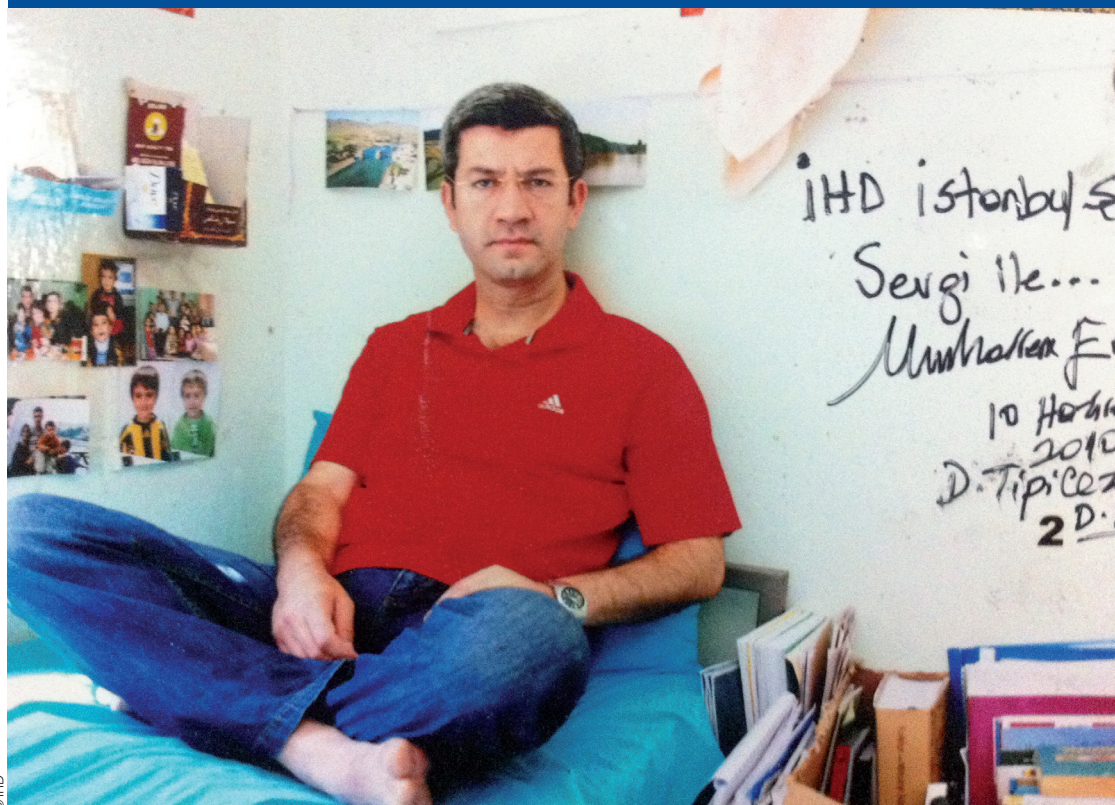


# TURKEY

## HUMAN RIGHTS DEFENDERS, GUILTY UNTIL PROVEN INNOCENT

International Fact-Finding Mission Report



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May 2012

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Cover: Muharrem Erbey in his cell. © IHD

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1. Cemal Bektas in his cell
2. Pinar Selek
3. Ragıp Zarakolu
4. Muharrem Erbey and other activists on December 26, 2009 before the hearing that confirmed the charges against 152 Kurdish figures. Contrary to the principle of presumption of innocence, the media was informed of the hearing and this photo was broadly published in the media.

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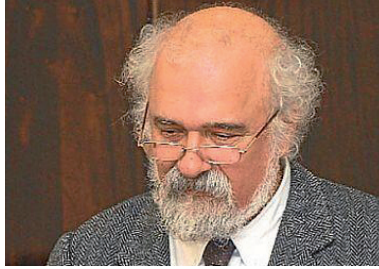


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## ACRONYMS

AKP	Justice and Development Party
ATL	Anti-Terrorism Law
BDP	Peace and Democracy Party
CoE	Council of Europe
DTP	Democratic Society Party
ECHR	European Convention on Human Rights
ECtHR	European Court on Human Rights
EU	European Union
FIDH	International Federation for Human Rights
HRFT	Human Rights Foundation of Turkey
ICCPR	International Covenant on Civil and Political Rights
İHD	Human Rights Association
KCK	Union of Kurdistan Communities
LGBT	Lesbian, Gay, Bisexual, Transvestite and Transgender
NGOs	Non-Governmental Organisations
OMCT	World Organisation Against Torture
OSCE	Organisation for Security and Co-operation in Europe
PKK	Kurdistan Workers' Party
TCC	Turkish Civil Code
TPC	Turkish Penal Code
UDHR	Universal Declaration of Human Rights
UN	United Nations



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## EXECUTIVE SUMMARY

Over the years, encouraged by the European Union (EU) integration process, Turkish political life has significantly democratised and the situation of human rights improved. Several reform packages, notably provisions improving the exercise of freedoms of association and expression were enacted in 1999-2005. Likewise, in July 2009, the Government announced a "democratic opening" to extend greater rights to all of Turkey's ethnic and religious minority groups, easing restrictions on broadcasts in minority languages such as Kurdish. Despite these advances, this opening was never fully implemented, and with the prospect of entry into the EU drifting away, pro human rights reforms seem to no longer be a priority. State-sanctioned repressive practices against dissenting and critical voices are still routine, especially in Ankara, Istanbul and in south east and eastern Turkey.

This trend is particularly illustrated by several large-scale trials against organised groups viewed as "in opposition" to the Government: the military and ultra-nationalist groups, leftist groups as well as Kurdish groups. In parallel, those commenting Turkey's human rights record, monitoring political trials or denouncing abuses have been assimilated by prosecutors and courts with criminal groups and themselves prosecuted. Between 2009 and 2012, this pattern went from bad to worse.

With a very rich and vibrant human rights community, those who speak out on "sensitive" human rights issues, in particular members of non-governmental organisations (NGOs) but also lawyers, trade unionists, journalists, intellectuals and academics, writers, and family members of victims of serious violations, have been subjected to severe repression. "Sensitive" issues include in particular expressing alternative identities (ethnic and religious minorities' rights, particularly the Kurdish issue, and sexual minorities), and criticising the State and its institutions (the functioning of the institutions, including the independence of the judiciary and the impunity of the State and the army for human rights violations).

Though human rights as set out in the Universal Declaration of Human Rights are guaranteed by the Constitution, many administrative practices and criminal provisions left unchanged by reform packages, notably in the Turkish Penal Code (TPC) and the Anti-Terrorism Law (ATL), continue to be used to criminalise legitimate and peaceful activities of human rights defenders. Despite several improvements made to the Constitution, law-enforcement bodies, prosecutors and judges, long-accustomed to limiting rights, continue to interpret and apply the law in an overly restrictive manner. A comprehensive overhaul of the Turkish legal system is today more than needed to improve the environment of operation of human rights defenders in Turkey. Indeed, justice is used as a weapon to repress, intimidate and punish human rights defenders, through criminal proceedings that blatantly violate the right to a fair trial. Prolonged pre-trial detention is used very frequently and may be seen as a form of punishment per se, independently of the outcome of the trial. The ATL has been particularly used against human rights defenders over the past years, entailing the application of a set of rules less protective of the defence's rights: obstacles to the access of evidence against defendants, excessive length of criminal proceedings, impossibility to counter examine some witnesses, etc. The vague definition of terrorism and its interpretation by the courts has made it possible for prosecutors and judges to consider that the mere critic of the authorities for their human rights record may in itself be construed as a form of support to terrorist groups or evidence of membership in terrorist groups. In this context, those who defend or take stand for the promotion or protection of human rights are particularly vulnerable to administrative and legal harassment.

.....  
Beginning of 2012, 105 journalists<sup>1</sup>, 44 lawyers<sup>2</sup>, at least 17 members of human rights organisations<sup>3</sup> and 41 trade unionists were jailed, for most of them in relation to anti-terrorism charges<sup>4</sup>. Dozens of others were subjected to years-long judicial harassment. Every day during the visit of the Observatory's delegation in 2010, hearings of trials held against human rights defenders took place in many cities throughout Turkey. More than two years after the visit, most of these trials are ongoing. Sociologist **Pınar Selek** prosecuted since 1998, lawyer **Muharrem Erbey**, detained since December 2009, and publisher **Ragıp Zarakolu**, detained during more than five months, are among the most emblematic cases of this deplorable situation.

Concerned by the large-scale criminalisation of human rights defenders in Turkey, the Observatory respectfully urges the authorities of Turkey to pay the utmost attention to its recommendations and comply with the provisions of the United Nations Declaration on Human Rights Defenders and, more generally, ensure in all circumstances the respect for human rights and fundamental freedoms in accordance with international and regional human rights instruments ratified by Turkey.

- .....
1. Figures provided by Bianet in January 2012 and Human Rights Association (İHD).
  2. According to İHD.
  3. According to information collected by the Observatory as to April 2012, they include 10 İHD members (see list in annex 1), three members of Yakay-Der, three members of Mothers for Peace and one member of Ka-Der. No organisation systematically lists cases of jailed human rights defenders. Therefore figures might be higher.
  4. See lists in annex 1.

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## INTRODUCTION: OBJECTIVE AND METHODOLOGY OF THE MISSION

Alerted by numerous reports of cases of judicial harassment against human rights defenders, including in particular the pre-trial detention on terrorism charges of Mr. **Muharrem Erbey**, General Vice-Chairperson and Chairperson of the Diyarbakır province branch of the Human Rights Association (İHD), the International Federation for Human Rights (FIDH) and the World Organisation Against Torture (OMCT), within the framework of their joint programme the Observatory for the Protection of Human Rights Defenders (the Observatory), decided to send an international fact-finding mission to Turkey. The objective was to attend the opening of the trial against Mr. Erbey in Diyarbakır, hold meetings with human rights defenders in Diyarbakır, Istanbul and Ankara and with the local authorities in Diyarbakır and the national authorities in Ankara, with a view to discuss and collect information on the conditions in which human rights defenders operate in Turkey.

This mission was carried out as a follow-up to the Observatory's previous activities on cases of harassment against human rights defenders in Turkey, especially through its regular urgent interventions and its Annual Reports. In addition, in 2002 and 2004, the Observatory had already carried out two trial observation missions in Turkey related to human rights defenders<sup>5</sup>.

The mission took place from October 16 to 22, 2010 in Diyarbakır, Ankara and Istanbul. The Delegation was headed by Ms. Souhayr Belhassen, FIDH President (Tunisia), and also composed of Mr. Martin Pradel, lawyer (France), and Ms. Alexandra Poméon O'Neill, Head of the Human Rights Defenders Desk at FIDH.

Over the course of the mission, the delegation met with the Turkish authorities at the highest level, including:

- Mr. Sadullah Ergin, Justice Minister,
- Mr. Egemen Bağış, Minister for European Union Affairs and Chief Negotiator,
- Mr. Kaan Esener, Minister Plenipotentiary, Deputy Director General for the Council of Europe and Human Rights at the Ministry of Foreign Affairs,
- Dr. Zafer Üskül, President of the Human Rights Commission of the Grand National Assembly of Turkey (TBMM),
- Mr. Oğuz Kaya, Secretary General of the Constitutional Court,
- Mr. Hasan Gerçek, President of the Supreme Court of Appeals,
- Mr. Osman Baydemir, Mayor of Diyarbakır,
- Mr. Memduh Turan, Vice-Governor of Diyarbakır.

Requests for meetings were also sent to the Prime Minister and the Interior Minister, but no meeting could be obtained with them.

The Delegation also met a large number of representatives of NGOs in Ankara, Istanbul and Diyarbakır working on a wide range of issues, lawyers, journalists, trade unions as well as foreign diplomats based in Ankara representing France, the United States of America and the European Union Delegation.

The Observatory would like to thank İHD for its support in setting up the mission and meetings as well as the Human Rights Foundation of Turkey (HRFT) and all the persons met by the mission.

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5. See Observatory International and Legal Observation Mission Report, *Judicial harassment against human rights defenders*, December 2002 ; Observatory International Judicial Observation Mission Report, *Deux défenseurs des droits de l'Homme en procès*, February 2005, as well as Observatory Annual Reports 2004-2011.



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Although the mission was the occasion to discuss various issues of concern with civil society and the authorities, such as conditions of detention, the fate of terminally-ill detainees, freedom of expression, minorities' rights, women's rights and other issues, this report only addresses the conditions under which human rights defenders have been operating in Turkey over the past three years. An environment favourable to civil society in general and human rights defenders in particular, is as a pre-requisite for the promotion and protection of human rights in the country, and as such should be deemed a priority by all State authorities.

For the Observatory, a human rights defender is anyone who, in conformity with the international instruments of protection of human rights, acts for the promotion and protection of others' universally recognised human rights and fundamental freedoms, whether individually or in association with others, including NGO members and representatives, human rights lawyers and activists, academics, intellectuals, religious leaders, trade unionists, community leaders, land activists and public officials, etc. The situation of human rights defenders was assessed in relation to standards set out in the Declaration on Human Rights Defenders adopted on December 9, 1998 by the United Nations (UN) General Assembly, which places a duty on UN member States to ensure that certain minimum standards or conditions exist to guarantee that human rights defenders may operate freely and safely.

Similarly, at regional level, the Declaration of the Committee of Ministers of the Council of Europe (CoE) on the protection of human rights defenders and the promotion of their activities, includes an Article 2.i, in which the Committee calls on member States to "create an environment conducive to the work of human rights defenders, enabling individuals, groups and associations to freely carry out activities, on a legal basis, consistent with international standards, to promote and strive for the protection of human rights and fundamental freedoms without any restrictions other than those authorised by the European Convention on Human Rights".

It is hoped that this report will contribute to encourage the Government of Turkey to take the necessary steps to create and maintain a safe and conducive environment for human rights defenders to operate freely and efficiently in the country; to release human rights defenders arbitrarily detained in retaliation to their legitimate human rights activities; and to put an end to the practice of judicial harassment against them.

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# I – POLITICAL CONTEXT: RECENT INSTITUTIONAL REFORMS AND POLICIES HAVE SO FAR FAILED TO ADDRESS TURKEY'S AUTHORITARIAN TENDENCIES

Over the past decades, the country has undergone major reform processes after Turkey was granted EU official candidate status in December 1999. Between 1999 and 2004, Turkey took indeed great steps in order to meet the Copenhagen criteria, especially regarding stable institutions, the rule of law, human rights and the protection of minorities. While the European Council decided in December 2004 to open accession negotiations with Turkey, practical negotiations on the 35 chapters of the *acquis communautaire* only began in June 2006. To date, only one chapter (science and research) has been provisionally closed. Twelve more have been opened, but eight remain blocked. Over the years, the reform impetus has also been waning in Turkey as a result of the increasingly critical stance of key players like France and Germany, which are sceptical of Turkey's credentials as a European country and its ability to fulfil the accession criteria.

In June 2011, voters returned Justice and Development Party (AKP) – which has been ruling since 2002 – to power in a landslide. On the one hand, the Arab world and the West emphasize Turkey's booming economy and regional ascendance under ruling, which appears as a comforting model for reconciling piety, liberalism and democracy. In this context, until the "Arab Spring", Turkey efficiently operated a "zero problems with neighbours" policy and often appeared as a mediator and conflict-resolution actor. Similarly, owing to the situation in neighbouring Iran, Iraq and Syria, Turkey has become strategically important for Western countries.

However, on the other hand, domestically, critics complain more and more that AKP-led reforms are mere attempts to solidify the party's increasing control over all spheres of power, rather than a move to strengthen Turkish democracy.

In 2010-2011, the political agenda in Turkey was dominated by a constitutional reform successfully led by the ruling AKP, the Government's so-called "democratic opening" to address the Kurdish issue, multiple investigations into alleged coup plans and the general elections held on June 12, 2011. However, Turkey's human rights record failed to improve significantly.

## FROM A MILITARY DICTATORSHIP TO A CIVIL AUTHORITARIAN REGIME

Since Mustafa Kemal Atatürk founded the modern secular Republic of Turkey in 1923, the Turkish military has perceived itself as the guardian of Atatürkism, the official State ideology. As a consequence, the military assumed power for several periods in the latter half of the 20<sup>th</sup> century. It executed coups d'état in 1960, in 1971, and in 1980, maintaining an important influence over politics and the decision making process regarding issues related to "national security".

Yet, over the past years, and in particular since the arrival of AKP to power in 2002, the Executive and Judiciary have strived to decrease this influence through legal reforms and large scale trials. Indeed, several generals have been detained or questioned since July 2008 with respect to Ergenekon, an alleged clandestine, ultra-nationalist organisation with ties to members of the country's military and security forces. Along with over a hundred people, they are accused of "terrorism" in Turkey. In February 2010, more than 40 military officers were arrested and then formally charged with attempting to overthrow the Government with respect to the alleged "Sledgehammer" (*Balyoz*) plot. They include four admirals, a general and two colonels, some of them retired, including former commanders of the Turkish navy and air force.

Moreover, hundreds of politically motivated trials were ongoing or initiated throughout 2010-2012, both on the left and right sides of the political spectrum, particularly against leftist groups and right-wing networks – in addition to Kurdish personalities or groups (see below) – on charges of “membership or support of illegal organisations” or other charges. Trials into alleged right-wing conspiracies to trigger a military coup were initiated, notably the “Sledgehammer” and the Ergenekon trials. Over 500 people, including politicians, ex-military officials, business and media personalities, were taken into custody and nearly 300 formally charged with membership in the network. The prosecutors claimed that those persons were responsible for virtually every act of political violence committed over the last 30 years in Turkey, although progress in investigating the link between the suspects and past human rights violations has in fact remained slow<sup>6</sup>.

### **SPECIAL COURTS TO HEAR “POLITICALLY” SENSITIVE CASES**

The civilian judicial system is divided into general law courts and specialised heavy penal courts. The Court of Cassation hears appeals for criminal cases. There are no appeal court as such. In 2004, the Parliament adopted legislation providing for the establishment of regional appeal courts to relieve the High Court's case-load and allow the judiciary to operate more efficiently, but the law has still not been implemented to date due to an alleged lack of financial and technical resources.

Cases involving political prisoners are heard in the heavy penal courts, which were created in June 2004, to replace the State security courts<sup>7</sup>. Most of judges who were then sitting on the State security courts today sit on the heavy penal courts and thus perpetuate a very repressive interpretation of the law and the procedures detrimental to the rights of suspects and accused. Reflecting that tendency, Turkey reportedly counts one of the highest number of conviction under Anti-Terrorism Law, before China<sup>8</sup>.

Most of cases against human rights defenders are heard before heavy penal courts, which may impose restrictive measures for the defence<sup>9</sup>.

Anyone detained under provisions that can be termed “political offences” can be held for 48 hours (instead of 24 hours for ordinary criminals) and the maximum period of pre-trial detention is twice as long as for ordinary offences. Lengthy criminal proceedings and pre-trial detention remain a particularly acute problem as close to half of all detainees are either awaiting trial or awaiting a final verdict on their cases.

### **MINORITIES ISSUES, IN PARTICULAR THE “KURDISH ISSUE”, STILL SEEN AS A NATIONAL SECURITY ISSUE**

Turkey is a land of vast ethnic, linguistic and religious diversity – home not only to Turks, Kurds and Armenians, but also, among others, to Alevis, Ezidis, Assyrians, Laz, Caferis, Roma, Greeks, Caucasians and Jews. According to Article 66 of the Turkish Constitution, “everyone bound to the Turkish State through the bond of citizenship is a Turk”. The Constitution affirms the principle of the indivisibility of the Turkish nation and of constitutional citizenship that is not based on ethnicity. Consequently, the word “Turkish” legally refers to all citizens of Turkey.

6. See İHD.

7. Those courts of exception were created under the 1982 Constitution by the then military Government to try cases involving crimes against the security of the State, and organised crime were formally abolished and transformed into heavy penal courts, authorised to try only cases involving organised crime and terrorism.

8. See Associated Press Study, *AP IMPACT: 35,000 worldwide convicted for terror*, September 4, 2011.

9. See below.



.....

