

Turkey

IHF FOCUS: elections; freedom of expression and the media; freedom of association; peaceful assembly; independence of the judiciary and fair trial; torture, ill-treatment and detainees' rights; prison conditions; death penalty; national minorities; religious intolerance; asylum seekers; internally displaced persons; human rights defenders.

In 2002, many positive human rights developments took place in Turkey: the death penalty was abolished; several restrictions on minority language education and broadcasting were removed; and some necessary but not yet sufficient formal steps were taken to prevent the use of torture. On November 30, the 15-year-long state of emergency was lifted in the two provinces (Diyarbakir and Sirnak) where it had remained in force.¹ The state of emergency had seriously restricted some basic human rights, particularly those related to arrest, detention and investigation of criminal suspects.

Three legislative reform packages were ratified in February, March, and August 2002,² and a fourth one was announced in December 2002.³ The changes were mainly intended to meet European Union (EU) human rights accession standards in advance of the EU Copenhagen Summit in December 2002, which concluded the membership negotiations with ten countries, reinforced the candidate status of two others and decided on the candidate status of Turkey.⁴

Despite the reform packages, many of the steps detailed in the EU document *Accession Partnership - 2000*, as necessary for Turkey to take in the economic and political spheres in order to qualify for membership negotiations, remained outstanding. Restrictions on freedom of expression persisted, exacerbated by the courts' failure to adhere to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Turkish police and gendarmes still commonly tortured or ill-treated detainees. The recommendation of the European Committee for the Prevention of Torture (CPT) to guarantee immediate access to all detainees was not followed in respect to detainees subject to state security court jurisdiction.

Former Kurdish parliamentarians remained imprisoned; thorough reform of the Law on Associations was long overdue; and problems in the prison system needed urgent solution. Human rights defenders continued to be persecuted, and there was insufficient support for the return of hundreds of thousands internally displaced people (IDPs). In addition, Turkey maintained restrictions on the rights of refugees and violated the principle of *non-refoulement*.⁵

Elections

¹ *Turkish Daily News Online*, "...and emergency rule becomes history," December 2, 2002, at www.turkishdailynews.com/old_editions/12_02_02/dom.htm

² See Human Rights Foundation of Turkey (HRFT), *Meaning and Value of the Changes Made in the Turkish Law System in Relation with the European Union*, December 2002.

³ This package was enacted by the parliament in two parts. The first part, Law No. 4778 (cited from here on as the fourth harmonization package) was passed by parliament on January 2, 2003 and came into force on January 10. The second part, Law No. 4793 (cited from here on as the fifth harmonization package), was passed on January 23 and came into force on February 4, 2003. See website of the Office of the Prime Minister, Directorate General of Press and Information, at www.byegm.gov.tr/on-sayfa/uyum/uyum-ingilizce-58hukumet.htm

⁴ In December 2002 the Turkish government released statements regarding the content of the intended amendments, however, the harmonization packages actually ratified by parliament in January 2003 differed somewhat from these earlier announcements.

See EU Observer, www.euobserver.com/index.php?aid=9200; *Turkish Daily News Online*, "Parliament holds back on EU reforms," December 13, 2002, at www.turkishdailynews.com/old_editions/12_13_02/dom.htm#d5

⁵ Human Rights Watch (HRW), *Hits and Misses on Turkey's E.U. Accession Targets, Backgrounder on the European Union regular Report on Turkey*, October 7, 2002, at www.hrw.org/press/2002/10/turkey-bck1008.htm

The November parliamentary elections brought to power by a surprisingly large margin the Justice and Development Party (AKP, 34.3% of the vote while none of the former governing parties gained any seats). The AKP enjoyed support from nationalist and Islamist elements. Its leader, Recep Tayyip Erdogan, has himself been convicted for non-violent expression and stripped of his political rights, including running in parliamentary elections.

Although the OSCE/ODIHR generally deemed the parliamentary elections as a positive sign of the vibrancy of Turkey's democracy, it noted that there were still strict limits for the scope of political debate. This was seen, for example, in the measures to close down many parties during the election campaign, including the AKP and the People's Democracy Party (HADEP), and in the banning of many candidates from running as a result of past convictions for non-violent expression, including Murat Bozlak, former chairman of HADEP; Necmettin Erbakan, former prime minister and chairman of the banned Virtue Party; and Akin Birdal, former leader of the Socialist Democratic Party and former chairman of the Human Rights Association of Turkey.

Also, by European standards, the threshold of 10% of the nationwide vote for parties to enter the parliament was exceptionally high. The ODIHR also reported harassment of members of some political parties and human rights defenders, although the situation had improved markedly compared with previous elections. Finally, it recommended Turkey to find alternative penalties to the drastic sanctions (closure) of media outlets which violated regulations of media coverage.⁶

Freedom of Expression and the Media⁷

The fourth harmonization package in December included a major improvement in the field of freedom of expression: editors-in-chief and news journalists no longer needed to reveal their sources to authorities.⁸ But serious concerns remained. As of the end of 2002, Turkish legislation still included hundreds of provisions, which inhibited free expression. Serious moves to abolish any of these provisions were met with accusations of willingness to compromise with "separatism," "religious extremism," "betrayal of the state" and even "treason."⁹

Despite a large number of independent media outlets and active debate in the media, certain topics remained forbidden: criticism of the power of the military and the plight of the Kurdish minority as well as dissenting views about the role of Islam frequently resulted in judicial proceedings and prison sentences. This was frequently done under the pretext of incitement to racial, ethnic or religious enmity, punishable under article 312 of the Criminal Code. Criticism of authorities or, for example, the introduction of the F-type prison system,¹⁰ were often interpreted as insulting the state and its officials under article 159 of the Penal Code. Both articles were amended under EU pressure but were still used to restrict freedom of expression.

