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Amnesty International

TURKEY

REPUBLIC OF TURKEY

Head of state: Ahmet Necdet Sezer

Head of government: Recep Tayyip Erdoğan

Death penalty: abolitionist for all crimes

International Criminal Court: not signed

UN Women's Convention and its Optional Protocol: ratified

Overview - Covering events from January - December 2005

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The Council of Ministers of the European Union (EU) formally opened negotiations for Turkey's membership of the EU. Practical implementation of reforms intended to bring Turkish law into line with international standards slowed in 2005. The law provided for continuing restrictions on the exercise of fundamental rights. Those expressing peaceful dissent on certain issues faced criminal prosecution and sanctions after the introduction of the new Turkish Penal Code. Torture and ill-treatment continued to be reported, with those detained for ordinary crimes particularly at risk. Law enforcement officers continued to use excessive force in the policing of demonstrations; four demonstrators were shot dead in November. Investigations of such incidents were inadequate and law enforcement officers responsible for violations were rarely brought to justice. Human rights deteriorated in the eastern and south-eastern provinces in the context of a rise in armed clashes between the Turkish security services and the armed opposition Kurdistan Workers' Party (PKK).

Background

In June, the new Turkish Penal Code (TPC), Code of Criminal Procedure and Law on the Enforcement of Sentences (LES) entered into force. The laws contained positive aspects, with the TPC offering greater protection from violence to women. However, the TPC in particular also included restrictions to the right to freedom of expression. Human rights defenders in Turkey also raised objections to the punishment regime for prisoners envisaged by the LES. A revised draft of the Anti-Terror Law was being discussed by a parliamentary sub-commission at the end of the year; human rights groups had commented critically on earlier drafts.

In September Turkey signed the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In October the Council of Ministers of the EU formally opened negotiations for Turkey's membership of the EU.

Freedom of expression

A wide range of laws containing fundamental restrictions on freedom of expression remained in force. These resulted in the prosecution of individuals for the peaceful expression of opinions in many areas of public life. The pattern of prosecutions and judgments also often demonstrated prosecutors' and judges' lack of knowledge of international human rights law. In some cases comments by senior government officials demonstrated an intolerance of dissenting opinion or open debate and seemed to sanction prosecution.

Article 301, on the denigration of Turkishness, the Republic, and the foundation and institutions of the state, was introduced in June and replaced Article 159 of the old penal code. Article 159 and Article 301 were frequently applied arbitrarily to target a wide range of critical opinion. Journalists, writers, publishers, human rights defenders and academics were prosecuted under this law. Among the many prosecuted were journalist Hrant Dink, novelist Orhan Pamuk, Deputy Chair of the Mazlum Der human rights organization Oehmüs Ulek, and academics Baskın Oran and İbrahim Kaboğlu.

An international academic conference on perceptions of the historical fate of the Armenians in the late Ottoman period, to be held in May at Bosphorus University in Istanbul was postponed after comments made by the Minister of Justice, Cemil Çiçek, which fundamentally challenged the notion of academic freedom by portraying the initiative as treacherous. The conference eventually took place at Bilgi University in September. However, in December legal proceedings under TPC Articles 301 and 288 were initiated against five journalists who reported on attempts to prevent the conference.

A further restriction on freedom of expression remained in the broad restrictions on the use of minority

languages in public life. Frequent prosecutions for speaking or uttering single words in Kurdish continued to be brought under Article 81 of the Law on Political Parties.

In May the Court of Appeal ordered the closure of the teachers' union, E-itim-Sen, on the grounds that a clause in its statute defending the right to "mother-tongue education" violated Articles 3 and 42 of the Constitution which emphasize that no language other than Turkish may be taught as a mother tongue. E-itim-Sen later revoked the relevant article of its statute in order to avoid closure.

- In October the prosecutor initiated a case to close down permanently the Diyarbakır Kurdish Association (Kürd-Der) on various counts, including the decision to adopt a "non-Turkish" spelling of the word Kurdish in the association's name and statute, and provisions in the association's statute defending the right to Kurdish-language education. The association had previously been warned to adjust the disputed elements in its statute and name.

