

# Meaningful consultation and the Ilisu Dam: the trial of human rights defenders

June 2003





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The trial of human rights defenders**

Kurdish Human Rights Project  
Bar Human Rights Committee  
The Corner House  
June 2003

Trial Observation Report



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The Kurdish Human Rights Project (KHRP) is an independent, non-political, non-governmental human rights organisation founded and based in London, England. KHRP is a registered charity and is committed to the promotion and protection of the human rights of all persons living with the Kurdish regions, irrespective of race, religion, sex, political persuasion or other belief or opinion. Its supporters include both Kurdish and non-Kurdish people.

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## Foreword

In April 2000, the Ilisu Dam Campaign was established by a group of organisations and individuals concerned about the environmental, human rights and cultural impacts that would follow from the construction of a proposed dam on the River Tigris in Southeast Turkey. If built, the dam would have had catastrophic effects. It would have flooded a vast area, submerging or partially submerging some 183 villages and hamlets<sup>1</sup> and the ancient city of Hasenkeyf, a site of international archaeological significance. The downstream flow of water to Iraq and Syria would be reduced, heightening the risk of “water wars” with Turkey.<sup>2</sup> Of concern to human rights groups was that, despite these enormous impacts, the Turkish government had failed to consult with the people affected or their representatives, had failed to draw up a resettlement plan that reflected internationally accepted practice, and had failed to satisfactorily assess the human rights, environmental and cultural impacts of the dam.<sup>3</sup>

The dam was to be built by a consortium of European and US companies for the Turkish government. Financial backing was sought from the Export Credit Agencies (ECAs) of the companies’ various governments, with the UK, Switzerland and the US giving provisional approval. In July 2001, the UK Government’s Export Credit Guarantee Department (ECGD) requested public comment on the Environmental Impact Assessment Report (EIAR) in order to inform its decision whether to provide £160 million backing for the project.

The Ilisu Dam Campaign, a group of organisations and individuals concerned about the impacts that would follow from the construction of the dam, responded by organising a formal submission from a number of experts, including Mahmut Vefa, a leading lawyer from Turkey. Mr. Vefa, former General Secretary and current board member of the Diyarbakir Bar Association gave voice to the concerns expressed by numerous project-affected people and organisations in his submission, ‘Legal Review of Ilisu (Hasankeyf) Dam and Evacuated Villages’. Therein, Mr. Vefa stated that the Ilisu dam, if built, would exacerbate the problems of resettlement for the

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<sup>1</sup> Kudat, A., *Ilisu Dam’s Resettlement Action Plan (RAP) – Achieving International Best Practice*, Working document, distributed to export credit agencies, 16 August 2000.

<sup>2</sup> KHRP, Corner House, Ilisu Dam Campaign, *Downstream Impacts of Turkish Dam Construction on Syria and Iraq*, London (2002)

<sup>3</sup> See KHRP, Ilisu Dam Campaign, Ronayne M., *The Ilisu Dam: Displacement of Communities and Destruction of Culture*, 2002; KHRP *et al*, “*If the River Were a Pen...*” – *The Ilisu Dam, the World Commission on Dams and Export Credit Reform*, London (2001); KHRP *et al*, *The Ilisu Dam: A Human Rights Disaster in the Making – a Report on the implications of the Ilisu Hydro-electric Project, Southeast Turkey, following a fact-finding mission to the region*, London (1999)

thousands of people displaced by the Turkish authorities' practice of "village destructions" over the last decade.

Mr. Vefa's submission was subsequently reproduced in the Diyarbakir Bar Association journal in January 2002. For this article, Mr. Vefa was indicted by the Diyarbakir Public Prosecutor's office in Turkey under Article 159 of the Turkish Penal Code, accused of "overtly insulting the moral integrity of the Government and the military and security forces. If convicted, Mr. Vefa would face between one and three years' imprisonment. KHRP and the Ilisu Dam Campaign, in conjunction with the Bar Human Rights Committee of England and Wales and the Corner House, sent a delegation to observe the first hearing of the trial on 18 March 2003.

The trial of Mr. Vefa raises considerable concern not only in relation to the continuing efforts of the Turkish Government to seek international consent and funding for the Ilisu dam; but also in relation to the present quality of democratic rights and free expression in Turkey. Without adequate regard for freedom of expression, international standards regarding detailed and meaningful consultation with affected populations when dam building could not be adhered to. The trial also gives the opportunity to assess the legitimacy of Turkey's claimed adherence to European human rights standards, including achievement of the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.

This trial observation delegated concluded that there are insubstantial improvements in legal standards in Turkey. At the heart of any EU monitoring of the application of democratic standards must be consultation of the affected population, especially in the Southeast. At present it is clear that those in the population traditionally relied upon to express the views of their community, lawyers and politicians, are being targeted by the Turkish authorities to reduce effective debate and criticism of policy. This report concludes that the Turkish authorities are removing the cornerstone of democracy while at the same time claiming to have improved democratic standards.