For decades, the Kurdish population in Turkey<sup>10</sup> has been calling for the legal recognition of its identity, culture and language as Kurdish. Due to the large population of Turkish Kurds, successive governments have viewed the expression of a Kurdish identity both in the private and the public sphere as a potential threat to Turkish unity, a feeling that has been compounded since the armed rebellion initiated by the Kurdistan Workers' Party (PKK) in 1984. In parallel, advocacy for the rights of minorities is seen by the authorities as potentially undermining the security of the State and as such leads to legal prosecutions.

To make their voices heard, the majority of the Kurds have resorted to participation in the political life and debate (via membership in mainstream political parties, via the creation of and membership in specific pro-Kurdish parties and via the media and ordinary activities within associations). A minority has opted for armed rebellion.

The 30-year old armed conflict with the banned armed group PKK continues to cause numerous human rights violations, though the PKK renewed ceasefire declarations throughout 2010 and part of 2011. On February 28, 2011, PKK ended the unilateral ceasefire arguing that the ruling AKP had shown unwillingness to solve the Kurdish issue politically. To date, the armed conflict has reportedly caused the death of 45,000 people<sup>11</sup>.

Since 2002, as part of its reforms aimed at EU integration and under pressure to promote the rights of Kurds, Turkey passed laws allowing Kurdish radio and television broadcasts as well as the option of private Kurdish education. In June 2004, *Turkey Public Television (TRT)* began broadcasting a half-hour Kurdish program, and on March 8, 2006, the Radio and Television Supreme Council (RTÜK) allowed two TV channels (*Gün TV* and *Söz TV*) and one radio channel (*Medya FM*) to have limited service in the Kurdish language. In 2009, *TRT* launched a channel (*TRT 6*) in the Kurdish language. In August 2009, the Government begun restoring names of Kurdish villages, as well as considering allowing religious sermons to be made in Kurdish. Despite these reforms, use of Kurdish in the public sphere and government institutions is still severely restricted.

Furthermore, while the Government granted cultural rights to the Kurdish minority, the electoral law has not been changed, particularly the 10% threshold which any party must reach at the national level in order to gain access to the Parliament. This threshold, which is inaccessible to the pro-Kurdish parties, even though they won more than 50% of votes in Kurdish regions, forces Kurdish MPs to stand as independent candidates and constitutes a serious obstacle to the political representation of this minority group. This threshold allows the ruling party electoral victories.

Under the Anti-Terrorism Law (ATL) (Law 3713), entered into force in 1991, cases involving crimes against the security of the State are punishable. The application of the ATL mainly targets Turkish citizens of Kurdish origin or those who express 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 TPC, the mere public mention of certain individuals' names is a criminal offence<sup>12</sup>.

.....

10. The Kurdish community represents approximately 12 to 15 millions within the Turkish population according to official sources. 25 to 40 millions according to unofficial sources. There is no official census of the Kurdish population as census on ethnic bases is not allowed. The claims of the Kurdish population are three-fold: the recognition in the Constitution of the ethnic and linguistic specificity of the Kurds as Turks citizens; the cultural recognition and the official use of the Kurdish language; the devolution of the administrative system to allow more decision-making at provincial level throughout Turkey.

11. See İHD and HRFT.

12. In particular any reference to the PKK leader Abdullah Öcalan. On July 23, 2010, the Parliament adopted amendments to the anti-terrorism legal framework that limit the prosecution of minors under the laws, reduce punishments for illegal demonstrations and meetings, and allow for the release of minors who had been previously convicted under the laws, thus resulting in the release of hundreds of children from prison.

On March 29, 2009, the then main Kurdish party, the Democratic Society Party (DTP), won several provinces during the local elections. Two weeks later, on April 14, 2009, the wide-range anti-terrorist operation called "KCK operations" was launched. To date, it has reportedly led to the arrest, detention and prosecution under the ATL of thousands of Kurdish civil society figures, notably officials from the DTP and its successor, the Peace and Democracy Party (BDP), including mayors and elected officials, as well as journalists, writers, trade unionists, social activists, lawyers and human rights defenders. They were prosecuted for their alleged membership in the Union of Kurdistan Communities (KCK), a body said to be the "urban front" of the PKK – under the argument that by virtue of gathering all Kurdish groupings including the PKK, the KCK is a terrorist network. Since April 2009, more than 8,000 Kurdish or pro-Kurdish figures have reportedly been taken into police custody, with more than half having been charged and remanded in pre-trial detention without even the prospect of a trial in the foreseeable future, in at least 11 provinces. 15 related trials were launched in 2010 in the courts of Istanbul, Diyarbakır, Adana, Van, Erzurum, Mersin, Siirt and İzmir, for alleged membership in the KCK, risking 7,5 to 15 years of imprisonment<sup>13</sup>. Most trials were ongoing as of February 2012. The main trial opened on October 18, 2010 before the Diyarbakır Heavy Penal Court No. 6 against 152 defendants, including a large number of publicly known defendants. At that time, a majority of the defendants had already served 17 months of imprisonment. The indictment was 7,578 pages long and there were 366 files appended to it. The criminal file was mainly constituted of data collected with tapped phones and bugged rooms as well as testimonies made by secret witnesses. Between September 2011 and February 2012, new waves of arrest occurred, new trials were opened or are due to open in 2012<sup>14</sup>.

At the same time, in July 2009, the Government announced a plan to improve the rights of Kurds in Turkey called the "Democratic Opening". This Opening was said to be a comprehensive, multi-tiered policy approach to resolving tensions between the Turkish Government and Turkey's Kurdish population. The first of these measures included allowing Kurdish prayers in Kurdish mosques and officially changing the Turkish name of some Kurdish cities back to Kurdish. The second phase of the opening likely involved granting amnesty to PKK militants. The final and most difficult phase comprised a constitutional amendment redefining Turkish citizenship to be less ethnically based and allowing Kurdish language classes to be taught in schools. As of February 2012, only the first phase had been launched.

On December 11, 2009, the Constitutional Court closed down the DTP, ruling that it had become the "focal point of activities against the indivisible unity of the State, the country and the nation" under Article 68 and 69 of the Constitution and the relevant provisions of the Law on Political Parties. This decision led to massive protests<sup>15</sup>.

In 2010-2011, the authorities again failed to address the "Kurdish issue" through political dialogue. The demands of the Kurdish population only met military responses together with the criminalisation of its leaders as well as ordinary citizens for participating in demonstrations. Indeed, demonstrations in the east and south east of Turkey – organised to protest against events that curtailed the participation of Kurdish personalities in the political life on suspicion of terrorism – were violently repressed<sup>16</sup>.

13. More trials will be launched in 2012 following the 2011 and 2012 campaigns of arrest.

14. Due to the large number of arrest and trials, there exists no comprehensive monitoring by civil society organisations and no one knows the exact figures. See İHD.

15. The Constitutional Court also ruled to ban 37 members from party politics for five years, including two members of Parliament who thereby lost their parliamentary seats. The ruling was a serious setback to the Government's announced efforts at the "Democratic Opening". Former DTP Members of Parliament joined the BDP and created a new parliamentary group under the BDP. Over the years, all political parties that have focused on the Kurdish issue in the name of democratisation have been closed by the Constitutional Court.

16. In 2010, the İHD reported that two people died and sixty-nine were wounded due to police violence against demonstrators. See İHD Press Release, November 8, 2010.

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## THE CONSTITUTIONAL REFORM

Promised by the AKP when it took power, a major reform to the 1982 Constitution, adopted at the time of the military coup, was sanctioned by referendum in September 2010 with a majority of 58%. In the process, the ruling party failed to consult political parties and civil society organisations viewed as opposing the ruling party on the content of the reform and failed to address the Kurdish issue as promised. Nonetheless, the reform was significant in that it lifted immunity from prosecution for military and public officials for crimes committed during and after the September 12, 1980 coup, reduced the role of military courts, changed the composition of the Constitutional Court and the powerful Higher Council of Judges and Prosecutors, introduced the right of individual petition to the Constitutional Court (which is scheduled to enter into force on September 23, 2012), established an Ombudsman office, partially lifted some restrictions to trade union rights for the public sector and allowed positive discrimination in favour of women, children, veterans, persons with disabilities, and the elderly. On November 2, 2011, the Speaker of the Parliament announced that the Constitution Reconciliation Commission had agreed on a roadmap to give a new constitution to Turkey by the end of 2012.

Moreover, apart from the constitutional reform, the Government also submitted, in February 2010, a draft law to the Parliament regarding the establishment of the Turkish Independent Human Rights Institution. However, it has not been adopted to date<sup>17</sup>.

## SEVERE HUMAN RIGHTS VIOLATIONS REMAIN FREQUENT

Human rights in Turkey are theoretically protected by a variety of international treaties, which take precedence over domestic legislation, according to Article 90 of the Constitution. However, in 2011, the European Court on Human Rights (ECtHR) delivered 174 judgement finding that Turkey had violated the European Convention on Human Rights (ECHR). As of October 12, 2011, 19,988 cases were pending before the ECtHR regarding Turkey. In 2011, Turkey was the country with the highest number of convictions by the ECtHR<sup>18</sup>.

While, as noted by human rights organisations and diplomats met by the delegation, Turkey's human rights record has significantly improved over the past decades leading to the development of a vibrant and diverse civil society and media outlets, serious human rights violations continue on a regular basis as the authorities remain intolerant when some principles (e.g. unity of the Turkish nation and sexual rights) or institutions (e.g. the Army) are "undermined"<sup>19</sup>.

This "intolerance" gives rise to an important number of violations of the right to life and the right to a fair trial, the prohibition of arbitrary detention, torture and ill-treatment. Furthermore, security forces frequently file fabricated counter-complaints for resisting arrest or insult against those who complained of torture or abuse by the same. Lengthy criminal proceedings and pre-trial detention remain a particularly acute problem as close to half of all detainees are either awaiting trial or awaiting a final verdict on their cases.

Moreover, police and military forces which burnt villages, kidnapped and summarily executed civilians in the past remain unpunished<sup>20</sup>. 59 civilians were extra-judicially killed in 2011, compared to 29 in 2010<sup>21</sup>.

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17. The last version of the bill was criticised by human rights organisations as failing to comply with human rights law, including the Paris Principles.

18. See ECtHR website, Turkey Press Country Profile, January 2012 as well as 2010 EU Progress Report on Turkey, Document SEC(2010) 1327, November 9, 2010 and 2011 EU Progress Report on Turkey, Document SEC(2011) 1201 final, October 12, 2011.

19. "Sensitive" issues include in particular minorities' rights, including ethnic, religious and religious minorities, particularly the Kurdish issue as well as sexual minorities, and the functioning of the institutions, including the independence of the judiciary and the impunity of the State and the army for human rights violations.

20. 4,000 Kurdish villages would have been burnt down, thousands of people lost their life and many have disappeared. Enforced disappearances and extra-judicial killings were frequent in south-east Turkey. The bodies of victims were not surrendered to families. The latter have continuously been calling for truth and justice for the disappeared. See İHD.

21. See İHD table of human rights violations.



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The CoE's Commissioner for Human Rights concluded in a recent report that there are "some long-standing, systemic dysfunctions in the domestic justice system adversely affecting the enjoyment of human rights and fundamental freedoms in Turkey, as well as the public perception of the system's effectiveness, independence and impartiality". The Commissioner for Human Rights then identified as the main factors hampering progress "the entrenched culture within the Turkish judiciary and the fact that the protection of the State takes precedence over the protection of human rights". He noted that excessive resort to remands in custody and length of proceedings, the wide margin of interpretation and application allowed by provisions of the ATL and TPC, the excessive use of restrictions to the disclosure of evidence before trial, the numerous restrictions opposed routinely to the right of defence in specialised courts and prosecutors were particularly problematic and needed to be addressed<sup>22</sup>.

Moreover, freedom to peaceful demonstration and assembly continued to be severely restricted. For instance, in 2011, 312 peaceful demonstrations, public meetings, marches, press conferences were dispersed by force, leading to 1,425 wounded. A total of 491 people were sentenced to 1,561 years of imprisonment in 87 cases for exercising this right<sup>23</sup>.

The Government also continues to limit freedom of expression, in particular in the press and on the Internet<sup>24</sup>, through the use of constitutional restrictions and numerous laws. Individuals in many cases cannot criticise the State and the Government publicly without risking criminal investigation or prosecution, particularly those who criticised the military, the military service, the Kurdish, or the Armenian issue. This is leading to self-censorship in Turkish media<sup>25</sup>.

This situation was reported by the Commissioner for Human Rights of the Council of Europe (CoE) in his report on freedom of expression and the media published on July 12, 2011. The Commissioner deplored a large number of judgements of the ECtHR finding violations by Turkey of the right to freedom of expression and notably identified as the underlying causes "the letter and spirit of the Constitution, statutory legislation and the judicial system", which should be amended "to ensure effective respect and protection of pluralism and freedom of expression and that any restrictions to freedom of expression correspond to the strict proportionality provided for by the ECHR"<sup>26</sup>.

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22. See Commissioner for Human Rights of the Council of Europe, *Report on the administration of justice and protection of human rights*, document CommDH(2012)2, January 10, 2012.

23. See IHD Account of the Human Rights Violations in Turkey in 2011.

24. More than 7,000 websites would be blocked in Turkey. See Reporters Without Borders (RSF) Press Releases, November 3, 2010 and April 29, 2011.

25. Kurdish publications continued to be banned. For more information see below.

26. See Commissioner for Human Rights of the Council of Europe, *Report on freedom of expression and the media*, document CommDH(2011)25, July 12, 2011.

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## II – LEGAL AND INSTITUTIONAL FRAMEWORK

The rights to freedom of association and expression are guaranteed by numerous human rights treaties ratified by Turkey, as well as the Constitution and domestic laws. Nonetheless, several legal provisions continue to excessively restrict the exercise of these two freedoms by human rights defenders.

### A/ THE INTERNATIONAL LEGAL FRAMEWORK: A GOOD RATIFICATION RECORD

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Turkey is a party to core international human rights instruments, including all of the seven main UN international human rights treaties. Turkey is also a party to 96 of the 200 Council of Europe conventions, including the European Convention on Human Rights (ECHR). As a participating State of the Organisation for Security and Cooperation in Europe (OSCE), Turkey is also politically bound by the relevant human dimension commitments included in the OSCE documents.

In addition, the Ministry of Interior, through a circular on human rights defenders issued on October 18, 2004, instructed the provincial and district governorships to act *inter alia* in conformity with the Declaration on Human Rights Defenders and with the relevant EU Guidelines, as well as to provide favourable conditions for human rights defenders. The instructions included the establishment of regular channels of dialogue with civil society organisations and individuals active in the area of human rights. The content of the circular has become part of the curricula of the training courses for law enforcement and administrative officials<sup>27</sup>. While this initiative is highly commendable, the current situation shows that the circular lacks effective implementation.

### 1/ THE PROTECTION OF FREEDOM OF ASSOCIATION

The right to freedom of association is one of the fundamental rights protected by international human rights law. Several international and regional instruments guarantee this freedom:

- Article 20/1 of the Universal Declaration of Human Rights (UDHR), which reads as follows: “Everyone has the right to freedom of peaceful assembly and association”;
- Article 22/1 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Turkey in 2003, which reads as follows: “Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests”;
- Article 5 of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the Declaration on Human Rights Defenders of December 1998, which states that (...) “For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels: [...] (b) To form, join and participate in non-governmental organizations, associations or groups”;
- and Article 11/1 of the ECHR, acceded to by Turkey in 1954, which reads as follows: “Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests”. At the level of the ECtHR, Turkey was condemned on several occasions for violating Article 11<sup>28</sup>.

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27. See UN Core document forming part of the reports of state parties : Turkey, UN Document HRI/CORE/TUR/2007, July 8, 2008.

28. In 2010 and 2011, 14 judgements in which a violation of Article 11 was recognised were issued. See ECtHR website, ECtHR Table on violations by article and country, January 2012.

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In addition, with regard to workers' freedom of association, Turkey has ratified several International Labour Organisation conventions including, Convention No. 87 on Freedom of Association and Protection of the Right to Organise Convention of 1948, Convention No. 98 on the Right to Organise and Collective Bargaining Convention of 1949, Convention No. 144 on the Tripartite Consultation (International Labour Standards) Convention of 1976.

## 2/ THE PROTECTION OF FREEDOM OF EXPRESSION

The right to freedom of expression is also one of the fundamental rights protected by international human rights law. Several international and regional instruments guarantee this freedom:

- Article 19 of the UDHR guarantees the right to freedom of expression: "Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers".
- The right to freedom of opinion and expression is also enshrined in Article 19 of the ICCPR. The UN Human Rights Committee has made clear the importance of freedom of expression in a democracy: "[T]he free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. (...) this implies that citizens, in particular through the media, should have wide access to information and the opportunity to disseminate information and opinions about the activities of elected bodies and their members"<sup>29</sup>. The media merit special protection notably because of their role in informing the public and in acting as watchdog of governments.

As reminded by the UN Human Rights Committee, "protection of the right to freedom of expression, (...) includes not only freedom to 'impart information and ideas of all kinds', but also freedom to 'seek' and 'receive' them 'regardless of frontiers' and in whatever medium, 'either orally, in writing or in print, in the form of art, or through any other media of his choice'". (...) "Because of the development of modern mass media, effective measures are necessary to prevent such control of the media as would interfere with the right of everyone to freedom of expression in a way that is not provided for in Article 19 paragraph 3 of the ICCPR"<sup>30</sup>.

On the one side, though Turkey ratified ICCPR in 2003, it only submitted its initial report on measures taken to give effect to the rights enshrined in the Covenant in 2011 in violation of State parties' obligation to submit their initial report within a year of the Covenant's entry into force (Article 40.1 of ICCPR). This initial report will be examined by the UN Human Rights Committee on its 106<sup>th</sup> session to be held in October-November 2012. On the other side, in March 2001, Turkey issued a standing invitation to all UN special procedures. This move enabled the visit of several mandate-holders since 2004, including the UN Special Representative of the Secretary-General on Human Rights Defenders in 2004, the UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism in 2006, the UN Working Group on Arbitrary Detention in 2006 and the UN Special Rapporteur on the Independence of Judges and Lawyers in 2011. In their country visit reports, all UN special procedures expressed concern and formulated recommendations on the right to freedom of expression. To date, said recommendations have not been fully implemented.

- The UN Declaration on Human Rights Defenders of December 1998 states in its Article 6 that "Everyone has the right, individually and in association with others: (a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including

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29. See *Gauthier v. Canada*, April 7, 1999, Communication No. 633/1995, para. 13.4; see also the General Comment of the HRC on Article 25 of the ICCPR, para. 25.

30. See UN Human Rights Committee General Comment No. 10: Freedom of expression (Article 19), June 19, 1983.



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having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems; (b) freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; (c) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental draw public attention to those matters". Article 8.2 of that Declaration enshrines the right, "individually and in association with others, to submit to governmental bodies and agencies and organisations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realisation of human rights and fundamental freedoms".

- The right to freedom of opinion and expression is also enshrined in Article 10 of the ECHR. At the level of the ECtHR, Turkey was condemned on several occasions for violating Article 10<sup>31</sup>.

## **B/ THE DOMESTIC LEGAL AND INSTITUTIONAL FRAMEWORK: A DEFICIENT FRAMEWORK**

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### **1/ THE PROTECTION OF FREEDOM OF ASSOCIATION<sup>32</sup>**

Article 33 of the Constitution guarantees freedom of association<sup>33</sup>.

In 2004, Turkey amended the Associations Law No. 2908, which had entered into force on October 6, 1983, through the Associations Law No. 5253 of November 4, 2004. The Government also suppressed the ban to promote minorities' cultures and use languages other than Turkish in unofficial activities. It authorised associations to seek funding abroad, to join and cooperate with international organisations. These progresses enabled groups defending minorities, including those defending Lesbian, Gay, Bisexual, Transvestite and Transgender (LGBT) rights, to form associations, which started to play a key awareness-raising role and became essential actors for the protection of sexual minorities' rights.

The right to exercise freedom of association is also governed by the Turkish Civil Code (Law No. 4721 adopted on November 22, 2001) and the Foundations Law No. 5737 of February 20, 2008, which specifically governs foundations i.e. legal entities formed by individual persons or legal entities dedicating their private property and rights for a specific cause or a public use.