Provisions in the Press Law restricting press coverage of cases under judicial process were used in an arbitrary and overly restrictive way to hinder independent investigation and public comment by journalists on human rights violations. These provisions were also used to hinder human rights defenders.

Legal proceedings were begun against the Chairperson of the Diyarbakır branch of the Human Rights Association (HRA), Selahattin Demirtaş, and Mihdi Perinçek, HRA Regional Representative, in connection with a report they co-authored with others on the killing of Ahmet Kaymaz and Uğur Kaymaz (see below). The indictment alleged that the report violated Article 19 of the Press Law, undermining the prosecutor's preparatory investigation into the killings, despite the fact that the authors had no access to the contents of files on the case which, by court order and for reasons of security, were unavailable for inspection. The first hearing against the two began in July.

Torture and ill-treatment

Torture and ill-treatment by law enforcement officials continued to be reported, with detainees allegedly being beaten; stripped naked and threatened with death; deprived of food, water and sleep during detention; and beaten during arrest or in places of unofficial detention. Reports of torture or ill-treatment of individuals detained for political offences decreased. However, people detained on suspicion of committing ordinary crimes such as theft or for public disorder offences were particularly at risk of ill-treatment. Reports suggested that there were still many cases of law enforcement officials completely failing to follow lawful detention and investigative procedures and of prosecutors failing to ascertain that law enforcement officials had complied with procedures. Police also regularly used disproportionate force against demonstrators, particularly targeting leftists, supporters of the pro-Kurdish party DEHAP, students and trade unionists (see Killings in disputed circumstances below). Often those alleging ill-treatment, particularly during demonstrations, were charged with resisting arrest while their injuries were explained away as having occurred as police attempted to restrain them.

- In October in Ordu, five teenagers aged between 15 and 18 were detained at the opening of a new shopping centre. The five reported being beaten, verbally abused, threatened and having their testicles squeezed while being taken into custody and while in custody at the Ordu Central Police Station. They were later released. Two reported that they were stripped and threatened with rape. Three were not recorded as having been in police detention. One was subsequently charged with violently resisting arrest. Beyond the alleged ill-treatment, which was documented in medical reports and photographs, other irregularities in the handling of the detained teenagers by the police and prosecutor demonstrated a failure to follow legal procedures at any point from the moment of detention onwards.
- In March, in the Sarıyer area of Istanbul, demonstrators gathering to celebrate International Women's Day were violently dispersed by police, beaten with truncheons and sprayed with pepper gas at close range. Three women were reportedly hospitalized. The scenes drew international condemnation. In December, 54 police officers were charged with using excessive force; senior officers were not charged, but three received a "reprimand" for the incident.

Impunity

Investigations into torture and ill-treatment continued to be marked by deeply flawed procedures and supported suggestions of an unwillingness on the part of the judiciary to bring perpetrators of human rights violations to justice. An overwhelming climate of impunity persisted.

- In April, four police officers accused of the torture and rape with a truncheon of two teenagers, Nazime Ceren Salmanoğlu and Fatma Deniz Polattaş, in 1999 were acquitted. More than six years after the judicial process had begun and after the case had been delayed more than 30 times, a court in Şkenderun acquitted the officers due to "insufficient evidence". Lawyers for the young women announced that they would appeal against the decision. The two women had been sentenced to long prison terms on the basis of "confessions" allegedly obtained under torture.
- Fifteen years after the death of university student Birtan Altınbaş, the trial of four police officers accused of killing him continued in the Ankara Heavy Penal Court No. 2. Birtan Altınbaş died on 15

January 1991 following six days in police custody, during which he was interrogated on suspicion of being a member of an illegal organization. The case, which received international condemnation and was widely reported in the Turkish press, demonstrated many aspects of the flawed judicial process.

- The trial of four police officers charged with killing Ahmet Kaymaz and his 12-year-old son Uğur Kaymaz on 21 November 2004 in the Kızıltepe district of Mardin began in February. The four officers on trial were not under arrest and were still on active duty. It was significant that senior officers responsible for the police operation during which the two individuals were killed were excluded from the investigation and not charged, supporting the view that in cases of this kind prosecutors rarely examined the chain of command.

