
amnesty international

Turkey

Submission to the UN Universal Periodic Review

**Eighth session of the UPR Working Group of the
Human Rights Council**

May 2010



Executive summary

In this submission, Amnesty International provides information under sections C and D, as stipulated in the *General Guidelines for the Preparation of Information under the Universal Periodic Review*:¹

- Section C highlights Amnesty International's concerns about human rights violations in the context of freedom of expression, torture and other ill-treatment and impunity for such violations, fair trial and the rights of refugees and asylum-seekers.
- In section D, Amnesty International makes a number of recommendations for action by the government to address the areas of concern.

¹ Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I, adopted 27 September 2007.

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C. Promotion and protection of human rights on the ground

Freedom of conscience, expression and association

Turkey continues to refuse to grant the right of conscientious objection to compulsory military service and no civilian alternative is available. Laws allowing conscientious objectors to be repeatedly prosecuted for their refusal to perform military service remain in force.

A large number of articles of the Penal Code and other laws limit the right to freedom of expression either directly or through their vague wording and arbitrary application. Groups frequently made the target of such prosecution include writers, journalists, human rights defenders, lawyers, and officials and activist members of pro-Kurdish political parties. Speech expressing dissenting opinions regarding the position of Armenians or Kurds in Turkey and criticism of state institutions, especially the armed forces, frequently results in criminal prosecution.

Under amendments which came into force in May 2008, Article 301 of the Penal Code now criminalizes denigration of the Turkish Nation rather than denigration of Turkishness. The changes also reduce the maximum custodial sentence applicable following conviction under the Article and now require permission from the Minister of Justice to in order to launch investigations under the Article. Amnesty International is concerned that despite these changes, Article 301 remains a direct and illegitimate limitation to freedom of expression. At the current time the vast majority of investigations proposed under the Article are refused permission to proceed by the Minister of Justice. Article 318 of the Penal Code, which criminalizes the alienation of the public from the institution of military service, also represents a direct and illegitimate limitation to the right to freedom of expression. The Article is often used to prosecute conscientious objectors and their supporters when they voice their legitimate opposition to compulsory military service.

While numerous other pieces of legislation potentially limit the right to free expression in their application, certain articles and laws are used with particular frequency and as such raise additional concern: Article 216 of the Penal Code while purporting to criminalize incitement to hatred or hostility is not clearly written, its scope is much broader than the restrictions to the right to freedom of expression permitted under international human rights law, and its implementation is arbitrary and mainly used to prosecute minority dissenting opinions.

Anti-terrorism 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 frequently results in custodial sentences. Article 215 of the Penal Code creates a criminal offence of the mere public mention of certain individuals' names. Its application has mainly targeted Turkish citizens of Kurdish origin, in particular with references to the leader of the Kurdistan Workers' Party (PKK), Abdullah Öcalan, and those who have been commemorating radical left-wing groups and their leaders of the 1960s. The remit of Article 7/2 of the anti-terrorism law is very broad, and in particular makes no distinction between supporting political aims, which are shared by a 'terrorist' organisation, and promoting that organization, including its violent methods and actions.

Human rights defenders in Turkey are at risk and prominent individuals are subjected to regular criminal investigations by public prosecutors as a result of their legitimate work documenting and reporting on alleged human rights violations. Many human rights defenders and others expressing dissenting views have also received threats of violence. In some cases police protection has been provided, but investigation of the threats seldom results in prosecution. Human rights associations are also at risk with excessive administrative scrutiny hindering their work and in certain cases threatening their closure. Associations that support the rights of lesbian, gay, bisexual and transgender people appear to be especially subject to official harassment.

Torture and other ill-treatment and impunity

Reported cases of torture and other ill-treatment have risen during the past 18 months. Many of these cases are alleged to have taken place outside official places of detention, at the time of demonstrations or during transfer to police custody. There has also been an increase in the number of such cases reported to have occurred in police custody and on transfer to prison. Persons accused of ordinary as well as politically motivated offences are vulnerable to ill-treatment by law enforcement officials and prison guards.

Solitary confinement and small group isolation remain a problem across the prison system and on occasion access by inmates to appropriate medical care is not provided. Amnesty International has recorded cases of children being held alongside adults in pre-trial detention and more commonly, children being held within a prison regime that does not differ significantly from that applied to adults, and which notably does not make provisions for children to continue their education.

Allegations of torture and other ill-treatment are often not subject to effective and impartial investigations. Allegations of ill-treatment taking place during and after demonstrations are particularly unlikely to be formally investigated, while in all cases the chances of state officials being brought to justice for abuses of human rights remains remote.

