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TURKEY

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS
ANNUAL REPORT 2010

Political context

In 2009, Turkey continued to demonstrate its failure to move towards the necessary human rights and governance reforms. The Government did not comply with its 2007 post-election pledge to engage in meaningful consultation on a new constitution, needed to strengthen respect for rights. The country remained heavily militarised. Police and military forces who burnt villages, kidnapped and summarily executed civilians in the past remained unpunished. According to the Human Rights Association (*İnsan Hakları Derneği – İHD*), 97 civilians were extra-judicially killed in 2009¹. Allegations of torture, ill-treatments and impunity for perpetrators were also still a cause for great concern of human rights defenders in Turkey².

Moreover, freedom to peaceful demonstration and meeting continued to face serious obstacles. For instance, in 2009, 229 peaceful demonstrations, public meetings, marches, press conferences were dispersed by force, leading to deaths and 565 wounded. More than 1,415 remained detained as of the end of 2009 and 369 were arrested and then released following their participation in a demonstration³.

The same applied to freedom of expression. Members of the opposition, journalists and civil society activists, including human rights defenders, continued to face prosecution and conviction based on the Criminal Code, the Press Law and the Law to Fight Terrorism (Law 3713)⁴. In 2009, 355 people were sentenced for the exercise of the right to freedom of expression, and 18 newspapers, most of them being accused of propaganda, were suspended temporarily⁵. Frequent websites bans also continued to

1/ See İHD, *2009 Turkey Human Rights Violations Balance Sheet*, April 29, 2010.

2/ The report on torture and ill-treatment by the Parliamentary Human Rights Investigation Committee, adopted in January 2009, denounces that none of the 35 lawsuits filed against 431 members of the Istanbul police for ill-treatment or torture resulted in a conviction. According to the same report, only 2% of the police officers were subject to disciplinary sanctions as a result of an administrative investigation of the allegations of torture or ill-treatments. In 2009, İHD received more than 1,000 torture complaints.

3/ See İHD, *2009 Turkey Human Rights Violations Balance Sheet*, April 29, 2010.

4/ Article 301 of the Criminal Code, which criminalises denigration of the Turkish nation, Article 37-1 of the Criminal Code on “propaganda and lies against the State” and the Law 3713 are some of the main provisions that restrict free speech in Turkey.

5/ See İHD.

be a cause for concern: 4,662 websites were blocked under Law 5651 on “the organisation of online publications and combating offences committed by means of such publications”⁶. In such cases, judicial and administrative decisions blocked the entire website instead of filtering out unwanted content. For instance, *Youtube* and *Deezer* have remained blocked since May 2008⁷. However, on a positive note, it is to be noted that on February 4, 2009, the Interior Ministry Mr. Basir Atalay reopened an investigation into the 2007 murder of Mr. **Hrant Dink**, Editor of the Turkish-Armenian language daily *Agos*, after a report by the Prime Minister’s Service found negligence and potential culpability among high-ranking intelligence officials⁸.

The application of the anti-terrorism legislation mainly targeted Turkish citizens of Kurdish origin or those who expressed sympathy with the Kurds. This legislation is particularly problematic in that it is used to bring a large number of prosecutions targeting legitimate free expression regarding the Kurdish issue in Turkey, and it frequently results in prison sentences. Indeed, according to Article 215 of the Criminal Code, the mere public mention of certain individuals’ names is a criminal offence⁹. The remit of Article 7/2 of Law 3713 is also very broad, and in particular makes no distinction between supporting political aims, which are shared by a “terrorist” organisation, and promoting that organisation, including its violent methods and actions. As an example, on February 5, 2009, Mr. Aysel Tuğluk, a senior member of the pro-Kurdish Democratic Society Party (DTP), was sentenced to 18 months in prison by the Diyarbakır Fourth Heavy Penal Court for violating anti-terrorism legislation by referring to PKK guerrillas as “heroes to some” at a rally in 2006¹⁰. On April 14, 2009, Republic Prosecutor of Diyarbakır started an operation against the Kurdish political movement. On this date, approximately 52 Kurdish politicians and activists were arrested. The latest wave of arrests took place on December 24, 2009 in 11 Turkish provinces and targeted members of the Kurdish Peace and Democracy Party (BDP) – one day after many of those arrested had joined the newly formed BDP, created following the December 11, 2009

6 / Law 5651 allows prosecutors to block access if a site’s content is deemed liable to incite suicide, paedophilia, drug abuse, obscenity or prostitution, or violates the 1951 Law forbidding any attacks on the Turkish Republic’s founder, Mr. Mustafa Kemal Atatürk.