But, still, the right to form associations or foundations may be restricted if the objects of the association are deemed contrary to constitutional principles and basic principles in the Constitution, law, morals, national unity, national interest, aim to support members of a specific race or community or if the association violates its "foundational aim". Indeed, according to Article 56 of the Turkish Civil Code (TCC), an association may be closed down by a court if its objects are in violation of the laws or ethics. For instance, the promotion of minorities rights – for example the right to education in one's mother tongue or LGBT rights – can lead to the closing down of the association, as these rights may be held unconstitutional or contrary to the laws or ethics.

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31. See ECtHR website, ECtHR Table on violations by article and country, January 2012.

32. See Euro-Mediterranean Human Rights Network Report, *Freedom of association of groups defending minority rights in Turkey*, October 24, 2011.

33. Article 33 provides that "Everyone has the right to form associations, or become a member of an association, or withdraw from membership without prior permission. No one shall be compelled to become or remain a member of an association. Freedom of association may only be restricted by law on the grounds of protecting national security and public order, or prevention of crime commitment, or protecting public morals, public health. The formalities, conditions, and procedures governing the exercise of freedom of association shall be prescribed by law. Associations may be dissolved or suspended from activity by the decision of a judge in cases prescribed by law. In cases where delay endangers national security or public order and in cases where it is necessary to prevent the perpetration or the continuation of a crime or to effect apprehension, an authority designated by law may be vested with power to suspend the association from activity. The decision of this authority shall be submitted for the approval of the judge in charge within twenty-four hours. The judge shall announce his decision within forty-eight hours, otherwise this administrative decision shall be annulled automatically. Provisions of the first paragraph shall not prevent imposition of restrictions on the rights of armed forces and security forces officials and civil servants to the extent that the duties of civil servants so require. The provisions of this article are also applicable to foundations".

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Indeed, Article 3 of the Constitution provides that the language of the State is Turkish, while Article 42 provides that: "No language other than Turkish shall be taught as a mother tongue to Turkish citizens at any institutions of training or education. Foreign languages to be taught in institutions of training and education and the rules to be followed by schools conducting training and education in a foreign language shall be determined by law. The provisions of international treaties are reserved". Prosecutors and judges have used this provision to deny registration or threaten the closing down of NGOs defending minorities' rights<sup>34</sup>.

In addition, the bureaucratic requirements imposed to those who wish to create or administer an association are burdensome, particularly for small associations and associations with low financial capacities. During the Observatory mission, NGO representatives met by the delegation complained of disproportionate administrative checks and fines on the grounds of improperly kept accounts or the failure to request permission before raising money from the public, especially in the provinces. They also mentioned difficulties to meet legal requirements. Indeed, associations must produce a statute detailing the association's aims and its type and field of activities. It is not permitted to carry out activities other than those indicated in its statute. In case of violation, a fine may be imposed. Associations have to submit to the Ministry of the Interior and their Governorates in the provinces and districts annual reports on activities undertaken and the association's income and expenditure as well as official correspondences. Auditing requirements are also onerous. The system is very complicated and one can easily make mistakes for lacking expertise. Indeed, small associations and branches cannot afford an accountant. The authorities can undertake more detailed checks of the associations if they consider it necessary. The administration does not have the resources to control all associations and tend to check some rather than others in an arbitrary manner. Some reported that associations working on minorities or on politically sensitive issues are the subject of close disproportionate administrative monitoring, in particular in the provinces. Associations may be fined on the grounds of improperly kept accounts or the failure to request permission before raising money from the public.

The bureaucratic requirements for fund-raising or obtaining public benefit status and the lack of simplified rules for small or medium-sized associations do not constitute enabling environment for associations. The obligations imposed by the Associations Law to notify the local administrative authorities before receiving financial support from abroad and to provide detailed documents on such support continue to place a burden on associations' operations. It is also feared that this obligation to inform authorities before receiving foreign funding is used as a tool to control them and check NGOs' foreign alliances. Frequent inspections of NGOs receiving funds from abroad, including EC funds, is a cause of concern for the EU.

The Desk of Associations – the body in charge of liaising with associations – acts as a controlling body. While failure to comply with the Associations Law's requirements is no longer grounds for dissolution, it may nonetheless result in disproportionate fines with the potential to cripple small human rights associations.

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34. See below, section III – A.

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## 2/ THE PROTECTION OF FREEDOM OF EXPRESSION

Article 26 of the Constitution provides for the right to freedom of expression<sup>35</sup> and Article 28 for the right to freedom of the media<sup>36</sup>. But several legal provisions that restrict freedom of expression remain a cause of serious concern, as they are used to restrict and criminalise the expression of non-violent opinion on "sensitive" issues. Many of these provisions are overly broad and/or interpreted by prosecutors and judges in a manner restrictive to freedom of expression.

Though reform packages adopted in 2002-2007 saw the repeal of some repressive provisions, the Turkish statute book still retains numerous laws that do not comply with international standards on free expression and are used against human rights defenders. They are found in the TPC (or Law 5237 of 2004)<sup>37</sup> and the ATL. These provisions provide for excessively long prisons sentences and heavy fines. Several provisions of the TPC stipulate that when an offence is committed through the print press or any mass media, then the penalty shall be automatically increased (e.g. Article 218, 220, 226, 266, 268, 297, etc.). Media professionals, NGO members, writers and intellectuals face scores of investigations, periods of detention and trials for peacefully imparting legitimate information and views on human rights issues.

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35. Article 26 provides that "Everyone has the right to express and disseminate his thoughts and opinion by speech, in writing or in pictures or through other media, individually or collectively. This right includes the freedom to receive and impart information and ideas without interference from official authorities. This provision shall not preclude subjecting transmission by radio, television, cinema, and similar means to a system of licensing. The exercise of these freedoms may be restricted for the purposes of protecting national security, public order and public safety, the basic characteristics of the Republic and safeguarding the indivisible integrity of the State with its territory and nation, preventing crime, punishing offenders, withholding information duly classified as a state secret, protecting the reputation and rights and private and family life of others, or protecting professional secrets as prescribed by law, or ensuring the proper functioning of the judiciary. The formalities, conditions and procedures to be applied in exercising the right to expression and dissemination of thought shall be prescribed by law".

36. Article 28 provides that "The press is free, and shall not be censored. The establishment of a printing house shall not be subject to prior permission or the deposit of a financial guarantee. The state shall take the necessary measures to ensure freedom of the press and freedom of information. In the limitation of freedom of the press, Articles 26 and 27 of the Constitution are applicable. Anyone who writes or prints any news or articles which threaten the internal or external security of the state or the indivisible integrity of the state with its territory and nation, which tend to incite offence, riot or insurrection, or which refer to classified state secrets and anyone who prints or transmits such news or articles to others for the above purposes, shall be held responsible under the law relevant to these offences. Distribution may be suspended as a preventive measure by the decision of a judge, or in the event delay is deemed prejudicial, by the competent authority designated by law. The authority suspending distribution shall notify a competent judge of its decision within twenty-four hours at the latest. The order suspending distribution shall become null and void unless upheld by a competent judge within forty-eight hours at the latest. No ban shall be placed on the reporting of events, except by the decision of judge issued to ensure proper functioning of the judiciary, within the limits specified by law. (...) Periodicals published in Turkey may be temporarily suspended by court sentence if found to contain material which contravenes the indivisible integrity of the state with its territory and nation, the fundamental principles of the Republic, national security and public morals. Any publication which clearly bears the characteristics of being a continuation of a suspended periodical is prohibited; and shall be seized following a decision by a competent judge".

37. The main provisions of the TPC used to restrict or criminalise freedom of expression are: Article 125 on insults or defamation, with heavier penalties when it concerns a representative of the State; Article 134 on the violation of the right to privacy; Article 214 on publicly inciting to commit a crime; Article 215 on praising the offence of a criminal; Article 216 on inciting the population to enmity or hatred and denigration; Article 217 on publicly inciting the population to disobey the law in a manner troubling public order; Article 218, which provides that when above-mentioned offences are committed through the print press or any mass media, then the penalty shall be automatically increased by half; Article 220 on forming organised groups with the intention of committing a crime; Article 222 on using non Turkish letters; Article 267 on defaming a person; Article 277 on influencing members of the judiciary; Article 285 on violating the confidentiality of an investigation; Article 288 on making verbal or written statements in public in order to influence a prosecutor, a judge, a court, an expert, witnesses before an investigation and prosecution has concluded with a legally binding verdict; Article 299 on insulting the President of the Republic; Article 300 on insulting symbols of the state; Article 301 on denigrating the Turkish nation, the Republic, the organs and institutions of the State [After being long used abusively, since a 2008 amendment, all formal investigations require approval by the Justice Ministry. While the prior authorisation requirement opens up the possibility that the article will become subject to political consideration, this amendment has had a positive impact as the number of criminal investigations under this provision has significantly decreased.]; Article 305 on undermining fundamental national interests; Article 314 on belonging to an illegal organisation; Article 318 on discouraging people from performing military service; Article 334 on obtaining confidential information; Article 336 on revealing confidential information; and Article 341 of the TPC on insulting the flag of a foreign State.

Provisions of Article 1/1 of Law 5816 on insulting or cursing the memory of Atatürk of July 25, 1951 and the Law No. 2911 on Meetings and Demonstrations are also used to restrict or criminalise freedom of expression.

The Turkish legal framework lacks provisions to guarantee the public's right to information and to engage in public debates on matters of public interest: there are no general provisions securing the right of journalists to report and discuss on public interest issues, nor specific reservations under which criminal liability of journalists shall be reduced or lifted in the TPC.

In addition, Turkish judges and prosecutors apply a wide interpretation of the provisions on "inciting" or "praising" to commit "violence", "an offence" or "disobey the law" or "national interest", in particular as concerns Kurdish-related issues<sup>38</sup>. This is not in line with the ECtHR case law on freedom of expression and implies in particular a lack of differentiation between violent and non-violent opinions.

Furthermore, journalists and editors are targets for prosecution when they write on the justice system. Legitimate news reporting on trials is deemed "attempting to influence a judicial process", reporting on criminal investigations is judged as "violating the secrecy of a criminal investigation" and news reports on the PKK is deemed "terrorist propaganda". Similarly, public statements on the right to conscientious objection are prosecuted under Article 318 (discouraging the people from military service) of the TPC.

Restrictions on freedom of expression also stem from a wide definition of terrorism under the ATL and are a cause for concern, in particular, Articles 6 and 7. ATL is often used to severely punish broadly defined terrorist activities. The provisions of the law are vague and they are often given excessively broad interpretation by judges. In this context, some acts which should not be held as terrorist acts fall within the ambit of the terrorism law. Its Article 1(1) provides that "Terrorism is any kind of act done by one or more persons belonging to an organisation with the aim of changing the characteristics of the Republic as specified in the Constitution, its political, legal, social, secular and economic system, damaging the indivisible unity of the State with its territory and nation, endangering the existence of the Turkish State and Republic, weakening or destroying or seizing the authority of the State, eliminating fundamental rights and freedoms or damaging the internal and external security of the State, public order or general health by means of pressure, force and violence, terror, intimidation, oppression or threat". This definition together with broad definitions of "membership", "support" and "propaganda" allows to cover a large range of actions or activities, which, under international law, are deemed perfectly legal.

The remit of Article 7/2 of ATL is also very broad, and, in particular, it makes no distinction between supporting political aims, which are shared by a "terrorist" organisation, and promoting that organisation, including its violent methods and actions. Additionally, since a 2006 amendment of Article 2, those who are not members of an illegal organisation but carry out activities in line with the objectives of an illegal organisation shall be penalised like members of the illegal organisation, whether or not they have resorted to violence. This provision paved the way for the targeting under the anti-terrorism law of individuals advocating for the respect of Kurdish minority's rights or denouncing abuses committed in the framework of the fight against terrorism.

The combination of TPC and ATL provisions allows to use a complicated and interlinked set of legal norms against any human rights defender deemed by the Prosecutor to have committed a crime "on behalf of" an illegal organisation, while those persons have simply carried out human

38. As highlighted in a report of the Council of Europe published in July 2011, the interpretation of the concept of "incitement to violence" is not compliant with the case-law of the European Court of Human Rights. No defences of truth and public interest exist in the Turkish legal system. See Commissioner for Human Rights of the Council of Europe Report, *Administration of justice and human rights in Turkey*, document CommDH(2012)2, January 10, 2012.

rights activities such as participation in a peaceful demonstration, expressing one's opinion<sup>39</sup>. It has been used to harass minority groups, members of the media, students, human rights defenders and political opponents who are not in any way linked to terrorism. Another important aspect is the lack of proportionality in the interpretation and application of the existing legal provisions by courts and prosecutors, which leads to violations of freedom of expression. The role of prosecutors, including special "press prosecutors" or "special prosecutors" for heavy penal courts, in initiating criminal proceedings violating freedom of expression is particularly preoccupying and has resulted in protracted, burdensome and unfair trials.

The anti-terrorism legislation imposes far-reaching restrictions to the due process. In particular, special investigation methods may be prolonged indefinitely; the right to legal counsel may be delayed for twenty-four hours in custody; the right to notify of reasons a person when taken into custody after being apprehended is limited; limits apply to the presence of the defence lawyers, to the interrogation of the suspect before and during trial; and the right of the defence lawyer to analyse and take copies from the case file is limited.

Terrorism-related offences fall within the jurisdiction of specialised heavy penal courts that have been established after the abrogation of the national security courts. These courts have special competences regarding the period of investigation, gathering of evidence, and especially, regarding the maximum period of incarceration of suspected and accused persons (up to six years). This power is excessively used by judges who often prolong pre-trial detention during months and sometimes years<sup>40</sup>.

Because of the all-catching definition of terrorism offences, this legislation has a chilling effect on freedom of expression in Turkey and has led to wide self-censorship in Turkish media. As emphasised by the UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism after his visit to Turkey in 2006, who voiced his concern in his discussions about prosecution for acts related to freedoms of expression, association and assembly in relation to the notion of terrorism, "there are elements both in the Anti-Terror Act and in the Penal Code which may put severe limitations on the legitimate expression of opinions critical of the Government or State institutions, on the forming of organizations for legitimate purposes, and on the freedom of peaceful assembly"<sup>41</sup>. At the time of publication of this report, this assessment remained valid.

39. Article 220 of the TPC entitled "Forming organised groups with the intention of committing crime" is used to criminalise membership in armed political organisations. However, courts have also applied Article 220 to those "deemed to be associated with" armed political organisations. Paragraph 6 of this article also introduced a provision allowing individuals to be treated as if they are members of an armed organisation even if they are not. "A person who commits a crime on behalf of the organisation although he or she is not a member of the organisation shall also be punished as though a member of the organisation". Thus, individuals who "commit crimes on behalf of" armed organisations such as the PKK – can be prosecuted as if they were fighters, and sentenced accordingly. Similarly, Paragraph 7 of Article 220 states that "A person who aids and abets the organisation knowingly and willingly, although he or she does not belong to the hierarchical structure of the organization, shall be punished as though a member of the organisation". Article 220/6-7 of the TPC connects with Article 2/2 of the ATL, which includes a similar provision: "A person who is not a member of a terrorist organisation, but commits a crime on behalf of the organisation, is also deemed to be a terrorist offender and is punished as a member of the organisation".

Finally Article 220/8 penalises "propaganda," and its use frequently constitutes a restriction on free expression: "A person who makes propaganda for the organisation or its objectives shall be punished to imprisonment of one to three years. If the crime is committed through media and press, the sentence will be increased by half".

When a defendant is convicted of committing a crime on behalf of an armed political organisation, Article 314 of the TPC provides the punishment, stipulating substantially higher penalties than if the person were prosecuted for a crime committed on behalf of an organised criminal gang.

Article 314/2 applies to any person who establishes or becomes a member of an armed political organisation. Article 314/3 states vaguely: "Other provisions relating to the offence of forming an organised group for the purpose of committing crimes are treated [punished] in the same way as for this offence". This paragraph, and Article 2/2 of the ATL provide the legal basis for linking the offences proscribed by Article 220 with the harsh punishments provided for in Article 314.

Article 7/2 of the ATL concerns the crime of "making propaganda for a terrorist organisation".

40. According to the website of the Directorate General for Prisons and Detention Centres, 43% of the total prison population was remanded in custody pending trial or appeal.

41. See Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, UN Document A/HRC/4/26/Add.2, November 16, 2012.



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To conclude, the present legislation does not sufficiently guarantee freedom of expression in line with the ECHR and ECtHR case law and permits restrictive interpretation by the judiciary. Turkey's legal and judicial practices, legislation, criminal procedures and political responses are obstacles to the free exchange of information and ideas. Therefore, a number of articles of the TPC and the ATL should be amended to guarantee the protection of freedom of expression as enshrined in regional and international standards.

In 2010-2011, the Ministry of Justice undertook a review of the legal framework of freedom of expression. On this basis, at the end of January 2012, the Government submitted Bill No. 1/565 "amending certain Acts with the aim of rendering judicial services more effective and postponing proceedings and sentences for offences committed through the press" to Parliament. The bill includes a certain number of articles that would potentially affect the situation of human rights defenders prosecuted and/or jailed in relation to their exercise of freedom of expression.

While, generally, the current version would definitely improve the legal framework, it however falls short of amending or repealing a number of provisions and addressing practices that are not consistent with the rights to freedoms of association and expression, like the ATL<sup>42</sup>.

One of the declared objectives of the new law is to introduce a generalized "suspension of prosecutions and sentences in media cases". The Bill, in its current version, provides for the three-year suspension of investigations, criminal proceedings and the execution of sentences for "media and opinion offences" committed before December 31, 2011 and carrying a maximum sentence of five years in prison and the termination of the cases if the persons concerned have not committed another similar offence during this period. According to the Justice Ministry, this provision could affect 5,000 cases involving journalists. But the nature of the crimes covered by this provision remains vague. In addition, this would require persons concerned to exercise self-censorship during the three-year period, in violation of their right to freedom of expression.

The second declared objective is to "make the services provided by the judicial system more effective". To this end several amendments to the Turkish Code of Penal Procedure, TPC and ATL are proposed. Article 76 of the Bill may put an end to the current abuse of pre-trial detention by clarifying the obligation of judges to reason their decisions authorising or extending detention on remand, or rejecting a request for release. Article 77 of the Bill extends the use of judicial control as an alternative to detention on remand for offences carrying a punishment of imprisonment of up to five years, instead of three.

Article 73 proposes to restrict the scope of Article 285 on the violation of the confidentiality of criminal investigations and Article 288 on attempting to influence fair trial, often used to criminalise journalistic reporting, in violation of the public's right to information.

Another article of the Bill provides for a three-month limit to the total restriction of access by the defence lawyers to the prosecution file before acceptance of the indictment by the court. After that period, defence lawyers may access certain documents. To date, many are often held for months or more without knowing the charges against them, in flagrant violation of the ECHR, preventing their lawyers from being able to present effective arguments for their release<sup>43</sup>.

The Ministry of Justice is reportedly working on another reform package dealing more substantially with issues related to freedom of expression.

It should be noted that reforms will not bring expected results if the police and the judiciary continue to interpret laws in manner restrictive to the right to freedom of expression.

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42. See Comments by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe on the Turkish Bill on judicial reform, February 20, 2012 and RSF Press Release, February 9, 2012.

43. See RSF Press Release, February 9, 2012.

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### 3/ THE INSTITUTIONAL FRAMEWORK DEDICATED TO THE PROMOTION AND PROTECTION OF HUMAN RIGHTS: A COMPLEX SYSTEM THAT STILL NEEDS TO PROVE ITS EFFICIENCY

On paper, the institutional framework to promote and protect human rights is particularly impressive<sup>44</sup>.

