Turkey

Despite constitutional guarantees of judicial independence, 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. Both judges and public prosecutors face restrictions, influence, pressure, threats and interference in the exercise of their professional duties. Lawyers in Turkey are sometimes subjected to harassment, intimidation and violence merely for providing legitimate professional legal services to their clients.

According to the 1982 Constitution, Turkey is a republic with a parliamentary form of government. The President is the head of the state and shares executive powers with the Council of Ministers, consisting of the Prime Minister and other ministers. The President is elected by the Grand National Assembly (GNA) for seven years and cannot be re-elected. National elections are held every five years through a system of proportional representation, and every citizen of 18 years and over has the right to vote. The GNA consists of 550 members and carries out legislative functions.

The 1982 Constitution was adopted during military rule by the last military regime which seized power in 1980. It established the National Security Council (NSC) which functions as an advisory body for the President and the Cabinet. 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.

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. In practice, however, the military in Turkey continues to have far-reaching powers and a tremendous influence over the government.

The April 1999 elections resulted in the formation of a majority coalition under 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.

For more than fifteen years now, an armed conflict between the government and the Kurdish Worker's Party (PKK) has been in effect in Turkey. The aim of the PKK is to establish a separate state, Kurdistan, in the south-east of Turkey. In October 1997, the state of emergency that was declared in nine provinces in south-eastern Turkey in 1987 was lifted in three provinces (Batman, Bingol and Bitlis), but remained in effect for the six others. The state of emergency gives the regional governor far-reaching powers, inter alia, giving him authority over the ordinary governors of the provinces and the power to restrict freedom of the press.

In February 1999, Abdullah Öcalan, leader of the PKK, was forcefully transferred from Kenya to Turkey. The ICJ condemned the forced transfer of Mr. Öcalan from Kenya to Turkey in violation of international law. Mr. Öcalan was sentenced to death on 29 June 1999,

after a State Security Court found him guilty of the charges of "treason and separatism" under Article 125 of the Turkish Penal Code (TPC). Following his arrest, Mr. Öcalan called for an end to the armed conflict. On 25 November 1999, the death sentence was upheld by the High Court of Appeals. Pending Mr. Öcalan's case before the European Court of Human Rights, the sentence has not been carried out.

State of Emergency

The state of emergency, still in effect in six provinces, gives the regional governor far-reaching powers under decrees enacted under Law no. 2935 on the State of Emergency (25 October 1983), giving him authority over the ordinary governors of the provinces, the power to put restrictions on the press and the ability to remove people from the province who are a threat to public order.

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. Consequently, impunity remains a major problem in the south-eastern provinces.

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".

This article enlarges the risk of impunity for the deeds of the governors. The governors have extensive powers to evacuate villages, to impose resident restrictions and to enforce the transfer of people to other areas.

On 27 October 1995, Article 8 of the 1991 Anti-Terror Law was amended. Despite the amendment, the provisions still define terrorism in vague terms, and many of those accused before the State Security Courts are charged under it. The amendment to Article 8 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".

Several provisions concerning the state of emergency in Turkey were the subject of review by the European Court of Human Rights in 1997 and 1998. In two cases, the court ruled that Article 5 (right to liberty and security) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention) was violated, even though Turkey was derogating from this provision under Article 15 (state of emergency). While recognising the difficulties faced by Turkey, the court affirmed that '"Article 15 authorises derogations from the obligations arising from the Convention only to the extent strictly required by the exigencies of the situation".

Following the judgement of the European Court of Human Rights in the case of Aksoy v. Turkey (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 term of police detention from 30 days to 10 days in provinces under state of emergency legislation, and from 14 days to seven days throughout the rest of the country.

The amendment also aimed at improving access to lawyers in accordance with the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms. However, in state of emergency regions, this right only comes into effect after an extension from the judge has been granted, that is, after 96 hours (four days). Once a detainee has been charged with an offence, he or she has the right to meet with his or her legal counsel at any time. The new law, in effect, amounts to a denial of the right of access to a lawyer (for up to 4 days) to detainees who have not yet been charged.

The European Court also criticised the village guard system. In provinces where the state of emergency legislation applies, a village guard system exists. 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. On the other hand, the PKK punishes those who do join the village guards.

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 for the actions of the security forces who burnt houses to force the evacuation of villages in the south-east that refused to join the village guard system. In 1998, the court found the Turkish Government in violation of the Convention in Ergi v. Turkey (28 July 1998) because it failed to protect a Turkish citizen's right in the context of an operation by the security forces, and subsequently did not carry out an adequate and effective investigation.

In 1999, the court found the Turkish Government in violation of Article 2 in Ogur vs. Turkey (20 May 1999) (See European Court of Human Rights).