The prison term under article 159 was reduced from the maximum of six years to three years (the minimum length remained one year) and fines were abolished. Later a clause was added to the article specifying that speech intended to criticize, but not insult, state institutions shall no longer constitute a reason for punishment.¹¹

⁶ OSCE/ODIHR, *Republic of Turkey, Parliamentary Elections, 3 November 2002, OSCE/ODIHR Assessment Mission, Final Report*, at www.osce.org/odihr/documents/reports/election_reports/tr/tr_par_nov2002.php3#1

⁷ See also National and Ethnic Minorities and Religious Intolerance.

⁸ Turkish Governmental Website, www.byegm.gov.tr/on-sayfa/uyum/uyum-ingilizce-58hukumet.htm; and *Boston Com*, Suzan Fraser, February 1, 2003, at www.boston.com/dailynews/002/world/Turkish_parliament_approves_an.shtml

⁹ HRW, op.cit.

¹⁰ See Conditions in Prisons and Detention Facilities.

¹¹ HRFT, op.cit.

Article 312(2) was narrowed but remained still too vague. According to it, “fomenting enmity or hatred among the public based on differences between social classes, races, sects or regions” could be punished only if it was done “in a manner that could be detrimental to public order.”¹²

According to judicial authorities, as of September, the reforms had led to the Constitutional Court overruling 50 judgments made under article 159 and 24 judgments under article 312. However, an estimated 100 court cases against journalists, writers and publishers were still pending at the year’s end.¹³

- Tayyar Tas, a Kurdish villager, was arrested in July under article 159 for “insulting” the military because he had accused them of burning his village.¹⁴
- On December 25, the Istanbul State Security Court sentenced Islamist *Milli Gazete*’s columnist Mehmet Sevki Eygi to one year and eight months imprisonment on the charges of inciting hatred and enmity based on religious and sectarian differences in his May 12 article entitled “Headscarf Enmity.” The editor of the newspaper, Selami Caliskan, received the same sentence but it was commuted to a TL 4.4 billion fine. The execution of both sentences was suspended. In October, Eygi had been sentenced to 20 months’ imprisonment on the same charges under another article in which he had claimed that the Constitutional Court and the Court of Cassation were taking hostile decisions in the headscarf issue.¹⁵

The February reform package also amended articles 7 and 8 of the Anti-Terror Law which had been used to curb freedom of expression. Article 7 had formerly made spreading of all “terror-related propaganda” punishable. Now it was the case only when such propaganda was spread in a manner that “encourages people to resort to terrorist methods.”¹⁶

The old article 8 carried a prison term of between one and three years for so-called “separatist propaganda” without advocating violence. Instead of abolishing this article, the parliament broadened its scope and increased penalties. It decided that also visual propaganda (in addition to written and oral) would be punishable if “the act does not require a heavier penalty.” Moreover, the penalty could be increased by a third if the act was committed in a form that “encourages the use of terrorist methods.”¹⁷

- In February, Turkish publisher Fatih Tas was acquitted of charges of spreading “separatist propaganda” (article 8 of the Anti-Terror Law) because he had published a summary on the human rights situation in southeaster Turkey written by American academic Noam Chomsky.¹⁸

The Law on the Founding and Broadcasting of Radio and Television (RTÜK law) that had passed the Turkish parliament in June 2001, but was vetoed by State President Sezer, was re-adopted unchanged by parliament in May 2002, imposing tighter restrictions on freedom of expression. It prohibited broadcasts which “violate the existence and independence of the Turkish Republic, the territorial and national integrity of the State, the reforms and principles of Atatürk,” or “instigate the community to violence, terror, or ethnic discrimination” and introduced very high penalties. Following a request by President Sezer for the law to be annulled, the Constitutional Court issued in June 2002 a

¹² Ibid.

¹³ *Turkish Daily News Online*, “EU’s political assessments over candidacy of Turkey,” October 12, 2002, at www.turkishdailynews.com/old_editions/10_12_02/feature.htm#f1

¹⁴ HRW, op.cit.

¹⁵ *Turkish Daily News Online*, “Court sentences journalist Eygi to imprisonment,” December 25, 2002, at www.turkishdailynews.com/old_editions/12_25_02/dom.htm

¹⁶ HRFT, op.cit.

¹⁷ Amnesty International (AI), “Turkey: Briefing on law No. 4744(‘Mini-Democracy Package’),” EUR 44/012/2002.

