

FREEDOM OF ASSOCIATION – WORKING SESSION 17

Current Situation

In spite of intensive criticism in the European Commission's 2006 Report and by numerous NGOs, Turkey continues to restrict the right to freedom of association and assembly within its borders. These restrictions operate in conjunction with other limitations on freedom of expression and language and culture rights of ethnic and religious minorities, as well as efforts to quiet voices critical of the Turkish government. In addition, we are aware of several incidents where the Turkish government restricted the freedom of human rights defenders to gather and disseminate information within its borders, details of which are highlighted below.

The widely-criticised Anti-Terror legislation, passed in 2006, has been the main vehicle used to restrict freedom of association. Ethnic and religious minorities, which the government continues to perceive as a threat to national unity despite its OSCE commitments, have been subjected to harassment and discrimination. It is Turkey's sizable Kurdish minority (25 per cent of the country's population) that has been the particular subject of harassment at the hands of the state. Under the guise then of strengthening the unity of the Turkish nation, the government has hindered the formation of Kurdish ethnic and political groups, oppressed political parties with a Pro-Kurdish agenda and

even disciplined students for vocalising their criticism of the Turkish government.

Through interpretations of law by the courts and interventions by the police, the Turkish government also continues to limit the ability of labour unions to properly organise and strike. It has permitted businesses to fire employees for union membership, and has arrested labourers for peacefully protesting these policies. Demonstrations by union workers and strikes have both been broken up by the police, at times violently.

These behaviours are opposed to the commitments Turkey has made as an OSCE participating State, and prevent Turkish citizens from effectively engaging in democratic discourse and activity. As the OSCE commitments articulate, freedom of association is central to democratic society and a key component of true political discourse. Participating States recognise that by allowing all peoples to freely assemble and associate with one another, they both encourage and strengthen democratic freedoms, leading to a more stable and peaceful society.

OSCE Commitments

We recall to the Turkish state the following commitments that it has made and ask it to renew its undertaking to respect them.

- **Regarding a General Right to Freedom of Association and Assembly:**

- o Participating States affirm that “everyone will have the rights of peaceful assembly and demonstration. Any restrictions which may be placed on the exercise of these rights will be prescribed by law and consistent with international standards” (Copenhagen Document 1990, par. 9.2)
- **Regarding Freedom to Form Political Parties:**
 - o Participating States will “respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organization with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities” (Copenhagen Document 1990, par. 7.6)
- **Regarding the Right to Unionise:**
 - o Participating States will also “ensure the right of workers freely to establish and join trade unions, the right of trade unions freely to exercise their activities and other rights as laid down in relevant international instruments.” (Madrid Document, 1983) They reaffirm that “the right to form and - subject to the general right of a trade union to determine its own membership - freely to join a trade union will be guaranteed...[and that] freedom of association for workers, including the freedom to strike, will be guaranteed,

subject to limitations prescribed by law and consistent with international standards;" (Copenhagen Document 1990, par. 9.3)

- **Regarding the Rights of NGOs and Human Rights Defenders:**

- o Participating States reaffirm "their commitment to ensure effectively the rights of the individual to know and act upon human rights and fundamental freedoms, and to contribute actively, individually or in association with others, to their protection and promotion" (Copenhagen Document 1990, par. 10)
- o They further recognize that "individuals are permitted to exercise the right to association, including the right to form, join and participate effectively in non-governmental organizations which seek the promotion and protection of human rights and fundamental freedoms." (Copenhagen Document 1990, par. 10.3)
- o Participating States acknowledge and reaffirm that "non-governmental organizations (NGOs) can perform a vital role in the promotion of human rights, democracy and the rule of law," and therefore pledge "to enhance the ability of NGOs to make their full contribution to the further development of civil society and respect for human rights and fundamental freedoms." (Istanbul Document 1999, par. 27)