Human Rights Background

The armed conflict in the south-east decreased 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 restrained freedom of expression. The PKK, meanwhile, continued to execute civilians they suspected of co-operating with the security forces, targeting village officials and other perceived representatives of the state.

The climate in Turkey regarding respect for human rights seemed to improve during 1999. Nevertheless, despite commitments from the government and a public debate on human rights, grave violations of rights and freedoms continued to take place in Turkey. Extrajudicial killings continued, as well as death in detention due to torture and abuses by the security forces.

Torture

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 successive 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.

International Obligations

Turkey is a state party to several universal and regional human rights treaties, including the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the UN Convention on the Elimination of All Forms of Discrimination against Women, the UN Convention on the Rights of the Child, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. 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.

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 and 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 and was only 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.

European Court of Human Rights

The European Convention for the Protection of Human Rights and Fundamental Freedoms is the primary international convention to have 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.

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.

Emergency Law

Several provisions concerning the state of emergency in Turkey have been the subject of review by the European Court of Human Rights (see State of Emergency).

In 1999, the court found the Turkish Government in violation of Article 2 (right to life) in Ogur vs. Turkey (20 May 1999) when a night-watchman of a mining company was killed when security forces carried out an armed operation in the province of Siirt where the state of emergency still applies. The government was condemned as violating Article 2 because of the disproportionate, unnecessary use of force and because no effective investigations capable of leading to the identification and punishment of those responsible for the events were conducted.

Torture

In 1999, Turkey was found to be in violation of Articles 2, 3, 5 and 13 in the case of Cakici v. Turkey (8 July 1999). The European Court of Human Rights held unanimously that there had been a violation of Article 2 (right to life) of the European Convention in respect of the death of the applicant's brother, who had disappeared after being detained by the security forces, and in respect of the inadequate investigation carried out by the authorities. The court also held unanimously that there had been a violation of Article 3 (prohibition of torture, inhuman or degrading treatment or punishment) in that Ahmet Çakici had been tortured during his detention. There had also been a violation of Article 5 (right to liberty) in respect of the unacknowledged detention of Ahmet Çakici in the complete absence of the safeguards required by that provision. The court also ruled that there had been a violation of Article 13 (right to an effective remedy) in that the applicant had not been provided with an effective remedy in respect of these complaints.

Freedom of Expression

Fourteen of the eighteen judgements of the European Court of Human Rights in 1999 concerned a violation of the right of freedom of expression.

On 8 July 1999 the European Court of Human Rights delivered judgement in the following thirteen cases: Arslan v. Turkey, Baskaya and Okcuoglu v. Turkey, Ceylan v. Turkey, Erdogdu and Ince v. Turkey, Gerger v. Turkey, Karatas v. Turkey, Okcuogluv v Turkey, Polat v. Turkey, Sürek and Ozdemir v. Turkey, Sürek v. Turkey (no. 1), Sürek v. Turkey (no. 2), Sürek v. Turkey (no. 3) and Sürek v. Turkey (no. 4).

The court held that there had been a violation of freedom of expression, as guaranteed by Article 10 of the European Convention on Human Rights, in 11 of the 13 cases. Further, in 9 of the 13 cases it was found that the applicants had been denied the right to have their cases heard by an independent and impartial tribunal within the meaning of Article 6 para.1 of the Convention because they had been tried by National Security Courts, in which one of the bench of three judges was a military judge. The court pointed out that in its judgements in Incal v. Turkey (9 June 1998) and Ciraklar v. Turkey (28 October 1998) it had noted that, although the status of military judges sitting as members of National Security Courts did provide some guarantees of independence and impartiality, certain aspects of these judges' status 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 also been a breach of Article 6 para. 1 in the nine cases before it

On 28 September 1999 the court decided in the case Ötztürk v. Turkey that Article 10 of the Convention had been violated by the government when Mr. Ötztürk was convicted for helping to publish and distribute a book which described the life of Ibrahim Kaypakkaya. Mr. Kaypakkaya was one of the founder members of the Communist Party of Turkey, an illegal Maoist organisation.

The Judiciary

On at least two occasions, the European Court found the judicial system in the south-eastern provinces to be ineffective. In several cases, the government pleaded before the European Commission of Human Rights, as well as the court, that the applicant did not exhaust domestic remedies before filing the complaint. However, the court was of the opinion in the cases of Mentes and Others v. Turkey and Selcuk and Asker v. Turkey that while the rule relating to the exhaustion of domestic remedies referred to in Article 26 of the Convention obliges those seeking to bring their case against a state before an international judicial or arbitral organ to first use all 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 "generally recognised rules of international law" there may be special circumstances in which the applicant is absolved 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 several of the above-mentioned cases the court was of the opinion that special circumstances existed and that, as a result, the non-exhaustion of domestic remedies did not preclude the complaint procedure 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.