¹⁸ HRW, “Turkey: Acquittal in Chomsky Case Is Step in Rights Direction,” press release, February 15, 2002.

suspension order on two articles, relating to the composition of the RTÜK Board and the ownership of shares.¹⁹

Apart from formal legal changes, interpretation and application of laws remained a central problem. This was stressed in a report by the EU Commission, in which it highlighted the tendency by prosecutors to use other provisions of the Penal Code to limit freedom of expression. One such provision was article 169 (support for illegal armed organizations) that was applied, for example, to students petitioning for optional language courses at university.²⁰

Freedom of Association

The EU-promoted amendments to the laws brought about some improvements to freedom of association but left many provisions untouched, several questions unanswered and in spite of everything tightened some legislation. Generally, freedom of association remained severely restricted.

According to the March amendments, Turkish associations were given the right to carry out international activities and to join foreign federations, and foreign associations were allowed to operate and to set up branches in Turkey. However, the August amendments re-introduced old restrictions and conditioned such activities to permission from the Council of Ministers.²¹

Student associations could still deal with educational matters only, and those convicted under article 312 of the Criminal Code were barred from forming associations for five years (formerly permanently). Also, it remained illegal to form associations for the purpose of “engaging in any activity on the grounds of or in the name of any region, race, social class, religion or sect” (article 5 of the Law on Associations). The reforms provided for the establishment of a new body within the Ministry of Interior in charge of associations as well as of new control procedures on associations’ activities and accounts.²² The supervising body changed from the local police to civil authorities, but these authorities were still allowed to inspect the documentation of associations “when deemed necessary,” and association still had such onerous responsibilities as informing the local governor of their membership, publications and meetings.

In December, with the approval of the Turkish Parliament and president, the legal provision according to which politicians convicted of “ideological actions” could not run in parliamentary elections was revoked and replaced with a new stipulation. The new provision held that only those convicted of “terror crimes” could be prohibited from running. This amendment would allow the leader of the AKP Party to run in the February 2003 by-elections and should he be elected deputy, to become prime minister.²³

While the fourth harmonization package made it harder to shut down a political party, it did not make it impossible. It stipulated that political parties could no longer be automatically closed for acting in contradiction to the laws and for failure to ignore warnings, instead a three-fifths majority of the Supreme Court necessary to make a decision for the closure of a party. The chief public prosecutor may simultaneously file an application to deny the party concerned partial or whole state aid.²⁴

A trial that commenced at the end of 2003 demonstrated the still serious situation of associations in Turkey.

¹⁹ Commission of the European Communities, *2002 Regular Report on Turkey's Progress Towards Accession*, October 9, 2002, at http://europa.eu.int/comm/enlargement/report2002/tu_en.pdf

²⁰ Ibid.

²¹ HRFT, op.cit.

²² Commission of the European Communities, op.cit.

²³ *Turkish Daily News Online*, “Cabinet approves EU adaptation law package,” December 4, 2002, at www.turkishdailynews.com/old_editions/12_04_02/dom.htm

²⁴ Turkish Governmental Website, <http://www.byegm.gov.tr/on-sayfa/uyum/uyum-ingilizce-58hukumet.htm>

- A trial against five German institutions – Konrad Adenauer, Heinrich Böll, Friedrich Ebert and Friedrich Naumann Foundations and Orient Institute – commenced on December 25, 2002 in Ankara. They were charged with setting up a spy network to work against Turkey's interest and in "creating secret alliance against Turkey's unity and the secular republic's regime." According to the prosecutor, the foundations had encouraged villagers to revolt against the mine on ecological grounds as part of a greater German plan to prevent Turkey from exploiting its natural resources. The protests and court proceedings filed against the mining company had delayed mining in the region for several years. The 15 defendants representing the institutions faced up to 15 years imprisonment if found guilty.²⁵

Peaceful Assembly

In March, some amendments were made to laws governing demonstrations and other public assemblies, but in general legislation still fell clearly short of European standards.

The changes in the Law on Meetings and Demonstrations included lowering the age limit for participation in demonstrations from 21 to 18 (article 9), and some vaguely-formulated reasons for banning a demonstration were removed from article 17. According to the amended article 19, a governor no longer had the right to ban an assembly, but he/she could postpone it for three months in order to protect national security, public order, health or moral or rights and freedoms of other persons – a provision that had almost the same effect as a direct ban.²⁶

The amendments did not lift many other restrictions, including the required advance "notification" for the organization of any meetings by Turkish citizens; only the time limit was reduced from 72 hours to 48 hours. Foreigners still needed prior permission to participate in demonstrations and assemblies, and a new provision stipulated that foreigners who wished to address a crowd or to carry banners must inform the Ministry of Interior about their intention.²⁷

Independence of the Judiciary and Fair Trial

In addition to the fact that much Turkish legislation remained out of line with European standards, in 2002 the *modus operandi* of the Turkish courts gave rise to many human rights violations. At times the judiciary interpreted legislation broadly or indeed applied it selectively

On March 20, the Constitutional Court recognized that the ECHR could be used by Turkish courts as a basis for decisions,²⁸ however the courts failed to do so, despite the fact that the European Court of Human Rights had on many occasions clearly condemned decisions of Turkish courts which curbed free expression.