More widely, in cases of alleged human rights abuses by law enforcement officials, investigations lack thoroughness due to a failure to conduct prompt crime scene investigations and due to the loss of crucial pieces of evidence. Medical evidence of torture and other ill-treatment is often not documented and police officers remain present during examinations of suspects. Prosecutions for alleged human rights violations are exceptionally protracted and in some cases permission for state officials to be prosecuted is denied, adding further delays. Counter charges are often brought by the authorities against victims, their families or lawyers representing them.

Amendments to the Law on Powers and Duties of Police, introduced in June 2007, which give police widespread powers of stop and search, also give police increased authority to use lethal weapons. The law allows police officers to shoot escaping suspects in the event that a warning to stop is not obeyed. While the law requires such use of weapons be proportional, the required proportionality in the use of lethal weapons in the law is descriptive rather than prescriptive allowing for arbitrary implementation.

Following the law entering into force, failure to obey stop warnings is often provided as a reason for shootings by law enforcement officers. Courts are often unwilling to apply the principles of necessity and proportionality in prosecutions resulting from use of lethal force by law enforcement officials.

There are no independent mechanisms to investigate allegations of human rights violations and no system of independent monitoring of places of detention.

Fair trial concerns

A pattern of unfair trials continues, especially for those prosecuted under anti-terrorism legislation. Those accused, including children, are routinely held in prolonged pre-trial detention and criminal proceedings are protracted.

There is ongoing concern that prosecutors and judges make arbitrary decisions and do not uphold standards of fair trial. Studies of the judiciary have revealed that a significant number of judges and prosecutors prioritize protecting the state rather than upholding the law and are reluctant to implement various pieces of law, notably Article 90 of the Constitution that requires international conventions to take precedence where there is a conflict with domestic law over fundamental rights and freedoms.²

Article 220/6 of the Penal Code allows a person to be prosecuted as a member of an armed organization without being an actual member if he or she has committed a crime on behalf of the organization. The jurisprudence of the Supreme Court of Appeals regarding that Article is such that it has allowed children to be convicted for membership of a terror organization for participating in demonstrations organized on behalf of armed organizations.

More generally, in cases brought under anti-terrorism legislation prosecutions are frequently launched and guilty verdicts pronounced on the basis of insubstantial and inconclusive evidence. Secrecy decisions prevent defence lawyers from accessing evidence against their clients until indictments are prepared in the case, frequently after many months.

Barriers to fair trial include a provision in law for suspects to be denied access to a lawyer for up to 24 hours after arrest; this provision is routinely applied for persons arrested under anti-terrorism legislation. Measures to ensure the protection of the rights of suspects are also frequently not implemented. Evidence allegedly obtained through torture or under other forms of duress is sometimes used as evidence in court. Police interrogations of children after arrest also frequently form evidence used in court despite the law requiring statements of children to be taken only from prosecutors. Statements from secret witnesses who cannot be cross-examined in court also form evidence used against terrorism suspects.

The prosecution of children accused of terrorism offences under proceedings that do not differ from those of adults is widespread. According to national law children aged over 15 years of age may be tried in adult Heavy Penal Courts under the same procedures as adults; however, children as young as 12 are also tried in these courts where Children's Courts are not available.

Refugees and asylum-seekers

Citing their geographical limitation to the Refugee Convention, Turkey continues to refuse to recognise persons coming from outside the Council of Europe as refugees. There is also no functioning asylum procedure implemented for persons fleeing persecution in states within the Council of Europe.

Access to the temporary asylum procedure is also arbitrarily denied. Thousands of persons are returned to neighbouring countries each year, often without any legal procedure being followed and without being given access to the temporary asylum procedure.

Refugees, asylum-seekers and others who may be in need of protection are detained in Foreigners' Guest-Houses for reasons not prescribed in international law and are not given access to procedural rights applicable to all persons in detention, including access to a lawyer and to have the legality of their detention reviewed by a competent judicial authority. Detention is commonly for many months and, on occasions, years and in conditions that do not meet international standards. There have also been frequent reports of ill-treatment of persons detained in Foreigners' Guest-Houses and in gendarmerie detention.

There continues to be reported cases of *refoulement* of registered asylum-seekers and refugees, particularly to neighbouring countries. Unsubstantiated national security concerns are frequently cited as reasons for such

² See "Justice is escaping us" Judges and Prosecutors in the Process of Democratization"Adalet biraz es geçiliyor", Demokratikleşme Sürecinde Hakimler ve Savcılar, TESEV, May 2009 available at http://www.tesev.org.tr/default.asp?PG=DMKMMMDEN&MMMOO_ITEM_CODE=DEM_JUDICIARYBOOK1

deportations, which include regular returns to the authorities of neighbouring countries and irregular returns whereby refugees and asylum-seekers are forced to leave Turkish territory. Such irregular returns have resulted in loss of life, including when refugees and others were forced to cross a fast-flowing river on the Turkey/Iraq border. There have also been reported cases of ill-treatment by law enforcement officers against refugees during such irregular returns.