7 / See İHD.

8 / The renewed investigation was expected to focus on possible involvement by Government officials in the murder. Twenty suspects were arrested, and court proceedings were continuing in late 2009. Eight police officers were also being investigated over allegations that they had failed to act on warnings that Mr. Dink was in danger.

9 / In particular any reference to the leader of the Kurdistan Workers’ Party (PKK) Abdullah Ocalan.

10 / See Human Rights Foundation of Turkey Daily Human Rights Reports, October 28, 2009.

closure of the DTP by the Constitutional Court ruling that the party had become the “focal point of activities against the indivisible unity of the State, the country and the nation”¹¹. Those arrested included a number of democratically elected mayors and officials of BDP, journalists and political activists. 28 were indicted, out of which 23 were remanded into custody pending trial for alleged links with the PKK as of the end of 2009. Since April 14, 2009, more than 1,400 Kurdish politicians, nine Mayors, Municipal and Provincial General Council members, Women’s Council and Youth Council members have been detained in all of Turkey¹².

Ongoing judicial criminalisation of human rights organisations and their members

In 2009, several human rights organisations continued to be subjected to judicial harassment and faced trials in order to hamper their activities. This was particularly the case of the İHD and its members. For instance, at the end of 2009, the criminal case that was opened by the Chief of Public Prosecutions Office of Beyoglu on October 17, 2008 against the İHD Istanbul branch pursuant to the Law on Associations No. 5253 was ongoing, following the complaint filed by the Province of Istanbul in which the Governor claimed that the İHD Istanbul branch had carried out activities that were contrary to its objectives by allowing the Mothers For Peace Initiative to hold a press conference in their conference room. Since July 19, 2007, the İHD Mersin branch is also facing ongoing judicial proceedings that are based on claims that the association acted in a way contrary to its objectives by joining the Platform Against Privatisation and the Labour and Democracy Platform¹³ in Mersin. These proceedings contradict Article 23 of the İHD statutes, which states that the “Executive Committee carries out activities to establish platforms with other associations, foundations, trade unions and other NGOs, to join or leave platforms that carry out activities in the field of human rights, democracy and other

11/ This decision contradicts the Constitutional Court’s previous ruling of January 2008, ruling against the closure of the pro-Kurdish Rights and Freedoms Party that had set a precedent by establishing that statements on the Kurdish issue fell within the boundaries of free speech. The ban was widely criticised both by NGOs and groups within Turkey and abroad. In the weeks leading up to the court’s decision, protests over the case in Turkey’s south-east grew in both scale and violence. Overall, since 1962, DTP is the 25th political party closed down in Turkey. On December 15, 2009, 1,000 people gathered in front of the DTP building in Bulanik, district of Mus province with the goal of protesting the closure of the DTP. The crowd was fired upon with a long-barrelled gun and a pistol from a store in the shopping district, leading to two people’s death and the injury of seven. See İHD.

12/ See İHD.

13/ The Labour and Democracy Platform is an association of progressive and labour organisations and political parties.

similar topics”¹⁴. Yet, on a positive note, it is to be welcomed that on April 30, 2009, a lower court granted the organisation Lambda Istanbul, which is working on lesbian, gay, bisexual, and transgender (LGBT) rights, permission to continue operating, after its closure in May 2008 following a decision by an Istanbul court. The case had been initiated by the Istanbul Governor’s office, which claimed that Lambda Istanbul’s objectives were “against law and morality”.

In that framework, several İHD leaders were in turn again subjected to arbitrary detentions, judicial harassment and arbitrary searches. On May 12, 2009, in Ankara, the offices and homes of Mr. **Hasan Anlar**, İHD Deputy Secretary General, Ms. **Filiz Kalayci**, İHD Executive Committee member, Mr. **Halil İbrahim Vargün**, İHD former Treasurer, and Mr. **Murat Vargün**, lawyer and İHD member, were raided by officers of the Anti-Terror Unit of the police. The four lawyers were immediately arrested and placed in police custody in the Anti-Terror Unit detention centre. This crackdown intervened after the İHD published in February 2009 a report on human rights violations in prisons of Turkey. The four lawyers had also been working on cases of human rights violations that occurred in detention. The court decided to release the four lawyers in the night of May 14, 2009, but imposed a travel ban on them as long as the proceedings were ongoing. On May 28, the 11th District High Criminal Court of Ankara ordered the re-arrest of Ms. Filiz Kalayci on the basis of an allegation of “aiding illegal organisations”¹⁵. Moreover, four different criminal cases against Mr. **Ethem Açıkalın**, former Chairperson of İHD Branch in Adana, remained ongoing in 2009. Arrested on January 23, 2009 on charges of “being a member of an illegal organisation” and “making propaganda of an illegal organisation” for his participation in a press conference organised on December 17, 2007 to denounce the assassination on December 10, 2007 of Ms. Kevser Mızrak, reportedly a member of the Revolutionary People’s Liberation Party/Front (DHKP-C) allegedly killed by police force, he was released on bail on June 23, 2009 by the Adana Eighth Heavy Penal Court. On October 8, 2009, the same court sentenced Mr. Açıkalın to 10 months of imprisonment on charges of “making propaganda of an illegal organisation”. He appealed the decision and, at the end of 2009, the appeal was pending. In addition, on October 17, 2009, the First Criminal Chamber of the Adana First Instance Court sentenced