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## Introduction

In April 2000, the Ilisu Dam Campaign was established by a group of organisations and individuals concerned about the environmental, human rights and cultural impacts that would follow from the construction of a proposed dam on the River Tigris in Southeast Turkey. If built, the dam would have had catastrophic effects. It would have flooded a vast area, submerging or partially submerging some 183 villages and hamlets<sup>4</sup> and the ancient city of Hasenkeyf, a site of international archaeological significance. The downstream flow of water to Iraq and Syria would be reduced, heightening the risk of “water wars” with Turkey.<sup>5</sup> Despite these enormous impacts, the Turkish government had failed to consult with the people affected or their representatives, had failed to draw up a resettlement plan that reflected internationally accepted practice, and had failed to satisfactorily assess the human rights, environmental and cultural impacts of the dam.<sup>6</sup>

Another cause for concern was that the Ilisu dam is not an isolated project. It is but one part of Turkey’s ambitious Southeast Anatolia Project, known as GAP. Launched in 1977<sup>7</sup> and covering nine provinces<sup>8</sup> with a total area of 74,000 square kilometres, the \$32 billion project<sup>9</sup> is the largest development project ever undertaken in Turkey, and one of the largest of its kind in the

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<sup>4</sup> Kudat, A., *Ilisu Dam’s Resettlement Action Plan (RAP) – Achieving International Best Practice*, Working document, distributed to export credit agencies, 16 August 2000.

<sup>5</sup> KHRP, Corner House, Ilisu Dam Campaign, *Downstream Impacts of Turkish Dam Construction on Syria and Iraq*, London (2002)

<sup>6</sup> See KHRP *et al*, *The Ilisu Dam: Displacement of Communities and Destruction of Culture*, 2002; KHRP *et al*, “*If the River Were a Pen...*” – *The Ilisu Dam, the World Commission on Dams and Export Credit Reform*, London (2001); KHRP *et al*, *The Ilisu Dam: A Human Rights Disaster in the Making – a Report on the implications of the Ilisu Hydro-electric Project, Southeast Turkey, following a fact-finding mission to the region*, London (1999)

<sup>7</sup> In 1977, the Turkish government's State Hydraulics Works department (DSI) drew together all its planned programmes for the Euphrates and Tigris basins under one package - subsequently named the GAP project. In 1989, the Turkish government established the Southeastern Anatolia Project Regional Development Administration (GAPRDA) to oversee the GAP project and to ensure co-ordination between the agencies and institutions concerned. The GAP Higher Board is the most senior decision-making body of GAPRDA and is responsible for decisions pertaining to planning, design and work programmes. The Board is headed by the Minister of State in charge of GAP, the Minister of State responsible for the State Planning Organisation and the Minister for Public Works and Reconstruction.

<sup>8</sup> The nine provinces are: Gaziantep, Diyarbakir, Sanliurfa, Mardin, Adiyaman, Batman, Kilis, Sirnak and Siirt.

<sup>9</sup> According to the GAP administration, just over 50 per cent of this figure will be spent on dams and irrigation infrastructure. As of February 2000 – thirty years after the project was first launched - the Turkish government had raised just 43.3 of the total projected expenditure. See: Olcay Unver, “The Southeastern Anatolia Project (GAP): An Overview”, in Turkish Embassy, *Water and Development in Southeastern Anatolia: Essays on the Ilisu Dam and GAP*, London, 2000, pp.14-15.

world.<sup>10</sup> When completed, a total of 90 dams and 60 power plants<sup>11</sup> will have been built on the two river basins, regulating 28 per cent of Turkey's total water potential.

The World Commission on Dams and the World Bank have both recognised the devastating impact of dam building on people and livelihoods. Consequently both institutions have introduced standards to be adhered to notably in relation to the detailed and meaningful consultation of populations and the provision of adequate compensation for the displaced.

In the case of the Ilisu dam, the proposed reservoir catchment area would flood many villages which were forcibly evacuated during a concerted campaign by Turkish security forces that peaked in severity during the mid-1990s. The policy of evacuation was a government response to the conflict occurring in the region between government forces and the Kurdistan Workers' Party (PKK, now KADEK), designed to isolate the rebels from the population and to install an army of irregular soldiers ('village guards') in the Southeast. The campaign resulted in the forcible displacement of over 3 million people from their homes and the destruction of over 3,500 settlements, allied to disappearances, arbitrary detentions, rape and extra-judicial killings. In a series of cases brought by KHRP, the European Court of Human Rights determined that security forces had destroyed the applicants' homes and property deliberately, in violation of the European Convention on Human Rights.<sup>12</sup> Moreover, further cases demonstrated violations of freedom of expression by Turkish authorities.<sup>13</sup> Without adequate regard for freedom of expression, international standards requiring detailed and meaningful consultation with affected populations could not be adhered to.

As a result, the Kurdish population view the Ilisu dam and the GAP as yet another threat to its collective existence, after decades of being subjected to widespread human rights abuse. One interviewee met by the fact-finding mission delegation described the project as fostering the Turkish desire, "to bury our land and cultural heritage under the sea".

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<sup>10</sup> Sahan, E., Mason, S., Gilli, A., Zogg, A., "Southeastern Anatolia Project in Turkey – GAP, Swiss Federal Institute of Technology Zurich, 2000, p.1.

<sup>11</sup> KHRP, The Corner House, Ilisu Dam Campaign, *Downstream Impacts of Turkish Dam Construction on Syria and Iraq*, London (July 2002) p.15. These figures include all the projects planned on tributaries of the Tigris and Euphrates. The more generally cited figure of 22 dams and 19 power plants only covers major components of the GAP project.

<sup>12</sup> See, *inter alia*, *Akdivar and Others v. Turkey* (99/1995/605/693), *Mentes and Others v. Turkey* (58/1996/677/867), *Selcuk and Asker v Turkey* (12/1997/796/998-999), *Bilgin v. Turkey* (23819/94), *Dulas v. Turkey* (25801/94) and *Orhan v. Turkey* (25656/94)

<sup>13</sup> See *Ozgur Gundem v. Turkey* (23144/93)

The Ilisu dam project held an international dimension: it was to be built by a consortium of European and US companies for the Turkish government. Financial backing was sought from the Export Credit Agencies (ECAs) of the companies' various governments, with the UK, Switzerland and the US giving provisional approval. Underpinning the possibility of funding from the UK Export Credits Guarantee Department (ECGD) and other ECAs was the requirement, under international standards, of consultation with affected populations.