The fifth harmonization package extended the reach of provisions ratified in August 2002, which granted a right of retrial in the Turkish courts to those whose original Turkish convictions or sentences were condemned as unsafe by the European Court of Human Rights. The August 2002 measures had confined the application of this right to those individuals who obtained their European Court judgments subsequent to August 2002; the later enactment revised this limitation, providing instead that the right should have retrospective effect.²⁹ It was predicted that the reform would provide

²⁵ *Turkish Daily News Online*, "Trial of German 'spy organizations' starts," December 25, 2002, at www.turkishdailynews.com/FrTDN/latest/for.htm

²⁶ HRFT, op.cit.

²⁷ Ibid.

²⁸ Commission of the European Communities, op.cit.

²⁹ *Turkish Daily News Online*, January 21, 2003, "Reform package paves way for retrial of former DEP members," at www.turkishdailynews.com/old_editions/01_21_03/dom.htm#d7,

Turkish Daily News Online, January 24, 2003, "Parliament paves way for retrial of former DEP deputies," at www.turkishdailynews.com/old_editions/01_24_03/dom.htm#d8

for the retrial of former Kurdish Democracy Party (DEP) deputies Hatip Dicle, Orhan Dogan, Selim Sadakm and Leyla Zana.³⁰

Turkey failed in 2002 to execute judgments of the European Court of Human Rights. In some 90 cases the payment of satisfaction had not been ensured, and in a further 18 cases related to freedom of expression, authorities failed to erase the consequences of criminal convictions.³¹

Despite reforms, the *EU Accession Report* noted that the manner in which the State Security Court was functioning was still not in line with European standards. The EU report also criticized the excessive length of judicial proceedings noting the average duration of 406 days in criminal cases and 241 in civil cases.³²

Torture, Ill-Treatment and Detainees' Rights

Reforms were enacted by the Turkish parliament and government throughout the year in the name of preventing torture.

The first and the second harmonization packages of February and March reduced the legitimate detention periods. However, for suspects under State Security Court jurisdiction, charged with crimes of a collective, political, or conspiratorial nature, the maximum initial detention period still remained four days at the prosecutor's discretion.³³

Contrary to earlier indications that the amendments would provide all defendants with rights of access to a lawyer from their first moment in custody, there were no attempts to pass legislation abolishing article 31(1) of Law No. 3842, which denied detainees held under State Security Court jurisdiction the right to legal council for the first forty-eight hours – generally acknowledged as the period in which police and gendarmes most frequently tortured their detainees.³⁴ The persistence of incommunicado detention for political detainees had a knock-on effect for those detained on common criminal charges, and consequently they were commonly denied the assistance of a lawyer.³⁵ After visits to Turkey, United Nations and Council of Europe experts all concurred that access to a lawyer is the key protection required to curb torture.³⁶

Positive legal changes brought by the fourth harmonization package included provisions preventing Turkish courts from suspending the prison sentences of those convicted of inflicting torture.³⁷ The parliament also approved measures stipulating that these prison sentences could no longer be commuted to fines.³⁸ The amendments incorporated measures obliging the judiciary to hear

³⁰ Ibid.; HRW, *Curbing Torture Top EU-Turkey Priority*, January 2003, at <http://hrw.org/press/2003/01/turky013003.htm>. Imprisoned leader of the outlawed Kurdistan Workers' Party, Abdullah Ocalan is excluded from this right.

³¹ Commission of the European Communities, op.cit.

³² Ibid.

³³ AI, *Turkey, Torture and prolonged detention in the Region under State of Emergency*, February 2002. For crimes allegedly committed in the region where the state of emergency remained in place this four-day period could be extended to seven days (formerly ten days) upon the request of a prosecutor and the decision of a judge. Moreover, under article 3/c of Legal Decree No. 430, individuals in the regions in a state of emergency could be returned to police detention for an additional ten days of questioning even after having been remanded to prison by a judge. The article could be applied again after the end of the ten-day period. The state of emergency was lifted in the provinces of Hakkari and Tinceli on July 30, 2002, and from the remaining two provinces, Diyarbakir and Sirnak, at the end of November.

³⁴ HRW, *A Human Rights Agenda for the Next Phase of Turkey's E.U. Accession Process* January 2003, <http://hrw.org/press/2003/01/turky-bck013003.htm>

³⁵ Ibid.

³⁶ Ibid.

³⁷ Turkish Governmental Website, www.byegm.gov.tr/on-sayfa/uyum/uyum-ingilizce-58hukumet.htm; and *Boston Com*, Suzan Fraser, January 2, 2003.

³⁸ Ibid.

the statements of defendants and detainees before they reach a verdict on the case before them, as well as provisions detailing that, upon entering and leaving prison, defendants and detainees should be subject to medical examinations about which reports must then be written.³⁹

Despite the formal measures taken to prevent torture and ill-treatment, the climate of impunity remained. Prosecutors were reluctant to file charges against alleged torturers, and many torturers who "were not found" were able to continue their police careers. In the emergency region, superiors were able to hinder judicial proceedings against their officers. The burden of proof lay on the victims, and the slow pace of judicial proceedings easily ended up in unresolved cases due to the statute of limitations.

