attached to the Turkish Armed forces and to the security organization are subject to the provisions of their respective special laws.

F. Radio and Television Administration and News Agencies with State Connection

ARTICLE 133. Radio and television stations shall be established only by the State, and shall be administered by an impartial corporate body.

The law shall provide that broadcasts are made in a manner to safeguard the existence and independence of the Turkish State, the indivisible integrity of the country and the nation, the peace of society, public morals, and the fundamental characteristics of the Republic as outlined in Article 2 of the Constitution; and, it shall observe the principle of impartiality in the administration and supervision of the Corporation, in the formation of its administrative organs, and in all radio and television broadcasts.

The principles governing the selection, treatment and presentation of news and programmes, the fulfillment of the task to aid the national culture and education, and the principles of ensuring the accuracy of the news; and the election, functions, and responsibilities of the organs shall be regulated by law.

The provisions of paragraph 2 above shall also apply to those news agencies having the character of state economic enterprises and to those receiving financial aid from the State or other public corporate bodies.

G. The Atatürk High Institution of Culture, Language and History

ARTICLE 134. The "Atatürk High Institution of Culture, Language and History" shall be established, as a public corporate body, under the moral aegis of Atatürk, under the supervision and with the support of the President of the Republic, attached to the Office of the Prime Minister, and composed of the Atatürk Center of Research, the Turkish Language Society, the Turkish Historical Society and the Atatürk

Cultural Center, in order to conduct scientific research, to produce publications and to disseminate information on the thought, principles, and reforms of Atatürk, Turkish culture, Turkish history and the Turkish language.

The financial income of the Turkish Language Society and Turkish Historical Society, bequeathed to them by Atatürk in his will are reserved and shall be allocated to them accordingly.

The establishment, organs, operating procedures, and personnel matters of the Atatürk High Institution of Culture, Language and History, and its authority over the institutions within it, shall be regulated by law.

H. Public Professional Organizations

ARTICLE 135. Public professional organizations and their higher organizations are public corporate bodies established by law, with the objectives to meet the common needs of the members of given profession, to facilitate their professional activities, to ensure the development of the profession in keeping with the common interests, to safeguard professional discipline and ethics in order to ensure integrity and trust in relations among its members and with the public; their organs shall be elected by secret ballot by their members in accordance with the procedure set forth in the law, and under judicial supervision.

Persons regularly employed in public institutions, or in state economic enterprises shall not be required to become members of public professional organizations.

Public professional organizations shall not engage in activities outside the aims for which they were established, nor shall they engage in political activities or take joint action with political parties, labour unions or associations.

Political parties, labour unions and their higher bodies shall not nominate candidates in elections for the organs of public professional organizations or their higher bodies, nor shall they engage in activities or propaganda for or against particular candidates.

Public professional organizations shall be subject to administrative and financial supervision of the State as prescribed by law.

The responsible organs of public professional organizations which engage in activities beyond their objectives or in political activities, shall be dissolved by a court decision, at the request of the authority designated by law; and new organs shall be elected in their place.

In respect of safeguarding the existence and independence of the Turkish State, the indivisible integrity of the country and nation, the peace of society, and preventing the activities threatening the fundamental characteristics of the State as defined in the Constitution, the highest local administrator, may, in the event delay is deemed prejudicial, temporarily remove these organs from office.

The decision to remove from office shall be communicated to the court within ten days. The court shall decide within ten days at the latest whether the decision of removal from office is justified.

I. Department of Religious Affairs

ARTICLE 136. The Department of Religious Affairs, which is within the general administration, shall exercise its duties prescribed in its particular law, in accordance with the principles of secularism, removed from all political views and ideas, and aiming at national solidarity and integrity.

J. Unlawful Orders

ARTICLE 137. A person employed in public services, irrespective of his position or status when he finds an order given by his superiors to be contrary to the provisions of by-laws, regulations, laws, or the Constitution shall not carry it out, and shall inform the person giving the order of this inconsistency.

However if his superior insists on the order and renews it in writing, this order shall be executed; in this case the person executing the order shall not be held responsible.

An order which in itself constitutes an offence shall under no circumstances be executed; the person who executes such an order shall not evade responsibility.

Exceptions designated by law relating to the execution of military duties and the protection of public order or public security in urgent situations are reserved.

Chapter three: JUDICIAL POWER (Articles 138 - 160)

I. General Provisions

A. Independence of the Courts

ARTICLE 138. Judges shall be independent in the discharge of their duties; they shall give judgement in accordance with the Constitution, law, and their personal conviction conforming with the law.

No organ, authority, office or individual may give orders or instructions to courts or judges relating to the exercise of judicial power, or send them circulars, make recommendations or suggestions.

No question shall be asked, debates held, or statement made in the Legislative Assembly relating to the exercise of judicial power concerning a case under trial.

Legislative and executive organs and the administration shall comply with court decisions; these organs and the administration shall neither alter them in any respect, nor delay their execution.

B. Security of Tenure of Judges and Public Prosecutors

ARTICLE 139. Judges and public prosecutors shall not be dismissed, or retired before the age prescribed by, the Constitution; nor shall they be deprived of their salaries, allowances or other rights relating to their status, even as a result of the abolition of court or post.

Exceptions indicated in law relating to those convicted for an offence requiring dismissal from the profession, those who are definitely established as unable to perform their duties on account of ill-health, and those determined unsuitable to remain in the profession, are reserved.

C. Judges and Public Prosecutors

ARTICLE 140. Judges and public prosecutors shall serve as judges and public prosecutors of courts of justice and of administrative courts. These duties shall be carried out by career judges and public prosecutors.

Judges shall discharge their duties in accordance with the principles of the independence of the courts and the security of tenure of judges.

The qualifications, appointment, rights and duties, salaries and allowances of judges and public prosecutors, their promotion, temporary

or permanent change of their duties or posts, the initiation of disciplinary proceedings against them and the subsequent imposition of disciplinary penalties, the conduct of investigation concerning them and the subsequent decision to prosecute them on account of offences committed in connection with, or in the course of, their duties; the conviction for offences or instances of incompetence requiring their dismissal from the profession, their in-service training and other matters relating to their personnel status shall be regulated by law in accordance with the principles of the independence of the courts and the security of tenure of judges.

Judges and public prosecutors shall exercise their duties until they complete the age of sixty-five; the age limit, promotion and the retirement of military judges shall be prescribed by law.

Judges and public prosecutors shall not assume official or public functions other than those prescribed by law.

Judges and public prosecutors shall be attached to the Ministry of Justice in so far as their administrative functions are concerned.

Those judges and public prosecutors working in administrative posts of the justice service shall be subject to the same provisions as other judges and public prosecutors. Their categories and grades shall be determined according to the principles applying to judges and public prosecutors, and they shall enjoy all the rights accorded to judges and public prosecutors.