- **Regarding the Right to Association of Minority Groups**
 - o Participating States affirm that “persons belonging to national minorities have the right freely to...establish and maintain organizations or associations within their country and to participate in international non-governmental organizations. Persons belonging to national minorities can exercise and enjoy their rights individually as well as in community with other members of their group”. (Copenhagen Document 1990, par. 32.6)
 - o In OSCE member States, minority groups are allowed to “establish and maintain their own educational [and] cultural institutions, organizations or associations, which can seek voluntary financial and other contributions as well as public assistance”. (Copenhagen Document 1990, par. 32.2)

Assessment 2006-2007:

In 2006-2007 Turkey has struggled to fulfil its commitments to Freedom of Association. In the face of criticism, Turkey has persisted in using its Anti-Terror laws in ways that violate the OSCE Commitments and its other obligations under international law. New penal code articles 215, 216 and 220 as well as the Prevention of Terrorism Act allow the Turkish government to make arrests for crimes ranging from “praising crime and criminals” to being a member of, or otherwise supporting, “illegal organisations”. Under the guise of these laws,

Turkey has arrested and tried political parties and activists, students and human rights defenders.

a) Political activists and Minority Political Parties

While Turkey should be commended for releasing Kurdish activists İbrahim Güçlü, Zeynel Abidin Özalp and Ahmet Sedat Oğur as we recommended last year, it must further allow and even encourage political association for all peoples residing in Turkey in order to meet the OSCE Commitments and align with general standards for a democracy both within the EU and abroad. Turkey has consistently repressed political parties that advocate minority rights or a non-centrist political approach, and has rendered criminal support of such parties. On 25 December 2006, for example, the 9th Chamber of the Court of Cassation, Turkey's highest court, upheld the March 2006 convictions of Mehmet Desde, Mehmet Bakır, Hüseyin Habip Taşkın, Maksut Karadağ and Şerafettin Parmak for "membership in an illegal organisation", and of Metin Özgünay, Ömer Güner and Ergün Yıldırım for "supporting an illegal organisation". The convictions relate to the men's alleged connection with the Bolshevik Party (North Kurdistan and Turkey), a small, non-violent opposition party. All of the accused denied affiliation with this party at their trial, and the prosecution relied on statements allegedly extracted through torture, implicating both problems with rule of law and freedom of association. Similarly, on 27 February 2007 the Ankara 9th High Criminal Court convicted pro-Kurdish DTP

Party co-chairs Ahmet Türk and Aysel Tuğluk of “praising crime and criminals” as well as “using a language other than Turkish” in official papers (a crime under the Law on Political Parties). It has been suggested that these arrests, emblematic of numerous others, are aimed at keeping DTP representatives from being elected to Parliament and generally seek to prevent the DTP from being able to organise. This situation highlights the main thrust of these laws, which has been to confound the efforts of Kurds and other minority groups to meet, assemble and establish political representation.

Indeed, it is most often Kurdish political parties that are banned from meeting, are harassed or otherwise repressed, and even Kurdish parties that are permitted to form struggle to gain Parliamentary seats because of the high 10 per cent threshold Turkey’s electoral laws require. This threshold has been criticised by the European Court of Human Rights as the “highest in Europe” and on 21 November 2007 this court will review an appeal disputing the lawfulness of this threshold as applied in Turkey’s 2002 elections. Furthermore, though Kurds are allowed to vote in Turkey, political parties that have taken up the Kurdish issue continue to be harassed by the government. Targeted “security cautions” by armed officials in the form of roadblocks and identity checks often frustrate the efforts of pro-Kurdish parties like the DTP to function freely. In the days leading up to the 2007 Parliamentary elections, the gendarmerie constantly interfered with DTP campaign events and even prevented the party from putting up

posters or opening election offices.⁶ Pro-Kurdish candidates running independently in an effort to circumvent the 10 per cent threshold faced similar obstacles. Several independent DTP candidates' convoys were attacked or stopped as they travelled through the country, campaign events were interrupted and pressures applied to the Kurdish electorate not to vote for these independent candidates.