- First, at the Government level, a Deputy Prime Minister is responsible both for human rights and for the fight against terrorism; a Deputy Directorate General for Council of Europe and Human Rights, dealing exclusively with human rights issues, is responsible at the Ministry of Foreign Affairs to deal with international human rights organisations (UN, OSCE, Council of Europe, etc.) as well as human rights issues on a bilateral basis; a bureau for the inquiry of allegations of human rights violations is responsible within the Ministry of the Interior to investigate complaints of human rights violations allegedly committed by law enforcement officials; and the Ministry of Justice established a department of human rights for the prevention of human rights violations<sup>45</sup>.
- However, the Deputy Prime Minister is responsible both for human rights and for the fight against terrorism, which is the most aberrant component of this system.
- There are also several interministerial bodies in charge of fostering pro-human rights reform, including the Human Rights High Council of Turkey, which spearheads the human rights work within the Government<sup>46</sup>, and the Reform Monitoring Group, in charge of over-viewing the progress in the actual implementation of recent reforms<sup>47</sup>. The Council is advised by the Human Rights Advisory Council, a subordinate body that consists of high-level Government officials and representatives of NGOs. But the fact that, in 2005, members of the Human Rights Advisory Council, including its President, were prosecuted and risked a heavy prison term after they released a report on minorities and cultural rights is evidence that this body cannot operate freely. Since then, several human rights groups have refused to participate and cooperate with this body and the Human Rights Advisory Council has become inactive. Although there is an obligation for the Prime Ministry to call the Council at least two times a year, this has not been the case since 2004. In 2011, HRFT officially denounced this failure as a violation of the law.
- At the parliamentary level, the Human Rights Inquiry Commission (HRIC) investigates individual complaints of human rights abuses and submits its findings and recommendations to relevant authorities for necessary action. While the HRIC accomplishes commendable work and is open to dialogue with NGOs, it cannot be considered as an independent human rights body since it is composed of MPs and not independent experts. Furthermore, its authority remains limited as it cannot table legislation and is not consulted on draft bills.
- At the administrative level, the Human Rights Presidency, an affiliate body of the Prime Ministry, is responsible for coordinating at the national level the work of various Government agencies in the field of human rights, including human rights boards (see below). It acts as the secretariat for all bodies mentioned above, conducts monitoring and publishes reports.

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44. See United Nations, Core Document Forming Part of the Reports of States Parties, – Turkey, UN Document HRI/CORE/TUR/2007, July 8, 2008.

45. Although this measure was announced in 2011, several NGOs interviewed were unfortunately not aware of the creation of this department.

46. The Council is chaired by the Deputy Prime Minister in charge of terrorism and human rights and the Minister for Foreign Affairs. It brings together the under-secretaries of the Prime Ministry, the Ministers of Justice, of the Interior, of National Education, and Health. The Council oversees the reports of the Human Rights Advisory Council. It is mainly responsible for preparing and proposing draft legislative and administrative regulations aiming at the better promotion and protection of human rights.

47. The Group is currently chaired by the Deputy Prime Minister and Minister of Foreign Affairs, and comprised of the Minister of Justice, the Minister of the Interior and the Minister of State and Chief (EU) Negotiator. Senior officials from the ministries concerned as well as the Secretary-General for EU Affairs, Head of the Human Rights Presidency and Chair of the Human Rights Advisory Council.

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- At the provincial and district level, human rights boards are in charge of receiving and investigating complaints of human rights abuses, transmitting findings to competent authorities for administrative and/or legal action, taking measures for the prevention of all forms of discrimination and launching programmes for human rights education at the local level. Chaired by the Governor or Deputy Governor, the selection process of these boards remains problematic. Board members consist for the most part of representatives of the State or political parties in power, while the rest are selected at the discretion of the Governor.
  - Finally, the Turkish National Human Rights Institution (NHRI) and the Turkish Ombudsman, despite bills tabled in 2010, remain to be established. Furthermore, the draft law on the Turkish NHRI fails to comply fully with the Paris Principles.

The fact that most of these institutions do not have contacts with the main domestic human rights groups and that some of them are not even known by such groups reflects the inadequacy and inefficiency of this system. In addition, it is also reflected by the fact that some are in charge of both implementing repressive legislation and protecting freedoms. While some mandates are over-lapping, others are unclear.

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## III – THE HARASSMENT OF HUMAN RIGHTS DEFENDERS IN TURKEY

In Turkey, civil society is diverse, organised and vocal and counts large numbers of groups and individuals involved in the human rights movement. Open and critical debate has increased both in the public and in the media, including on topics perceived as sensitive, such as the Kurdish and Armenian issues and the role of the military, even as restrictions on free speech are still acute.

Yet, NGOs representatives met by the Observatory delegation complained of attempts to close down NGOs, mass criminalisation of those who defend human rights, notably under the ATL, and the prevailing impunity of attacks against human rights defenders. They also regretted the insufficient dialogue between human rights organisations and the authorities. In particular, they complained that over the period 2007-2011 human rights organisations were unable to obtain a meeting with the Minister in charge of human rights. This lack of dialogue renders the task of human rights defenders more difficult and undermines their protection.

### A/ CLOSURE CASES TARGETING NGOS MONITORING MINORITIES' RIGHTS

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Over the past years, several human rights organisations were subjected to judicial harassment and faced closure trials, particularly NGOs monitoring minorities' rights. It was particularly the case of organisations addressing ethnic and religious minorities' rights, on the one hand, and organisations addressing sexual minorities' rights, on the other hand, with the aim of hampering their activities.

#### 1/ NGOS ADDRESSING ETHNIC AND RELIGIOUS MINORITIES' RIGHTS

- The Association for Freedom of Thought and the Right to Education Ozgur-Der was subjected to a closure case since April 2009 over a statement it released in November 2008 advocating the abolition of military-style ceremonies in schools. The statement, titled "Let's adopt a stance against ceremonies that impose on us the official ideology and despise our beliefs and identities", called on individuals to raise their voice against in-school ceremonies that militarise students<sup>48</sup>. In 2010, the closure case against Ozgur-Der was rejected by the Fatih Court of First Instance. The Governorate did not appeal this decision.
- İHD, one of the oldest and most respected human rights NGO in Turkey<sup>49</sup>, with its branches covering most of the territory, has been and remains the subject of judicial harassment, notably because of its work on Kurdish-related human rights issues. As an example, a criminal case 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, following a complaint filed by the province of Istanbul. 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, an association which struggles for the peaceful settlement of the Kurd issue and the right to obtain the truth on enforced disappearances, to hold a press conference in their conference room. The case was still pending as of February 2012.

In addition, since July 19, 2007, the İHD Mersin branch is also facing judicial proceedings based on claims that the association acted in a way contrary to its objectives by joining the

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48. Every morning since 1933, Turkish primary school students have had to stand in military-style ranks and repeat the national pledge of allegiance. They are also made to march like soldiers during official ceremonies on various public holidays.

49. Created in July 1986, the objective of İHD is to promote and defend all human rights and peace in Turkey. Its main activities relate to the improvement of prison conditions and other issues pertaining to detention, the fight against torture, the issue of displaced Kurdish populations, the right to life, freedom of expression and assembly and the promotion of economic, social and cultural rights. İHD operates human rights education programmes throughout Turkey. To date, it counts 28 branches, seven representative offices and over 10,000 members.

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Labour and Democracy Platform<sup>50</sup> 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 similar topics". On February 26, 2010, the Mersin Penal Court of First Instance No. 2 rejected the petition for closure. However, the Public Prosecutor appealed to the Supreme Court. The Appeal was pending as of February 2012.

- The case against executive members of the Diyarbakır branch of the Migrants' Association for Social Cooperation and Culture (GÖÇ-DER), which had been active since 1997 in the area of internal displacement and immigration, ended on February 2, 2010 with the closure of the association. GÖÇ-DER branches have been sued several times for their activities since 1997. Today, branches in Diyarbakır and Batman remain closed. On April 9, 2012, the Supreme Court confirmed the closure verdict issued by Batman Court of First Instance No.1 against GÖÇ-DER Branch in Batman on charges of "opposing to the Law No. 2911 on Meetings and Demonstrations".
- On February 16, 2012, the Dersim Alevilik Belief and Culture Academia Association, an association that defends the rights of the Alevi minority, was closed down by the Tunceli Law Court of First Instance on grounds that the association had "violated its foundational aim" and that its Chairperson was a pre-trial detainee in a KCK case<sup>51</sup>.

## 2/ NGOS ADDRESSING SEXUAL MINORITIES' RIGHTS

Organisations that defend the rights of LGBT are also subjected to trials for closure.

- For instance, cases were brought, unsuccessfully, against the LGBT associations KAOS-GL in 2005 and Pembe Hayat (Pink Life) in 2006. The court did not accept the reason for the closure application that stated that the association was "opposing the general moral and the Turkish family structure" according to Article 56 of the Turkish Civil Code.
- It is to be welcomed that on April 30, 2009, a lower court granted the organisation Lambda Istanbul, which is working on LGBT rights, permission to re-register and continue operating, after its closure in May 2008 following a decision by an Istanbul court. The case had been initiated on July 19, 2007 by the Istanbul Governor's office on the ground that Lambda Istanbul's objectives were "against law and morality".
- On February 9, 2010, a closure trial began against the Black Pink Triangle Association (BPTA), which combats discrimination against the lesbian, gay, bisexual, transvestite and transsexual (LGBT) people in Izmir province, on charges of "being contradictory to general moral and the structure of Turkish family", following a complaint filed by the İzmir Governorate on October 16, 2009. On April 30, 2010, the court rejected the request for closure arguing that that "LGBT persons also have the right to organise and to establish associations".
- On January 3, 2011, the Bursa Penal Court of First Instance No. 12 decided to close down the Association for the Development of Protection, Solidarity and Cultural Activities for Transvestites, Transsexuals, Gays and Lesbians (Rainbow Association) following a criminal complaint filed by the Bursa Governorship on charges of "prostitution" after two years of proceedings. The organisation filed an appeal against the closure verdict, which was still pending according to the latest information received by the Observatory. Ms. **Öykü Evren Özen**, President of Rainbow Association, was also facing imprisonment of up to three years under charges of "opposing the Law on Associations" but was finally acquitted.

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

51. See HRFT.



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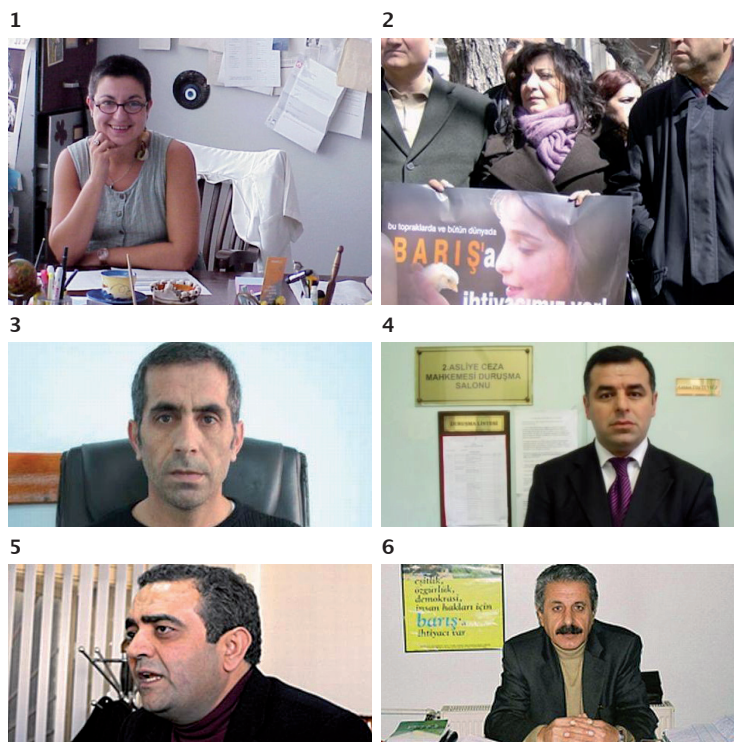
## B/ ESCALATING CRIMINALISATION OF SEVERAL CATEGORIES OF CIVIL SOCIETY GROUPS ACTIVE IN THE DEFENCE OF HUMAN RIGHTS, NOTABLY IN A CONTEXT OF WIDE-RANGING FIGHT AGAINST TERRORISM

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Since 2009, with the “KCK” operations, the number of human rights defenders criminalised has increased. Indeed, many face harsh punishments because the Turkish authorities believe that their action – though in itself perfectly legal – entails ideological support for the PKK. Prosecutors and courts thus focus on the number of demonstrations an individual has attended, speeches he made, acquaintances he has, views he expressed on the Kurdish issue, social projects on which he worked, private phone conversations as important elements to determine whether he or she has been acting on behalf of an armed organisation. Courts often deem non-violent expression to be terrorist propaganda or to constitute aiding and abetting a terrorist organisation. Courts have deemed individuals to be “members” of armed organisations on notoriously vague grounds. The legal framework makes no distinction between an armed PKK combatant and a civilian activist calling for a peaceful resolution of the conflict. Many of these defenders are subjected to months, and sometimes, years of pre-trial detention and judicial harassment.

This criminalisation affects members of human rights NGOs, and individuals acting in their professional capacity for human rights principles, including writers, editors, academics, trade unionists, journalists, lawyers, trade unionists and others under unfair criminal charges for the legitimate and non-violent expression of information and opinion. This occurs in a context where many prosecutors and judges continue to interpret and apply the law in a manner restrictive towards human rights and fundamental freedoms. Many of these cases stretch over several years and appear to be designed by the Turkish authorities for a political purpose – to be an object lesson to anyone who thinks of stepping out of the “official line”. All the main categories of civil society who generally act as watchdog of the Government’s policies have been affected.

Human rights organisations complain that the high number of judicial cases against human rights defenders makes it impossible for them to monitor properly all cases and provide legal assistance to human rights defenders<sup>52</sup>.



1. Şebnem Korur Fincancı
2. Filiz Kalaycı
3. Ethem Açıklan
4. Barış Yarkadaş
5. Sezgin Tanrıkulu
6. Rıdvan Kızgın

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52. See Human Rights Defenders Working Group Report, *The issue of defending the human rights defenders in Turkey*, February 23, 2012.

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## 1/ HUMAN RIGHTS DEFENDERS AFFECTED BY AN ALL-CATCHING DEFINITION OF THE FIGHT AGAINST TERRORISM AND OTHER OPINION OFFENCES

### a/ MEMBERS OF NGOS

Dozens of human rights NGO members are being subjected to judicial harassment compelling them to defend themselves and divert significant time and resources that could otherwise be directed to their human rights work.

This is notably the case of İHD members, mostly in relation to its monitoring of serious human rights violations, its critics towards state institutions as well as its views on the resolution of the Kurdish issue. İHD's integral approach to human rights and its struggle against rights violations have turned it into a target, as some institutions continue to perceive human rights defenders as elements threatening security.

Since its opening, İHD has indeed been subjected to incredible pressures in its struggles. Many of its executives and members have been arbitrarily detained and prosecuted, notably within the framework of anti-terrorist operations. Most of these cases have been going on for years forcing some to exile.

For instance, as of 2012, four criminal cases against Mr. **Ethem Açıkalın**, former Chairperson of İHD branch in Adana, and Mr. **Mustafa Bağcıççek**, former manager at İHD Adana branch, were ongoing. They were notably accused of "being a member of an illegal organisation" and "making propaganda of an illegal organisation" for participating in a press conference organised in December 2007 to denounce the assassination by the police of Ms. Kevser Mızrak; "instigating a part of the people to hatred or hostility" for criticising on *Roj TV* in October 2008 the Governor of Adana for cancelling the green cards of families whose children were arrested during demonstrations in Adana; "making propaganda of an illegal organisation" for participating in a press conference in December 2007 to commemorate the operation "Back to life", carried out in December 2000 by the Turkish security forces against 20 prisons at the same time to stop hunger strikes, which caused 28 prisoners dead and many wounded. In December 2009, Messrs. Açıkalın and Bağcıççek left Turkey to seek asylum abroad.

Mr. **Rıdvan Kızgın**, an İHD board member and former Chairperson of the Bingöl branch, was subjected to several criminal cases for "insults to a State official" and "insults to the Turkish nation" until his death on July 24, 2010<sup>53</sup>.

Since 2009, four human rights lawyers, Mr. **Hasan Anlar**, İHD Deputy Secretary General, Ms. **Filiz Kalaycı**, İHD Executive Committee member, Mr. **Halil İbrahim Vargün**, İHD former Treasurer, and Mr. **Murat Vargün**, a lawyer and İHD member, have been facing a prison sentence of between six to 15 years of imprisonment. On May 12, 2009, in Ankara, their offices and homes 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 as they were charged of "membership in an armed organisation" and "propaganda for a terrorist organisation" under Article 314/2 of the TPC and Article 5 of the ATL. On May 28, the 11<sup>th</sup> Heavy Penal Court of Ankara ordered the re-arrest of Ms. Filiz Kalaycı on the basis of an allegation of "aiding illegal organisations"<sup>54</sup>. On January 28, 2010, the four appeared before the 11<sup>th</sup> Heavy Penal Court of Ankara, which ordered Ms. Filiz Kalaycı's provisional release. The four are incriminated on the basis of phone and web-calls of private nature and those they

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53. A total of over 50 cases would have been opened against Mr. Rıdvan Kızgın as a result of his activities as a human rights defender.

54. On January 28, 2010, the court ordered the release of Ms. Kalaycı. However, Ms. Kalaycı 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.

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had made under the scope of their legal representative-client relations. On October 6, 2011, the Public Prosecutor requested the sentencing of the four lawyers. The trial is ongoing and the next hearing was scheduled for May 25, 2012.

İHD members were also particularly affected by the so called “KCK” operations for which police investigations started as early as 2007 (see above). In this context, the communications of several İHD branches as well as several İHD executives and members were tapped. The most emblematic case is that of Mr. **Muharrem Erbey**, lawyer and General Vice-President of İHD and President of its Diyarbakır branch, as well as Mr. **Arslan Özdemir** and Ms. **Roza Erdede**, İHD members in Diyarbakır, who have worked closely with associations of families of the disappeared and have been defending unresolved cases of extrajudicial killings and enforced disappearances in the region. They are among 152 Kurdish personalities prosecuted on accusation of “being a member of an illegal organisation” and are facing a minimum sentence of 7.5 to 15 years of prison. Messrs. Muharrem Erbey and Arslan Özdemir have been in prison since December 24, 2009 and Ms. Roza Erdede since April 14, 2010<sup>55</sup>. At the time of the arrest, the police also searched İHD offices in Diyarbakır 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. To date, the archives have never been returned to İHD. During his interrogation, Mr. Erbey was asked extensively about his work with the İHD, including about several international visits he conducted in order to draw attention to human rights abuses in the region. His lawyers were prevented from accessing his case file and as such did not know the exact charges or the evidence on which they are based until indictment on June 18, 2010. By the record of Mr. Erbey’s interrogation, however, it appeared that he had been imprisoned and indicted on the basis of his work with the İHD and in his capacity as a human rights lawyer. The trial, which opened before the Sixth Special Heavy Penal Court of Diyarbakır on October 18, 2010, was ongoing as of January 2012 when the 41st hearing took place. The trial started with a request on the right to defence in the mother tongue and the provision of an interpreter by the defendants. Approximately 200 lawyers are part of the defence team. The next court session was to take place on April 18, 2012.