D. Publicity of the Hearings and Verdict Justification

ARTICLE 141. Court hearings shall be open to the public. It may be decided to conduct all or part of the hearings in closed session only in cases where required absolutely for reasons of public morality or public security.

Special provisions shall be provided in the law with respect to the trial of minors.

The decisions of all courts shall be made in writing with a statement of justification.

It is the duty of the judiciary to conclude trials as quickly as possible and at the minimum cost.

E. Organization of Courts.

ARTICLE 142. The organization, functions and jurisdictions of the courts, their functioning and trial procedures shall be regulated by law.

F. Courts of the Security of the State

ARTICLE 143. Courts of the Security of the State shall be established to deal with offence against the indivisible integrity of the State with its territory and nation, the free democratic order, or against the Republic whose characteristics are defined in the Constitution, and offences directly involving the internal and external security of the State.

The Court of the Security of the State shall consist of a President, two regular and two substitute members, one public prosecutor and a sufficient number of deputy public prosecutors.

The President, one regular and substitute member and the public prosecutor from among first category judges and public prosecutors; one regular and one substitute member from among first category military judges; and deputy public prosecutors from among public prosecutors of the Republic and military judges, shall be appointed in accordance with procedures prescribed by their special laws.

The President, members and substitute members, and public prosecutors and deputy public prosecutors of the Court of the Security of the State shall be appointed for four years; those whose term of office expires may be reappointed.

The High Court of Appeals is the competent authority to examine appeals against the verdicts of the Court of the Security of the State.

Other provisions relating to the functioning, the duties and jurisdiction and the trial procedure of the Court of the Security of the State shall be prescribed by law.

In the event of declaration of martial law within the regions under the jurisdiction of a Court of the Security of the State, the latter may be transformed, in accordance with the provisions prescribed by law, into a Martial Law Military Tribunal with jurisdiction restricted to these regions.

G. Supervision of Judges and Public Prosecutors

ARTICLE 144. Supervision of judges and public prosecutors with regard to the performance of their duties in accordance with laws, regulations, by-laws and circulars (administrative circulars, in the case of judges), investigation into whether they have committed offences in connection with, or in the course of, their behaviour and attitude are in conformity with their status and duties and if necessary, inquiry and investigations concerning them shall be made by judiciary inspectors with the permission of the Ministry of Justice. The Minister of Justice may request the investigation or inquiry to be conducted by a judge or public prosecutor who is senior to the judge or public prosecutor to be investigated.

H. Military Justice

ARTICLE 145. Military justice shall be exercised by military courts and military disciplinary courts. These courts shall have jurisdiction to try military personnel for military offences, for offences committed by them against other military personnel or in military places, or for offences connected with military service and duties.

Military courts also have jurisdiction to try non-military persons for military offences specified in the special law; and for offences committed while performing their duties specified by law, against military personnel on military places specified by law.

The offences and persons falling within the jurisdiction of military courts in time of war or under martial law, their organization and the appointment, where necessary, of judges and public prosecutors from courts of justice to military courts shall be regulated by law.

The organization of military judicial organs, their functions, matters relating to the status of military judges, relations between military judges acting as military prosecutors and the office of commander under which they serve, shall be regulated by law in accordance with the principles of the independence of courts and the security of tenure of judges and with the requirements of military service. Relations between military judges and the office of commander under which they serve, regarding the requirements of military service apart from the judicial functions, shall also be prescribed by law.

II. Higher Courts

A. The Constitutional Court

1. Organization

ARTICLE 146. The Constitutional Court shall be composed of eleven regular and four substitute members.

The President of the Republic shall appoint two regular and two substitute members from the High Court of Appeals, two regular and one substitute member from the Council of State, and one member each from the Military High Court of Appeals, the High Military Administrative Court and the Audit Court, three candidates being nominated for each vacant office by the Plenary Assemblies of each court from among their respective president and members, by an absolute majority of the total number of member from a list of three candidates nominated by the Higher Education Council from among members of the teaching staff of institutions of higher education who are not members of the Council, and three members and one substitute member from among senior administrative officers and lawyers.

To qualify for appointments as regular or substitute members of the Constitutional Court, members of the teaching staff of institutions of higher education, senior administrative officers and lawyers shall be required to be over the age of forty and to have completed their higher education, or to have served at least fifteen years as a member of the teaching staff of institutions of higher education or to have worked actually at least fifteen years in public service or to have practiced as a lawyer for at least fifteen years.

The Constitutional Court shall elect a President and Deputy President from among its regular members for a term of four years by secret ballot and by an absolute majority of the total number of members. They may be re-elected at the end of their term of office.

The members of the Constitutional Courts shall not assume other official and private functions, besides their main functions.

2. Termination of Membership

ARTICLE 147. The members of the Constitutional Court shall retire on reaching the age of sixty-five.

Membership in the Constitutional Court shall terminate automatically if a member is convicted of an offence requiring his dismissal from the judicial profession; it shall terminate by a decision of an absolute majority of the total number of members of the Constitutional Court if it is definitely established that he is unable to perform his duties on account of ill health.

3. Functions and Powers

ARTICLE 148. The Constitutional Court shall examine the constitutionality in respect of both form and substance of laws, decrees having force of law, and the Rules of Procedure of the Turkish Grand National Assembly. Constitutional amendments shall be examined and verified only with regard to their form. However, no action shall be brought before the Constitutional Court alleging the unconstitutionality as to the form or substance of decrees having force of law, issued during a state of emergency, martial law or in time of war.

The verification of laws as to form shall be restricted to consideration of whether the requisite majority was obtained in the last ballot; the verification of constitutional amendments shall be restricted to consideration of whether the requisite majorities were obtained for the proposal and in the ballot, and whether the prohibition on debates under urgent procedure was complied with. Verification as to the form may be requested by the President of the Republic or by one-fifty of the members of the Turkish Grand National Assembly. Applications for annulment on the grounds of defect in form shall not be made more than ten days after the date on which the law was promulgated; nor shall objection be raised.

The President of the Republic, members of the Council of Ministers, presidents and members of the Constitutional Court, of the High Court of Appeals, of the Council of State, of the Military High Court of Appeals, of the High Military Administrative Court of Appeals, their Chief Public Prosecutors, Deputy Public Prosecutors of the Republic, and the president and members of the Supreme Council of Judges and Public Prosecutors, and of the Audit Court shall be tried for offences relating to their functions by the Constitutional Court in its capacity as the Supreme Court.

The Chief Public Prosecutor of the Republic or Deputy Chief Public Prosecutor of the Republic shall act as public prosecutor in the Supreme Court.

The judgments of the Supreme Court shall be final.

The Constitutional Court shall also perform the other functions given to it by the Constitution.

4. Functioning and Trial Procedure

ARTICLE 149. The Constitutional Court shall convene with its President and ten members, and shall take decisions by absolute majority. Decision of annulment of Constitutional amendments shall be taken by a two-thirds majority.