At the invitation of the Turkish government, the OSCE/ODIHR sent an election observation mission to Turkey to monitor the July 2007 Parliamentary elections. Though it found that overall the Turkish electoral process "is characterised by pluralism and a high level of public confidence underscored by the transparent, professional and efficient performance of the election administration", it also found that "the overall legislative framework would benefit from review in order to further promote respect for fundamental civil and political rights".⁷ The election observation mission monitored campaign rights and freedoms, use of the media, the situation for minority candidates and voters. The OSCE's assessment of the full implications of the overall electoral process on freedom of association will become clearer when it publishes its Final Report from this observation mission.

⁶ 'Kurdish Politicians Harassed During Campaigns', BIA News Centre, 9 July 2007.

⁷ 'Turkish Elections Underscore Positive Record and Continued Challenges, OSCE Finds', OSCE Press Release 23 July 2007.

b) Students

Student political activism has also come under suspicion and has been similarly targeted by the Turkish government. On 8 November 2006 police and gendarmes forcibly detained student demonstrators throughout Turkey who had organised a nation-wide protest the 25th anniversary of the country's Supreme Board of Education (YOK). The YOK was created following the military coup of 1980 and is regarded as an oppressive body that tightly controls the country's higher education policy and appointments. Following these detentions, university administrators developed a policy of collaborating with public prosecutors to oppress "dissident" students through constant inquisitions and disciplinary penalties.⁸ For example, several students at Çanakkale University who participated in a protest against the YOK were handed notification of administrative inquisitions. Other students have been subject to disciplinary action for "protesting without permission", "chanting slogans" and "participating in press conferences". On occasion this oppression has crossed the line from harassment to legal action, such as this year when prosecutors filed accusations against Trakya University students who marched in protest of the murder of Hrant Dink. In this instance, 33 students were sentenced to nearly 4 years in prison for organising an "alternative spring festival". On 5 June 2007, 20 people were tried under Article 215 of the Penal Code for gathering to remember the murder of a student killed by the gendarmerie thirty years ago. In a few

⁸ 26 February 2007 BIA News Center.

cases the police have even used violence to disperse a gathering; on 1 May 2007, demonstrators gathered to remember the bombing of Taksim Square in Istanbul were violently repressed by the police, who injured 23 people using batons and teargas.

These limitations on the right of free association and assembly act in direct opposition to Turkey's obligations as an OSCE Member State. Further, Turkey will not be and cannot be called a truly democratic society until it allows for the organization of political parties that represent all its citizens – including Kurds and other minority groups.

c) Minority Civil Associations and Religious Assemblies

There has been some concern that the Turkish government makes the registration of certain associations, and particularly associations of religious and ethnic minorities, purposefully difficult or burdensome. The EU Commission Progress Report on Turkey that was issued on 8 November 2006 highlighted an example in which a court in Diyarbakir ordered the closure of a Kurdish Association on the grounds that its statute included the objectives of setting up a Kurdish archive, museum and library and that its activities would be carried out in Kurdish. Further allegations have surfaced that other religious and ethnic minorities also face discrimination and administrative hurdles in their attempts to assemble. *The Economist* reported that it has become difficult to open a Christian church anywhere in Turkey, and that the Greek Orthodox community

of Istanbul feels pressure from the government to disappear.⁹ Indeed, though the United States government and several NGOs have recommended that Turkey re-open Halki Greek Orthodox Seminary, closed by the government in 1971, it remains shut. Its closure has contributed to the decline of the Greek Orthodox population in Turkey. The Alevi also complain of persecution, discrimination and pressure not to meet and worship.¹⁰ Such oppression runs afoul of Turkey's commitment as an OSCE member State under the Copenhagen Document to recognise that "persons belonging to national minorities have the right freely to...establish and maintain organizations or associations within their country".

d) Human Rights Defenders

The Turkish government has remained unsupportive of human rights defenders operating in Turkey and has at times prevented them from assembling or acting in concert towards the furtherance of human rights. On 1 November 2006, approximately 30 human rights lawyers gathered at Istanbul Justice Hall were beaten by police officers as they attempted to file a suit against Justice Minister Cemil Cicek. The lawyers had congressed to sue for damages against Cicek for his alleged purposeful inattention to the hunger strike of fellow human rights lawyer Bahic Asci, who had then been protesting the conditions of maximum security prisons by refusing to eat for 212 consecutive days. In their

⁹ 'The White Cap of Hatred', *The Economist* 1 June 2007.

