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The "Amnesty Law" - An ambiguous step



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TURKEY

The "Amnesty Law" - An ambiguous step

"Turkey needs justice, rather than an amnesty" said the newspaper Turkish Daily News three years ago, on 22 July 1998, after the Democratic Left Party (DSP) had accepted the amnesty proposal of their Deputy Chairwoman Rahşan Ecevit. Rahşan Ecevit had put forward her proposal after having been touched by a report on a two-year-old girl staying in prison together with her mother. This event triggered off a heated debate over an amnesty for those in Turkey's prisons, which at that time hosted a population of some 80,000 inmates. Parliament discussed various different versions of enabling laws, with the political parties following different aims: some were interested in the release of specific political prisoners, others more in those convicted of corruption, organized crime or torture. A first version of the law met the veto of then State President Süleyman Demirel in September 1999, and the bargaining between the political wings in parliament began again. A second version, first passed by parliament on 8 December 2000, was again returned by the State President Ahmet Sezer (the former head of the Constitutional Court). It was passed again by parliament without change on 21 December, and thus adopted by parliament as "Law No. 4616 on the conditional release and the suspension of trials and sentences for offences committed up until 23 April 1999" (the Law on Conditional Release and Suspension)¹.

Amnesty International calls for the immediate and unconditional release of prisoners of conscience, who are detained solely for the peaceful expression of their conscientiously held beliefs. The organization therefore welcomes the release of any prisoner of conscience under this law, and further urges that their civil and political rights be fully reinstated. Amnesty International also welcomes the fact that under this law death sentences imposed for some acts committed prior to 23 April 1999 will not be carried out. However, the organization is concerned that the new law could promote impunity by allowing some members of the security forces who have been convicted of ill-treatment to escape sanction, and by providing for the suspension of trials and investigations where security force members have been charged with ill-treatment.

Freedom of expression remains restricted in Turkey

On 19 July 2001 Justice Minister Hikmet Sami Türk informed the press that Turkey's prison population had been reduced from 73,000 to 50,000 after the Law on Conditional Release and Suspension took effect. Prior to that he had also noted that, in addition, 3,671 people had applied to the prosecutors' offices and had not been imprisoned at all. As of late April 2001 the total prison population was reported as 57,874 prisoners, of which some 9,000 prisoners were held under the Anti-Terror Law, and nearly 1,000 for organized crime. The rest were reported to be other common criminals.

¹ Commonly referred to as the "Amnesty Law".

Amnesty International welcomed the fact that a provision within the Law on Conditional Release and Suspension has resulted in early release for some prisoners of conscience (who were excluded from a similar law passed a year ago), and the suspension of sentences for others. Among the latter group was Necmettin Erbakan, the former Prime Minister and leader of the banned Welfare Party, who was due to be imprisoned in January 2001. However, Amnesty International remains concerned that Necmettin Erbakan and other possible, past and actual prisoners of conscience such as Akin Birdal, head of the Human Rights Association (IHD) until he was forced to resign due to criminal convictions,² continue to be banned from politics. Akin Birdal had been adopted as a prisoner of conscience by Amnesty International while he was imprisoned. The organization urges that outstanding charges and sentences against all those who have peacefully exercised their right to freedom of expression be dropped altogether.

Having appealed against his exclusion from the Law on Conditional Release and Suspension, the blind lawyer and prisoner of conscience Eşber Yağmurdereli was conditionally released on 18 January 2001.³ However, some prisoners of conscience - such as four former members of parliament from the Democracy Party (DEP), which has since been banned⁴ - have been excluded from this law because they were sentenced under articles outside its scope. Human rights defenders, writers, politicians, religious leaders, trade unionists and many others in Turkey continued to be tried and imprisoned for exercising their right to freedom of expression, particularly when expressing opinions on the Kurdish question, the prisons or the role of Islam.

One of them is Dr Fikret Başkaya, the founder and chairman of the Turkey and Middle East Forum Foundation. On 1 June 1999, he had published an article entitled "A Question of History?" in the daily newspaper *Özgür Bakış*, in which he questioned the viability of the Turkish state's approach towards the Kurdish problem following the arrest

² See the Amnesty International document *Turkey - "Creating a silent society": Turkish Government prepares to imprison leading human rights defender*, February 1999, AI Index: EUR 44/05/99. Akin Birdal is facing new charges for statements made after his release from prison in September 2000. In the cases of the politicians Hasan Celal Güzel and Recep Tayyip Erdoğan, the Constitutional Court lifted the ruling banning them from politics.

³ See the Amnesty International document *Turkey - 17 years in the balance: Lawyer Eşber Yağmurdereli returns to prison in freedom of expression case*, November 1997, AI Index: EUR 44/74/97.

⁴ See the Amnesty International document *Turkey - The colours of their clothes: parliamentary deputies serve 15 years' imprisonment for expressions of Kurdish political identity*, December 1997, AI Index: EUR 44/85/97. On 17 July 2001 the European Court of Human Rights (ECHR) ruled that the four parliamentary deputies from the DEP had been convicted after an unfair trial. Amnesty International is calling for their immediate and unconditional release.

of Abdullah Öcalan. As a result, he was indicted under Article 8/1 of the Anti-Terror Law for "disseminating separatist propaganda through the press". Istanbul State Security Court sentenced him to 16 months' imprisonment and a fine on 13 June 2000. He was remanded to prison over a year later, on 29 June 2001. Amnesty International has adopted Dr Fikret Başkaya as a prisoner of conscience and campaigns for his immediate and unconditional release.⁵

The European Union (EU) and the Council of Europe have called upon Turkey to comply with Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Turkey's National Programme for the Adoption of the Acquis mentions a "review" of some articles which have frequently been used to restrict freedom of expression, but again links the intended reform to "basic principles of the Turkish Constitution, in particular those concerning the secular and democratic character of the Republic, national unity and the unitary state model". AI is concerned that this wording suggests that restrictions which do not comply with Article 10 will be retained.