The Constitutional Court shall give priority to the consideration of, and to decisions on, applications for annulment of the ground of defect in form.

The organization and trial procedures of the Constitutional Court shall be determined by law; its method of work and the division of labour among its members shall be regulated by the Rules of Procedure made by the Court.

The Constitutional Court shall examine cases on the basis of files, except where it acts as the Supreme Court. However, when it deems necessary, it may call on those concerned and those having knowledge relevant to the case, to present oral explanations.

5. Annulment Action

ARTICLE 150. The President of the Republic, Parliamentary groups of the party in power and of the main opposition party and minimum of one-fifth of the total number of members of the Turkish Grand National Assembly shall have the right to apply for annulment action to the Constitutional Court, based on the assertion of the unconstitutionality of laws in form and in substance, of decrees having force of law, of Rules of Procedure of the Turkish Grand National Assembly or of specific articles or provisions thereof. If more than one political party is in power, the right of the parties in power to apply for annulment action shall be exercised by the party having the greatest number of members.

6. Time Limit for Annulment Action

ARTICLE 151. The right to apply for annulment directly to the Constitutional Court shall lapse sixty days after the publication in the Official Gazette of the contested law, the decree having force of law, or the Rules of Procedure.

7. Contention of Unconstitutionality Before Other Courts

ARTICLE 152. If a court which is trying a case, finds that the law or the decree having force of law to be applied is unconstitutional, or if it is convinced of the seriousness of a claim of unconstitutionality submitted by one of the parties, it shall postpone the consideration of the case until the Constitutional Court decides on this issue.

If the court is not convinced of the seriousness of the claim of unconstitutionality, such a claim together with the main judgement shall be decided upon by the competent authority of appeal.

The Constitutional Court shall decide on the matter and make public its judgement within five months of receiving the contention. If on decision is reached within this period, the trial court shall conclude the case under existing legal provisions. However, if the decision on the merits of the case becomes final, the trial court is obliged to comply with it.

No allegation of unconstitutionality shall be made with regard to the same legal provision until ten years elapse after the publication in the Official Gazette of the decision of the Constitutional Court dismissing the application on its merits.

8. Decisions of the Constitutional Court

ARTICLE 153. The decisions of the Constitutional Court are final. Decisions of annulment cannot be made public without a written statement of reasons.

In the course of annulling the whole or a provision of laws or decrees having force of law, the Constitutional Court shall not act as a law-maker and pass judgement leading to new implementation.

Laws, decrees having force of law, or the Rules of Procedure of the Turkish Grand National Assembly or provisions thereof, shall cease to have effect from the date of publication in the Official Gazette of the annulment decision. Where necessary, the Constitutional Court may also decide on the date on which the annulment decision shall come into effect. That date shall not be more than one year from the date of the publication of the decision in the Official Gazette.

In the event of the postponement of the date on which an annulment decision is to come into effect, the Turkish Grand National Assembly

shall debate and decide with priority on the draft bill or a law proposal, designed to fill the legal void arising from the annulment decision.

The annulment decision cannot have retroactive effect.

Decisions of the Constitutional Court shall be published immediately in the Official Gazette, and shall be binding on the legislative, executive, and judicial organs, on the administrative authorities, and on persons and corporate bodies.

B. The High Court of Appeals

ARTICLE 154. The High Court of Appeals is the last instance for reviewing decisions and judgements given by courts of justice and which are not referred by law to other judicial authority. It shall also be the first and last instance for dealing with specific cases prescribed by law.

Members of the High Court of Appeals shall be appointed by the Supreme Council of Judges and Public Prosecutors from among the first category judges and public prosecutors of the Republic of the courts of justice, or those considered to be members of this profession, by secret ballot and by an absolute majority of the total number of members.

The First President, first deputy presidents and heads of division shall be elected by the Plenary Assembly of the High Court of Appeals from among its own members, for a term of four years, by secret ballot and by an absolute majority of the total number of members; then may be re-elected at the end of their term of office.

The Chief Public Prosecutor of the Republic and the Deputy Chief Public Prosecutor of the Republic of the High Court of Appeals shall be appointed by the President of the Republic for a term of four years from among five candidates nominated for each office by the Plenary Assembly of the High Court of Appeals from among its own members by secret ballot. They may be re-elected at the end of their term of office.

The organization, the functioning, the qualifications and procedures of election of the President, deputy presidents, the heads of division and members and the Chief Public Prosecutor of the Republic and the Deputy Chief Public Prosecutor of the Republic of the High Court of Appeals shall be regulated by law in accordance with the principles of the independence of courts and the security of tenure of judges.

C. Council of State

ARTICLE 155. The Council of State is the last instance for reviewing decisions and judgements given by administrative courts and which are not referred by law to other administrative courts. It shall also be the first and last instance for dealing with specific cases prescribed by law.

The Council of State shall try administrative cases, give its opinions on draft legislation submitted by the Prime Minister and the Council of Ministers, examine draft regulations and the conditions and contracts under which concessions are granted, settle administrative disputes and discharge other duties as prescribed by law.

Three-fourths of the members of the Council of State shall be appointed by the Supreme Council of Judges and Public Prosecutors from among the first category administrative judges and public prosecutors, or those considered to be of this profession; and the remaining one-fourth of the members by the President of the Republic from among officials meeting the requirements designated by law.

The President, Chief Public Prosecutor, deputy president, and heads of division of the Council of State shall be elected by the Plenary Assembly of the Council of State from among its own members for a term of four years by secret ballot and by an absolute majority of the total number of members. They may be re-elected at the end of their term of office.

The organization, the functioning, the qualifications and procedures of election of the President, the Chief Public Prosecutor, the deputy presidents and the heads of division and the members of the Council of State, shall be regulated by law in accordance with the principles of specific nature of the administrative jurisdiction, and of the independence of the courts and the security of tenure of judges.

D. Military High Court of Appeals

ARTICLE 156. The Military High Court of Appeals is the last instance for reviewing decisions and judgements given by military courts. It shall also be the first and last instance for dealing with specific cases designated by law concerning military personnel.

Members of the Military High Court of Appeals shall be appointed by the President of the Republic from among three candidates nominated

for each vacant office by the Plenary Assembly of the Military High Court of Appeals from among military judges of the first category, by secret ballot and by an absolute majority of the total number of members.

The President, Chief Public Prosecutor, second presidents and heads of division of the Military High Court of Appeals shall be appointed according to rank and seniority from among the members of the Military High Court of Appeals.

The organization, the functioning of the Military High Court of Appeals, and disciplinary and personnel matters relating to the status of its members shall be regulated by law in accordance with the principles of the independence of the courts and the security of tenure of judges and with the requirements of military service.