State Security Court

The State Security Court's (SSC) jurisdiction over civilians before 18 June 1999 was a violation of international approved standards. The European Court of Human Rights indeed ruled in two cases in 1998 that the composition of the State Security Court violated Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (see State Security Court under The Judiciary).

Harassment of lawyers

In two cases before the European Court it was established that applicants or their lawyers had been harassed because they submitted complaints to the European Commission on Human Rights, and, therefore, that Article 25 (right to an individual petition) had been violated. In the case of Kurt v. Turkey, 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 in itself must be considered an interference.

The Judiciary

The principle of judicial independence is laid down in Article 138 of the Constitution of Turkey: "judges shall be independent in the discharge of their duties". Despite constitutional guarantees of judicial independence, judges in Turkey are, however, 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 duties.

Structure of the Courts

The judicial system is composed of general law courts (civil, criminal and administrative courts), military courts, a Constitutional Court and State Security Courts.

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.

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. Any challenge to the constitutionality of a law must be made within sixty days of its promulgation. 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. Decisions of the Constitutional Court on the constitutionality of legislation and government decrees are final.

The High Court of Appeals is the only competent authority for reviewing decisions and verdicts of lower-level judicial courts, both civil and criminal.

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. 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.

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

Military Courts

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. The Military High Court of Appeals reviews decisions and judgements issued by Military Courts of First Instance. 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.

State Security Courts

According to Article 143 of the Constitution 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 to threaten 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.

State Security Courts are comprised of a president, two regular and two substitute members, one public prosecutor and a sufficient number of deputy public prosecutors. 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 for a further term.

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

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 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 primarily on the manner and term of appointment of military judges. Military judges, even while sitting on a SSC, remained under the supervision of their military superiors. (see Attacks on Justice 1998).

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. On 9 June 1998, the European Court of Human Rights 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).

On 8 July 1999, the European Court of Human Rights delivered judgement in the following thirteen cases: Arslan v. Turkey, Baskaya and Okcuoglu v. Turkey, Ceylan v. Turkey, Erdogdu and Ince v. Turkey, Gerger v. Turkey, Karatas v. Turkey, Okcuoglu v. Turkey, Polat 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 judgement of 28 October 1998 it had noted that the status of military judges sitting as members of State Security Courts put their independence and impartiality into question: 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 subjectto 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.

Appointment, Promotion and Discipline

Article 159 of the Turkish Constitution establishes the High Council of Judges and Public Prosecutors (High Council), abody 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.

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 Appeal 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 terms of office. Once appointed, members cease to preside over courts of law, and instead devote themselves solely to their duties on the High Council.

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 the exertion of undue political influence by the Ministry of Justice within the High Council gives rise to a wide scope for partiality and prejudice in decisions relating to personnel.

Articles 146 to 155 of the Constitution establish a Constitutional Court, 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 Appeal, two regular and one substitute member from the Council of State, and one member each from the Military High Court of Appeal, 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.

Members of the High Court of Appeal are appointed by the High Council of Judges and Public Prosecutors from among first division judges and public prosecutors of the ordinary civil and criminal courts. 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.

Three-quarters 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-quarter 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.

Members of the Military High Court of Appeal 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 Appeal, from among first grade military judges. The President, Chief Public Prosecutor, second presidents and heads of division of the Military High Court of Appeal are appointed according to rank and seniority from among the members of the court itself.

Trial of Abdullah Öcalan

In February 1999, Abdullah Öcalan, leader of the armed opposition group, Kurdistan Workers' Party (PKK), was forcefully transferred from Kenya to Turkey. The ICJ condemned the forced transfer of Mr. Öcalan from Kenya to Turkey. Mr. Öcalan was sentenced to death on 29 June 1999, after a State Security Court found him guilty of the charges of "treason and separatism" under Article 125 of the Turkish Penal Code (TPC). Following his arrest, Mr. Öcalan called for an end to the armed conflict. On 25 November 1999, the death sentence was upheld by the High Court of Appeal. The sentence will not be carried out pending the case Mr. Öcalan has submitted to the European Court of Human Rights.

The last executions in Turkey took place in October 1984 and the Turkish President, Süleyman Demirel, has pledged several times to abolish the death penalty and, pending that, to uphold the existing moratorium on executions. There is, however, real fear that the death penalty issued against Mr. Öcalan could be carried out.

Lawyers

In two cases before the European Court it was established that applicants or their lawyers had been harassed because of their submission of complaints to the European Commission on Human Rights, and that, therefore, Article 25 (right to an individual petition) was violated (see under European Court of Human Rights).