Fair trial concerns

The continuing inequality between prosecution and defence and the influence of the executive on the appointment of judges and prosecutors prevented the full independence of the judiciary. While from 1 June detainees enjoyed the right to legal counsel and statements made in the absence of lawyers were not admissible as evidence in court, few prosecutors in the new Heavy Penal Courts (which replaced the State Security Courts in 2004) attempted to review ongoing cases where statements were originally made without the presence of legal counsel and where defendants alleged that their testimony had been extracted under torture. Little effort was made to collect evidence in favour of the defendant and most demands of the defence to have witnesses testify were not met.

Imprisonment for conscientious objection

Conscientious objection was not recognized and no civilian alternative to military service was available.

- In August, Sivas Military Court sentenced conscientious objector Mehmet Tarhan to four years' imprisonment on charges of "disobeying orders" and refusing to perform military service. He was a prisoner of conscience.

Killings in disputed circumstances

On 9 November in the Omdinli district of Hakkâri, a bookshop was bombed, killing one man and injuring others. Three men were charged in connection with the incident. The alleged bomber was subsequently revealed to be a former PKK guerrilla turned informant and his alleged accomplices were two members of the security services, with identity cards indicating that they were plain-clothes gendarmerie intelligence officers. Subsequently, as the prosecutor carried out a scene-of-crime investigation, the assembled crowd was fired upon from a car, resulting in the death of one civilian and injury of others. The prosecutor's crime-scene investigation was postponed. A gendarmerie specialist sergeant was charged with disproportionate use of force resulting in death. AI called upon the government to establish an independent commission of inquiry to investigate all dimensions of these incidents including allegations of direct official involvement. During subsequent protests at the events in Omdinli, three people in the Yüksekova district of Hakkâri and one person in Mersin were shot dead by police.

During 2005 approximately 50 people were shot dead by the security forces, over half of them in the south-eastern and eastern provinces. Many may have been victims of extrajudicial executions or the use of excessive force. "Failure to obey a warning to stop" was a common explanation provided by the security forces for these deaths.

At least two individuals were alleged to have been assassinated by the PKK. On 17 February, Kemal Oahin, who split from the PKK to found an organization allied with the Patriotic Democratic Party of Kurdistan, was killed near Suleimaniyeh in northern Iraq. On 6 July, Hikmet Fidan, former DEHAP deputy chair, was killed in Diyarbakır.

An organization calling itself the Kurdistan Freedom Falcons claimed responsibility for a bomb attack in July on a bus in the Aegean town of Kuşadası that killed five civilians.

Violence against women

Positive provisions in the new TPC offered an improved level of protection for women against violence in the family. The new Law on Municipalities required municipalities to provide shelters for women in towns with populations of more than 50,000 individuals. Implementation of this law will require adequate funding for the establishment of shelters from central government and full co-operation with women's organizations in civil society. Further efforts were needed to ensure that law enforcement officials, prosecutors and the medical profession were fully versed in the still little-known Law on the Protection of the Family.

Official human rights mechanisms

Official human rights monitoring mechanisms attached to the Prime Ministry failed to function adequately and had insufficient powers to report on and investigate violations. The work of the Prime Ministry Human Rights Advisory Board, encompassing civil society organizations, was obstructed and the Board became effectively inactive. Moreover, in November, former Chair İbrahim Kabaolu, and Baskın Oran, a board member, were

prosecuted for the contents of a report on the question of minorities in Turkey commissioned by the Board and authored by Baskın Öran. The Provincial and Human Rights Boards, set up by the Human Rights Presidency and also attached to the Prime Ministry, failed to conduct adequate investigations of human rights violations. Draft legislation on the creation of an ombudsman failed to advance.

AI country visits

AI delegates visited Turkey in November.

Turkey

Archive information

Turkey: Memorandum on AI's recommendations to the government to address human rights violations
(AI Index: EUR 44/027/2005)

Concerns in Europe and Central Asia: January-June 2005: Turkey
(AI Index: EUR 01/012/2005)

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