E. High Military Administrative Court of Appeals

ARTICLE 157. The High Military Administrative Court of Appeals shall be the first and last instance for the judicial supervision of disputes arising from administrative acts and actions involving military personnel or relating to military service, even if such acts and actions have been carried out by civilian authorities. However, in disputes arising from the obligation to perform military service, there shall be no condition that the person concerned be a member of the military body.

Members of the High Military Administrative Court of Appeals who are military judges shall be appointed by the President of the Republic from a list of three candidates nominated for each vacant office by the President and members of the Court, who are also military judges, by secret ballot and by an absolute majority of the total number of such members, from among military judges of the first category; members who are not military judges shall be appointed by the President of the Republic from list of three candidates nominated for each vacant office by the Chief of the General Staff from among officers holding the rank and qualifications prescribed by law.

The term of office of members who are not military judges shall not exceed four years.

The President, Chief Public Prosecutor and head of division of the Court shall be appointed from among military judges according to rank and seniority.

The organization and functioning of the High Military Administrative Court, its procedure, disciplinary affairs and other matters relating to the status of its members shall be regulated by law in accordance with the principles of the independence of the courts and the security of tenure of judges with the requirements of military service.

F. Jurisdictional Conflict Court

ARTICLE 158. The Jurisdictional Conflict Court shall be empowered to deliver final judgments in disputes between courts of justice, and administrative and military courts concerning their jurisdiction and decisions.

The organization of the Jurisdictional Conflict Court, the qualifications of its members and the procedure for their election, and its functioning shall be regulated by law. The Office of President of this Court shall be held by a member delegated by the Constitutional Court from among its own members.

Decisions of the Constitutional Court shall take precedence in jurisdictional disputes between the Constitutional Court and other courts.

III. Supreme Council of Judges and Public Prosecutors

ARTICLE 159. The Supreme Council of Judges and Public Prosecutors shall be established and shall exercise its functions in accordance with the principles of the independence of the courts and the security of tenure of judges.

The President of the Council is the Minister of Justice. The Undersecretary to the Minister of Justice shall be an ex-officio member of the Council. Three regular and three substitute members of the Council shall be appointed by the President of the Republic for a term of four years from a list of three candidates nominated for each vacant office by the Plenary Assembly of the High Court of Appeals from among its own members and two regular and two substitute members shall be similarly appointed from a list of three candidates nominated for each vacant office by the Plenary Assembly of the Council of State. They may be re-elected at the end of their term of office. The Council shall elect a deputy president from among its elected regular members.

The Supreme Council of Judges and Public Prosecutors shall deal with the admission of judges and public prosecutors of courts of justice and

of administrative courts into the profession, appointment, transfers to other posts, the delegation of temporary powers, promotion, and promotion to the first category, the allocation of posts, decisions concerning those whose continuation in the profession is found to be unsuitable, the imposition of disciplinary penalties and removal from office. It shall take final decisions on proposals by the Ministry of Justice concerning the abolition of a court or an office of judge or public prosecutor, or changes in the jurisdiction of a court. It shall also exercise the other functions given to it by the Constitution and laws.

There shall be no appeal to any judicial instance against the decisions of the Council.

The functioning of the Council and methods of performing its duties, the procedure governing election and working methods, the principles relating to the examination of objections within the Council shall be regulated by law.

The Minister of Justice is empowered to appoint judges and public prosecutors with their consent, to temporary or permanent functions in the central offices of the Ministry of Justice.

The Minister of Justice may, in cases where delay is deemed prejudicial, confer temporary powers on judges or public prosecutors to prevent the disruption of services, subject to the approval of the Supreme Council of Judges and Public Prosecutors at its first meeting thereafter.

IV. Audit Court

ARTICLE 160. The Audit Court shall be charged with auditing, on behalf of the Turkish Grand National Assembly, all the accounts relating to the revenue, expenditure and property of government departments financed by the general and subsidiary budgets, with taking final decisions on the acts and accounts of the responsible officials, and with exercising the functions required of it by law in matters of inquiry, auditing and judgement. Parties concerned may file a single request for reconsideration of a final decision of the Audit Court within fifteen days of the date of written notification of the decision. No applications for judicial review of such decisions shall be filed in administrative courts.

In the event of a dispute between the Council of State and the Audit Court concerning decisions on matters of taxation or similar financial

obligations and duties, the decision of the Council of State shall take precedence.

The organization, functioning and auditing procedure of the Audit Court, the qualifications, appointment, duties and powers, rights and obligations of its members, other matters relating to their personnel status, and the security of tenure of the President and members shall be regulated by law. The procedure for auditing, on behalf of the Turkish Grand National Assembly, of State property in possession of the Armed Forces shall be regulated by law in accordance with the principles of secrecy required by National Defense.

ANNEX C

The European Convention on Human Rights and Fundamental Freedoms¹

Rome, 4.XI.1950

"The text of the Convention had been amended according to the provisions of Protocol No. 3 (ETS No. 45), which entered into force on 21 September 1970, of Protocol No. 5 (ETS No. 55), which entered into force on 20 December 1971 and of Protocol No. 8 (ETS No. 118), which entered into force on 1 January 1990, and comprised also the text of Protocol No. 2 (ETS No. 44) which, in accordance with Article 5, paragraph 3 thereof, had been an integral part of the Convention since its entry into force on 21 September 1970. All provisions which had been amended or added by these Protocols are replaced by Protocol No. 11 (ETS No. 155), as from the date of its entry into force on 1 November 1998. As from that date, Protocol n° 9 (ETS No. 140), which entered into force on 1 October 1994, is repealed and Protocol n° 10 (ETS No. 146), which has not entered into force, has lost its purpose."

The governments signatory hereto, being members of the Council of Europe,

Considering the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10th December 1948;

Considering that this Declaration aims at securing the universal and effective recognition and observance of the Rights therein declared;

Considering that the aim of the Council of Europe is the achievement of greater unity between its members and that one of the methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms;

¹ entered into force Sept. 3, 1953, as amended by Protocols Nos 3, 5, 8, and 11 which entered into force on 21 September 1970, 20 December 1971, 1 January 1990, and 1 November 1998 respectively.

Reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the human rights upon which they depend;

Being resolved, as the governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration,

Have agreed as follows:

Article 1 – Obligation to respect human rights

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

Section I – Rights and freedoms

Article 2 – Right to life

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
 - a) in defence of any person from unlawful violence;
 - b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
 - c) in action lawfully taken for the purpose of quelling a riot or insurrection.

Article 3 – Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 4 – Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. For the purpose of this article the term "forced or compulsory labour" shall not include:
 - a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
 - b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
 - c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
 - d) any work or service which forms part of normal civic obligations.

Article 5 – Right to liberty and security

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
 - a) the lawful detention of a person after conviction by a competent court;
 - b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
 - c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
 - d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
 - e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

- f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
- 2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
- 3. Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
- 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
- 5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

Article 6 – Right to a fair trial

- 1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
- 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
- 3. Everyone charged with a criminal offence has the following minimum rights:

- a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
- b) to have adequate time and facilities for the preparation of his defence;
- c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
- d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Article 7 – No punishment without law

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
2. This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

Article 8 – Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 9 – Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 10 – Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are 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 or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 11 – Freedom of assembly and association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection

of health or morals or for the protection of the rights and freedoms of others.