The guarantee of a fair trial depends, inter alia, 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 the trials themselves.

An initial obstacle faced by Turkish lawyers in fulfilling their professional duties is that many detainees remain ignorant of their right to legal representation. 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, 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.

Detainees are frequently psychologically and physically mistreated by members of the security forces. This creates an environment in which it is easy to discourage a detainee, who may be ignorant of his rights under the law, from insisting on access to a lawyer. In Turkey, even if a detainee is aware of his right to legal advice and representation and is not discouraged 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. 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.

In SSC cases, even if the detainee is both aware of his right to legal representation and able to afford the services of a suitably qualified lawyer, postponed 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.

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 the proceedings is reached, lawyers throughout Turkey face obstacles in providing effective legal advice and representation.

Lawyers face further problems 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 they loose 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's case.

Lawyers in Turkey are sometimes subjected to harassment, intimidation and violence merely for providing legitimate professional legal services to their clients. Lawyers who repeatedly conduct defence cases before the State Security Courts are sometimes considered to share the political views of their clients and may be called "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 can be 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 marked 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. 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. They are also subject to other types of harassment, such

as disrespectful or threatening treatment while performing their duties by members of the security forces, including unnecessary searches, verbal abuse and interception of telephone calls.

Cases

Gazanfer Abbasioglu, Sebahattin Acar, Abdullah Akin, Arif Altinkalem, Sedat Aslantas, Meral Danis Bestas, Mesut Bestas, Mehmet Biçen, Ferudun Celik, Niyazi Cem, Fuat Hayri Demir, Baki Demirhan, Tahir Elçi, Vedat Erten, Zafer Gür, Nevzat Kaya, Mehmet Selim Kurbanoglu, Cabbar Leygara, Hüsniye Ölmez, Arzu Sahin, Imam Sahin, Sinan Tanrikulu, Sinasi Tur, Fevzi Veznedaroglu and Edip Yildiz (the Diyarbakir 25 Lawyers' trial): In 1993, these lawyers were accused of anti-government activities in the province of Diyarbakir, after defending alleged members of the outlawed PKK. They were charged under the Anti-Terror Law with acting as couriers for the PKK. Originally 16 lawyers were indicted; the number was later 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. They were: Abdullah Akin, Fevzi Faznedaroglu, Cebar Leygara and Edip Yildiz. The trial is still pending.

Sixteen of these defendants submitted applications to the European Commission on Human Rights in relation to complaints of torture while in detention (Elci and Sahin v. Turkey, application No. 23145/93). An admissibility hearing was held in camera on 2 December 1996 and the applications were declared partially admissible. All of the applicants' complaints in relation to the lawfulness of their detention have been declared admissible. In those cases where a breach of Article 8 (respect for private and family life) and Article 1 was argued, the Commission declared the complaints to be admissible. Nine complaints in relation to ill-treatment were admissible. The seven others were inadmissible because the information was not submitted within the six months time limit (see Attacks on Justice 1996 and 1998).

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.

Sedat Aslantas and Husnu Ondul (lawyers): The two lawyers and members of the Human Rights Association were arrested for publishing "A Cross-Section of the Burnt Out 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 and the case was declared admissible on 15 September 1997.

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.

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 subjected to harassment by police officers and other sympathisers present at the hearing.

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 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 is still continuing. Meanwhile, the accused police officers remain on duty.

Akin Birdal (lawyer): Since 1995, Mr. Birdal, chair of the Human Rights Association in Ankara, has been prosecuted in over 21 cases. He has been convicted in three cases. The Konya State Security Court 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 State Security Court sentenced Mr. Birdal to a further term of one year imprisonment for "inciting hatred" in a speech he made in 1996 calling for a peaceful end to the Kurdish conflict. The Court of Appeal affirmed this conviction on 28 October 1998. Mr. Birdal was released on 25 September 1999 for medical reasons but he was again arrested on 28 March 2000 to serve the remainder of his sentence.

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 Human Rights Association (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 of 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. There are several other charges still pending against Mr. Birdal, all related to his writings and public speeches.

Murat Celik (lawyer): Mr. Celik 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 1999, while he had been carrying out the funeral proceedings, a police officer had taken him to the office of Atilla Cinar, punched him and said "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.

Kemal Kirlangic (lawyer): On 7 February 1999, the Izmir Public Prosecution Office launched a trial against Mr. Kirlangic under Article 159 of the Turkish Penal Code on allegations that he had "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 Mr. Kirlangic. Meanwhile, the Izmir Public Prosecutions Office reportedly applied to the court to confiscate the book, but this demand was rejected.