In Siirt, also in the context of the KCK operation, on March 16, 2010, Ms. **Vetha Aydın**, President of İHD Siirt branch, and Mr. **Abdullah Gürge**n, Executive Board member of the same branch, were arrested at their home. On the same day, the police raided the offices of İHD Siirt branch and confiscated material concerning the activities of the association and its members, including the association’s hard disk, files and CDs as well as some letters sent by prisoners regarding human rights violations in detention. They searched for information concerning the activities of the association and its members. The police filmed with a camera all of the membership registration forms. This material and equipment was later returned after the authorities had made a copy. On March 17, 2010, Mr. Abdullah Gürge

In September 2011, another KCK operation was launched and affected human rights defenders in Şanlıurfa. In the morning of September 27, 2011, law-enforcement officers raided İHD Şanlıurfa branch, the Education and Science Workers Trade Union (Eğitim-Sen), the Health and Social Service Workers Trade Union (SES) branch offices as well as the houses of their chairpersons and executives and arrested 31 members of these organisations. The police was in possession of a warrant from the Şanlıurfa Chief Public Prosecution Office mentioning alle-

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<sup>55</sup>. The investigation and trial have raised a series of fair trial concerns, including illegal surveillance and tapping, prolonged pre-trial detention and limitations on access by defendants and their lawyers to the evidence against them. The trial has been delayed in part because the court has consistently denied many of the defendants’ right to address the court in Kurdish, their mother-tongue and because the court refused to examine the defendants’ conditions of detention. On April 26, 2011, after several defence lawyers stood out to protest violations of their clients’ right to a defence, the court appointed new lawyers and adjourned until May 10, 2011.

gations of "propaganda for an illegal organisation" and "participating in activities in line with the action and aims of that organisation". Among those arrested were İHD Şanlıurfa Branch President **Cemal Babaoğlu**, İHD executives **Müslüm Kına** and **Müslüm Çiçek**, Eğitim-Sen Branch President **Halit Şahin**, Eğitim-Sen former branch President **Sıtkı Dehşet**, Eğitim-Sen executive **Veysi Özbingöl**, Mr. **Yasin Öztürkoğlu**, Eğitim-Sen member, Messrs. **Hikmet Evin**, **Adil Arslan** and **Adile Şahin**, SES members. On September 30, 2011, seven of the 31 initially arrested, namely Messrs. Cemal Babaoğlu, Halit Şahin, Yasin Öztürkoğlu, Hikmet Evin, Adil Arslan and Adile Şahin, were formally charged for "making propaganda for an illegal organisation" under Article 7/2 of the ATL and placed in provisional detention. The other 24 were released without charges. On January 9, 2012, the Diyarbakır Heavy Penal Court No. 7 ordered the provisional release of the seven accused pending trial. İHD executives are prosecuted in relation to a speech covering human rights issues made during a visit paid on March 23, 2011 to the BDP Peace Tent in Şanlıurfa. The next court session was scheduled on April, 27, 2012.

On October 4, 2011, a similar operation was launched in Istanbul and targeted in particular members of associations of families of victims of abusive anti-terrorism policies, which struggle for the right to obtain the truth on enforced disappearance cases and for a peaceful settlement of the Kurd issue in Turkey<sup>56</sup>. Several members of the Association for Solidarity and Support of Relatives of Disappeared People "Yakay-der", an association member of the Euromed Federation Against Enforced Disappearances (FEMED), Messrs. **Kemal Aydın**, Spokesperson, **Selahattin Tekin**, member of the Board Council, were arrested in Istanbul as part of a vast operation in which more than 105 activists, mainly Kurdish political activists, were arrested. On October 11, 2011, Mr. **Cemal Bektas**, President of the same organisation, who had been away from Istanbul at the time, was also arrested as he was leaving Yakay- der's offices. On October 15, 2011, Ms. **Nahide Ormancı**, a member of the "Mothers for Peace" association, also member of FEMED, was arrested in the District of Silopi. Mr. Cemal Bektas' family was only informed two days after his arrest about his situation and whereabouts. The four were later charged with "being a member of an illegal organisation" and remain in provisional detention in Istanbul and Silopi.

On October 28, 2011, Mr. **Ragıp Zarakolu**, Honorary Board Member and Founder of İHD, Director of the Belge Publishing House and Chairman of the Publishers Association Freedom to Publish Committee of Turkey, and Ms. **Büsra Ersanlı**, lecturer at the Marmara University Faculty of Political Sciences and International Relations in Istanbul and a member of KA-DER (Woman Candidates Support and Training Association) who has been engaged with NGOs for political rights of the women, were both arrested in Istanbul as part of a vast operation that targeted more than 193 people, mostly Kurdish political activists and particularly members of the BDP. Mr. Ragıp Zarakolu is a well known human rights activist since the 1970s and has particularly focused his work on freedom of expression and minorities' rights. Through the Belge Publishing House, he has published numerous books on the repression of national minorities in Turkey and on the Armenian Genocide and has been subjected to arbitrary detention and judicial harassment on numerous occasions. In the days leading up to his arrest, Mr. Zarakolu had been campaigning for the release of his son, Deniz Zarakolu, who was arrested in early October after giving a lecture on political philosophy at the BDP Academy of Political Science. Once at the police headquarters, the arrestees were held in a waiting room during the interrogation which lasted over 24 hours with just a few chairs to be shared between them. During Mr. Zarakolu's interrogation, the police did not ask any questions on the KCK of which he is accused of being a member, but only questioned him about the books he authored or edited for publication as well as public meetings where he spoke or that he attended. On October 31, Mr. Ragıp Zarakolu was taken to the Istanbul Courthouse, together with the other individuals arrested. Following a 28-hour long hearing, on November 1, 2011, the two were officially charged with "being a member of an illegal organisation", namely the KCK, under Article 314 of the TPC by Istanbul Heavy Penal Court No. 14. Chillingly in a climate of

56. Yakay-Der and Mothers for Peace have been working for many years for Truth and Justice on enforced disappearances in Turkey. Their representatives are victims of daily harassment by the authorities against them. These associations seek to clarify the circumstances of disappearances and extrajudicial executions occurred in Turkey and this, by conducting research with families of victims, organising conferences and other outreach activities. Last July, the associations have organised a major conference on the existence of mass graves in Turkey asking the authorities to proceed with the exhumation of the bodies in order to return them to their families.



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mass arrests, the Prime Minister demonstrated his intolerance of debate when he warned after the arrest of Mr. Zarakolu and Ms. Ersanlı that those who would criticize such arrests should scrutinize themselves. On March 19, 2012, the investigation was closed. On April 3, 2012, the İstanbul Heavy Penal Court No. 15 accepted the 2400-long indictment order and set July 2, 2012 at the Silivri Prison Complex for the first hearing of the case. Mr. Zarakolu now faces up to 15 years of prison on charges of “knowingly and willingly helping an organised criminal group” under Article 220/7 of the TPC and Ms. Ersanlı up to 22 and a half years of prison on charges of “belonging to a criminal organisation” under Article 314 of the TPC. On April 10, 2012, the İstanbul Heavy Penal Court No. 15 ordered the release on bail of Mr. Ragıp Zarakolu. Ms. Büsra Ersanlı is detained in Bakırköy closed prison for females.

Members of associations of victims of the Kurdish conflict and Kurdish peace activists are also subjected to other cases of judicial harassment. For instance, on August 11, 2009, Mr. Cemal Bektas was sentenced by the Fifth Chamber of the Court of Diyarbakır 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 Diyarbakır 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 Diyarbakır has first and final jurisdiction to entertain the most serious crimes and therefore the sentence cannot be appealed. Mr. Bektas' lawyer immediately filed an application for review of the conviction before the Supreme Court (Yargıtay), 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 Yargıtay within three months. As of March 2012, no decision had been issued yet. Moreover, another criminal investigation against 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. As of March 2012, 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 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 March 2012, the material seized had still not been returned to the association and Ms. Nar was held in Bakırköy 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 Diyarbakır 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 Yargıtay. The application suspended the implementation of the sentence and should have been examined by Yargıtay within three months. As of March 2012, no decision had been issued yet.

Dozens of other İHD members were also prosecuted on other grounds. For instance, Mr. **Raci Bilici** and Ms. **Necibe Güneş Perinçek**, members of İHD Diyarbakır branch, were indicted on December 23, 2011 for violating Law 2911 on Meetings and Demonstrations, after they participated in a weekly meeting to ask for the truth and justice on enforced disappearance cases on February 5, 2011. The Diyarbakır 6<sup>th</sup> Heavy Penal Court decided to indict them. The trial shall start on February 21, 2012<sup>57</sup>. In Çanakkale, İHD Branch executives Messrs. **Kenan Döner** and **Hayrettin Pişkin** are prosecuted under Law No. 2911 for organising an event on the occasion of the International Peace Day on September 1, 2007. Sentenced to one year and six months of imprisonment in 2008, as to February 2012, an appeal was pending before the Court of Cassation.

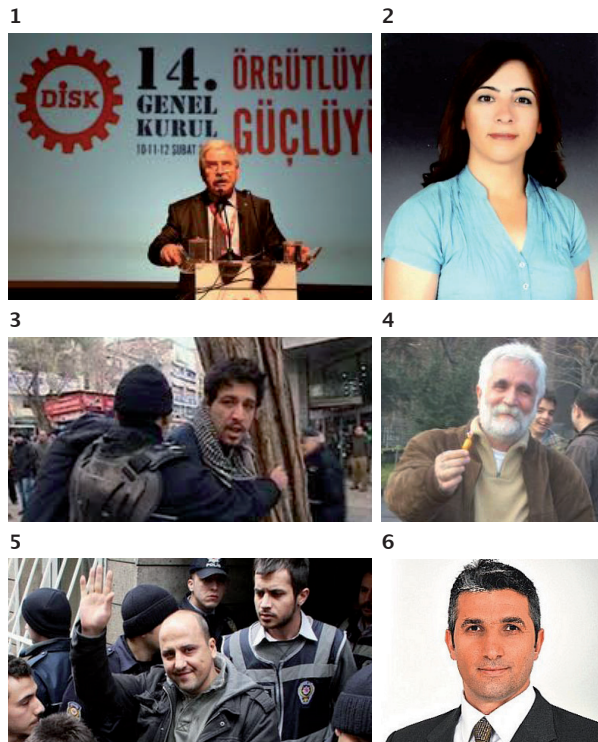
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57. See HRFT Daily Report, December 24-26, 2011.



On November 6, 2011, Mr. **İsmail Akbulut**, İHD Hakkâri branch President, was detained in a check point in Hakkâri province and arrested four days later on charges of "being a member of an illegal organisation". He was released pending the end of a criminal investigation on January 6, 2012. The arrest occurred while he was investigating allegations of the use of chemical weapons by the Turkish Armed Forces during an aerial strike conducted on October 19, 2011 which led to the death of 37 PKK militants. The investigation was pending as of February 2012.

Members of other human rights organisations were also victims of judicial harassment. For example, on September 30, 2010, a criminal trial opened before the Kadıköy Penal Court of First Instance No. 2 against Ms. **Şebnem Korur Fincancı**, President of the Executive Board of the Human Rights Foundation of Turkey (HRFT)<sup>58</sup>, and Mr. **Barış Yarkadaş**, General Publications Director of the information website *GercekGundem.com*, on charges of "insulting a public official in the media in relation to his duty". On July 22, 2009 the website had published an interview given by Ms. Fincancı, where she openly criticised Ms. Nur Birgen, then the incumbent President of the Third Specialisation Chamber of the Forensic Medical Institute<sup>59</sup>. On September 15, 2011, the two were finally acquitted. On January 11, 2011, a criminal case on charges of "attempting to influence the fair trial" was launched against Mr. **Sezgin Tanrikulu**, HRFT Diyarbakır Representative, in connection with a criticism he made on the *nolle prosequi* decisions of the Martial Court and Diyarbakır Heavy Penal Court No. 3 in the case of a man who had been killed by a sergeant in Diyarbakır province in 1994. On February 11, 2011, he was acquitted.



1. Ali Rıza Küçükosmanoğlu
2. Canan Çalağan
3. Volkan Sevinç
4. Temel Demirer
5. Ahmet Sik
6. Nedim Sener

58. Created in 1990, the objective of HRFT is to provide treatment and rehabilitation services for torture survivors and document human rights violations in Turkey. The HRFT grew out of the necessity to further promote the prevention of torture in Turkey where grave human rights violations left thousands of people tortured and traumatised. The establishment process of the HRFT was launched by İHD together with the Turkish Medical Association. With five rehabilitation centres throughout the territory, HRFT may shelter victims and provide medical and/or psychological support. Since its creation, more than 13,000 victims have been taken care of by pro-bono doctors, psychologists and social workers working with the Foundation.

59. In 1998, Dr. Nur Birgen was banned from professional activities for six months by the Turkish Medical Association and was then prosecuted for issuing false certificates concerning seven persons detained in July 1995 who were allegedly victim of ill-treatments. In spite of this, the Ministry of Justice did not suspend her from her duties, reportedly on the grounds that she is a civil servant whose civil rights must be protected.

## b/ TRADE UNIONISTS

In 2009-2012, 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. Several operations were conducted under the ATL. Since 2009, most of these operations against the trade union movement were conducted in the framework of the KCK operations.

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" prisons<sup>60</sup> or small group isolation prisons. This followed months of phone taps and monitoring of personal e-mails and the arrests were conducted in a very brutal way. 31 of them were charged of terrorist offences, of whom 22 were kept in detention. Until the submission of the indictment on July 31, 2009, the defence lawyers did not have access to their files, their homes and workplaces were searched, and their computers confiscated. On November 19 and 20, a 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 KCK". 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, 2009, the court ruled in favour of the conditional release of the 22 leaders who remained detained. On October 22, 2010, in a hearing that only lasted 15 minutes, the İzmir Court again postponed its decision in this case. The trial was postponed four times. On November 28, 2011, the Court sentenced 25 of the KESK officials and members<sup>61</sup> to six and three months of prison and acquitted the remaining six. The court heard no evidence that any had incited violence or been involved in activities that could constitute terrorism.

In September 2010, the adoption by referendum of the amendments to the Constitution resulted noticeably in granting civil servants and other public employees the right to collective bargaining. However, no collective agreement has been made since then, which means that collective bargaining is still not effective. Most importantly, the bans on strikes, lockouts, and other forms of protest by workers were lifted. This apparent "détente" of the authorities towards workers' protests was particularly perceptible on May Day 2010 when, for the first time since 1977, Taksim square in Istanbul was open to demonstrations. Besides, it is now possible to be part of more than one union in the same branch.

Yet, in practice, the Government remained reluctant to give space for protest from workers and many times demonstrations were countered with police violence. On February 3, 2011, the

60. 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.

61. They are Mr. **Lami Özgen**, KESK General President, Mr. **Songül Morsümbül**, KESK former Central Management Board member, Ms. **Sakine Esen Yılmaz**, EĞİTİM SEN Central Management Board member, Mr. **Gülçin İsbirt**, EĞİTİM SEN former Central Management Board member, Mr. **Elif Akgül Ates**, EĞİTİM SEN former Central Management Board member, Mr. **Haydar Deniz**, EĞİTİM SEN former Central Supervisory Board member, Mr. **Mehmet Hanifi Kuruş**, EĞİTİM SEN Central Office Educational Branch member, Mr. **Hasan Soysal**, BTS former Secretary General, Mr. **Nihat Keni**, EĞİTİM SEN Branch Management Board Member, Mr. **Mustafa Beyazbal**, EĞİTİM SEN Branch Director, Ms. **Yüksel Özmen**, SES İzmir Branch Management Board Member, Ms. **Meryem Çağ**, BES member, Messrs. **Mine Çetinkaya**, **Aziz Akikol**, **Hasan Umar**, **Harun Gündes**, **Aydın Güngörmez**, **Süeda Demir**, **Şermin Gündes**, **Şeymus Belek**, **Erkan Deniz**, **İsmail Demir**, **Mahir Engin Çelik**, EĞİTİM SEN members and former branch administrators, workplace representatives, Mr. **Abdulcelil Demir**, retired worker and former union activist, and Mr. **Ahmet Demiroğlu**, EĞİTİM SEN former member, retired teacher.

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police violently intervened against workers who were peacefully protesting against a draft law that was discussed at the time at the Parliament and would affect labour rights. The demonstration gathered 10,000 people, with the most important Turkish trade unions being represented. Police used tear gas bombs against the demonstrators and detained approximately 50 demonstrators, who were released later. No complaint was lodged against police officers<sup>62</sup>.

Trade unions activists also continued to be repeatedly harassed when they advocated for greater respect of labour rights. For example, Mr. **Ali Rıza Küçükosmanoğlu**, a member of the Confederation of Progressive Trade Unions (DISK) Executive Board and President of Nakliyat-İs trade union, was detained for one month between December 2009 and January 2010<sup>63</sup>. A criminal case was still pending as of February 2012.

The last "KCK" operation targeted a group of women trade unionists. On February 16, 2012, a group of nine female executives and members of trade unions affiliated with KESK were placed in detention pending investigation. Ms. **Canan Çalağan**, KESK Women Secretary, Ms. **Bedriye Yorgun**, SES Women Secretary, Ms. **Güler Elveren**, Women Secretary of the Municipal and Local Authority Trade Union (Tüm Bel-Sen), Ms. **Hatice Beydilli Kahraman**, Eğitim-Sen 1st Branch member, Ms. **Güldane Erdoğan**, Eğitim-Sen 2nd Branch Women Secretary, Ms. **Evrin Özdemir Oğraş**, Eğitim-Sen 1st branch member, Ms. **Belkis Yurtsever**, former KESK executive, Ms. **Hülya Mendillioğlu**, SES Ankara branch Executive, and Ms. **Nurşat Yeşil**, SES Ankara branch Women Secretary, were arrested under allegations of "membership in an illegal organisation". The nine were in charge of women's rights related activities. According to KESK, their members have been targeted in order to break KESK's opposition against the Draft Law No. 4866 on Public Service Unions and to break women's struggle initiated to make International Women's Day on March 8 a public holiday<sup>64</sup>.

## **c/ JOURNALISTS, WRITERS AND ACADEMICS**

Freedom of expression of human rights defenders is undermined by the high number of judicial cases and investigations against journalists, writers, academics and undue pressure on the media, eventually leading to self-censorship.

Journalists are particularly vulnerable to the criminalisation of speech. The number of jailed journalists multiplied by more than five in two years. Indeed, in 2011, 27 journalists, compared to six in 2010 and two in 2009, were serving prison terms, while 77 journalists, compared to 24 in 2010 and 18 in 2009, were in detention pending indictment or trial. They are detained for writings published on the Ergenekon case, the KCK operations, or other operations against leftist groups, on Kurdish issues, for commenting on judicial decisions or reporting or denouncing human rights violations. The majority of the journalists was prosecuted in the scope of the ATL for alleged "membership in an organisation", "propaganda for an illegal organisation", "influencing a fair trial" or "praising crime and a criminal", while in the past Article 301 of the TPC was the main weapon to criminalise freedom of expression<sup>65</sup>.

For instance, on March 3, 2011, Messrs. **Ahmet Şık** and **Nedim Şener**, two prominent writers and journalists who have been reporting for many years on human rights violations, were arrested and taken to the Metris prison in Istanbul pending trial, together with eight other journalists. They were accused of being members of Ergenekon, "inciting people to hatred and enmity" under Article 216 of TPC, "having confidential documents" and "trying to influence the fair trial" under Article 288 of TPC and risk up of 15 years of prison. On March 12, 2012, after more than a year in provisional detention, the two journalists were finally released on bail. The next hearing is scheduled for June 18, 2012<sup>66</sup>.

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62. See İHD Press Release, February 3, 2011.

63. See DISK.

64. See Human Rights Defenders Working Group Report, *The issue of defending the human rights defenders in Turkey*, February 23, 2012 and Bianet Article, February 20, 2012.

65. See Bianet, *Bia Media Monitoring Report for 2011, 2010 and 2009*.

66. See HRFT.

On March 6, 2012, Dicle News Agency (DIHA) correspondents in Adana Ms. **Özlem Ağuş**, and Messrs **Ali Buluş** and **Hamdullah Keser** were taken into custody in Adana, on accusation of "spreading terrorist propaganda" by breaking the story of the rape, sexual abuse and torture of minors charged with terrorist offences held in Pozanti Juvenile Closed Prison, near Adana. The three were remanded into pre-trial detention<sup>67</sup>. As of April 2012, the two remained in detention and charges held against them were not known.