In July 2001, the ECGD published the environmental impact assessment report (EIAR) for the Ilisu dam. In order to inform its decision whether to provide £160 million backing for the project, the ECGD requested public comment on the EIAR. The Ilisu Dam Campaign responded by organising a formal submission from a number of experts, including a leading lawyer from Turkey.

Mr. Vefa, former General Secretary and current board member of the Diyarbakir Bar Association, has been based in Southeast Turkey for all of his life and, as a qualified lawyer, has been involved in several applications to the European Court of Human Rights. In his submission to the ECGD, *Legal Review of Ilisu (Hasankeyf) Dam and Evacuated Villages*, he states that the Ilisu dam, if built, would exacerbate the problems of resettlement for the thousands of people displaced by the Turkish authorities' practice of "village destructions" over the last decade. The author called for a debate over the data contained in the Turkish government's report. The paper formed a vital part of the Ilisu Dam Campaign's submission to the UK government, as Mr. Vefa gave voice to the concerns expressed by numerous project-affected people and organisations.

Since that time and as a result of determined campaigns by concerned groups and individuals, three companies - Skanska Dam, Balfour Beatty and Impreglio - have withdrawn from the Ilisu dam project. As a result, the ECAs in Sweden, the UK and Italy and the US are no longer actively considering the project. In 2002, the Union Bank of Switzerland, which was to arrange financing for the project, also withdrew. Despite this, the Turkish State has announced that it is still determined to build the dam and companies still involved with the project have stated that they are seeking a replacement for the construction firms that have withdrawn. Despite the withdrawal of companies and the main bank involved and ignoring the destructive potential of this project, the UK's ECGD has said that it would still "consider any new application for the Ilisu Project on its merits".

Mr Vefa's submission was subsequently reproduced in the Diyarbakir Bar Association journal in January 2002. For this article, Mr Vefa was indicted by the Diyarbakir Public Prosecutor's office in Turkey under Article 159 of the Turkish Penal Code, accused of "overtly insulting the moral integrity of the Government and the military and security forces". If convicted, Mr Vefa would face between one and three years' imprisonment.

The trial prompted concern from international human rights and environmental organisations including KHRP, the Ilisu Dam Campaign, BHRC, Friends of the Earth (England, Wales and Northern Ireland), the Corner House and Article 19. In the UK, 45 parliamentarians signed onto an Early Day Motion tabled by John Austin MP, calling on the UK Government, the EU Commission, the European Parliament and the Council of Europe to ensure that international observers be sent to observe the trial and to ensure that Turkey complies with its obligations to provide a fair trial and to protect free expression under the European Convention.<sup>14</sup> KHRP and the Ilisu Dam Campaign, in conjunction with the BHRC and the Corner House, sent a delegation to observe the first hearing of the trial on 18 March 2003 in Diyarbakir.

The delegation arrived in Turkey only days before the onset of war in Iraq and found the Kurdish population predictably in fear for their immediate future. Meetings held with political representatives, lawyers' groups and NGOs all disclosed a belief that the Turkish authorities were using the impending hostilities as a cover for remilitarising the Southeast of the country. Those consulted perceived a harshening in attitude by the authorities. The latest statistics compiled by the Human Rights Association of Turkey (IHD) enumerating serious human rights abuses during January and February of 2003 indicate a worrying rise on the figures of last year. Of equal concern was the deprivation of political rights caused by the ruling of the Turkish Constitutional Court on 9 March 2003 outlawing the pro-Kurdish political party HADEP. Pursuant to this ruling, 46 members of the party were prohibited from any political involvement for five years.

The prosecution of Mr. Vefa raises considerable concern not only in relation to the continuing efforts of the Turkish Government to seek international consent and funding for the Ilisu dam; but also in relation to the present quality of democratic rights and free expression in Turkey. This issue is of extreme consequence to the continuing progress of Turkey towards EU accession. In

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<sup>14</sup> See appendices, *Ilisu Dam and the Trial of Mahmut Vefa*, EDM 915, 18 March 2003. Also available: <http://edm.ais.co.uk/weblink/html/motion.html/ref=915>

1999, the European Commission published its EU Accession Partnership Draft Agreement which outlined the pre-conditions that Turkey must satisfy before accession negotiations could be commenced. These included achievement of the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. In March 2001 Turkey published its National Programme of Action stating that Turkey would review its constitution and other legislation in relation to the ECHR and in particular to Article 10 guaranteeing freedom of expression. This led to a package of constitutional and legislative reforms which specifically amended Article 159 of the Turkish Penal Code (TPC) in February and August 2002. The first amendment sought to address the issue of proportionality by reducing the maximum sentence to three years; the second altered the scope of the provision to create a distinction between “criticising” the state and “insulting” it.

The trial of Mr. Vefa thus gives an opportunity to assess these amendments in relation to the standards required under the Convention and ultimately to comment on the legitimacy of Turkey’s claimed adherence to European human rights standards and the Copenhagen Criteria. In short this trial raises issues of considerable importance at a crucial time for the region and places a question mark over Turkey’s commitment to abide by international standards concerning the building of dams and to provide the effective realisation of the rights guaranteed by the Convention.