This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Article 12 – Right to marry

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

Article 13 – Right to an effective remedy

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

Article 14 – Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 15 – Derogation in time of emergency

1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.
2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.
3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons

therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

Article 16 – Restrictions on political activity of aliens

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

Article 17 – Prohibition of abuse of rights

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

Article 18 – Limitation on use of restrictions on rights

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

Section II – European Court of Human Rights

Article 19 – Establishment of the Court

To ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto, there shall be set up a European Court of Human Rights, hereinafter referred to as “the Court”. It shall function on a permanent basis.

Article 20 – Number of judges

The Court shall consist of a number of judges equal to that of the High Contracting Parties.

Article 21 – Criteria for office

1. The judges shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence.

2. The judges shall sit on the Court in their individual capacity.
3. During their term of office the judges shall not engage in any activity which is incompatible with their independence, impartiality or with the demands of a full-time office; all questions arising from the application of this paragraph shall be decided by the Court.

Article 22 – Election of judges

1. The judges shall be elected by the Parliamentary Assembly with respect to each High Contracting Party by a majority of votes cast from a list of three candidates nominated by the High Contracting Party.
2. The same procedure shall be followed to complete the Court in the event of the accession of new High Contracting Parties and in filling casual vacancies.

Article 23 – Terms of office

1. The judges shall be elected for a period of six years. They may be re-elected. However, the terms of office of one-half of the judges elected at the first election shall expire at the end of three years.
2. The judges whose terms of office are to expire at the end of the initial period of three years shall be chosen by lot by the Secretary General of the Council of Europe immediately after their election.
3. In order to ensure that, as far as possible, the terms of office of one-half of the judges are renewed every three years, the Parliamentary Assembly may decide, before proceeding to any subsequent election, that the term or terms of office of one or more judges to be elected shall be for a period other than six years but not more than nine and not less than three years.
4. In cases where more than one term of office is involved and where the Parliamentary Assembly applies the preceding paragraph, the allocation of the terms of office shall be effected by a drawing of lots by the Secretary General of the Council of Europe immediately after the election.
5. A judge elected to replace a judge whose term of office has not expired shall hold office for the remainder of his predecessor's term.
6. The terms of office of judges shall expire when they reach the age of 70.

7. The judges shall hold office until replaced. They shall, however, continue to deal with such cases as they already have under consideration.

Article 24 – Dismissal

No judge may be dismissed from his office unless the other judges decide by a majority of two-thirds that he has ceased to fulfil the required conditions.

Article 25 – Registry and legal secretaries

The Court shall have a registry, the functions and organisation of which shall be laid down in the rules of the Court. The Court shall be assisted by legal secretaries.

Article 26 – Plenary Court

The plenary Court shall

- a) elect its President and one or two Vice-Presidents for a period of three years; they may be re-elected;
- b) set up Chambers, constituted for a fixed period of time;
- c) elect the Presidents of the Chambers of the Court; they may be re-elected;
- d) adopt the rules of the Court, and
- e) elect the Registrar and one or more Deputy Registrars.

Article 27 – Committees, Chambers and Grand Chamber

1. To consider cases brought before it, the Court shall sit in committees of three judges, in Chambers of seven judges and in a Grand Chamber of seventeen judges. The Court's Chambers shall set up committees for a fixed period of time.
2. There shall sit as an ex officio member of the Chamber and the Grand Chamber the judge elected in respect of the State Party concerned or, if there is none or if he is unable to sit, a person of its choice who shall sit in the capacity of judge.
3. The Grand Chamber shall also include the President of the Court, the Vice-Presidents, the Presidents of the Chambers and other

judges chosen in accordance with the rules of the Court. When a case is referred to the Grand Chamber under Article 43, no judge from the Chamber which rendered the judgment shall sit in the Grand Chamber, with the exception of the President of the Chamber and the judge who sat in respect of the State Party concerned.

Article 28 – Declarations of inadmissibility by committees

A committee may, by a unanimous vote, declare inadmissible or strike out of its list of cases an application submitted under Article 34 where such a decision can be taken without further examination. The decision shall be final.

Article 29 – Decisions by Chambers on admissibility and merits

1. If no decision is taken under Article 28, a Chamber shall decide on the admissibility and merits of individual applications submitted under Article 34.
2. A Chamber shall decide on the admissibility and merits of inter-State applications submitted under Article 33.
3. The decision on admissibility shall be taken separately unless the Court, in exceptional cases, decides otherwise.

Article 30 – Relinquishment of jurisdiction to the Grand Chamber

Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects.

Article 31 – Powers of the Grand Chamber

The Grand Chamber shall

- a) determine applications submitted either under Article 33 or Article 34 when a Chamber has relinquished jurisdiction under Article 30 or when the case has been referred to it under Article 43; and
- b) consider requests for advisory opinions submitted under Article 47.

Article 32 – Jurisdiction of the Court

1. The jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the protocols thereto which are referred to it as provided in Articles 33, 34 and 47.
2. In the event of dispute as to whether the Court has jurisdiction, the Court shall decide.

Article 33 – Inter-State cases

Any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the protocols thereto by another High Contracting Party.

Article 34 – Individual applications

The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.

Article 35 – Admissibility criteria

1. The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.
2. The Court shall not deal with any application submitted under Article 34 that
 - a) is anonymous; or
 - b) is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information.
3. The Court shall declare inadmissible any individual application submitted under Article 34 which it considers incompatible with the provisions of the Convention or the protocols thereto, manifestly ill founded, or an abuse of the right of application.

4. The Court shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings.

Article 36 – Third party intervention

1. In all cases before a Chamber or the Grand Chamber, a High Contracting Party one of whose nationals is an applicant shall have the right to submit written comments and to take part in hearings.
2. The President of the Court may, in the interest of the proper administration of justice, invite any High Contracting Party which is not a party to the proceedings or any person concerned who is not the applicant to submit written comments or take part in hearings.

Article 37 – Striking out applications

1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that a the applicant does not intend to pursue his application; or
 - b) the matter has been resolved; or
 - c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the protocols thereto so requires.

2. The Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course.

Article 38 – Examination of the case and friendly settlement proceedings

1. If the Court declares the application admissible, it shall
 - a) pursue the examination of the case, together with the representatives of the parties, and if need be, undertake an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities;

- b) place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and the protocols thereto.
2. Proceedings conducted under paragraph 1.b shall be confidential.

Article 39 – Finding of a friendly settlement

If a friendly settlement is effected, the Court shall strike the case out of its list by means of a decision which shall be confined to a brief statement of the facts and of the solution reached.