One emblematic case is that of Ms. **Pınar Selek**, a writer and sociologist who defends the rights of women, disadvantaged communities and the victims of discrimination, including street children and the Kurd and Armenian minorities, who was detained for two years and tortured and remains today subjected to judicial harassment since 1998. On February 9, 2011, she again appeared on trial before İstanbul Heavy Penal Court No. 12 on charges of being a member of the PKK and causing a bomb to explode. After recess, the Court announced that it had decided to acquit Ms. Selek. She was acquitted for the third time by the first instance court. Next day the prosecution appealed for the third time to the Court of Cassation. In 1998, Ms. Pınar Selek, as a sociologist, seeking to understand the motivations of both sides in the enduring armed conflict between the Kurdish minority and the Turkish state, carried out a research project that involved interviewing members of the PKK. On return she was apprehended by the Turkish security services and, when she refused to reveal the names of her informants, was severely tortured. A little while before this, an explosion in the Istanbul Spice Bazaar had caused a number of deaths and injuries. Ms. Pınar Selek was accused of having ordered the attack. In the twelve years since that explosion she has been subject to continuous unresolved prosecution. She has been imprisoned for two and a half of those years. Three times, in 2006, 2008 and 2011, İstanbul Heavy Penal Court No. 12 acquitted her after determining there was no evidence linking her to the blast. In June 2011, the same court re-opened the case. As of February 2012, Ms. Pınar Selek remain in provisional release and the charges against her are still pending. Next hearing was scheduled for August 1, 2012.

Moreover, several persons who raised attention on the impunity around Mr. Hrant Dink's murder in January 2007<sup>68</sup> faced harassment and reprisals, particularly those who published investigative books or documentary. Some were threatened, prosecuted or banned to display their work. Journalist and author Mr. **Temel Demirer** is facing a prison sentence of up to two years for his statement made the day after the assassination of Mr. Dink. He is prosecuted by the Ankara Penal Court of First Instance No. 2 under Article 301 of the TPC since 2008 for saying that Mr. Hrant Dink was killed because he acknowledged the Armenian Genocide. The next court session should take place on March 28, 2012. On January 27, 2011, Mr. **Adem Yavuz Arslan**, a journalist, received death threats, including bullets in envelopes sent to him, after he published a book on Mr. Dink's killing. Though he filed a complaint with the police, as of April 2011 he had not been informed of the launch of an investigation. On January 14, 2010, the screening of the documentary "19 January to 19 January" directed by Mr. Ümit Kıvanç for the third anniversary of the murder of Mr. Hrant Dink was banned by Ege University's (İzmir) Communication Faculty's Dean for "security" reasons. Mr. Nedim Şener is facing a total of 28 years of imprisonment as two criminal proceedings were launched against him for publishing a book entitled "The Dink murder and the lies of the Intelligence", in which he unveiled negligence by the authorities. He was prosecuted before the İstanbul Penal Court of First Instance No. 2 on charges of "attempting to influence fair trial", "insulting public officers" and "violating the confidentiality of the communication" and the İstanbul Heavy Penal Court No. 11 on charges of "getting confidential documents" and "targeting public servants" under Article 6 of the ATL. On June 4, 2010, the İstanbul Heavy Penal Court No. 11 acquitted Mr. Şener and the İstanbul Criminal Court of First Instance No. 2 acquitted him on December 7, 2011.

Another case is that of American freelance journalist **Jake Hess**, who, on August 11, 2010, was arrested at his hotel in Diyarbakır on the grounds that his name appeared in an indictment against alleged members of the KCK. Previously he had written articles on the Turkish mili-

67. See İHD and HRFT.

68. See below Section III – C.



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tary's alleged abuse of Kurds in the country's south-east. The reports, initially published by Inter Press Service (IPS), were widely redistributed by Kurdish publications. In 2009, while teaching English in Diyarbakır, he had volunteered at İHD, for which he translated reports once or twice a week. At the time, most of telephone conversations at İHD offices were tapped. It is believed that the real reason for Mr. Hess' arrest was articles he wrote for IPS. He was detained without formal charges being announced, beyond the initial legal limitation. On August 20, 2010, the journalist was deported on order of the Minister of the Interior after being held for nine days and banned from re-entering the country.

## **d/ LAWYERS**

Cases of judicial harassment against lawyers for merely defending their clients' rights in politically sensitive cases are not new but, during the past years, they have become frequent. Many lawyers suffer judicial harassment because they are identified with their clients or the cause they defend. Notably, lawyers who represent clients in anti-terrorism cases, in turn face prosecution for terrorism on the basis of the vague provisions on "membership", "support" or "propaganda". This practice blatantly violates international human rights law<sup>69</sup>. Other lawyers have also suffered harassment due to their involvement in the promotion of universal human rights standards. It has been the case of above-mentioned İHD members and lawyers Mr. Muharrem Erbey, Mr. Hasan Anlar, Ms. Filiz Kalaycı, Mr. Halil İbrahim Vargün, and Mr. Murat Vargün. This trend is particularly problematic in that it constitutes a serious obstacle to the strengthening of the rule of law.

Defence lawyers of imprisoned PKK leader, Mr. Abdullah Öcalan, have been particularly at risk<sup>70</sup>. Indeed, since 2005, when the Grand Chamber of the ECtHR condemned Turkey for violation of the rights of defence of Mr. Öcalan<sup>71</sup>, more than one hundred criminal cases have been opened against at least 68 of Mr. Öcalan's lawyers for "complicity with a terrorist organisation", based on the violation of Article 314 of the TPC and Articles 6 and 7 of the ATL.

The judicial harassment against these lawyers appears to exclusively aim at sanctioning the rights of defence by punishing them for the mere exercise of their legitimate professional activities. The charges pending against the lawyers are based on tape records between Mr. Öcalan

and his lawyers during their meetings in the İmralı prison, press articles, interviews in the media and public declarations made by his lawyers.

Some were found by the court not guilty. Nonetheless, further criminal cases were launched against the same lawyers and others under the same charges.

Furthermore, at least seven lawyers were sentenced to a ban to exercise their profession for one year and nine lawyers were sentenced to imprisonment. These harsh sentences, which are becoming a recurrent practice merely seem at preventing the lawyers from providing Mr. Öcalan a legal representation.

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69. The 1990 Havana Basic Principles on the Role of Lawyers indicate that "lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions" and Article 9.3 of the UN Declaration on Human Rights Defenders that "everyone has the right, individually and in association with others, *inter alia*, (...) "to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms".

70. It is notably the case of Abdulhamit Arslanlar, Ahmet Avcı, Ali Maden, Asya Ülker, Aydın Oruç, Ayla Ata Akad, Ayşe Batumlu, Aysel Tuğluk, Baran Doğan, Baran Pamuk, Bekir Benek, Bekir Kaya, Cemal Demir, Cengiz Çiçek, Deniz Büyük, Devrim Barış Baran, Doğan Erbaş, Ebru Günay, Feridun Çelik, Fethi Gümüş, Filiz Köstak, Fırat Aydıncaya, Fuat Coşacak, Hadice Korkut, Hakan Bozyayla, Hüseyin Cangir, İ. Akmeşe, İbrahim Bilmez, İlhami Sayan, İnan Poyraz, İrfan Dündar, M. Ali Birand, M. Eraslan, M. Rollas, Mahmut Şakar, Mahmut Vefa, Mehmet Ayata, Mehmet Bayraktar, Mehmet Deniz Büyük, Mehmet Erbil, Mehmet Kaya, Mehmet Nuri Deniz, Mehmet Sabırtaş, Mizgin Irgat, Muhammed Serdar Özer, Muharrem Şahin, Muhdi Öztüzün, Mustafa Eraslan, Muzaffer Akad, Muzaffer Demir, Muzaffer Kutay, Nezahat Paşa Bayraktar, Niyazi Bulgan, Okan Yıldız, Ömer Güneş, Osman Aktaş, Osman Çelik, S. Tanrıkulu, Selim Kurbanoglu, Serkan Akbaş, Servet Demir, Servet Özen, Sevil Küçükkoşum, Süleyman Kaya, Süleyman Özbayhan, Türkan Aslan, Yalçın Santaş and Zeynal Değirmenci,

71. See ECtHR judgment, Öcalan vs. Turkey, May 12, 2005.



On November 22, 2011, an unprecedented broad campaign of arrest was launched in Istanbul, Diyarbakır, Bursa and Ankara and targeted 39 lawyers and one legal worker in the scope of an anti-terrorism operation. They were taken into custody in Istanbul for their alleged membership in KCK under charges of "membership in an illegal organisation" and "directing an illegal organisation". All were remanded into custody on November 26 or December 7 after they had been interrogated at the Beşiktaş (Istanbul) Heavy Penal Court No. 11. All of them have been involved in the legal representation of imprisoned PKK leader Abdullah Öcalan and have been accused of "passing orders of Abdullah Öcalan". Several had already been subjected to judicial harassment. The arrests include defence lawyers who are engaged in the main KCK trial handled by the Diyarbakır High Penal Court No. 6. The lawyers took a stance against the ban of a defence in Kurdish before the Diyarbakır courts as a matter of principle and stated that they would not be able to defend their clients. Both the lawyers and the Diyarbakır Bar Association were warned several times by the court and the prosecutors about "committing a crime". On December 5, another lawyer was remanded into custody in the same criminal case.

The 41 individuals – 40 lawyers and one legal worker – were remanded into custody pending the end of the investigation and are currently detained in İstanbul Bakırköy Closed Prison for Females or Kocaeli Kandıra F Type Closed Prison No. 2 are **Asya Ülker, Aydın Oruç, Bedri Kuran, Cemal Demir, Cemo Tüysüz, Davut Uzunköprü, Doğan Erbaş, Fuat Çoşacak, Hüseyin Çalışçı, Mehmet Bayraktar, Mehmet Deniz Büyük, Mehmet Nuri Deniz, Mehmet Sani Kızılkaya, Mensur Işık, Mizgin Irgat, Muharrem Şahin, Mehdi Öztüzün, Mustafa Eraslan, Osman Çelik, Sebahattin Kaya, Serkan Akbaş, Servet Demir, Şakir Demir, Şaize Önder, Veysel Vesek, Yaşar Kaya, Cengiz Çiçek, Faik Özgür Erol, Hatice Korkut, İbrahim Bilmez, Ömer Güneş, Emran Emekçi, Mehmet Sabir Tas, Mahmut Alınak, Fırat Aydınkaya, Mehmet Ayata, Nevzat Anuk, Nezahat Paşa Bayraktar, Yalçın Sarıtaş, Ümit Sisligün** as well as and the Secretary of the Century's Law Bureau, Ms. **Sebahat Zeynep Arat**. On April 18, 2012, the court accepted the indictment order submitted to it on April 6 but did not schedule an hearing for the case. The lawyers are charged of "belonging to a criminal organisation" under Article 314 of the TPC. This case, which is known as the "Lawyers trial" is due to open on July 16, 2012.

Moreover, Mr. **Hakan Karadağ**, one of the lawyers involved in the trial against the police in the case of Mr. Hrant Dink's murder, faced reprisals, and serious concerns were raised as to whether his death was a real suicide. Mr. Karadağ was found hung, on June 4, 2010, at his home in Istanbul. He was previously directly threatened by Mr. Ogün Samast, who was suspected of Mr. Dink's murder<sup>72</sup>. Mr. Karadağ had filed a complaint about this matter.

## e/ DEFENDERS OF THE RIGHT TO CONSCIENTIOUS OBJECTION

The right to conscientious objection is not legally recognised in Turkey, and the issue remains highly controversial<sup>73</sup>.

In this context, as of February 2012, defenders of the rights of conscientious objectors continued to be prosecuted and detained. Some of them were subjected to multiple criminal cases for defending conscientious objection.

For example, on January 6, 2010, members of the Solidarity Initiative with Conscientious Objector Enver Aydemir, who was then detained since December 24, 2009, were arrested by the police after they made a public statement in Ankara province. They were later released and 19 of them were charged of "alienating people from military service" under Article 318 of the TPC. On June 17, 2010, the Ankara Penal Court of First Instance No. 10 sentenced Mr. **Volkan Sevinç** to 18 months of imprisonment on charges of "insulting the police officers"

72. The latter was sentenced on July 25, 2011 to 22 years' imprisonment.

73. The ECtHR condemned Turkey on several instances for not recognising this right. In November 14, 2011, the Ministry of Justice announced that a draft proposed to legalise conscientious objection in Turkey and it is going to be in effect two weeks after the President approves of the law change. This decision followed pressures coming from ECtHR, which condemned Turkey on several instances for not recognising this right and asked the Government to legalize conscientious objection by the end of year 2011. As to February 2012, no bill had been tabled owing to pressures from the militarists. See İHD.

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and "alienating people from military service", and Messrs. **Gökçe Oflu Sevimli, Halil Savda** and **Zarife Ferda Çakmak** to six months of imprisonment on charges of "alienating people from military service". The other 15 defendants were acquitted. As of February 2012, an appeal was pending before the Court of Cassation (Yargıtay).

Five defenders of the right to conscientious objection, Messrs. **Ahmet Aydemir, Davut Erkan, Fatih Tezcan**, Halil Savda and **Mehmet Atak**, were prosecuted before the Eskişehir Penal Court of Peace No. 4 on charges of "alienating people from military service" under Article 318 of TPC after they shouted the slogan "everyone is born as a baby not a soldier" during the trial against the conscientious objector to military service Enver Aydemir on January 21, 2010. The first hearing took place April 21, 2011. The next hearing will take place on April 19, 2012.

On February 24, 2012, Mr. Halil Savda was arrested and brought to the Doğubeyazıt Closed Prison to serve a five months prison sentence for "alienating the public from military service" in relation to another case after he read a press release in front of the Israeli Consulate in Istanbul on August 1, 2006 in solidarity with Israeli conscientious objectors<sup>74</sup>. His conviction was upheld by the Supreme Court of Appeals in November 2010 and communicated to him in February 2011. On April 13, 2012, Mr. Savda was conditionally released from prison, under new amendments to the law on the execution of sentences that make it possible for prisoners with less than a year of their sentence remaining to be conditionally released under supervision. There are two other cases against Mr. Halil Savda which are ongoing, in which he is accused under Article 318.

In addition, on March 10, 2010, the Ankara Penal Court of First Instance No. 17 began to examine a criminal complaint against Mr. **Ali Barış Kurt**, Editor of [www.emekdefteri.com](http://www.emekdefteri.com), in connection with articles that defended the right to conscientious objection to military service on charges of "alienating people from military service" under Article 318. On July 7, 2010, he was acquitted by the court.

## **2/ THE HARASSMENT BY LOCAL AUTHORITIES OF THOSE WHO ACT ON GENDER-RELATED ISSUES**

### **a/ WOMEN RIGHTS' DEFENDERS**

During the mission, several women rights organisations complained of gender-related harassment. Indeed, sexual harassment and violence, including rape, and honour crimes remain taboo subjects. In some communities or areas, women rights' activism is not accepted. In this context, women human rights defenders, notably when they act and mobilise against sexual violence or against honour crimes, may face specific acts of harassment, particularly in the provinces.

For instance, women human rights defenders and their organisations receive threats, are subjected to fabricated complaints by the police, are regularly denigrated in local newspapers or subjected to insults by police officers for their action in favour of women. This is the case of the Association of Women in Van (Vakad), which fights violence against women in Van, and

is regularly subjected to acts of intimidation by local officials, the police, the local media and male family members of victims of violence supported by Vakad.

Intimidation and harassment of women human rights defenders also occur when women's organisations attempt to fight against the impunity of gender-related human rights violations. For instance, in the context of a criminal case for gang rape held before the Fethiye/Mugla Heavy Penal Court No. 12 under case number 2011/28, which opened on January 26, 2011, in which eight men, public officials, retired teachers, and national education inspectors, are being prosecuted, several women rights defenders who had travelled to Fethiye to observe the trial to support the victim have been subjected to acts of intimidation and abuses by the police on

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74. See IHD.

the occasion of each hearing in order to dissuade them to continue the observation. The police filmed women who were protesting before the court house and were threatened of criminal investigation. The trial had opened four years after the rape following pressure by women's rights organisations. The defendants' lawyers denigrated the women's rights organisations and accused them of having conspired. On January 26, 2011, 150 women gathered in front of the court house and made a statement on behalf of the Women's Initiative Against Rape, Turkey. They were notably harassed when gathering in front of the court building. The trial was ongoing as of February 2012<sup>75</sup>.

Similarly, beginning of October 2010, two members of the Solidarity Centre for Women in Diyarbakır which had travelled to Siirt to observe a trial, were arrested, filmed and subjected to an ID check by police officers.

## b/ LGBT DEFENDERS

LGBT defenders are constantly harassed by the police, which proceed to incessant discriminatory identity checks. Those who complain against this practice are often arrested and charged of "resistance to the police". Others who filed a complaint against the police for discriminatory identity check are in turn the subject of complaints by the police for "insult" and "harm to public order".

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1. Kurdish women marching for the Trans Pride. Banner says «my child is transsexual» in Turkish. Purple banner says «we are here, get used to it» in Armenian. İstanbul, 2011.
2. Hrant Dink Memorial Day, January 19, 2011.

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75. See Women's Initiative Against Rape in Turkey.

For instance, on June 19, 2010, Ms. **Buse Kılıçkaya**, Ms. **Selay Tunç** and Ms. **Naz Gudumen**, respectively founder and chairperson, founder and vice-chairperson and member of Pembe Hayat LGBTT Dayanisma Dernegi (Pink Life LGBTT Solidarity Association), were arbitrarily arrested by police officers while driving through the Seyranbaglari Mah neighbourhood in Ankara. They were taken to the police station and held for five hours before being released. Although the human rights defenders filed an official complaint for ill treatment and insults with the Public Prosecutor, the latter dismissed their complaint and instead permitted charges against them for "resisting the police" and "damaging public property". On October 25, 2011, Ms. Buse Kilickaya, Ms. Selay Tunc and Ms. Naz Gudumen were found guilty by the Ankara 15th Court of First Instance. Ms. Buse Kilickaya was convicted of "resisting public officials and preventing them from performing their duty" and was sentenced to five months in prison. Ms. Selay Tunc was convicted of the same charge and received a suspended six-month prison sentence. Ms. Naz Gudumen was convicted of "resisting public officials and preventing them from performing their duty" and "insults" and received a suspended 18-month prison sentence. In its reasoning, the court explained that it based its sentence solely on the accounts given by the police. The Court refused to listen and take into account recordings of the arrest made by the human rights defenders. As of February 2012, an appeal was pending before the Court of Cassation.

On May 17, 2010, five transgender members of the same organisation, Ms. Kılıçkaya and Ms. Tunç as well as Ms. **Yeşim Tatlıoğlu**, Ms. **Türkan Küçükkoçak** and Ms. **Eser Ulus**, were brutally assaulted and detained by Ankara's police. They were charged with "resisting public officials and preventing them from performing their duty" but an Ankara court subsequently dismissed the case against the activists for lack of evidence and condemned the police officers' treatment of the women as "totally wrong".

In March 2011, the Information and Communication Technologies Authority – Telecommunication Communication Presidency (TIB) ordered to the hosting company of Pembe Hayat's official website that the website be removed in accordance with Law No 5361 on "Regulation of Internet Broadcasting and Fighting Against Crimes Committed in these Broadcasts"; TIB later gave verbal assurances that the cancellation order would not be pursued.

LGBTI defenders were also victims of violent attacks by non State actors, often in impunity. For instance, on February 26, 2011, one of the founders of Pink Life LGBTT Solidarity Association, Ms. **Gorkem K.**, was beaten and stabbed ten times. She remained under intensive care for 15 days in a hospital<sup>76</sup>.

## C/ IMPUNITY OF ATTACKS AGAINST HUMAN RIGHTS DEFENDERS

While the number of attacks against human rights defenders has significantly decreased in comparison to past decades, most of them remain in impunity. Since its creation in 1986, 24 of İHD's administrators and members have been killed<sup>77</sup>. Most of these attacks remain unpunished. A prominent example is the murder of **Hrant Dink**, Editor-in-chief of the bilingual Turkish-Armenian newspaper *Agos*, known for advocating Turkish-Armenian reconciliation and human and minority rights in Turkey, who was critical of both Turkey's denial of the Armenian Genocide, and of the Armenian diaspora's campaign for its international recognition.