14 / On February 26, 2010, the Mersin Second Criminal Court of First Instance rejected the petition for closure. However, the Public Prosecutor appealed to the Supreme Court.

15 / On January 28, 2010, the court ordered the release of Ms. Kalayci. However, Ms. Kalayci as well as Messrs. Hasan Anlar, Halil İbrahim Vargün and Murat Vargün remained prosecuted for “aiding illegal organisations”. The next hearing was scheduled for June 10, 2010.

Mr. Açıkalın to three years of imprisonment for charges of “instigating a part of the people to hatred or hostility” for participating in a TV programme of *Röj TV* on October 29, 2008. During this programme, Mr. Açıkalın had criticised the Governor of Adana for cancelling the green cards¹⁶ of families whose children were arrested during demonstrations in Adana. He appealed the sentence. At the end of 2009, the appeal was still pending. In December 2009, Mr. Açıkalın left Turkey to seek asylum abroad¹⁷. On March 3, 2009, Mr. **Ridvan Kizgin**, an İHD Board member and former Chairperson of the Bingöl branch, who was sentenced on March 3, 2008 by the Supreme Court of Appeals (Yargıtay) to two and a half years’ imprisonment for “concealing evidence” in the 2003 killing by unknown perpetrators of five villagers in Bingöl after he published a report denouncing the assassination of these five persons. However, as of the end of 2009, two other proceedings against him remained pending before the Court of Appeal for “insults to a State official” and “insults to the Turkish nation”¹⁸. Finally, on December 24, 2009, police officers belonging to the Anti-Terror Unit launched an operation in at least 11 provinces in Turkey following an order issued by the Diyarbakir Chief Public Prosecution Office that led to the arrest of dozens of Kurdish opposition members, journalists and civil society activists including Mr. **Muharrem Erbey**, General Vice-Chairperson of the İHD and Chairperson of its Diyarbakir province branch. Mr. Erbey was then remanded into custody and charged by the Diyarbakir Special Heavy Penal Court on December 26, 2009 of “being a member of an illegal organisation”. Simultaneously, the police searched İHD offices in Diyarbakir and proceeded to the confiscation of İHD computers and documentation, including archives that had been collected during 21 years documenting serious human rights violations like politically motivated killings by unknown assailants, enforced disappearance and torture cases.

16 / The green card system was established in 1992 and is directly funded by the Government. Poor people earning less than a minimum level of income, which is defined by the law, are provided a special card giving free access to outpatient and inpatient care at the State and some university hospitals, and covering their inpatient medical drug expenses but excluding the cost of outpatient drugs.

17 / The Adana Sixth Heavy Penal Court is also prosecuting Mr. Açıkalın on charges of “being a member of an illegal organisation” for his participation as an İHD observer to some activities led by the Socialist Platform of the Oppressed such as press releases, marches etc. Another case was opened before the Adana Seventh Heavy Penal Court for charges of “making propaganda of an illegal organisation” for his participation in a press conference in front of the Kurkuler prison organised on December 19, 2007 by ĐHD, the Socialist Platform of the Oppressed and the Socialist Democracy Party (SDP) to commemorate the operation “Back to Life”, which was carried out on December 19, 2000 by the Turkish security forces against 20 prisons throughout Turkey at the same time to stop hunger strikes. During the operation, 28 prisoners were killed and many of them wounded.

354 18 / See Annual Report 2009.