## The Trial of Mahmut Vefa

The trial of Mr. Vefa has been ongoing since March 2002 and has necessitated several previous attendances at both the Prosecutor's Office and at court. This forms part of what can only be described as an ongoing campaign waged against lawyers representing the Kurdish population.<sup>15</sup> Many human rights lawyers find themselves in court as a defendant as frequently as they appear in court in their professional capacity.<sup>16</sup> At each meeting the delegation held, lawyers confirmed Article 159 to be a frequently used article against both the legal profession and ordinary citizens alike. For example, in March 2001, several previous detainees and relatives of then current detainees who spoke at a conference in late 2000 about their sexual abuse under detention during the previous seven years were indicted under Article 159 for "insulting security forces". In several of the detainees' cases police officers were on trial for the alleged sexual abuse.<sup>17</sup> This use of Article 159 as an insidious interference in the legal process is similarly apparent in the present case.

Mr Vefa's article, which formed the subject matter of the charge, is annexed to this report. The article provides an informed and useful evaluation of the issues surrounding the social impact of the proposed Ilisu dam. Attention should be drawn to the following aspects of the article:

- i) The article is entitled a 'Legal Review'.
- ii) The article begins, "I believe there should be a debate regarding the data in the Impact Assessment Report... compiled by the DSI [State Water Concern] and the way the problem of evacuated/burnt villages was set out."

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<sup>15</sup> See, *inter alia*, KHRP and BHRC, *Trial Observation Report: the State and Sexual Violence – Turkish Court Silences Female Advocate*, London (2003); KHRP, *State Violence Against Women in Turkey and Attacks on Human Rights Defenders and Victims of Sexual Violence in Custody*, London (2001); KHRP, Euro-Mediterranean Human Rights Network and World Organisation Against Torture, *The F-Type Prison Crisis and the Repression of Human Rights Defenders in Turkey*, London (2001); KHRP, 'Peace is Not Difficult' – *Observing the Trial of Nazmi Gur, Secretary General of the Human Rights Association of Turkey (IHD)*, London (2000); KHRP, BHRC & Howe & Co Solicitors, *Intimidation in Turkey*, London (1999)

<sup>16</sup> The meeting with the IHD was particularly instructive on this point: its present vice-chair has numerous cases outstanding while a previous chair at one time had 200 cases pending against him. Articles of the penal code restricting freedom of expression, such as Article 159 and Article 312, are often used against lawyers.

<sup>17</sup> As reported in The US Department of State Country Report on Human Rights Practices: Turkey 2001 released on March 4<sup>th</sup> 2002.



- iii) The article evaluates the topics listed under Social Impact, i.e. resettlement of the population, units of settlement to be effected, number of persons affected and number of persons who potentially had a right of resettlement.
- iv) The article is not limited to the views of NGOs and cites official opinions and statistics including parliamentary replies by the Interior Minister and research carried out by the Migration Research Commission of the Turkish Parliament
- v) The article sets out a detailed review of the problematic issues surrounding the property rights of the affected population.
- vi) The article recommends the abolition of the State of Emergency and the village guard system, the safe return of evacuated inhabitants, and that a review of the feasibility of the dam project should take place after a detailed cadastral survey is undertaken.

The full defence statement of the applicant is annexed to this report. Notable arguments put forward on behalf of the defendant Mr. Vefa include:

- i) The indictment alleged the use of words and phrases not present in the article.
- ii) The indictment involved the manipulation of words used in the article.
- iii) The prosecution was discriminatory as it was simply a sociological article based on the report of a government body which was not subjected to similar prosecution.
- iv) There was no evidence to indicate an intention to insult or vilify as the article was clearly an expression of opinion.
- v) The journal was not distributed in any way therefore the condition of ‘overtness’ was not satisfied.

Further to these arguments which were submitted in writing, the following argument was submitted orally at court:

- vi) The case had been instigated following the obtaining of an opinion from the Ministry of Justice in accordance with Article 160 of the Turkish Penal Code (TPC). It was argued that this contravened the principle of impartiality and independence of the courts as enshrined in Article 138/2 of the Constitution. Since the author of this opinion and the Minister of Justice are members of the High Council of Judges and Prosecutors, the prosecution of Mr Vefa was tainted by executive interference in the judicial process. Both the prosecutor and the judge could be said to be under undue

pressure by an invitation to prosecute emanating from members of the body that controls their career prospects. Accordingly the defence applied for the case to be referred to the Constitutional Court for an annulment of Article 160 of the TPC.

Unsurprisingly the court did not accede to the defence applications, choosing instead to follow the recommendations made by the prosecutor rejecting the referral to the Constitutional Court and making the following direction:

*“...photocopies of the case file be sent to the Ankara Duty Criminal Court of Peace and submitted to a council consisting of three members of the teaching staff of the Ankara University Faculty of Law for an expert report in order to establish the legal elements of the offence concerned and if required by experts for the report of the Turkish Parliamentary Commission of Investigation into the subject of displacement mentioned by the defence counsel to be requested.”*

Upon further investigation by the delegation it was ascertained that such a direction is not unusual in the Turkish legal system. Lawyers familiar with the use of expert testimony in criminal trials in the UK will observe the difference between seeking expert opinion in relation to forensic or medical evidence and seeking such assistance in relation to the ‘legal elements of the offence concerned’. It would normally be reasonable to presume that the courts are the forum in which case files are considered, that the penal code or previous judgments would identify the legal elements of the offence and that it is the judge, and not a panel of academics, that comes to such determinations. The defence seemingly has no say in the identity of those chosen to give the court expert testimony on the law but can only apply for permission to seek its own expert report. The court is under no obligation to accede to such an application. A full year after the instigation of proceedings the trial is further adjourned for the elements of the offence to be ascertained by a panel of academics. One year after being charged and made subject to attendant restrictions on his liberty and the threat of penal sanctions, Mr. Vefa must wait until the next hearing on 12 November 2003 while the court ascertains what the charge means.