Article 40 – Public hearings and access to documents

1. Hearings shall be in public unless the Court in exceptional circumstances decides otherwise.
2. Documents deposited with the Registrar shall be accessible to the public unless the President of the Court decides otherwise.

Article 41 – Just satisfaction

If the Court finds that there has been a violation of the Convention or the protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.

Article 42 – Judgments of Chambers

Judgments of Chambers shall become final in accordance with the provisions of Article 44, paragraph 2.

Article 43 – Referral to the Grand Chamber

1. Within a period of three months from the date of the judgment of the Chamber, any party to the case may, in exceptional cases, request that the case be referred to the Grand Chamber.
2. A panel of five judges of the Grand Chamber shall accept the request if the case raises a serious question affecting the interpretation or application of the Convention or the protocols thereto, or a serious issue of general importance.
3. If the panel accepts the request, the Grand Chamber shall decide the case by means of a judgment.

Article 44 – Final judgments

1. The judgment of the Grand Chamber shall be final.
2. The judgment of a Chamber shall become final
 - a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or
 - b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or
 - c) when the panel of the Grand Chamber rejects the request to refer under Article 43.
3. The final judgment shall be published.

Article 45 – Reasons for judgments and decisions

1. Reasons shall be given for judgments as well as for decisions declaring applications admissible or inadmissible.
2. If a judgment does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

Article 46 – Binding force and execution of judgments

1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.

Article 47 – Advisory opinions

1. The Court may, at the request of the Committee of Ministers, give advisory opinions on legal questions concerning the interpretation of the Convention and the protocols thereto.
2. Such opinions shall not deal with any question relating to the content or scope of the rights or freedoms defined in Section I of the Convention and the protocols thereto, or with any other question which the Court or the Committee of Ministers might have to consider in consequence of any such proceedings as could be instituted in accordance with the Convention.

3. Decisions of the Committee of Ministers to request an advisory opinion of the Court shall require a majority vote of the representatives entitled to sit on the Committee.

Article 48 – Advisory jurisdiction of the Court

The Court shall decide whether a request for an advisory opinion submitted by the Committee of Ministers is within its competence as defined in Article 47.

Article 49 – Reasons for advisory opinions

1. Reasons shall be given for advisory opinions of the Court.
2. If the advisory opinion does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.
3. Advisory opinions of the Court shall be communicated to the Committee of Ministers.

Article 50 – Expenditure on the Court

The expenditure on the Court shall be borne by the Council of Europe.

Article 51 – Privileges and immunities of judges

The judges shall be entitled, during the exercise of their functions, to the privileges and immunities provided for in Article 40 of the Statute of the Council of Europe and in the agreements made thereunder.

Section III – Miscellaneous provisions

Article 52 footnote 1 – Inquiries by the Secretary General

On receipt of a request from the Secretary General of the Council of Europe any High Contracting Party shall furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of the Convention.

Article 53 – Safeguard for existing human rights

Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a Party.

Article 54 – Powers of the Committee of Ministers

Nothing in this Convention shall prejudice the powers conferred on the Committee of Ministers by the Statute of the Council of Europe.

Article 55 – Exclusion of other means of dispute settlement

The High Contracting Parties agree that, except by special agreement, they will not avail themselves of treaties, conventions or declarations in force between them for the purpose of submitting, by way of petition, a dispute arising out of the interpretation or application of this Convention to a means of settlement other than those provided for in this Convention.

Article 56 – Territorial application

1. Any State may at the time of its ratification or at any time thereafter declare by notification addressed to the Secretary General of the Council of Europe that the present Convention shall, subject to paragraph 4 of this Article, extend to all or any of the territories for whose international relations it is responsible.
2. The Convention shall extend to the territory or territories named in the notification as from the thirtieth day after the receipt of this notification by the Secretary General of the Council of Europe.
3. The provisions of this Convention shall be applied in such territories with due regard, however, to local requirements.
4. Any State which has made a declaration in accordance with paragraph 1 of this article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided by Article 34 of the Convention.

Article 57 – Reservations

1. Any State may, when signing this Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. Reservations of a general character shall not be permitted under this article.
2. Any reservation made under this article shall contain a brief statement of the law concerned.

Article 58 – Denunciation

1. A High Contracting Party may denounce the present Convention only after the expiry of five years from the date on which it became a party to it and after six months' notice contained in a notification addressed to the Secretary General of the Council of Europe, who shall inform the other High Contracting Parties.
2. Such a denunciation shall not have the effect of releasing the High Contracting Party concerned from its obligations under this Convention in respect of any act which, being capable of constituting a violation of such obligations, may have been performed by it before the date at which the denunciation became effective.
3. Any High Contracting Party which shall cease to be a member of the Council of Europe shall cease to be a Party to this Convention under the same conditions.
4. The Convention may be denounced in accordance with the provisions of the preceding paragraphs in respect of any territory to which it has been declared to extend under the terms of Article 56.

Article 59 – Signature and ratification

1. This Convention shall be open to the signature of the members of the Council of Europe. It shall be ratified.

Ratifications shall be deposited with the Secretary General of the Council of Europe.

2. The present Convention shall come into force after the deposit of ten instruments of ratification.

3. As regards any signatory ratifying subsequently, the Convention shall come into force at the date of the deposit of its instrument of ratification.
4. The Secretary General of the Council of Europe shall notify all the members of the Council of Europe of the entry into force of the Convention, the names of the High Contracting Parties who have ratified it, and the deposit of all instruments of ratification which may be effected subsequently.

Done at Rome this 4th day of November 1950, in English and French, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatories.

ANNEX D

List of Interviewees

Mission to Turkey 14th – 25th November 1999

Ankara

- Prof. Dr. Hikmet Sami Turk, Minister of Justice of the Republic of Turkey
- Mr. Sami Selcuck, President of the Supreme Court of Appeals
- Mr. Vural Savas, Chief Prosecutor of the Republic of Turkey
- Prof. Dr. Eralp Ozgen, President of the Union of Turkish Bar Associations
- Mr. Husnu Ondul, President of the Human Rights Association of Turkey
- Mr. Akin Birdal, Former President of the Human Rights Association of Turkey
- Mr. Ali Ersin Gur, President of the Contemporary Lawyers Association
- Mr. Ajay Chhibber, Director of the World Bank in Turkey

Istanbul

- Mr. Necati Ceylan, President of the Lawyers Association
- Dr. Gursel Cetin, Head of the Society of Forensic Medicine Specialists

- Dr. Sebnem Korur, Former Head of the Society of Forensic Medicine Specialists
- Mr. Muzater Galcin, Deputy Head Prosecutor of the Istanbul State Security Court
- Mr. Mete Gokturk, Prosecutor of the Istanbul State Security Court
- Mr. Ferzan Citici, Head Prosecutor of the Istanbul Ordinary Court
- Mr. Yucel Sayman, Head of the Istanbul Bar Association
- Dr. Onder Ozkalipci, Head of the Istanbul Branch of the Human Rights Foundation of Turkey
- Mr. Murat Celik, Head of the Contemporary Lawyers Association of Istanbul
- Prof. Dr. Bakir Caglar, Professor of Law, Istanbul University