In the current context, where significant numbers of human rights defenders face anti-terrorism charges for the legitimate expression of non violent views, the judicial authorities are contributing to create a deleterious environment for human rights defenders, who risk to be assimilated

76. See Pink Life.

77. Murdered executives and members of İHD are **Vedat Aydın** (Founder member of the Diyarbakır Branch), **Sıddık Tan** (Board member of the Batman Branch), **İdris Özçelik** (Board member of the Urfa Branch), **Kemal Kılıç** (Board member of the Urfa Branch), **Orhan Karaağar** (Board member of the Van Branch), **Cemal Akar** (Board member of the Erzincan Branch), **Şevket Epözdemir** (Board member of the Tatvan Branch), **Metin Can** (Chairman of the Elazığ Branch), **Hasan Kaya** (Member of the Elazığ Branch), **Muhsin Melik** (Founder member of the Urfa Branch), **İkram Mihyas** (Member of the İzmir Branch), **Didar Şensoy** (Member of the İstanbul Branch), **Tacettin Aşçı**, **Abuzer Öner**, **Ahmet Aydın**, **M. Şirin Polat**, **Medeni Göktepe**, **Şükrü Fırat**, **Yahya Orhan**, **Eyüp Gökoğlu**, **Cengiz Altun**, **Habib Kılıç** and **Mehmet Sincar**. See İHD.



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to terrorist organisations and be exposed to attacks by non State actors. For instance, a recent incident was the posting on March 21, 2012 of a threatening message on İHD's website saying "one night, we may suddenly come to you" after their website was hacked<sup>78</sup>.

Human rights defenders are particularly vulnerable to hate crimes, acts of intimidation, threats and sometimes murders because they provide information or views on "sensitive issues". In many cases, the State has failed to its obligation to protect its citizens though notoriously threatened, some officials were involved in the act and the State has failed to carry out an independent, thorough and impartial investigation, to prosecute and punish all those responsible and guarantee the right to a fair trial for victims.

Despite the overall impunity of physical attacks against human rights defenders, 2010-2012 saw some progresses in investigating and prosecuting attacks against human rights defenders. For example, in June 2010, nineteen Turkish officials, among which police officials, prison managers, a doctor and prison guards, were found guilty of the murder of Mr. **Engin Çeber**, a prominent journalist and a human rights defender who was tortured to death in custody in 2008. Mr. Engin Çeber was arrested after he took part in a protest against the death of a human rights activist shot by the police. Two police officers received a 7.5-year prison sentences and one police officer a 2.5-year imprisonment<sup>79</sup>.

In January 2011, four years after the assassination of the journalist Hrant Dink, the Istanbul 6th Administrative Court found the Ministry of the Interior guilty of a "severe failure of duty" following the decision on September 14, 2010 of the ECtHR to condemn Turkey for failing to protect the life of Mr. Hrant Dink or to conduct an effective investigation into his murder. In particular, the Court noted the failure of the authorities to examine the role of the security services. The Trabzon Governorship which, at the time, had not taken the threats of assassination seriously and had made no decision to ensure Mr. Dink's protection, was considered by the court to have failed in its responsibility of taking precaution and thus to protect the police's interests. The Turkish Ministry of Foreign Affairs did not appeal<sup>80</sup>.

The Dink murder trial opened in Istanbul on July 2, 2007. 18 people were charged at Istanbul Heavy Penal Court No 14 in connection with the journalist's assassination. Since the main suspect, Mr. Ogün Samast, was younger than 18 the hearing was not public. The court decided to release several defendants, Messrs. Osman Altay, İrfan Özkan, Salih Hacisalihoglu and Veysel Toprak, to be tried without remand. On July 25, 2011, Ogün Samast was convicted of premeditated murder and illegal possession of a firearm by Istanbul Heavy Penal Court for Juveniles. He was sentenced to 22 years and 10 months in prison.

Despite the announcement of the reopening of the investigation in Turkey by the Ministry of Interior in February 2009, no major progress has been made. On September 19, 2010, the Prosecutor made its sum up of the case announcing that the prosecution was drawing to the end. This despite the fact that important witnesses have still not been located by the judicial authorities. Despite a recent court decision making it obligatory, the High Council for Telecommunications (TIB) has still not provided the court with a register of the phone calls made in the area where Mr. Dink was shot dead, the Istanbul district of Sisli, at the time of his murder on January 19, 2007. As a result, investigators have still not been able to trace the phone calls that a suspect – seen in the area on surveillance cameras – made just before and after the murder. Also the two individuals accompanying convicted killer Mr. Ogün Samast on the street in Sisli when he gunned Mr. Dink down have still not been identified. And it has not been possible to restore some surveillance camera recordings that were deleted by the Istanbul anti-terrorist department. The Prosecutor requested life sentences for the two alleged masterminds, Messrs. Yasin Hayal and Erhan Tunçel, accusing them of "premeditated murder" and of "running the cell of the terrorist organization Ergenekon in Trabzon", where they and Mr. Samast, the convicted shooter, lived. He also requested life sentences for five

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78. See İHD.

79. See Bianet.

80. See ECtHR, Dink vs. Turkey, Applications Nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, September 14, 2010.



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other defendants (currently not in detention) for "complicity in murder" and "membership in a terrorist organisation," sentences ranging from 3 to 19 years for other defendants, and the acquittal of seven others. The summing-up portrayed Mr. Dink's murder as political and ideological assassination that was just one element in a supposedly vast destabilization plan by the alleged ultra-nationalist underground network Ergenekon. The search for masterminds has been limited to the Hayal and Tunçel level, while the judicial authorities seem to be protecting more highly placed suspects. The investigation into 30 senior officials that was launched in February 2011 after the European Court of Human Rights ruled against Turkey seems to have been abandoned. Mr. Samast, the youth who shot him outside the newspaper on January 19, 2007, was tried before a different court from the 18 other defendants on the grounds that he was a minor at the time. Sentenced to 23 years in prison on July 25 for the Dink murder, he is also being tried on a separate charge of belonging to an illegal organisation. The members of the Trabzon gendarmerie who had prior knowledge of the Dink murder plot and did nothing to stop it were also tried separately and were sentenced on June 2, 2010, to sentences ranging from four to six months in prison.

At the 22<sup>nd</sup> hearing, on January 17, 2012, the court held that Mr. Dink's murder was not the work of a terrorist organisation and that no part of the State apparatus was involved. The murder was masterminded by Mr. Yasin Hayal alone, and was carried out by the young gunman, Mr. Ogün Samast. The Prosecutor and Mr. Dink's family filed an appeal. Mr. Dink family also filed a complaint to the Istanbul Public Chief Prosecutor's Office against public officials, on that several people and institutions carried responsibility for the Dink murder, namely the Provincial Gendarmerie Commander of Trabzon, the Provincial Police Directorate of Trabzon, the Provincial Police Directorate of Istanbul and the Police General Directorate Intelligence Branch Presidency, for their alleged involvement in the murder.

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## CONCLUSION

Numerous reform packages have been adopted throughout the last decade tentatively to make the Turkish legal framework more consonant with international and European human rights standards. However, the existence of a myriad of other potentially repressive provisions combined with the propensity of law-enforcement and judicial bodies to interpret and apply laws in a way that places State interest above the protection of fundamental rights continue to render the environment in which human rights defenders operate deleterious.

Despite this very repressive setting, many human rights defenders continue to monitor human rights violations and speak out vigorously, exposing themselves to the risk of arrest and prosecution.

Indeed, dozens of human rights defenders are currently jailed for their human rights activities. More are subjected to a constant judicial harassment, rendering the environment of those who legitimately defend or promote universally recognised human rights particularly unfavourable. Lately, human rights defenders have been in most cases prosecuted under the ATL. Since 2009, the majority of the cases of judicial harassment have taken place within the framework of the KCK dismantlement trials, which appear to have been used to intimidate and silence the different components of the Turkish civil society which speak out on sensitive developments – i.e. members of NGOs, lawyers, trade unionists, journalists and academics. In addition, the intensity of the judicial harassment faced by human right defenders is aggravated by deficiencies characterising the Turkish judicial system (long periods of pre-trial detention and long criminal proceedings).

Finally, if it is to be welcomed that during the last decade the physical safety of human rights defenders has continued to improve, it is feared that the current criminalisation of human rights defenders under anti-terrorism legislation risks to expose them again to physical abuse by non State actors.



Tekel workers strike

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## RECOMMENDATIONS

In light of the issues raised in this report, the Observatory urges the Government and relevant authorities of Turkey to comply with their international and regional human rights obligations and the provisions of the UN Declaration on Human Rights Defenders, notably by acknowledging the legitimacy of the work of human rights defenders and ensuring that they are able to carry out their peaceful activities in a favourable environment. This merely involves more tolerance by the authorities on critics made by independent groups. To this end, the Observatory makes the following recommendations:

### 1. TO THE GOVERNMENT AND RELEVANT AUTHORITIES OF TURKEY:

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#### **ENSURING THAT THE RESPECT OF HUMAN RIGHTS EFFECTIVELY GUIDES THE OPERATION OF LAW-ENFORCEMENT AND JUDICIAL BODIES**

- to conduct a comprehensive overhaul of the Constitution and statutory legislation, with a view to bring the spirit and letter of the law in conformity with international standards;
- to review its interpretation of national security to exclude all human rights activities;
- to amend the Constitution so as to ensure that fundamental rights take precedence over the interests of State and national security;
- to improve the training of State authorities (law enforcement bodies, prosecutors and judges) on amended laws and their interpretation;
- to issue circulars setting out how the spirit of the reform should be reflected in the treatment of human rights defenders;
- to clarify to law enforcement bodies, prosecutors and judges that legislation and regulations must be applied in a manner consistent with internationally recognised human rights standards;
- to publicly acknowledge the importance and legitimacy of the work of human rights defenders, and their essential contribution to public debate in an open, pluralist and fair society and to the promotion of human rights and the rule of law;
- to rationalise the domestic institutional framework for the promotion and protection of human rights and include a special focus on the protection of human rights defenders;
- to disseminate the United Nations Declaration on Human Rights Defenders among State agents and individuals, groups and organs of society and other non-State actors;
- to guarantee the independence of the judiciary.

#### **ENSURING THE SAFETY OF HUMAN RIGHTS DEFENDERS**

- to guarantee in all circumstances the physical and psychological integrity of all human rights defenders in Turkey;
- to conduct a full, independent, effective, impartial and transparent investigation into any act of violence or threat against human rights defenders, bring those responsible before a civil competent and impartial tribunal and apply to them the penal sanctions provided by the law;
- to immediately counter statements and actions by non State actors and State actors questioning the credibility of human rights defenders.

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## **ENSURING THE RIGHT TO FREEDOM OF EXPRESSION, INCLUDING THE RIGHT TO DISSEMINATE INFORMATION AND EXPRESS VIEWS ON HUMAN RIGHTS**

- to review articles of the TPC and the ATL that may be used to criminalise non violent expression, with a view to repealing or amending provisions that do not comply with international standards and offering guidance on the application of provisions that are wrongly applied by the police and judiciary against human rights defenders;
- to create an enabling legal environment for the development and full participation of the independent media by suppressing media-related offences, notably by incorporating the provisions of international media and freedom of expression standards into domestic law and passing new and progressive media related laws;
- to increase training of the judiciary, security forces and governorship on the aims and intent of the new laws;
- to increase tolerance to criticism, in particular in the areas of democratic reforms, fundamental freedoms, social rights, minority rights and conscientious objection.

## **ENSURING THE RIGHT TO FREEDOM OF ASSOCIATION OF HUMAN RIGHTS DEFENDERS**

- to review the law on associations to bring it into conformity with international standards;
- to simplify registration and reporting procedures and remove unnecessary bureaucracy. Sanctions for the failure of filing reports or complying with other provisions of the law governing freedom of association should provide for adequate warning being given to the association as well as an opportunity to correct such administrative infractions;
- to ensure that existing laws and regulations are applied in an independent, transparent and less burdensome or lengthy manner in order to avoid restricting the right to freedom of association;
- to ensure that human rights organisations can receive funding from within Turkey and abroad (without prior authorisation) and participate in national and international networks of actions in all fields of human rights without undue restrictions;
- to allow associations to engage in all legally acceptable fund-raising activities under the same regulations that apply to other non-profit organisations in general;
- to ensure that associations are not heavily fined for transgressing administrative regulations;
- to ensure that associations acting on sensitive issues do not face discriminatory treatment and disproportionate checks and abusive fiscal procedures, particularly in the provinces.

## **ENSURING THAT HUMAN RIGHTS DEFENDERS ARE NOT SUBJECTED TO JUDICIAL HARASSMENT**

- to take all necessary measures to end all forms of harassment – including at the judicial level – against human rights defenders and to enable them to pursue their legitimate human rights activities, notably by: annulling all investigations, criminal proceedings as well as the execution of sentences for offences committed by human rights defenders through the expression of non violent ideas, opinions or information and ceasing to initiate cases against human rights defenders for their legitimate human rights activities. Prosecutors should ensure that unjustified cases are not initiated against human rights defenders and judges should refuse to indict and drop charges against human rights defenders for their legitimate human rights activities;

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- to stop using counter-terrorism provisions and other legislation to investigate and prosecute human rights defenders peacefully advocating for improvements in human rights for the Kurds;
  - to investigate situations where State officials appear to be abusing the judicial system or administrative processes to launch cases with the aim of harassing and intimidating human rights defenders;
  - to reform the law to limit the resort to pre trial detention, in particular ensure that human rights defenders are not subjected to pre-trial detention for their legitimate human rights activities;
  - to ensure that excessive financial penalties and custodial sentences are not enforced for legitimate acts defending human rights;
  - to include a “public interest” and “truth” defence in law to protect journalists and human rights defenders from the risk of prosecution and detention for simply reporting human rights violations or expressing non violent views.

#### **ENSURING THE PARTICIPATION OF HUMAN RIGHTS DEFENDERS IN PUBLIC AFFAIRS**

- to engage in constructive dialogue with human rights defenders in all initiatives pertaining to human rights including on the human rights reform process;
- to ensure that human rights defenders are involved in all initiatives pertaining to human rights so that these gain credibility and effectiveness;
- to show increased tolerance for criticism and see civil society as a partner and use NGO reports to assess the impact of state policies with regard to human rights and engage in constructive dialogue on how to best address remaining problems.

#### **PROTECTING VULNERABLE GROUPS, INCLUDING WOMEN RIGHTS AND MINORITY RIGHTS DEFENDERS**

- to acknowledge the legitimacy of human rights defenders who peacefully campaign for minorities rights, whether ethnic, religious or sexual minorities, and gender-related rights;
- to take extra measures to ensure the protection of defenders who are at greater risk of facing certain forms of violence because they are perceived as challenging accepted socio-cultural norms, traditions, perceptions and stereotypes;
- to support the efforts of women’s rights organisations striving to combat violence against women and to assist victims;
- to take active steps to challenge the view that human rights defenders advocating for improvements in the Kurdish regions necessarily have a political agenda or are linked to terrorist organisations.

#### **COOPERATION WITH THE UNITED NATIONS HUMAN RIGHTS MONITORING BODIES**

- to implement recommendations issued by UN, CoE and OSCE human rights mechanisms, including those of the then UN Special Representative of the Secretary General on Human Rights Defenders in her 2005 mission report and of the CoE Commissioner for Human Rights in his reports and comments published in 2011-2012;
- to follow up on its open invitation to the Special Procedures of the UN Human Rights Council and request a visit as soon as possible by the UN Special Rapporteur on Human Rights Defenders, the Special Rapporteur on the Promotion and Protection of Human Rights while



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Countering Terrorism, the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression and the Independent Expert on Minority Issues;

- to submit its due reports to the relevant regional and international human rights treaty bodies;
- to comply at all times with the provisions of the UN Declaration on Human Rights Defenders, adopted by the General Assembly of the United Nations on December 9, 1998, the Declaration of the Committee of Ministers of the Council of Europe for enhanced protection of human rights defenders, adopted on February 6, 2008 and the provisions of the Document of the Copenhagen Meeting of the 2nd Conference on the Human Dimension of the Cooperation and Security Conference in Europe (CSCE) (1990).

## **2. TO THE UN, SPECIFICALLY THE UN HUMAN RIGHTS COMMITTEE DUE TO REVIEW TURKEY IN OCTOBER-NOVEMBER 2012 AND THE UN SPECIAL PROCEDURES:**

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- to continue to grant particular attention to the protection of human rights defenders in Turkey, in accordance with the UN Declaration on Human Rights Defenders and follow-up on the implementation of recommendations issued on Turkey;
- to follow up on Turkey's open invitation to the Special Procedures of the UN Human Rights Council and arrange a joint follow-up visit as soon as possible by the UN Special Rapporteur on Human Rights Defenders and the UN Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism;
- to condemn publicly the deterioration of the situation of human rights defenders and freedom of expression in the country;

## **3. TO THE EUROPEAN UNION, THE COUNCIL OF EUROPE, INCLUDING THE COMMISSIONER FOR HUMAN RIGHTS, THE PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE (PACE) SPECIAL RAPPORTEUR ON HUMAN RIGHTS DEFENDERS, THE COMMITTEE OF MINISTERS AND THE ORGANISATION FOR SECURITY AND COOPERATION IN EUROPE (OSCE):**

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- to continue to grant particular attention to the protection of human rights defenders in Turkey, in accordance with the UN Declaration on Human Rights Defenders, the ECHR and the EU Guidelines on Human Rights Defenders;
- to engage a dialogue with the authorities on the concerns set out in this report as well as on the measures to be taken by the Turkish authorities to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under the Turkish State's jurisdiction, individually and in association with others, are able to enjoy all human rights and fundamental freedoms.