Access to social and economic rights in Turkey is severely restricted for registered asylum-seekers and refugees. Affordable health care is not available for refugees and asylum-seekers, despite purported legal changes allowing access to such groups. High administrative costs and overly bureaucratic procedures effectively mean that few refugees or asylum-seekers have been able to access legal employment. Access to primary education for refugee and asylum-seeker children is generally granted, subject to families obtaining the necessary residence permits. Access to secondary education is rarer. Access to all such services is dependant on refugees obtaining residence permits for each member of their family. The cost of such permits is prohibitive and in many cases cannot be obtained without the payment of related overstay fines.

D. Identification of achievements, best practice, challenges and constraints

Amnesty International calls on the government:

On freedom of expression, conscience and association

- To introduce legislation preventing the repeated prosecution of conscientious objectors to military service;
- To institute laws that recognize and guarantee the right to conscientious objection to military service and provide for a genuinely civilian alternative that is not punitive in length;
- To abolish Articles 301 and 318 of the Penal Code which directly and unfairly limit the right to freedom of expression;
- To ensure that the application of all articles of the Penal Code and other laws are in line with international standards on the right to freedom of expression, including ensuring that lawful restrictions on the exercise of the right to freedom of expression on grounds such as national security and public order are demonstrated to be necessary and proportional;
- To take further steps to ensure that human rights defenders are granted their right to the protection of the state and to conduct thorough, effective and impartial investigations into threats against them and others expressing dissenting views;
- To monitor all criminal investigations of human rights defenders and to halt all investigations launched for conduct that is protected by international standards.

On torture and other ill-treatment and impunity

- To acknowledge the increase in reported cases of torture and ill-treatment and to send a clear message that torture and other ill-treatment will not be tolerated in any circumstances;
- To ensure access to appropriate medical treatment as required for all persons in detention;
- To ratify the Optional Protocol to the Convention against Torture and to create an independent national monitoring mechanisms to carry out regular and unannounced visits to all places of detention;
- To ensure prompt, independent, impartial and thorough investigations of all allegations of human rights violations by members of the security forces;

- To develop an effective complaints mechanism to carry out prompt, independent, impartial and thorough investigations into human rights violations allegedly committed by law enforcement officials;
- To suspend from active duty officers under investigation for human rights violations and to ensure their dismissal if convicted;
- To revise Article 10 of the anti-terrorism law to prevent incommunicado detention;
- To revise Article 4 of the Law amending the Law on the Duties and Powers of Police to ensure that the use of lethal force by law enforcement officials complies with international standards;
- To take urgent steps to ensure that medical examinations of all detainees are carried out thoroughly, independently and impartially.

On fair trial

- To take steps to ensure the independence and impartiality of the judiciary and to ensure that all judges in the higher courts receive training on international human rights standards;
- To ensure respect for the rights of all persons charged with a criminal offence to trial without undue delay;
- To ensure that all persons detained pending completion of criminal proceedings are tried within a reasonable time, or released pending trial;
- To ensure that any prosecutions of children comply with international standards on juvenile justice and in particular that children are not prosecuted according to the same procedures as adults;
- To ensure that the courts investigate all allegations that evidence has been obtained by torture or other ill-treatment;
- To ensure that any evidence elicited as a result of torture or other ill-treatment is excluded at trial.

On the rights of refugees and asylum-seekers

- To lift the geographical limitation to the Refugee Convention;
- To bring into force comprehensive national asylum legislation consistent with international standards on protection and reception to protect the rights of all refugees, asylum-seekers and other persons who may be in need of protection, without discrimination;
- To ensure that all persons who may be in need of protection within Turkey's jurisdiction, both within its territory and at its borders, are given access to a fair and effective refugee status determination procedure;
- To ensure that all persons in need of international protection, including persons excluded from refugee status, are not forcibly returned to a place where they are at risk of serious human rights abuses, and to establish the necessary procedures to examine their claims;
- To ensure that asylum-seekers and refugees reside in adequate conditions consistent with international standards on reception;
- To end the practice of detention of refugees and asylum-seekers for immigration purposes, in line with international human rights standards which required that such detention is only used in the most exceptional circumstances;
- In situations where detention is unavoidable, to ensure that refugees and asylum-seekers are held in adequate conditions and granted access to all procedural rights as defined under international law and standards.

Annex: Amnesty International documents for further reference³

- Turkey: Three children on trial in case over freedom of expression, June 2008, AI Index: EUR 44/011/2008
- Turkey: Stranded: Refugees in Turkey denied protection, April 2009, AI Index: EUR 44/001/2009

³ All of these documents are available on Amnesty International's website: <http://www.amnesty.org/en/region/Turkey>