The court procedure contained all the deficiencies associated with the Turkish criminal process. The delegation could see no improvement or refinement of the procedure in comparison with previous visits over the last two years. The process of being an accused citizen in Turkey is a prolonged and ambiguous affair. There seems to be no way of predicting when or how the

proceedings will come to a close. There is no recognised process of disclosing information to the defence. No emphasis is placed on the need for evidence; to say nothing of scrutiny of the source or of its admissibility. The Prosecution neither sets out in detail the evidential basis of the allegation, nor specifies witnesses relevant to it, nor identifies witnesses producing documentary evidence. In the present case the Prosecution has not even been required at any stage to justify evidentially the allegation as set out in the indictment. Apart from the very substantial concerns regarding the ability of the legal system to protect or promote human rights there are less often stated concerns about the lack of fundamental care taken to ensure the kind of measured and procedurally predictable process that is the cornerstone of any principled legal system. There is no indication of the use of available and reported judgments of higher courts and accordingly no development of precedent. This should be borne in mind when considering the political criteria relevant to accession to the EU.

The proceedings in the present case exhibited the same features which have previously given rise to criticisms of the ability of the Turkish courts to provide a fair trial under Article 6 of the ECHR. Criminal procedure has no recourse to the principle of equality of arms. The Prosecutor sits in court elevated, literally and metaphorically, to the same status as the judge and wears identical robbing to the judge; while the Defence sits in the floor of the court facing both judge and prosecutor. The recording of court proceedings distinguishes between the utterances of the Judge and the Prosecutor (recorded) and those of the Defence (unrecorded). Little, if any, judicial consideration is given to submissions made by the Defence at court. When considering the determination of proceedings the judge remained in the courtroom accompanied by the Prosecutor. All other persons present were required to leave including the defence lawyers. There were no reasons given for the decisions arrived at and little indication of the legal reasoning behind them. It is hardly surprising that defence lawyers exhibit a marked lack of expectation of success when embarking on a case. Notwithstanding the inherent deficiencies of the process the Turkish courts do not even pretend to deal with cases fairly. Not only is there no respect for the principle of justice being done, there is similarly none for the principle of justice being seen to be done.

This trial raises important issues of principle covering a cross-section of legal areas both domestic and international. At the heart of these proceedings is an attempt to intimidate, silence and criminalise a lawyer for the substance of his contribution to a government consultation process, regarding an issue of great relevance and concern to the community he represents.

## The Ilisu dam project

The Ilisu dam project is of great significance to the Kurdish population of Southeast Turkey and has been dogged by controversy since its inception. The UK ECGD first stated itself “minded” to grant an export credit guarantee in December 1999. This support was originally subject to the following conditions:

- (i) A resettlement programme to be drawn up, **reflecting international best practice;**
- (ii) Provision to be made for upstream water treatment plants to ensure the maintenance of water quality;
- (iii) An assurance to be provided that downstream water flows will be maintained at all times;
- (iv) Detailed plans to be provided to show the preservation of as much of Hasankeyf as possible.

Of these of primary focus for this report is resettlement of the affected population. This is a difficult and challenging area of regulation when applicable to non-conflict zones. In 2000 the World Commission on Dams (WCD) published an extensive survey of the problems associated with dam projects.<sup>18</sup> The report acknowledged that displacement of populations was a common feature of dam projects (defining displacement as both physical displacement and livelihood displacement).<sup>19</sup> Displacement is often involuntary and involves coercion and force, even killing.<sup>20</sup> It identified problems with the under-estimation of affected people and with the provision of assistance to those recognised. With regard to participation of affected people it observed;

*‘Little or no meaningful participation of affected people in the planning and implementation of dam projects has taken place. Involuntary, traumatic and delayed relocation, as well as the denial of development opportunities for years and often decades, has characterized the*

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<sup>18</sup> ‘Dams and Development; A New Framework for Decision-Making (The Report of the World Commission On Dams)

<sup>19</sup> *Ibid.* Chapter 4 Pg 102

<sup>20</sup> *Ibid.* Pg 103

*resettlement process. For millions of people...displacement has essentially occurred through official coercion.*<sup>21</sup>

The WCD report raised the following issues:

- i) The rights of indigenous peoples and ethnic minorities were found to be often poorly enshrined in the national legal frameworks and consequently their entitlements have lacked effective protection. The report concluded that vulnerable ethnic minorities ‘have suffered disproportionate levels of *displacement and negative impacts livelihood, culture and spiritual existence.*’<sup>22</sup>
- ii) Large dams were found to have significant adverse effects on cultural heritage through the loss of cultural resources...and the submergence and degradation of archaeological resources. Turkey was cited as a poor example having only 25 of 298 dam projects surveyed for cultural heritage.<sup>23</sup>
- iii) The report identified the lack of participation and transparency as responsible for the most unsatisfactory social outcomes of past dam projects and as a facilitation to corruption at key points in the decision making process. There had been, ‘*a generalized failure to include and recognize affected people and empower them to participate in decision making.*’<sup>24</sup>
- iv) The report observed the lack of sanctions for non-compliance both at national and international level; ‘*In many cases local affected communities were unable to defend their interests when faced with a strong centralized government especially in countries with weak legal safeguards and recourse mechanisms.*’<sup>25</sup>

The key element to be noted here is the recognised vulnerability of populations affected by dam projects. The situation of the Kurds in Turkey encapsulates the fears expressed for a minority whose rights are poorly enshrined and which faces a strong centralised government with little

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<sup>21</sup> *Ibid.* pg 107