Repression faced by human rights defenders fighting for justice for victims of enforced disappearances

In 2009, several human rights defenders who fight for the truth, justice and reparation of victims of enforced disappearances in Turkey were subjected to judicial harassment. For instance, on August 11, 2009, Mr. **Camal Bektas**, President of “Yakay-der”, an association struggling for the right to obtain the truth on enforced disappearance cases occurred in Turkey, was sentenced by the Fifth Chamber of the Court of Diyarbakir for “undermining the reputation of the army” and “propaganda and lies against the State” to one year of imprisonment. This judicial harassment followed the organisation by Yakay-der of a conference in July 2008 in Diyarbakir during which Mr. Bektas denounced the existence of mass graves in Turkey and accused the army of blocking access to several of them. The sentence took place in full contradiction with all fair trial requirements as no oral and public hearing took place and Mr. Bektas had no opportunity to defend himself. In addition, the Fifth Chamber of the Court of Diyarbakir has first and final jurisdiction to entertain the most serious crimes and therefore the sentence cannot be appealed, but Mr. Bektas’ lawyer immediately filed an application for review of the conviction before Yargitay, based in Ankara, in charge of reviewing the decisions and judgements given by courts of justice from the point of their conformity with the law. The application suspended the implementation of the sentence and should have been examined by Yargitay within three months. At the end of 2009, no decision had been issued yet. Moreover, another criminal investigation on Mr. Bektas was opened in June 2009 in relation to statements he made between February and June 2009, asking for the opening of a mass grave located in Van, a military area in eastern Turkey. Should the Prosecutor decide to prosecute him, Mr. Bektas risks a prison term ranging from four to five years. At the end of 2009, the investigation was ongoing. Ms. **Hacer Nar**, a member of the “Mothers for Peace” association, which struggles for the peaceful settlement of the Kurd issue and the right to obtain the truth on enforced disappearance cases occurred in Turkey, as well as a member of the Euromed Federation Against Enforced Disappearances (FEMED), was arrested as she was going to her office on April 12, 2009. On April 9, 2009, security forces had searched the offices of the Mothers for Peace association and confiscated a computer, a hard drive as well as working documents of the association. As of the end of 2009, the material seized had still not yet been returned to the association and Ms. Nar was held in Bakirköy prison, pending her trial on the basis of her alleged links with the PKK. Likewise, in 2009, Ms. **Nezahat Teke**, another member of the association, was convicted and sentenced to one year and a half of prison by the Fifth Chamber of the Court of Diyarbakir on the basis of similar charges without an oral and public trial, following appeals for peace and

the respect of the right to truth in Turkey and her denunciation of conditions of detention of political prisoners. Her lawyer filed an application for review of the conviction before Yargitay. The application suspended the implementation of the sentence and should have been examined by Yargitay within three months. At the end of 2009, no decision had been issued yet. Finally, Ms. **Pinar Selek**, a writer and sociologist who has been actively advocating for women's rights, the rights of discriminated and marginalised groups, including street children, and for the rights of the Kurdish and Armenian minorities, faced again trial for "alleged terrorism"¹⁹. In March 2009, the Ninth Criminal Department of the Supreme Court of Appeals (YCGK) demanded a life sentence for Ms. Selek, therefore cancelling the two decisions of the 12th Criminal Chamber of the Istanbul Court in 2006 and 2008 to acquit her after determining there was no evidence linking her to the blast²⁰.

Arrest and trial of trade unionists

In 2009, repression against the trade union movement was brought to bear at several levels, including systematic repression of peaceful protests, arbitrary arrests of trade union leaders and members, and confiscation of their documents because of their activities in favour of labour rights. For instance, on May 28, 2009, the Confederation of Public Employees' Trade Unions (KESK) headquarters in Ankara, its branch offices in İzmir and Van, even the houses and workplaces of some of its members were raided and searched by the Gendarmerie, and all official documents regarding gender issues and trade union activities, as well as a laptop and 18 CDs were confiscated. On the same day, 35 trade union leaders and members were arrested and placed in detention in "F-type" prisons²¹ or small group isolation prisons. 31 of them were charged of terrorism charges, of whom 22 were kept in detention. Until the submission of the indictment on

19/ Ms. Selek had initially been arrested by the police two days after the July 9, 1998 explosion at Istanbul's spice bazaar, in which seven people were killed and many injured. She was at the time working on an academic research on the Kurd issue and the origin of the civil war. Four expert reports said the explosion was caused by a gas leak and there was no evidence of a bomb. The only reason for accusing Ms. Selek in the explosion case was the testimony of a detainee who reportedly gave the testimony to the police under torture. In December 2000, Ms. Selek was released on bail after she had spent two years and an half in prison.

20/ The Public Prosecutor of the Supreme Court of Appeals objected to the decision of the Ninth Criminal Department of the YCGK but, on February 9, 2010, the Criminal General Council of Supreme Court (the Court of Cassation) rejected the objection of the Public Prosecutor and stated that the decision of the Ninth Criminal Department was appropriate. The case will be re-examined before the Istanbul 12th Criminal Chamber. If the court acquits Ms. Selek again, the decision will be re-examined again by the Criminal General Council of the Supreme Court.