¹⁰ *Ibid*

attack the police not only injured several of the lawyers, but physically removed many of them from the building and then barricaded the door, refusing lawful re-entry until the prosecutor's office intervened. The attack was condemned by Turkey's Human Rights Foundation, but not by the Turkish government. Though the lawyers were eventually allowed to file their charges, this illegal police intervention was neither officially investigated nor condemned.

The Turkish government has even interfered with the functioning of respected international NGOs trying to work in the country. In January 2007 the Turkish government froze Amnesty International's bank accounts within the country, claiming that the NGO was improperly registered. On 30 May 2007, local authorities in Beyoğlu, Istanbul issued a decision that Amnesty was guilty of 'illegal fundraising', and that therefore the accounts must remain frozen. On 13 April 2006 the Turkish government deported a Human Rights Watch researcher on the pretext of 'visa irregularities', though the researcher in question was not in breach of visa requirements. The researcher was interviewing internally displaced people and prior to this arrest the entire Human Rights mission had been frequently harassed by the gendarmerie.

e) Labour Unions

Musa Cam, Secretary General of Turkey's Revolutionary Workers Union Confederation (DÝSK) has noted with consternation that union rights are not mentioned in most human rights reports on Turkey, and that this omission

allows union rights to be abused with impunity. Most of Turkey's union and working life laws were written over 20 years ago and are often still interpreted in this antiquated, narrow context such that they yield restrictive results. Article 51 of the Turkish Constitution, for example, limits the scope and organisation of unions by stating that their "regulations, administration and functioning...should not be inconsistent with the fundamental characteristics of the Republic and principles of democracy". Article 54 narrows the ability of unions to strike, requiring that strikes never be exercised "in a manner contrary to the principle of goodwill to the detriment of society, [or] in a manner damaging national wealth". It also forbids "politically motivated strikes and lockouts, solidarity strikes and lockouts, occupation of work premises, labour go-slows, and other forms of obstruction". While these provisions present few problems on their face, they have been interpreted so narrowly and constrictively that they cannot be said to protect the right of free association or the interests of workers in Turkey. Musa Cam has therefore declared that the best way to promote the free association of labour unions and raise the status of workers in Turkey would be to amend these articles, thereby breaking the authority of their past interpretations.

DÝSK further complains that the government allows thousands of people to be fired for becoming members of unions in various fields of employment, and that secret agreements between employers and the judiciary delay court cases for years. These behaviours so limit the efficacy of unions and deter union

membership that the right to be a union member is effectively denied to many Turkish workers. Union members are also actively discouraged from enjoying their right to assemble, protest and strike by police interventions and arrests. Two union leaders of the Ports, Dockyards and Ship-Building-Repairs Workers Union (LIMTER-IS) were arrested by an Istanbul prosecutor on 10 June 2006 for “resisting the police” when they attempted to bring action against police officers who violently repressed union workers on industrial action at a Tuzla dockyard. The police beat the workers with truncheons, including leaders Cem Dinc and Kamber Saygili, who were detained by the police two days later as they went to file a criminal complaint. The workers were striking to protest not being paid their wages for three months. On 4 April 2007 11 Executive Committee members of various labour unions were sentenced to one year and three months’ imprisonment and a fine of 407 YTL (about 233 Euro) each for having violated Law No. 2911 on Public Meetings and Demonstrations. Their violation of this law consisted of attending a peaceful teachers’ demonstration organised by teachers’ union Egitim Sen in Ankara on 26 November 2005. The police forcibly dispelled the meeting, injuring 17 teachers and arresting many of the participants. Though nine of the convicted have had their sentences set aside, the remaining two have standing convictions and therefore face jail time. Suspending the sentences of the other seven may seem like clemency, however such a ruling is often pronounced as a deterrent to future behaviour, as a second arrest and conviction would enact both the suspended sentences and the new