<sup>22</sup> *Ibid.* Pg 130

<sup>23</sup> *Ibid.* Pg 117

<sup>24</sup> *Ibid.* Pg 191

<sup>25</sup> *Ibid.* Pg 189

provision for effective legal resource to legal process. Should the dam project go ahead the Kurdish population of affected areas face the kind of devastating and long-term consequences so emphatically recognised by the WCD. The WCD report makes the following observation;

*'For resettlement to lead to the development of those resettled, the process has to address the complexities of resettlement itself and to effectively engage the full range of political and institutional actors. A positive outcome requires several enabling conditions such as low level of displacement, resettlement as development policy with supporting legislation, a combination of land and non-land based sustainable livelihood provisions, strong community participation and accountability and commitment from government and project directors.'*<sup>26</sup>

The crucial factor for the displaced Kurdish population is in fact that raised by Mr. Vefa's indicted article: their resettlement falls far below the standards outlined here as in many cases their legal rights have been appropriated by others; moreover they seek redress and compensation from a government that seeks to criminalise those who ask for their rights and which operates in a climate of intolerance, non-recognition of rights and non-compliance with international standards and regulations.

There are some recognised standards to be applied to development projects to ensure that those to be resettled are to be treated as fairly as possible. The World Bank has set out Operational Policies on Involuntary Resettlement<sup>27</sup>.

The policy recognises the serious risks associated with involuntary resettlement<sup>28</sup> and states clearly that involuntary resettlement should be avoided where feasible or minimised<sup>29</sup>. Crucially the policy continues,

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<sup>26</sup> *Ibid.* Pg 109

<sup>27</sup> See Annex

<sup>28</sup> World Bank Operational Manual 'Operational Policies; Involuntary Resettlement OP 4.12 December 2001. The policy states, '*Bank experience indicates that involuntary resettlement under development projects, if unmitigated, often gives rise to severe economic, social and environmental risks: production systems are dismantled; people face impoverishment...; people are relocated to environments where their productive skills may be less applicable and the competition for resources greater; community institutions and social networks are weakened; kin groups are dispersed; and traditional authority, and the potential for mutual help are diminished or lost. This policy includes safeguards to address and mitigate these impoverishment risks.'*

<sup>29</sup> *Ibid* Article 2(a)

*'2(b). Where it is not feasible to avoid resettlement, resettlement activities should be conceived and executed as sustainable development programs, providing sufficient investment resources to enable the persons displaced by the project to share in project benefits. Displaced persons should be meaningfully consulted and should have opportunities to participate in planning and implementing resettlement programs*

6. *...the borrower [is to] prepare a resettlement plan or a resettlement policy framework that covers the following:*

*(a) The resettlement plan or policy framework includes measures to ensure that the displaced persons are*

- (i) informed about their options and rights pertaining to resettlement;*
- (ii) consulted on, offered choices among, and provided with technically and economically feasible resettlement alternatives; and*
- (iii) provided prompt and effective compensation at full replacement costs for losses of assets attributable directly to the project*

The policy also notes the special care to be taken when dealing with 'vulnerable groups' including indigenous peoples and ethnic minorities<sup>30</sup> and notes the need for a census to be carried out as part of the procedure for establishing those eligible for assistance<sup>31</sup>. It also envisages distinguishing between persons who have legal rights to the land, those who have claims to the land recognised through a process recognised by the resettlement plan and those who had no recognisable legal right or claim to the land they are occupying.<sup>32</sup> The two key components of these provisions are consultation and compensation. Consultation is intended to be much more than merely an aesthetic exercise and is to be 'meaningful', involving the population throughout the process beginning with the planning stage. Compensation is to be carefully considered, swift, full and provided for those who have the most sustainable and recognised legal right or claim to the land. It is clear when reconsidering Mr. Vefa's indicted article that the points he raised are of extreme relevance to the awarding of compensation and his article as a whole fits within the consultative process and as such should be an integral part of the project.

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<sup>30</sup> *Ibid* Article 8

<sup>31</sup> *Ibid* Article 14

<sup>32</sup> *Ibid* Article 15 'Criteria for Eligibility'

Instead, he is potentially criminalised for drawing attention to aspects of the proposed dam project which the Turkish government clearly wishes to be kept quiet. In this situation the Penal Code is being used as a means to censor and discourage the expression of opinion and the raising of debate (itself required by international standards) in order to protect the continuation of a process that has adverse consequences for the population.

As is often the case the denial of freedom of expression here does not stand alone; it is a means to an end. Through denying Mr. Vefa and others like him their right to enter debate and express views, a larger and more wide-ranging abuse is facilitated: the denial of property rights, cultural respect and compensation to members of a 'vulnerable group' who have already been subjected to the sufferings of war, the destruction of their homes and wide-ranging violations of their fundamental human rights. Numerous cases before the European Court have concluded that the Turkish government and security forces have been responsible for the deliberate destruction and evacuation of villages (see below).



## **Relevant European Court of Human Rights case law**

### **A) Village destruction**

#### *1. Orhan v Turkey (25656/94) – 6 November 2002*

The applicant complains that on 6 May 1994 the State security forces burned and evacuated the hamlet of Deveboyu, detaining the applicant's brothers and his son, after which those three relatives disappeared.

In relation to Article 38 the Court concluded that the Government had not advanced any or any convincing explanation for its delays and omissions in response to the Commission and the Court's requests for relevant documents, information and witnesses. It therefore found itself permitted to draw inferences in this respect. Furthermore, and referring to the importance of a respondent Government's co-operation in Convention proceedings and mindful of the difficulties inevitably arising from an evidence-taking exercise of such a large nature, the Court found that the Government fell short of their obligations under Article 38(1)(a) of the Convention to furnish all necessary facilities to the Commission and Court in its task of establishing the facts.