21/ The F-type prisons are characterised by one- or three-inmate isolation cells. Many acts of torture and ill-treatment have reportedly taken place in these prisons.

July 31, 2009, the defence lawyers had not had access to their files, their homes and workplaces were searched, and their computers confiscated. On November 19 and 20, an hearing took place before the İzmir Heavy Penal Court No. 8 on this case, and the 31 leaders and members of KESK were tried on charges of “being members of the PKK”. The evidence against them referred primarily to their activities in support of such issues as Kurdish-language education and their participation in meetings. During the trial, the rights of the defence were constantly violated, with the President of the court himself doing the interrogations, and the defence lawyers being impeded to speak to the defendants. The only evidence against them stemmed from their recorded telephone conversations and their e-mail exchanges. On November 20, the court ruled in favour of the conditional release of the 22 leaders who remained detained. They had to appear in court again on March 2, 2010 and are banned to leave the country until the end of the trial. Moreover, on September 30, 2009, Mr. **Murad Akincilar**, a Turkish trade unionist working in Switzerland as the Secretary of the Swiss inter-professional trade union UNIA, based in Geneva, was arrested in Istanbul by officers in plain clothes along with sixteen other persons on terrorism charges, while they were holding a meeting for the organisation of the Social Forum in Turkey. Mr. Akincilar was then in Turkey visiting his sick mother. Ten of those arrested were released after being interrogated by the police and the others, including Mr. Murad Akincilar, remained in detention as of the end of 2009, pending trial. While in detention, Mr. Akincilar partially lost his sight in one eye because he was not granted the necessary medical care²².

22 / See International Trade Union Confederation (ITUC).

Urgent Interventions issued by The Observatory in 2009

Name	Violations / Follow up	Reference	Date of Issuance
Mr. Ethem Açıklan	Search / Administrative harassment	Urgent Appeal TUR 001/0108/OBS 011.1	March 11, 2009
Mr. Hasan Anlar, Ms. Filiz Kalayci, Mr. Halil İbrahim Vargun and Mr. Murat Vargün	Search / Arbitrary detention	Urgent Appeal TUR 001/0509/OBS 070	May 12, 2009
	Release / Travel ban / Judicial harassment	Urgent Appeal TUR 001/0509/OBS 070.1	May 15, 2009
Ms. Filiz Kalayci	Ongoing arbitrary detention / Judicial harassment	Urgent Appeal TUR 001/0509/OBS 070.2	October 27, 2009
Ms. Filiz Kalayci and Ms. Yüksel Mutlu	Harassment	Joint Press Release	May 29, 2009
Confederation of Public Employees' Trade Unions (KESK) and Eğitim-Sen / Ms. Songül Morsunbul, Ms. Gülçin Isbert, Mr. Abdurrahman Dasedemir, Ms. Elif Akgül Ates, Mr. Lami Özgen, Mr. Haydar Deniz, Ms. Mine Cetinkaya, Ms. Sermin Günes, Mr. Nihat Keni, Mr. Mehmet Hanifi Kuris, Ms. Sakine Esen Yılmaz, Mr. Aydın Güngörmez, Mr. Mustafa Beyazbal, Mr. Harun Gündes, Mr. Abdulcelil Demir, Ms. Yüksel Özmen, Ms. Meryem Çag, Mr. Hasan Soysal, Mr. Aziz Akikloglu, Mr. Hasan Umar, Ms. Sueyda Demir, Ms. Yüksel Mutlu, Mr. Onder Dogan, Mr. Nejat Sezginer, Mr. Cezmi Gunduz, Mr. Ali Cengiz, Mr. Bisar Polat, Ms. Seher Tumer, Ms. Olcay Kanlibas, Mr. Erdal Guzel, Ms. Emriye Demirkir and Ms. Selma Aslan	Ongoing arbitrary detention	Open Letter to the authorities	July 30, 2009
	Conditional release	Press Release	November 25, 2009
Mr. Camal Bektas, Ms. Hacer Nar and Ms. Nezahat Teke	Sentencing / Judicial harassment	Urgent Appeal TUR 002/0809/OBS 119	August 20, 2009
Mr. Camal Bektas		Closed Letter to the authorities	September 1, 2009
Ms. Hacer Nar	Arbitrary detention	Press Release	October 28, 2009
Mr. Muharrem Erbey / Human Rights Association (IHD)	Search / Arbitrary detention	Press Release	December 29, 2009