By the end of November, prosecutors had received 890 cases alleging torture by police and gendarmes. Of these, 456 cases were processed, with the rest of 524 cases still under investigation. The processed cases resulted in 147 indictments and 309 dismissals. From the 147 indictments, 91 cases were completed, resulting in 16 convictions, 49 acquittals, 15 suspended sentences, and 11 case dismissals. During the year, 87 police officers received administrative punishments, such as short suspensions, for torture or ill-treatment.⁴⁰

- A case against ten police officers accused of torturing 16 juveniles in detention in Manisa started in 1996, but due to the non-appearance of defendants at the trials, and because the lawyers of some of the defendants withdrew from the trial, the progress was very slow.⁴¹ Only in April 2003, three months before the statute of limitation would have expired the proceedings, the Court of Cassation confirmed the sentences given to the police officers.⁴²
- In April two Istanbul police officers of the department to fight terrorism were found guilty of hanging Abdurrahim Demir by the arms in October 1995, giving him electric shocks, squeezing his testicles, beating him on the soles of the feet (*falanga*), insulting and threatening him. The case was only opened as late as 2.5 years after the incident. The court sentenced the defendants on the grounds of ill-treatment, rather than torture, and suspended the sentences according to the Law on Conditional Release.⁴³

In February the government amended the Penal Procedure Code to require immediate notification of arrests, consistent with constitutional amendments adopted in October 2001.⁴⁴ However, according to Amnesty International (AI), the guidelines for the prompt and proper registration of detainees and for notification of their families were often ignored, which was not only extremely distressing for the families of detainees, who often had spent days trying to establish the whereabouts of their loved ones, but which also created conditions in which there was an increased risk of torture, "disappearance" or death in custody.⁴⁵

Although the Turkish government adopted a regulation forbidding the blindfolding of detainees in police custody in May, there were still many cases of alleged torture involving blindfolding since then, and it appeared that the new regulation was unknown to police and gendarmes as well as lawyers in Turkey.⁴⁶

³⁹ Turkish Governmental Website, www.byegm.gov.tr/on-sayfa/uyum/uyum-ingilizce-58hukumet.htm

⁴⁰ U.S. Department of State, *Country Reports on Human Rights Practices – 2002*, Turkey, www.state.gov/g/drl/rls/hrrpt/2002/18396pf.htm

⁴¹ Commission of the European Communities, op.cit.

⁴² HRFT, "Manisa Trial."

⁴³ HRFT, *Human Rights in Turkey: May 2002 Report*, at www.tihv.org.tr/eindex.html

⁴⁴ Article 19(6) now reads: "The next of kin of the arrested or remanded person shall be notified immediately."

⁴⁵ AI, "Turkey: An end to torture and impunity is overdue!" December 1, 2002, at <http://web.amnesty.org/library/Index/ENGEUR440262002?open&of=ENG-TUR>

⁴⁶ HRW, *A Human Rights Agenda for the Next Phase of Turkey's E.U. Accession Process*

In August the justice minister issued a circular asking public prosecutors and prison administrators to ensure a secure environment for convicts and prisoners and to prevent the ill-treatment of prisoners. The minister urged that those engaging in such conduct be punished.⁴⁷

While the CPT noticed a gradual improvement in the treatment of persons in police custody in the Istanbul area, it noted that there were "still credible allegations of resort to methods of ill-treatment."⁴⁸ Indeed, the Human Rights Foundation of Turkey (HRFT) stated in July that there was no indication of a decrease in the infliction of torture compared to previous years and that threats towards security of life remained "very serious" in Turkey. It said it had registered at least 806 incidents of torture, 11 deaths in detention and 26 deaths in prisons (apart from deaths resulting from hunger strikes) during 2002 by that date.⁴⁹

The CPT reported that torture methods such as prolonged standing, sleep deprivation, and physical ill-treatment (including *falaga*) were used. Reports of serious abuse came particularly from the regions of Sanliurfa and Van.⁵⁰ Human Rights Watch (HRW) reported police beating detainees, stripping them naked, sexually assaulting them, hosing them with cold water and subjecting them to electric shocks.⁵¹

This hiatus, which existed between the intentions of the Turkish government, as manifested in the reforms, and the reality on the ground in Turkey⁵², resulted in part from a failure on the part of the executive and legislature to recognize that a practical and legal framework is necessary for the effective implementation of reforms.

Prison Conditions

The introduction of the so-called F-type prisons remained a cause of concern due to its possible misuse for isolation and lack of group activities. In these facilities, prisoners were held permanently either in single- or three-person cells and they could leave their cells only once a week when a member of their closest family visited them.

Some improvements were introduced to the F-type prison system through supplementary association periods for up to ten prisoners, but only on the condition that the prisoners already took part in other communal activities. CPT required that all such conditions be dropped and all prisoners be eligible for association periods.⁵³ It, and human rights organizations had warned since the introduction of the F-type prisons in December 2000 that confinement under small-group isolation conditions was physically and mentally damaging and thus unacceptable.