In relation to the applicant's submissions under Article 2 (right to life) the Court concluded that taking into account that no information came to light concerning the whereabouts of the Orhans for almost 8 years, it was satisfied that the Orhans must have been presumed dead following an unacknowledged detention by the security forces. Thus the responsibility of the Turkish authorities for their death was engaged and in the absence of any justification in respect of any use of lethal force by the government agents, it follows that there has been a violation of Article 2. The Court found that the investigations carried out into the disappearance of the Orhans were seriously deficient and in breach of the State's procedural obligations to protect the right to life and accordingly there was a violation of Article 2 in this respect also.

The Court found that the uncertainty and apprehension (regarding the whereabouts and fate of his brothers and son) suffered by the applicant over a prolonged and continuing period which caused him severe mental distress and anguish constituted inhuman treatment contrary to Article 3. It concluded that he therefore suffered ill-treatment in violation of Article 3 (prohibition of torture) of the Convention in this respect. Furthermore, the Court found that the Orhans were held in

unacknowledged detention in the complete absence of the most fundamental safeguards required by Article 5 (right to liberty and security) of the Convention.

The Court found it established that the homes and certain possessions of the applicant and of the Orhans were deliberately destroyed by the security forces. It concluded that there is no doubt that these acts constituted particularly grave and unjustified interferences with the applicant's right to respect for their private and family lives and homes. Such acts also amounted to serious and unjustified interferences with the peaceful enjoyment by the applicant of his property and possessions. The Court did not find it necessary to consider whether the forced evacuation of the village is sufficient, of itself, to constitute a violation of these Articles.

The Court found that it had not been demonstrated by the Government with sufficient certainty that effective and accessible domestic remedies existed for complaints concerning the destruction of Deveboyu. Having regard to the circumstances in which the villagers' homes were destroyed the Court considered it understandable if the applicant would have considered it pointless to attempt to secure satisfaction through national legal channels. The Court found therefore that there was no available effective remedy in respect of the presumed death of the Orhans in detention and the destruction of Deveboyu.

The Court found that in light of the direct contact by the authorities with the applicant and the attempt to cast doubt on the validity of the present application and the credibility of the applicant could only be interpreted as a bid to try to frustrate the applicant's successful pursuance of his claims, which also constituted a negation of the very essence of the right of individual petition. Accordingly the Court found that Turkey failed to comply with its obligations under Article 34 of the Convention.

(2) *Dulaş v Turkey (25801/94) - 30 January 2001*

The applicant alleged that her home and property had been destroyed during an operation by gendarmes carried out in her village in Southeast Turkey.

In assessing the applicant's claim that Article 3 (prohibition of torture) was violated the Court took into account the fact that the applicant was aged over 70 at the time of the events, that her home and property were destroyed before her eyes, depriving her of means of shelter and support,

and obliging her to leave the village and community, where she had lived all her life and that no steps were taken by the authorities to give assistance to her in her plight. Having regard to the manner in which her home was destroyed and her personal circumstances, the Court found that the applicant must have been caused suffering of sufficient severity for the acts of the security forces to be categorised as inhuman treatment within the meaning of Article 3.

The applicant submitted that the destruction of her home, property and possessions represented a serious violation of her right to respect for private and family life, her right to respect for home and her right to peaceful enjoyment of property. Further, the expulsion from her home and the fact that she could not return to her village represented a serious interference with her lifestyle and a continuing violation of her right to peaceful enjoyment of her possessions. She contended that the expulsion from her village constituted separate and additional violations of both Articles above. The Court found it established that the applicant's house and property were deliberately destroyed by the security forces, obliging her to leave her village. There is no doubt that these acts, in addition to giving rise to a violation of Article 3, constituted particularly grave and unjustified interferences with the applicant's right to respect for her private life, family life and home and with her peaceful enjoyment of her possessions. The Court, accordingly, found violations of Article 8 of the Convention and Article 1 of Protocol No. 1.

Further the Court found that no thorough or effective investigation was conducted into the applicant's allegations breaching Article 13 of the Convention. It held that the Administrative Council in Turkey, a body composed of civil servants hierarchically dependent on the governor – an executive officer linked to the security forces under investigation – could not be regarded as independent.

The Court found that the fact that the applicant was summoned by the public prosecutor in relation to her application to the Court constituted a serious interference with her right to petition. The applicant not unreasonably must have felt intimidated by this interview and felt under pressure to withdraw complaints considered as being against the State. This constituted a breach of Article 25.

(3) *Bilgin v Turkey (23819/94) 16 November 2000*

The applicant submitted that his house and other possessions in Yukarigören, a hamlet in the province of Diyarbakir, were destroyed by security forces. The Court thus found it established that security forces were responsible for the destruction of the applicant's home and possessions and that the loss of his home and possessions, which deprived him of his livelihood, caused him and his family to abandon Yukarigören and to settle elsewhere. Having regard to the circumstances in which the applicant's home and possessions were destroyed and his personal circumstances, the Court considers that this must have caused the applicant suffering of sufficient severity for the acts of the security forces to be categorised as inhuman treatment within the meaning of Article 3 of the Convention. Further there could be no doubt that these acts constituted grave and unjustified interferences with the applicant's rights to respect for his private and family life and home, and to the peaceful enjoyment of his possessions. Accordingly, there were violations of Article 8 of the Convention and Article 1 of Protocol No. 1.