Adana

- Mr. Fevzi Elmaz, Head Prosecutor of the Adana State Security Court
- Mr. Mustafa Sahin, President and Judge of the Adana State Security Court
- Mr. Ziya Yergok, Head of the Adana Bar Association
- Mr. Musa Ufuktepe, Judge of the Civil Court of Adana
- Mr. Fettah Oto, Judge of the Administrative Court of Adana
- Mr. Mustafa Cinkilic, Head of the Contemporary Lawyers Association of Adana

Izmir

- Mr. Abdulkadir Abaci, Head Prosecutor of the Izmir State Security Court

- Mr. Galip Cengiz, President and Judge of the Izmir State Security Court
- Mr. Cetin Turan, Head of the Izmir Bar Association
- Ms. Hulya Ucpina, Head of the Izmir Bar Association's Centre for Human Rights
- Dr. Turkcan Baykal, Head of the Human Rights Foundation of Izmir
- Mr. Nedim Degirmenci, Head of the Contemporary Lawyers Association of Izmir
- Mr. Suat Cetinkaya, Board Member of the Human Rights Association of Izmir

Diyarbakir

- Mr. Nihat Cakar, Head Prosecutor of the Diyarbakir State Security Court
- Mr. Ethem Ucan, President and Judge of the Diyarbakir State Security Court
- Mr. Rana Yilmaz, Head Prosecutor of the Diyarbakir Ordinary Court
- Mr. Mustafa Ozer, President of the Bar Association of Diyarbakir
- Mr. Sezgin Tanrikulu, President of the Human Rights Foundation of Diyarbakir
- Mr. Ekram Halici, President and Judge of the Diyarbakir Ordinary Court

ANNEX E

Views of the Turkish Government on the Draft Report of the CIJL Mission to Turkey Held between 14-25 November 1999

The Turkish Government views that CIJL has flagrantly exceeded its mandates, not the least stated in the introductory section, in its report prepared following their visit to Turkey on 14-25 November 1999.

In fact, the report brings about unfair criticism not only on the Turkish justice but also on the whole Turkish State structure and the Constitution. With this approach, CIJL has ignored the fact that constitutional systems take their shape in accordance with the historic, cultural, social and geographic peculiarities and their strength from the domain of sovereignty of States

CIJL assessment of the continuous PKK's campaign of terrorism in the 1990's from a perspective "an insurgency as a result of an ethnic tension" is a striking example of its prejudice. The report gives no place to the assistance that this terrorist organisation has long received from abroad.

This being the general opinion, the Turkish views on some specific aspects of the report are briefly stated in the following paragraphs:

A) In Chapter IV entitled "Legislation and Emergency" CIJL criticizes the fact that the constitutionality as to form or substance of decrees issued during a state of emergency cannot be called into question in a court of law and claims that this confers extremely wide powers on Regional governors.

In fact, Article 148/1 of the Constitution stipulates that "no action shall be brought before the Constitutional Court alleging the

unconstitutionality as to the form or substance of decrees having the force of law, issued during a state of emergency".

This being the principle, however, the Constitutional Court, in its interpretive decisions, tightly limited the scope of emergency decrees and annulled many of them falling out of these limits.

As depicted in the footnote, the Notice of Derogation of the Turkish Government, dated 6 August 1990, explicitly states, in its fourth paragraph that the decrees with force of law (nos. 424 and 425) promulgated on May 10, 1990 may in part result in derogating from rights enshrined in Articles 5, 6, 10, 11 and 13 of the European Convention on Human Rights and Fundamental Freedoms. The European Court on Human Rights, in its various decisions accepted that there was an emergency situation in the Southeast of the country, threatening the life of the nation and ruled that the Government may derogate from its obligations under some Articles of the Convention. The Court asked only that the measures taken in derogation should have been in conformity with the exigencies of the situation and they should have been limited to only Southeast Turkey.

The amendment made on the State Security Courts Law on 6 March 1997 reduced the maximum terms of detention in the emergency regions from 30 days to 10 days (4+6). In this context, detention period can be extended up to only 4 days upon written instruction by the Public Prosecutor. Thereafter, the suspect must appear before the judge and if necessary the court can decide to prolong the detention up to 10 days. 4 days *incommunicado* detention is acceptable in the jurisprudence of the European Court of Human Rights.

B) In chapter V entitled "the Courts and their Jurisdiction" CIJL recommends that the Constitution be amended so as to permit individuals to petition the Constitutional Court on issues of constitutionality. Such an amendment in the Constitution will confer an extra burden on the Constitutional Court and make it to lose sight of its intrinsic duties. On the other hand, in accordance with Article 152/1 of the Constitution, if one of the parties to a lawsuit brings forth a claim that a specific article of law is in contravention with the Constitution and if the court deems this claim worth of examination,

the Constitutional Court can seize the matter upon this personal initiative.

As to CIJL recommendation that the Constitution be amended so as to permit decrees issued under a state of emergency, martial law, or in time of war to be challenged in the Constitutional Court, the Government is in the opinion that the present Constitutional clause is in conformity with the present exigencies.

C) In Chapter VI, entitled: "The State Security Court System", the Government deems that the allegations vis-à-vis the independence and impartiality of the State Security Courts are baseless.

The State Security Courts are specialized courts established in the capitals of the certain provinces such as Ankara, Diyarbakir, Erzurum, Istanbul, Adana, Van and Malatya to try persons accused of offences committed against the free democratic system of government, against the Republic, as well as the indivisible unity of the state –meaning both the national territory and its people– and offences directly affecting the State's internal and external security. They are not extraordinary courts established after a crime is committed and for one particular crime exclusively. Those who commit acts which fall in the jurisdiction of the State Security Courts know, right from the beginning, in which court they will be tried. The jurisdiction of these courts are so narrowly defined that Article 262 of the Code on Criminal Procedural Law is not applied here. Thus, a State Security Court should give a decision of non jurisdiction at every stage of the proceedings when it comes across a crime that is not in its jurisdiction.

In summary, the judges of these courts are natural judges assigned independent of a specific crime and the accused persons since their assignments take place before the crime and the accused persons are identified. They are not judges assigned specifically for certain persons or actions.

Those assigned by the Supreme Council of Judges and Prosecutors as judges in State Security Courts are lawyers who are practicing the profession for a long time and who have been promoted to the 1st rank after having proven their professional talent and success.