Since the introduction of the F-type prison system, hunger strikes against it had led to the deaths of 104 people.⁵⁴

⁴⁷ *Turkish Daily News Online*, "Justice minister issues circular for prisoners," August 23, 2002, at www.turkishdailynews.com/old_editions/08_23_02/dom.htm#d4

⁴⁸ CPT, *Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 2 to 14 September 2001*, 24 April 2002, at www.cpt.coe.int/en/reports/inf2002-08en.htm

⁴⁹ HRFT, "Torture, Deaths in Detention, Cases of 'Disappearance' and Summary Executions Still Continue," press release, July 11, 2002.

⁵⁰ CPT, op.cit.

⁵¹ HRW, *Hits and Misses on Turkey's E.U. Accession Targets, Backgrounder on the European Union regular Report on Turkey*.

⁵² Just days before the government had submitted the December legal package to parliament, a court had acquitted officers who had been accused of having tortured to death trade unionist Suleyman Yeter in 1999.

⁵³ CPT, op.cit.

⁵⁴ Human Rights Association of Turkey, "19 December Fight for Human Rights in Prisons and Solidarity Day," press release, December 19, 2002, at www.ihd.org.tr/eindex.html

Death Penalty

One of the EU Harmonization Laws adopted on 3 August abolished the death penalty “except in times of war and imminent threat of war.” It was replaced with life imprisonment. This step in the right direction was all the more commendable in the face of severe criticism by the opposition. Still, the formulation “imminent threat of war” remained open to interpretation.

National and Ethnic Minorities

The August 2002 reform package lifted some restrictions on broadcasting and education in minority languages. While being an important formal step in the right direction, disappointingly, the regulations actually enacted by parliament to implement these reforms reduced the width implicitly attributed to the measures by initial announcements.⁵⁵

The Law on the Establishment and Broadcasting of Radio Stations and Television Channels was amended in 2002 to allow broadcasting in the “different languages and dialects used traditionally by Turkish citizens” if the programs did not “contradict the fundamental principles of the Turkish Republic enshrined in the Constitution and the indivisible integrity of the state with its territory and nation” or “encourage the use of violence or incite feelings of racial hatred.” However, these limitations can still be interpreted in a highly restrictive manner.⁵⁶

On December 18, a regulation, drafted by the RTÜK, was enacted to implement the above amendment. Under this regulation the Turkish State Radio and Television (TRT) will be allowed to air limited news, music and cultural programs in Kurdish and other regional languages. The regulation also states however that broadcasting in minority languages may only take place on state channels for four hours per week on radio and for two hours per week on television. It also provides that the radio program must be followed by a mandatory complete translation in Turkish. If the broadcast takes place on television, the speakers have to wear modern clothes. Moreover, there can be no broadcasts promoting the teaching of minority languages. Private broadcasts in minority languages remained banned.⁵⁷

On the basis of the August reforms, instruction of languages “used by Turkish citizens in their daily lives” was formally allowed in private educational institutions if such courses, again, do not threaten national integrity. Such courses will operate within the framework of the Ministry of National Education and according to its regulations. While in principle the legal restrictions were removed, in December the regulations adapted to implement this reform again exemplified a marked retreat from the original August amendment.⁵⁸ According to the regulation, minority language instruction may only be conducted on weekends or holidays for students between twelve and eighteen years of age who have completed primary education. Moreover, minority language instruction can only be given in private schools and not as part of the public educational system. Neither can a minority language constitute the language of instruction - even in private schools.⁵⁹

There was no legal obstacle to publishing newspapers and magazines in Kurdish, but the authorities confiscated these publications and prosecuted their publishers on charges of separatism. Music cassettes in Kurdish could be found legally on open sale in many Turkish cities, but occasional

⁵⁵ HRW, *A Human Rights Agenda for the Next Phase of Turkey's E.U. Accession Process*.

⁵⁶ IHF, *OSCE Human Dimension Implementation Meeting, Warsaw, 9-19 September 2002, Statements by the International Helsinki Federation for Human Rights (IHF)*, at www.ihf-hr.org

⁵⁷ *Turkish Daily News Online*, December 18, 2002.

⁵⁸ HRW, *A Human Rights Agenda for the Next Phase of Turkey's E.U. Accession Process*.

⁵⁹ IHF, *op.cit.*

police purges resulted in mass confiscations of such cassettes. Local governors circulated lists of cassettes banned from sale in city markets.⁶⁰

While the March amendments to article 5 of the Law on Associations recognized that different cultures existed in Turkey, it prohibited the establishment of associations to “create racial, religious, sectarian, cultural or linguistic differences or a minority based on such differences” and thus remained subject to restrictions. Positively, amendments to articles 3 and 4 of the Law on Associations lifted the prohibition on the use of languages other than Turkish on placards, plates, records, audio and visual tapes and leaflets.⁶¹

Religious Intolerance

Some 98% of over 65 million Turks are Muslims, of which 12 million are Alevis. By the Lausanne Treaty of 1923, the Armenian Orthodox and Greek Orthodox Christians, as well as Jews, enjoy a special registered legal status. There are also smaller religious minority groups in Turkey, such as Baha'is, Syrian Orthodox Christians and Protestants.

The Turkish Constitution guarantees freedom of religion, and provides that the state is secular. In practice, the state has sent confusing messages about secularism. For example, Muslim *imams* are civil servants, the state builds mosques, and Sunni Islam instruction is obligatory in public schools, with, legally, only those belonging to the Lausanne Treaty religious groups being exempted from it.