Amnesty International is therefore continuing to call for a thorough reform of law and practice to fully ensure freedom of expression in Turkey. As part of this reform, Article 312 and Article 159 of the Turkish Penal Code and Article 8 of the Anti-Terror Law should be amended or repealed as soon as possible, in order to prevent punitive measures being used to restrict freedom of expression. To ensure freedom of expression in Turkey requires a basic change in attitude on the part of the government and the judiciary, leading to a revision of both law and practice.

Law No. 4616 contributes to impunity for ill-treatment

Amnesty International is concerned that the new Law on Conditional Release and Suspension includes the conditional release, and suspension of trials and investigations, of law enforcement officials who have been charged with or convicted of ill-treatment. In its campaigning for the prevention of torture and ill-treatment, Amnesty International has been urging the Turkish government to ensure officials responsible for human rights violations are brought to justice. Such violations include torture, ill-treatment, "disappearances" and extrajudicial executions. Sentences should be commensurate with the gravity of the crime. Officials on trial for such offences should be suspended from active duty and, if convicted, dismissed from the forces.

The Law on Conditional Release and Suspension allows for the suspension of investigations and trials concerning ill-treatment. Upon application the Constitutional Court

⁵ See the Amnesty International appeal case *Dr Fikret Başkaya: Prisoner of conscience for the second time*, 16 July 2001, AI Index: 44/042/2001.

ruled on 18 July 2001 that torture should not be included under the scope of the law. However, according to Amnesty International's documented information, prosecutions for torture are rare in any case, and when convictions are secured they are usually for crimes classified as "ill-treatment".⁶ Under this law any security force members imprisoned following conviction of ill-treatment committed before 23 April 1999 are to be released and all trials and investigations in relation to charges of ill-treatment are being suspended for five years.

Death penalty

Death sentences imposed for some criminal acts committed prior to 23 April 1999 will not be carried out. Amnesty International welcomes this decision because it gives psychological relief to those who have been sentenced to death and thus exposed to a cruel, inhuman or degrading punishment. However, all political offences that are punishable by death have been excluded from commutation. Amnesty International continues to call for the full and immediate abolition of the death penalty for all prisoners. There has been a *de facto* moratorium on executions since 1984, but death sentences continue to be passed. In the year 2000 at least 81 death sentences were passed: 29 of them were later commuted to prison terms.

Amnesty International's recommendations

Amnesty International reiterates its urgent call to the Turkish government to implement the following, overdue measures:

- A thorough review of Turkish law and the constitution should be conducted in order to ensure that no one is detained or mistreated for the peaceful exercise of their right to freedom of expression; to lift unjustifiable restrictions on the right to peacefully express opinions, form associations and assemble in public; and to prevent the law being interpreted in such a way as to extend such restrictions. As part of this review Article 312 and Article 159 of the Turkish Penal Code and Article 8 of the Anti-Terror Law⁷ should be amended or repealed as soon as possible, in order to prevent them being used to restrict freedom of expression.

⁶ According to official figures, investigations of 577 security officials accused of torture between 1995 and 1999 resulted in only 10 convictions (1.7 %). In the same period, 2851 investigations into cases of ill-treatment ended with 84 convictions (2.9 %). This information is from a response of the Minister of the Interior to a written interpellation of an parliamentary deputy, dated 12 January 2000. See: Izmir Bar Association Center of Human Rights Law and Law Researches: *İşkence ve kötü muamele suçlarının soruşturulmasına ilişkin İçişleri Bakanlığı verilerinin değerlendirilmesi*, Izmir, 2000.

⁷ These articles are most frequently misused to restrict freedom of expression: Article 312 for alleged incitement to hatred in cases of a mere reference to Kurds, Article 159 for insulting state bodies and Article 8 for "separatist propaganda". See the Amnesty International documents quoted above.

- All prisoners of conscience should be immediately and unconditionally released and their civil and political rights reinstated.
- Those responsible for human rights violations, including those who order them, should be brought to justice.
- Police officers or gendarmes under investigation or trial for ill-treatment, torture, "disappearance" or extrajudicial executions should be suspended from active duty, and if convicted they should be dismissed from the force.
- The Law on Prosecution of Civil Servants should be amended in order to ensure that any decision as to whether or not to prosecute a government official for ill-treatment, torture, "disappearance" or extrajudicial execution, or for abuses of authority which might lead to such human rights violations, is taken exclusively by judicial authorities.
- The death penalty should be fully abolished from all laws. Turkey should sign and ratify Protocol No. 6 to the European Convention on Human Rights.

KEYWORDS: LEGISLATION1 / AMNESTIES1 / IMPUNITY / FREEDOM OF EXPRESSION / PRISONERS OF CONSCIENCE / MILITARY / DEATH PENALTY