The natural character of the State Security Courts is also underlined in the decision of the Constitutional Court (no: 1973/19 E, 1975/87 K and dated 15 April 1975) where it stated that "*...the State Security Courts are also within the general judicial system same as the Traffic Courts and the Combined Press Courts.*"

In the Article 2 of the Constitution the characteristics of the Republic are listed and in the 1st part of the 2. Book of the Turkish Criminal Code, the "*Crimes Against The State*" are defined. The jurisdiction of the State Security Courts are rather pertaining to this section. Therefore, the State Security Courts are legal institutions with the responsibility of maintaining the democratic and constitutional public order and they are by no means affiliated with politics.

The decisions of the State Security Courts are reviewed by the Supreme Court of Justice. The State Security Courts have never had a status of a military court and their decisions have never been reviewed by the Military Court of Cassation.

The procedural rules which are being applied in the State Security Courts are the rules outlined in the Code on Criminal Procedure which are also applied in the ordinary criminal courts. The special rules applied during the preparation of investigations and the trials are quite exceptional and they are included in a special law.

The European Court of Human Rights found the structure and the procedure of the State Security Courts eligible. However, in the case *Incal vs. Turkey*, the presence of a military judge in the State Security Courts was found contradictory to the principle of a "fair trial". Turkey, abolished the presence of the military judge from such courts by amending its Constitution.

The report recommends amendments to the Turkish Constitution with respect to further "freedom of speech". However, such provisions are also existing in the domestic legislations of Germany, Sweden, Netherlands and Spain.

The Regulation on Apprehension, Police Custody and Interrogation which entered into force in October 1998 further shortened the periods of detention. According to the Criminal Procedure Code, as well as the

law on the State Security Courts, the prolongation of the detention period from 4 days to 7 depends on the decision of the judge. Article 128 of the Criminal Procedure Code, enables the detainee or his/her relatives to object to the extension of the detention period.

For those offences under the jurisdiction of State Security Courts, although the detainee cannot be represented by a counsel during the first four days of his/her detention, he/she can object to the detention, or can resort to his/her right to silence. (Articles 128 and 135 of the Criminal Procedure Code).

The amendment introduced to the Criminal Procedure Code in 1992 categorically invalidates any evidence which is obtained through methods such as torture, extortion or violence.

D) In Chapter VII entitled: "The Judiciary and Public Prosecutors", regarding the recommendation of the CIJL on the establishment of a "police force" under the auspices of the public prosecutors, the Government would like to inform the CIJL that debate on this subject has been underway in the Grand National Assembly for some time.

E) In Chapter VIII of the Report, entitled: "Lawyers, Legal Services and Human Rights Advocates": the "Regulation on Apprehension, Police Custody and Interrogation" adopted in 1998 is a comprehensive document. However, for those offences under the jurisdiction of State Security Courts, a different kind of regulation than the "Regulation on Apprehension, Police Custody and Interrogation" of 1998, is applied to detainees whose case fall under the jurisdiction of the State Security Courts. This is because of the gravity of the offence.

The above mentioned Regulation stipulates in its Article 20 that a lawyer can meet his/her defendant anytime and no time limits are set thereupon. In addition, the lawyer is given access to investigate the preparatory files prepared by the prosecutor's office on the detainee.

There are no provisions in the Turkish law envisaging lawyers to be persecuted for their statements made in good faith when appearing in court. Furthermore, Articles 57, 58 and 59 of the Law on Lawyers

enforces the immunity of lawyers for their professional acts and strictly outlines the conditions of inquiry on lawyers.

Regarding allegations on harassment and intimidation of human rights defenders, it should be taken into consideration that those who violate laws are subject to legal proceedings in every state of law.

F) Regarding Chapter IX, entitled: "Torture and Police Impunity", the Government would like to bring to the attention of the CIJL that a law adopted on 2 December 1999, and entered into force on 5 December 1999 on the Prosecution of Civil Servants, replaced the previous Civil Servants Law of 1913 and introduced new measures in order to avoid impunity and render civil servants accountable before courts for their offences. (An information note on this law is annexed to this note).

According to the Turkish legislation, allegations of torture and ill-treatment are subject to prosecution. Such allegations are automatically dealt with by the Office of the Chief Prosecutor, no further complaint is required for a legal proceeding to this end.

Only in 1999, 110 new preparatory investigations were initiated at the Courts upon allegations of torture and ill-treatment, 127 new files were lodged regarding the allegations about the law enforcement personnel in pending cases and 17 law enforcement personnel were prosecuted upon these allegations. This is a clear indication of the efforts deployed by the Government of Turkey to eradicate such inhumane acts and its determination to fully comply with its national and international commitments in this regard.



Permanent Mission Of Turkey To the United Nations

29 B. CHEMIN DU PETIT - SAconnex 1211 GENÈVE 19 TEL : 74 39 36

15 December 1999

INFORMATION NOTE ON THE NEWLY ADOPTED LAW ON "THE PROSECUTION OF CIVIL SERVANTS"

1. The "Law on the Prosecution of Civil Servants" was adopted on 2 December 1999 by the Turkish Grand National Assembly. Upon the approval by the President, it entered into force on 5 December 1999. The Law replaces the previous one which was short of meeting the current requirements.

2. An important feature of the new Law is that it sets a "time limit" for the conclusion of cases. It, therefore, prevents impunity due to status of limitations and renders the civil servants accountable before courts for any of their offences.

3. According to the new Law, the procedure for the prosecution of civil servants is as follows:

The complaint is forwarded to the office of the prosecutor, who in turn informs the government office to which the accused civil servant is attached. The senior officer (clearly identified for the different levels of government offices) has the authority to decide on the acceptability of the investigation request, normally in 30 days. For extraordinary cases, this time limit can be extended up to 45 days. The senior officer who does not authorize the investigation has to provide tangible evidence to the prosecutor's office. In case of approval, the accused officer, and in case of disapproval, the prosecutor's office may appeal to the Council of State or the relevant regional administrative court for review. The Council of State or the regional administrative court has to give its ruling within three months at the latest, and this is final. Therefore, it takes maximum four and a half months to reach the final ruling for the case to be brought to the court.

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SURIYA WICKREMASINGHE Barrister (Sri Lanka)

Director

Mona A. Rishmawi

For most of the period since 1984 there has been a state of conflict in Turkey between the Government and militant Kurdish separatists. Although the military and violent opposition activities of both sides have been concentrated in the south-eastern provinces, the ramifications of the conflict have affected the country as a whole. Emergency powers have been assumed by the Government and human rights violations have been committed by both sides to the armed struggle.

This Mission's Report explores the state of legislation, the legal system, the legal protection of human rights, the independence of the judiciary and lawyers, and the investigation and prosecution of those suspected of violations of human rights in Turkey. Some of these matters are directly linked to the struggle against violence. Others have broader roots.

Centre for the Independence of Judges and Lawyers

81 A, avenue de Châtelaine
CH-1219 Châtelaine/Geneva
Switzerland

Tel: (4122) 979 38 00, fax: (4122) 979 38 01

email: info@icj.org

www.icj.org