one, which would then have to be served consecutively. Therefore the suspended convictions should be viewed as an act of censorship as well as a violation of freedom of association, as they are intended to make these seven men self-censor their behaviour. In protest of the unfairness of these sentences, Unison and the KHRP have brought a complaint before the ILO. On 17 July 2007 the European Court of Human Rights found that Turkey had violated the right to freedom of association when in 1998 it forced striking civil servants to pay an exorbitant fine for income lost during the strike.¹¹

Recommendations to the Government of Turkey

Turkey must genuinely seek to honour the OSCE Commitments by ceasing to prevent the association of peoples it finds threatening to the government's concept of national unity, such as national minorities, dissident political actors or human rights defenders. In fact, to be considered a true democracy and also to live up to its obligations under international law and its OSCE membership, Turkey must actively encourage the free association of all peoples. Specifically, it must amend, articles 215, 216 and 220 of the Turkish Penal Code, and amend Articles 51 and 54 of the Constitution to guarantee the right to free association of all peoples. Furthermore, it must ensure that the judiciary interprets these legal

¹¹ *Satılmış and Others v. Turkey* Application Nos. 74611/01, 26876/06 and 27628/02 17 July 2007

provisions consistently in ways that protect the right to free association and assembly articulated by the OSCE Commitments and in the various international legal obligations Turkey has undertaken.

At the OSCE Istanbul meeting of 1999 all OSCE States reaffirmed the central role that human rights defenders play in mediating disputes between states and victims of human rights violations. To keep in line with the OSCE commitments coming out of this meeting, the Turkish government must further encourage human rights defenders to operate in Turkey.

To these ends the KHRP recommends that Turkey:

- develop supportive regulatory framework for NGO law reform when necessary;
- provide registration procedures for NGOs that are quick, easy and inexpensive;
- provide a clear and concise legal framework for NGOs;
- cease to arrest, hinder, harass, encumber or otherwise prevent human rights defenders from carrying out successful missions in Turkey;
- release Amnesty International's funds in Turkey and allow Amnesty workers and all other human rights defenders to continue their work unimpeded;
- reduce the 10 per cent minimum threshold from the electoral requirements such that the Kurdish people and other national minorities have a real chance to achieve representation in government;

- recognise the commitments it undertakes as an OSCE participating State, and therefore cease to hinder the efforts of religious and ethnic minorities to meet, assemble or form associations of any kind;
- allow students, politicians, academics and labour unions to meet and associate freely without fear of arrest or other forms of abuse.

Recommendations to the OSCE

The OSCE encourages and supports the democratic practices of all participating States, and in the Istanbul Document all participating States recognized the assistance the ODIHR can provide in aiding States in developing and implementing electoral legislation. As a participating State, Turkey has agreed to “invite observers to....elections from other participating States, the ODIHR [and] the OSCE Parliamentary Assembly”, which has allowed the OSCE to observe the 22 July 2007 Parliamentary elections.¹² The KHRP applauds the OSCE’s decision to monitor the status of political freedoms in Turkey, and hopes that it will follow up this mission by continuing to devote attention to Turkey in the future.

Recalling the commitments to freedom of association the OSCE developed in the Copenhagen Document, the KHRP urges the OSCE to:

¹² Istanbul Document 1999 Charter for European Security: III. Our Common Response, par. 25.

- speedily report any freedom of association issues raised by the OSCE's election observation mission and follow up on these issues with the appropriate framework;
- maintain contact with NGOs, human rights defenders and other independent human rights organisations operating in Turkey;
- initiate dialogue with the Turkish government, working with state officials to address the issues raised in this report;
- use its good offices with the EU and UN to suggest they join the OSCE in condemning Turkey's violation of freedom of association, and put political pressure on the government to initiate the changes suggested above.