There were no major restrictions on freedom of worship in 2002, but, largely due to the authorities' fear of “fundamentalist Islam,” religious freedom was limited by restrictions on the freedom of expression. Statements associated, by the authorities, with “fundamentalism” frequently led to the prosecution of those making the statements, and women in public service and university students or school pupils were not allowed to wear traditional Islamic clothing, including a headscarf. Moreover, those criticizing the ban on Islamic clothing faced charges.⁶² It had been hoped that either the 4th or 5th harmonization package would include a bill pardoning university students' discipline penalties for wearing headscarves and for presenting petitions demanding Kurdish elective courses, however this bill was excluded from recent enactments.⁶³ After its exclusion, Education Minister Mumcu dismissed its importance, stating that the discipline penalties were mostly composed of petitions demanding Kurdish education, and that those who were dismissed from their schools because of these petitions, were allowed to return to school after court verdicts.⁶⁴

The legal ban on forming associations which carry names pertaining to religion caused difficulties also for Alevis, whom the state had not recognized as a religious minority.

- On 13 February, a court in Ankara ruled that the Federation of Alevi-Bektashi Institutions, where members performed ritual dances and songs, was promoting a sectarian belief and religious separatism and closed it down.⁶⁵

⁶⁰ HRW, *Questions and Answers: Freedom of Expression and Language Rights in Turkey*, April 2002, at <http://hrw.org/press/2002/08/turkeyqa041902.htm>

⁶¹ HRFT, *Meaning and Value of the Changes Made in the Turkish Law System in Relation with the European Union*, December 2002.

⁶² See Freedom of Expression.

⁶³ *Turkish Daily News Online*, “Amnesty for discipline penalties excluded from law package,” January 17, 2003, at www.turkishdailynews.com/old_editions/01_17_03/dom.htm#d5; and “Reform package paves way for retrial of former DEP members,” January 21, 2003, at www.turkishdailynews.com/old_editions/01_21_03/dom.htm#d7

⁶⁴ *Turkish Daily News Online*, “Reform package paves way for retrial of former DEP members,” January 21, 2003.

⁶⁵ Radio Free Europe, Jean-Christophe Peuch, “Turkey: Court Ruling Shows Authorities' Refusal to See Alevism as a religious Community,” February 19, 2002, distributed by Human Rights Without Frontiers, February 22, 2002.

- Nese Duzel, a journalist, and Osman Nihat Tuna, a publisher, faced charges of inciting people to enmity and hatred by distinguishing religious sects, a crime carrying a 13-year prison term. The charges were brought on the grounds of Duzel's book *Turkey's Hidden Face* which included interviews about the situation of Alevis. Duzel and Tuna were acquitted in June.⁶⁶

Legal restrictions on the right to acquire and dispose of real property has been a central point of dissatisfaction among religious minority groups for decades. Earlier, not even religious communities established by the Lausanne Treaty were allowed to buy or dispose of property. However, a new August provision under article 1 of the Law on Foundations prescribed that these communities "can acquire and dispose of real property with the permission of the Council of Ministers." Although a positive step, the amended law did not provide for the retribution of religious minority foundation property that had been lost since the 1970s, and the foundations were also still not allowed to rent their property. Moreover, other religious minorities were still excluded from the right. Also, the prescription that the government has to approve acquiring and selling property is cumbersome and discriminatory.⁶⁷

- Since 1974, the property of the Armenian Orthodox Church has been gradually confiscated on the grounds that Armenian foundations are "foreign" and can therefore not acquire property. While the property the church had to register with the state in 1936 was left untouched, the ownership of properties acquired after that time has been challenged one-by-one in the courts.⁶⁸ A case brought against the 1999 confiscation of the Armenian Church in Kirikan (Hatay province) was pending in 2002 after the Armenian Patriarchate won the court case but the prosecutor appealed the verdict.⁶⁹

Reports about harassment of other religious minority groups were received. For example, some Protestant groups faced harassment that was officially based on legal provisions such as building regulations. Also, legal charges were sometimes brought against members for, for example, distributing religious literature or leaflets, and a radio station was closed down.

- Starting in November 2001 and continuing in 2002, the Interior Ministry launched judicial proceedings against some 40 Protestant Churches on the grounds that their sites of worship allegedly violated municipal building laws. At the same time, Muslim places of worship could in practice operate without such permission. The directive also declared that conducting Sunday or Bible schools or other religious education without permission from the Ministry of Education was punishable with fines or prison sentences.⁷⁰

Asylum Seekers

Turkey continued to hold to its geographical reservation on the 1951 Geneva Convention Relating to the Status of Refugees, under which it did not recognize non-European refugees. As a result, there were serious concerns that refugees were frequently returned to countries where their life or freedom was threatened.⁷¹

⁶⁶ *Turkish Daily News Online*, "Journalist Nese Duzel acquitted," June 20, 2002, at www.turkishdailynews.com/old_editions/06_20_02/dom2.htm

⁶⁷ IHF, op.cit.