# ANNEXES

## ANNEX 1

### LISTS OF İHD MEMBERS, LAWYERS AND TRADE UNIONISTS IN JAIL AS OF APRIL 2012<sup>81</sup>

#### LIST OF İHD MEMBERS IN JAIL

	Name	Position	Place of detention	Date of arrest	Legal status
1	Mr. Muharrem Erbey	İHD Diyarbakır Branch Chairman and İHD National Vice Chairman	Diyarbakır D Type Closed Prison	December 23, 2009	Trial ongoing since October 18, 2010 under Anti-Terrorism Law - ATL ("KCK main trial")
2	Ms. Roza Erdede	İHD Diyarbakır Branch member	Diyarbakır E Type Closed Prison	April 2010	Trial ongoing since October 18, 2010 under ATL ("KCK main trial")
3	Mr. Arslan Özdemir	İHD Diyarbakır Branch member	Diyarbakır D Type Closed Prison	December 23, 2009	Trial ongoing since October 18, 2010 under ATL ("KCK main trial")
4	Mr. M. Şerif Süren	İHD Aydın Branch Executives	Kırıklar F Type Closed Prison No. 1	May 24, 2010	Trial ongoing ("KCK Aydın Province Branch trial")
5	Mr. Orhan Çiçek	İHD Aydın Branch Executives	Kırıklar F Type Closed Prison No. 2	May 24, 2010	Trial ongoing ("KCK Aydın Province Branch trial")
6	Ms. Zana Aksu	İHD Siirt Branch Executive	Kırıklar F Type Closed Prison No. 2	October 20, 2011	Trial ongoing ("KCK İzmir Province Branch case")
7	Mr. Reşit Teymur	İHD Siirt Branch Executive	E Type Closed Prison Siirt	November 23-25, 2011	In pre-trial detention on charges of "participating and organising illegal demonstrations"
8	Mr. Muhsin Beydoğan	İHD Siirt Branch Executive	E Type Closed Prison Siirt	November 22-25, 2011	In pre-trial detention on charges of "helping and harbouring illegal organisation"
9	Mr. Abdulkadir Çurğatay	İHD Mardin Branch Executive	Mardin E F Type Closed Prison	February 13, 2010	Trial ongoing ("KCK Mardin Province Branch trial")
10	Ms. Veysi Parlüt	İHD Mardin Branch Executive	Mardin E F Type Closed Prison	November 1-2, 2011	Trial ongoing ("KCK Mardin Province Branch trial")

81. These lists are not exhaustive. They are based on figures and data provided by İHD.

## LIST OF LAWYERS IN JAIL

	Name	Position	Place of detention	Date of arrest	Legal status
1	Mr. Fırat Anlı		Diyarbakır D Type Closed Prison	December 23-26, 2009	Trial ongoing since October 18, 2010 under Anti-Terrorism Law – ATL (Diyarbakır KCK trial)
2	Mr. Şinasi Tür		Diyarbakır D Type Closed Prison	April 14-18, 2009	Trial ongoing since October 18, 2010 under ATL (Diyarbakır KCK trial)
3	Ms. Ebru Günay		Diyarbakır E Type Closed Prison	April 14-18, 2009	Trial ongoing since October 18, 2010 under ATL (Diyarbakır KCK trial)
4	Mr. Mehmet Deniz Büyük		Kocaeli Kandıra F Type Closed Prison No. 2	Nov-Dec 2011	Trial under ATL to start soon ("Lawyers trial")
5	Mr. Mehmet Nuri Deniz		Kocaeli Kandıra F Type Closed Prison No. 2	Nov-Dec 2011	Trial under ATL to start soon ("Lawyers trial")
6	Mr. Muharrem Şahin		Kocaeli Kandıra F Type Closed Prison No. 2	Nov-Dec 2011	Trial under ATL to start soon ("Lawyers trial")
7	Mr. Mehdi Öztüzün		Kocaeli Kandıra F Type Closed Prison No. 2	Nov-Dec 2011	Trial under ATL to start soon ("Lawyers trial")
8	Mr. Osman Çelik		Kocaeli Kandıra F Type Closed Prison No. 2	Nov-Dec 2011	Trial under ATL to start soon ("Lawyers trial")
19	Mr. Servet Demir		Kocaeli Kandıra F Type Closed Prison No. 2	Nov-Dec 2011	Trial under ATL to start soon ("Lawyers trial")
10	Mr. İbrahim Bilmez		Kocaeli Kandıra F Type Closed Prison No. 2	Nov-Dec 2011	Trial under ATL to start soon ("Lawyers trial")
11	Mr. Mehmet Sabir Tas		Kocaeli Kandıra F Type Closed Prison No. 2	Nov-Dec 2011	Trial under ATL to start soon ("Lawyers trial")
12	Mr. Mahmut Alınak		Kocaeli Kandıra F Type Closed Prison No. 2	Nov-Dec 2011	Trial under ATL to start soon ("Lawyers trial")
13	Mr. Mehmet Ayata		Kocaeli Kandıra F Type Closed Prison No. 2	Nov-Dec 2011	Trial under ATL to start soon ("Lawyers trial")
14	Mr. Doğan Erbaş		Kocaeli Kandıra F Type Closed Prison No. 2	Nov-Dec 2011	Trial under ATL to start soon ("Lawyers trial")
15	Mr. Aydın Oruç		Kocaeli Kandıra F Type Closed Prison No. 2	Nov-Dec 2011	Trial under ATL to start soon ("Lawyers trial")
16	Mr. Cemal Demir		Kocaeli Kandıra F Type Closed Prison No. 2	Nov-Dec 2011	Trial under ATL to start soon ("Lawyers trial")
17	Mr. Mustafa Eraslan		Kocaeli Kandıra F Type Closed Prison No. 2	Nov-Dec 2011	Trial under ATL to start soon ("Lawyers trial")
18	Mr Mehmet Bayraktar		Kocaeli Kandıra F Type Closed Prison No. 2	Nov-Dec 2011	Trial under ATL to start soon ("Lawyers trial")
19	Mr. Mehmet Sani Kızılkaya		Kocaeli Kandıra F Type Closed Prison No. 2	Nov-Dec 2011	Trial under ATL to start soon ("Lawyers trial")
20	Mr. Emran Emekçi		Kocaeli Kandıra F Type Closed Prison No. 2	Nov-Dec 2011	Trial under ATL to start soon ("Lawyers trial")
21	Mr. Yaşar Kaya		Kocaeli Kandıra F Type Closed Prison No. 2	Nov-Dec 2011	Trial under ATL to start soon ("Lawyers trial")

	Name	Position	Place of detention	Date of arrest	Legal status
22	Mr. Serkan Akbaş		Kocaeli Kandıra F Type Closed Prison No. 2	Nov-Dec 2011	Trial under ATL to start soon ("Lawyers trial")
23	Mr. Davut Uzunköprü		Kocaeli Kandıra F Type Closed Prison No. 2	Nov-Dec 2011	Trial under ATL to start soon ("Lawyers trial")
24	Mr. Fuat Coşacak		Kocaeli Kandıra F Type Closed Prison No. 2	Nov-Dec 2011	Trial under ATL to start soon ("Lawyers trial")
25	Mr. Ümit Sisligün		Kocaeli Kandıra F Type Closed Prison No. 2	Nov-Dec 2011	Trial under ATL to start soon ("Lawyers trial")
26	Mr. Yalçın Sarıtaş		Kocaeli Kandıra F Type Closed Prison No. 2	Nov-Dec 2011	Trial under ATL to start soon ("Lawyers trial")
27	Mr. Nevzat Anuk		Kocaeli Kandıra F Type Closed Prison No. 2	Nov-Dec 2011	Trial under ATL to start soon ("Lawyers trial")
28	Mr. Fırat Aydıncaya		Kocaeli Kandıra F Type Closed Prison No. 2	Nov-Dec 2011	Trial under ATL to start soon ("Lawyers trial")
29	Mr. Ömer Güneş		Kocaeli Kandıra F Type Closed Prison No. 2	Nov-Dec 2011	Trial under ATL to start soon ("Lawyers trial")
30	Mr. Faik Özgür Erol		Kocaeli Kandıra F Type Closed Prison No. 2	Nov-Dec 2011	Trial under ATL to start soon ("Lawyers trial")
31	Mr. Cengiz Çiçek		Kocaeli Kandıra F Type Closed Prison No. 2	Nov-Dec 2011	Trial under ATL to start soon ("Lawyers trial")
32	Mr. Veysel Vesek		Kocaeli Kandıra F Type Closed Prison No. 2	Nov-Dec 2011	Trial under ATL to start soon ("Lawyers trial")
33	Ms. Şaziye Önder	İHD Doğubeyazıt Representative	Bakırköy F Closed Prison for Females	November 21, 2011	Trial under ATL to start soon ("Lawyers trial")
34	Mr. Şakir Demir		Kocaeli Kandıra F Type Closed Prison No. 2	Nov-Dec 2011	Trial under ATL to start soon ("Lawyers trial")
35	Mr. Sebahattin Kaya		Kocaeli Kandıra F Type Closed Prison No. 2	Nov-Dec 2011	Trial under ATL to start soon ("Lawyers trial")
36	Mr. Mensur Işık	İHD Muş former Branch Chairperson	Kocaeli Kandıra F Type Closed Prison No. 2	November 21, 2011	Trial under ATL to start soon ("Lawyers trial")
37	Mr. Hüseyin Çalışçı		Kocaeli Kandıra F Type Closed Prison No. 2	Nov-Dec 2011	Trial under ATL to start soon ("Lawyers trial")
38	Mr. Bedri Kuran		Kocaeli Kandıra F Type Closed Prison No. 2	Nov-Dec 2011	Trial under ATL to start soon ("Lawyers trial")
39	Ms. Nezahat Paşa Bayraktar		İstanbul Bakırköy Closed Prison for Females	Nov-Dec 2011	Trial under ATL to start soon ("Lawyers trial")
40	Ms. Hatice Korkut		İstanbul Bakırköy Closed Prison for Females	Nov-Dec 2011	Trial under ATL to start soon ("Lawyers trial")
41	Ms. Mizgin İrgat		İstanbul Bakırköy Closed Prison for Females	Nov-Dec 2011	Trial under ATL to start soon ("Lawyers trial")
42	Ms. Cemo Tüysüz		İstanbul Bakırköy Closed Prison for Females	Nov-Dec 2011	Trial under ATL to start soon ("Lawyers trial")
43	Ms. Asya Ülker		İstanbul Bakırköy Closed Prison for Females	Nov-Dec 2011	Trial under ATL to start soon ("Lawyers trial")
44	Ms. Sebahat Zeynep Arat	Secretary of the Century's Law Bureau's (Asrın Hukuk Bürosu)	İstanbul Bakırköy Closed Prison for Females	Nov-Dec 2011	Trial under ATL to start soon ("Lawyers trial")

## LIST OF TRADE UNIONISTS IN JAIL

	Name	Position	Place of detention	Date of arrest	Legal status
1	Mr. Olcay Kanlibaş	SES former MYK member	E Type Closed Prison Diyarbakır	April 17, 2009	Pre-trial detainee
2	Mr. Ahmet Zirek	TÜM BEL SEN Diyarbakır Branch member	D Type Closed Prison Diyarbakır	April 14, 2009	Pre-trial detainee
3	Mr. Serhat Uğur	EĞİTİM-SEN ŞIRNAK Branch Chairperson	D Type Closed Prison Diyarbakır	September 19, 2011	Pre-trial detainee
4	Mr. Zeynep Sular-Okan	TÜM BEL SEN Diyarbakır Branch member	E Type Closed Prison Diyarbakır	October 3, 2011	Pre-trial detainee
5	Mr. Ahmet Ertak	TÜM BEL SEN Diyarbakır Branch member	D Type Closed Prison Diyarbakır	April 14, 2009	Pre-trial detainee
6	Mr. Abdurrahim Tanrıverdi	TÜM BEL SEN Diyarbakır Branch member	D Type Closed Prison Diyarbakır	April 14, 2009	Pre-trial detainee
7	Mr. Hüseyin Bayrak	TÜM BEL SEN Diyarbakır Branch member	D Type Closed Prison Diyarbakır	December 25, 2009	Pre-trial detainee
8	Mr. Tarkan Altın	EĞİTİM SEN ŞIRNAK Branch member	D Type Closed Prison Diyarbakır	No information	Pre-trial detainee
9	Mr. Rıza Yasin Öztürkoğlu	No information	E Type Closed Prison / Urfa	No information	No information
10	Mr. Adil Aslan	No information	E Type Closed Prison / Urfa	No information	No information
11	Mr. Adile Şahin	SES Branch YÖNETİCİSİ	E Type Closed Prison / Urfa	No information	No information
12	Mr. Mahmut Binici	No information	E Type Closed Prison / Urfa	No information	No information
13	Mr. Halit Şahin	No information	E Type Closed Prison / Urfa	No information	No information
14	Mr. Yüksel Ozan	EGİTİM SEN Tatvan Representative	E Type Closed Prison / Muş	No information	No information
15	Mr. Selami Özyaşar	EĞİTİM SEN Van Branch Chairperson	E Type Closed Prison / Muş	No information	No information
16	Mr. Lezgin Botan	EĞİTİM SEN VAN Branch Chairperson	E Type Closed Prison / Muş	June 21, 2011	Pre-trial detainee
17	Mr. Garip Yaviç	Van Branch Executive Board member	E Type Closed Prison / Muş	June 21, 2011	Pre-trial detainee
18	Mr. Metin Findik	TÜM BEL SEN CİZRE Representative	E Type Closed Prison Mardin	June 19, 2009	Pre-trial detainee
19	Mr. Seyfettin Yavuz	EĞİTİM SEN Mardin Branch member	E Type Closed Prison Mardin	October 17, 2011	Pre-trial detainee



	Name	Position	Place of detention	Date of arrest	Legal status
20	Mr. Doğan Anğay	MARDIN EĞİTİM SEN Branch former Chairperson	E Type Closed Prison Mardin	October 17, 2011	Pre-trial detainee
21	Mr. Seher Tümer	SES ANKARA Branch Executive Board member	F Type Closed Prison Sincan / Ankara	April 17, 2009	Pre-trial detainee
22	Mr. Gülsüm Yıldız	No information	F Type Closed Prison Sincan / Ankara	No information	No information
23	Mr. Mehmet Ali Aslan	DERSİM EĞİTİM SEN former Branch Chairperson	E Type Closed Prison / Malatya	October 17, 2011	Pre-trial detainee
24	Mr. Celal Çalışır	SES URFA Branch member	E Type Closed Prison / Konya	No information	Convicted
25	Mr. Erol Aydemir	BES Hakkari Branch member	F Type Closed Prison / VAN	No information	Pre-trial detainee
26	Mr. Ali Karatay	BES İzmir Branch member	F Type Closed Prison Kiriklar / İzmir	No information	Pre-trial detainee
27	Mr. Ayhan Kurtulan Erzurum	KARS EĞİTİM SEN Former Branch Executive Board member	H Type Closed Prison 1. Kisim C/5 Erzurum	March 16, 2010	Pre-trial detainee
28	Mr. Sedat Güler	SES BITLİS Branch Chairperson	RİZE KALKAN DERE L Type Closed Prison	January 19, 2011	Pre-trial detainee
29	Mr. Muhsin Beydoğan	EĞİTİM SEN VAN Branch member	E Type Closed Prison / Siirt	July 24, 2011	Pre-trial detainee
30	Mr. Serpil Arslan Düzgün	SES İSTANBUL Branch member	Closed Prison for Females and Juveniles Bakırköy / Istanbul	No information	Convicted
31	Mr. Nazire Ayata Civelek	EĞİTİM SEN RİZE Branch member	Closed Prison for Females and Juveniles Bakırköy / Istanbul	No information	Convicted
32	Prof. Büşra Eranlı	Lecturer	Closed Prison for Females and Juveniles Bakırköy / Istanbul	October 28, 2011	Pre-trial detention pending investigation under Anti-Terrorism Law (ATL)
33	Ms. Canan Çalağan	KESK Women Secretary	Sincan Closed Prison for Females	February 16, 2012	Pre-trial detention pending investigation under ATL
34	Ms. Hatice Kahraman	EĞİTİM-SEN First Branch member	Sincan Closed Prison for Females	February 16, 2012	Pre-trial detention pending investigation under ATL
35	Ms. Nurşat Yeşil	SES ANKARA Branch Women Secretary	Sincan Closed Prison for Females	February 16, 2012	Pre-trial detention pending investigation under ATL

	<b>Name</b>	<b>Position</b>	<b>Place of detention</b>	<b>Date of arrest</b>	<b>Legal status</b>
36	Ms. Belkıs Yurtsever	Former KESK Executive	Sincan Closed Prison for Females	February 16, 2012	Pre-trial detention pending investigation under ATL
37	Ms. Güler Elveren	Women Secretary of the Municipal and Local Authority Trade Union (TÜM BEL-SEN)	Sincan Closed Prison for Females	February 16, 2012	Pre-trial detention pending investigation under ATL
38	Ms. Bedriye Yorgun	SES Women Secretary	Sincan Closed Prison for Females	February 16, 2012	Pre-trial detention pending investigation under ATL
39	Ms. Evrim Özdemir Oğraş	EGITIM-SEN First Branch member	Sincan Closed Prison for Females	February 16, 2012	Pre-trial detention pending investigation under ATL
40	Ms. Hülya Mendillioğlu	SES ANKARA Branch Executive	Sincan Closed Prison for Females	February 16, 2012	Pre-trial detention pending investigation under ATL
41	Ms. Güldane Erdoğan	EGITIM-SEN Second Branch Women Secretary	Sincan Closed Prison for Females	February 16, 2012	Pre-trial detention pending investigation under ATL

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## ANNEX 2

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- 2011 EU Progress Report on Turkey, Document SEC(2011) 1201 final, October 12, 2011
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82. The Human Rights Defenders Working Group was established on April 22, 2011 by organisations that have responded to the call by the Human Rights Joint Platform (IHOP) in view of establishing a working group to prepare the ground for a solidarity network for the protection of human rights defenders. The Ankara University Human Rights Centre (AÜİHM), Helsinki Citizens Assembly (HcA), İHD, Human Rights Watch (HRW), Women's Solidarity Foundation, KAOS GL, Pink Life LGBTT Solidarity Association, Amnesty International-Turkey Section which are all based/represented in Ankara and carry out advocacy activities in different fields of human rights are members of this group.



### Establishing the facts

Investigative and trial observation missions

Through activities ranging from sending trial observers to organising international investigative missions, FIDH has developed, rigorous and impartial procedures to establish facts and responsibility.

Experts sent to the field give their time to FIDH on a voluntary basis.

FIDH has conducted more than 1 500 missions in over 100 countries in the past 25 years. These activities reinforce FIDH's alert and advocacy campaigns.

### Supporting civil society

Training and exchange

FIDH organises numerous activities in partnership with its member organisations, in the countries in which they are based. The core aim is to strengthen the influence and capacity of human rights activists to boost changes at the local level.

### Mobilising the international community

Permanent lobbying before intergovernmental bodies

FIDH supports its member organisations and local partners in their efforts before intergovernmental organisations. FIDH alerts international bodies to violations of human rights and refers individual cases to them. FIDH also takes part in the development of international legal instruments.

### Informing and reporting

Mobilising public opinion

FIDH informs and mobilises public opinion. Press releases, press conferences, open letters to authorities, mission reports, urgent appeals, petitions, campaigns, website... FIDH makes full use of all means of communication to raise awareness of human rights violations.

17 passage de la Main-d'Or – 75011 Paris – France

Tel: + 33 1 43 55 25 18 / Fax: + 33 1 43 55 18 80 / [www.fidh.org](http://www.fidh.org)



**Created in 1985, the World Organisation Against Torture (OMCT) is today the main coalition of international non-governmental organisations (NGO) fighting against torture, summary executions, enforced disappearances and all other cruel, inhuman or degrading treatment.** With 311 affiliated organisations in its SOS-Torture Network, OMCT is the most important network of NGOs working for the protection and the promotion of human rights in the world.

Based in Geneva, OMCT's International Secretariat provides personalised medical, legal and/or social **assistance to victims of torture** and ensures the daily dissemination of **urgent interventions** across the world, in order to prevent serious human rights violations, to protect individuals and to fight against impunity. Moreover, some of its activities aim at protecting specific categories of vulnerable people, such as women, children and human rights defenders. OMCT also carries out campaigns relating to violations of economic, social and cultural rights. In the framework of its activities, OMCT also **submits individual communications and alternative reports** to the United Nations mechanisms, and actively collaborates in the **respect, development and strengthening of international norms** for the protection of human rights.

OMCT has either a consultative or observer status with the United Nations Economic and Social Council (ECOSOC), the International Labour Organisation, the African Commission on Human and Peoples' Rights, the Organisation Internationale de la Francophonie, and the Council of Europe.

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The Observatory  
for the Protection  
of Human Rights Defenders

## Activities of the Observatory

The Observatory is an action programme based on the belief that strengthened co-operation and solidarity among human rights defenders and their organisations will contribute to break the isolation they are faced with. It is also based on the absolute necessity to establish a systematic response from NGOs and the international community to the repression of which defenders are victims.

With this aim, the Observatory seeks to establish:

- a mechanism of systematic alert of the international community on cases of harassment and repression of defenders of human rights and fundamental freedoms, particularly when they require urgent intervention;
- the observation of judicial proceedings, and whenever necessary, direct legal assistance;
- international missions of investigation and solidarity;
- a personalised assistance as concrete as possible, including material support, with the aim of ensuring the security of the defenders victims of serious violations;
- the preparation, publication and world-wide dissemination of reports on violations of the rights and freedoms of individuals or organisations working for human rights around the world;
- sustained action with the United Nations and more particularly the Special Rapporteur on Human Rights Defenders, and when necessary with geographic and thematic Special Rapporteurs and Working Groups;
- sustained lobbying with various regional and international intergovernmental institutions, especially the Organisation of American States (OAS), the African Union (AU), the European Union (EU), the Organisation for Security and Co-operation in Europe (OSCE), the Council of Europe, the International Organisation of the Francophonie (OIF), the Commonwealth, the League of Arab States, the Association of Southeast Asian Nations (ASEAN) and the International Labour Organisation (ILO).

The Observatory's activities are based on consultation and co-operation with national, regional, and international non-governmental organisations.

With efficiency as its primary objective, the Observatory has adopted flexible criteria to examine the admissibility of cases that are communicated to it, based on the "operational definition" of human rights defenders adopted by FIDH and OMCT: "Each person victim or at risk of being the victim of reprisals, harassment or violations, due to his or her commitment, exercised individually or in association with others, in conformity with international instruments of protection of human rights, to the promotion and realisation of the rights recognised by the Universal Declaration of Human Rights and guaranteed by the different international instruments".

**To ensure its activities of alert and mobilisation, the Observatory has established a system of communication devoted to defenders in danger. This system, called Emergency Line, can be reached through:**

E-mail : [Appeals@fidh-omct.org](mailto:Appeals@fidh-omct.org)

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