⁶⁸ *Turkish Daily News Online*, "Turkish Society Begins to Learn the Realities of the Country's Past ... And Its Present," at www.greekhelsinki.gr/english/articles/tdn-minorities-in-turkey.htm

⁶⁹ U.S. State Department, *International Religious Freedom Report 2002*, at www.state.gov/g/drl/rls/irf/2002/13986.htm

⁷⁰ *Compass*, Barbara G. Baker, "Christians ordered to close place of worship, local Protestant congregations seek legal status," February 4, 2002, distributed by Human Rights Without Frontiers, January 31, 2002.

⁷¹ HRFT, *Meaning and Value of the Changes Made in the Turkish Law System in Relation with the European Union*.

Internally Displaced Persons⁷²

There was poor progress in the return of the estimated 380,000 to one million people who had been internally displaced from the southeastern regions. During the 15-year armed conflict between the security forces and the Kurdish Workers' Party (PKK), the IDPs were forced out of their homes by security forces and paramilitary village guards determined to deprive the PKK of access to food, shelter and recruits.

According to HRW, the Turkish government, security forces and paramilitaries were obstructing the return although active hostilities ceased in 1999. As a result, it appeared that no more than 10% had ventured home by late 2002. In some cases local authorities forbid people to return, in others return was officially permitted but returning villagers were greeted with harassment, detention and attacks by the gendarmerie and village guards. Some had to flee a second time.

The majority of the displaced continued to live in very difficult circumstances of overcrowding and poverty in towns and cities throughout the country.

It also appeared that authorities intended on limiting villagers' recourse to courts to enforce their rights to compensation, and it was often impossible to receive a written statement from the authorities either granting or denying their right to return.

According to HRW, the government's return programs were not transparent, they were ill conceived, did not meet international standards and, as a result, did not attract international funders. It was also reported that the government had come to a secret agreement with the army about the future of the region. The Village Return and Rehabilitation Project announced in March 1999, had yielded nothing more than a feasibility study for return to 12 model villages, unpublished as of the end of 2002. Other programs appeared to be designed to prioritize return for villages controlled by village guards or to resettle villagers in central villages, often impractically distant from the villagers' agricultural lands.

Human Rights Defenders⁷³

Human rights defenders in Turkey continued to be persecuted. Numerous cases were pending against them under restrictive laws on freedom of expression and association. For example, members of the HRFT, which documents cases of torture and runs rehabilitation centers for torture victims, faced criminal charges for their human rights activities, including criticism of the use of torture. Another target was the Human Rights Association of Turkey (HRA).

- On April 19, the Diyarbakir Penal Court of Peace No. 2 acquitted Sezgin Tanrikulu, director of the Diyarbakir branch of the HRFT of criminal charges of running a treatment center without state permission. Tanrikulu was indicted by the public prosecutor on December 26, 2001 for violating article 8 of the Private Hospitals Law and Law 2219. The indictment also alleged that the HRFT had violated article 526 of the Penal Code by illegally possessing banned documents. The indictment followed a search of the HRFT offices in Diyarbakir, on 7 September 2001, which was carried out unlawfully. During the search, confidential documents were seized and examined. After hearing Tanrikulu and his defense counsel, the judge requested that the prosecutor clarify the charge of possession of illegal documents, and he decided to visit the HRFT offices to determine whether it operated as a treatment center, as alleged by the prosecutor. After the visits, the court reconvened on April 19 and announced

⁷² Based on HRW, *Turkey Fails Displaced Villagers, International donors shun government's defective return plans*, October 30, 2002, at www.hrw.org/press/2002/10/turkey1030.htm. For full report, see *Displaced and Disregarded: Turkey's Failing Village Return Program*, at <http://hrw.org/reports/2002/turkey/>

⁷³ See also Freedom of Expression.

Tanrikulu's acquittal on the charges related to running a treatment center. However, other charges against Sezgin Tanrikulu were upheld.⁷⁴

- Activities by human rights defenders against the F-type prisons and criticism of the security force raids to prisons in December 2000 led to over 100 court cases against critics. Among the defendants were Dr. Alp Ayan, a psychiatrist of the HRFT Izmir Branch⁷⁵; Mehmet Barindik, an officer of the LIMTER-IS trade union; and Ecevit Piroglu, executive member of the HRA Izmir Branch. Alp Ayan faced several trials on the same charges. On June 3, he and Barindik were the first to be sentenced to one year imprisonment, in some other cases he was acquitted. They were charged under article 159, as their criticism of the F-type prison system was deemed to amount to insulting the armed forces and the Ministry of Justice. In another case under the same article against Alp Ayan and Mehmet Barindik, a hearing was adjourned until April 2003. Ayan had condemned the December 19 police raid on prisons, which led to the death of 32 people, as a "massacre."⁷⁶

⁷⁴ Lawyers Committee for Human Rights, "Lawyers Committee Welcomes Acquittal of Sezgin Tanrikulu by Turkish Court," April 23, 2002, at www.lchr.org/defenders/hrd_turkey/hrd_turkey_5.htm

⁷⁵ See Freedom of Expression.

⁷⁶ HRFT, "Why do they insist to punish those who are against torture," December 30, 2002 and other HRFT information at <http://www.tihv.org.tr/eindex.html>