The Court considered that the nature and gravity of the violations complained of in the present case under Articles 3 and 8 of the Convention and Article 1 of Protocol No. 1 had implications for Article 13 of the Convention. It stated that where an individual has an arguable claim that his or her home and possessions have been purposely destroyed by State agents, the notion of an "effective remedy" entails, in addition to the payment of compensation where appropriate and without any prejudice to any other remedy available in the domestic system, an obligation on the respondent State to carry out a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the complainant to the investigative procedure. The Court reminded itself that it has previously held that the implementation of the criminal law in respect of unlawful acts allegedly carried out with the involvement of the security forces discloses particular characteristics of Southeast Turkey during the early 1990s and that the defects found in the investigatory system in force in Southeast Turkey undermined the effectiveness of criminal law protection during this period. The Court held that this permitted or fostered a lack of accountability of members of the security forces for their actions which was not compatible with the rule of law in a democratic society respecting the fundamental rights and freedoms guaranteed under the Convention<sup>33</sup>. The Court further previously expressed serious doubts as to the ability of the administrative authorities in Southeast Turkey to carry out an independent investigation<sup>34</sup>. In the present case the Court considered that there was no thorough or effective investigation as required by Article 13 of the Convention and

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<sup>33</sup> *Mahmut Kaya v. Turkey*, no. 22535/93, judgment of 28 March 2000, §§ 94-98

<sup>34</sup> *Oğur v. Turkey*, [GC], no. 21594/93, judgment of 20 May 1999, § 91

that thereby access to any other available remedies, including a claim for compensation, was denied.

The Court found it established that the applicant was taken to the Catakköprü gendarmerie station where he was questioned about his application to the Commission which action was not based on an instruction from the Silvan public prosecutor responsible for the investigation of the applicant's allegations, but apparently on the gendarmerie command's own initiative. The Court held that the questioning at issue by an official of those authorities allegedly directly responsible for the events complained of in the present case is incompatible with the effective operation of the system of individual petition under the Convention and that, consequently, the Government failed to comply with its undertaking not to hinder in any way the effective exercise of the right of petition under Article 25 of the Convention.

## **B. Freedom of Expression**

Article 10 of the European Convention on Human Rights provides:

1. *Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*
2. *The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.*

In *Handyside v UK*<sup>35</sup> the Court stated,

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<sup>35</sup> A 24 para 49

*“Freedom of expression constitutes one of the essential foundations of a [democratic] society, one of the basic conditions for its progress and for the development of every man. Subject to paragraph 2 of Article 10, it is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive but also to those that offend, shock or disturb the state or any sector of the populations. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no “democratic society”.*

Article 10(1) has been interpreted broadly and it seems that there is little expression which does not fall within its scope.

The rights set out in Article 10(1) are limited by Article 10(2). Thus any interference with the right to freedom of expression must be set down in national law and be necessary<sup>36</sup> for the achievement of a legitimate aim. The law limiting expression must be accessible and sufficiently precise. The requirement for such a restriction to be “necessary” encompasses the notion of proportionality.

The Court has identified three classes of expression: political, artistic and commercial. The Court attaches the highest importance to the protection of political expression and, generally, requires the strongest reasons to justify infringements on the exercise of political speech. The Court sees political speech as a central feature of a democratic society, both insofar as it relates to the electoral process and to more general matters of public concern. In *Castells v Spain*<sup>37</sup> it was held that the protection of expression rights of politicians demands particular stringency, the more so for members of the opposition. This strict protection is not limited to matters of high politics and extends to more general political matters, i.e. police misconduct<sup>38</sup>, the impartiality of a court<sup>39</sup>, the availability of an emergency veterinary service in a single German city<sup>40</sup>.

In *Castells* the Court held that freedom of expression is particularly important for elected representatives: “While freedom of expression is important for everybody, it is especially so for an elected representative of the people. He represents his electorate, draws attention to their preoccupations and defends their interests. Accordingly, interferences with the freedom of

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<sup>36</sup> “Pressing social need” : *Zana v Turkey* (1999) 27 EHRR 667

<sup>37</sup> A 236 paras 42, 58 (1985)

<sup>38</sup> *Thorgjerson v Iceland* A 239 para 64 (1992)

<sup>39</sup> *Barfod v Denmark* A 149 (1989)

<sup>40</sup> *Barthold v FRG* A 90 (1985)

expression of an opposition Member of parliament, like the applicant, call for the closest scrutiny.”

The Court has frequently emphasised that freedom of the press affords the public an excellent means of informing themselves on the ideas and attitudes of their political leaders. Furthermore it allows politicians the opportunity to comment on the concerns of the public enabling participation in the free political debate which is at the core of the concept of a democratic society<sup>41</sup>. The press is a valuable means for politicians and the public to ascertain that judges are discharging their duties in a manner which is in conformity with the aim of the task entrusted to them<sup>42</sup>, thus acting as a “public watchdog”.

(1) *Ceylan v Turkey (23556/94) – 8 July 1999*

The applicant, who at the relevant time was the president of the petroleum worker’s union, wrote an article entitled, “the time has come for the workers to speak out – tomorrow it will be too late” in a weekly newspaper published in Istanbul. He was charged with non-public incitement to hatred and hostility contrary to Article 312 sections 1 and 2 of the Turkish Criminal Code. The applicant denied the charges submitting that the article was about human rights violations in Southeast Turkey and maintained that he had not intended to promote separatism or to sow discord or strife amongst the population. He was found guilty of the offence and sentenced to one year and eight months imprisonment, plus a fine of 100,000 Turkish liras.

The Court examined the complaint under Article 10 alone. The government agreed that the conviction constituted an interference with the applicant’s rights but submitted that it was “prescribed by law” and “necessary in a democratic society” to achieve the legitimate aims of “maintaining national security”, “preventing disorder” and preserving “territorial integrity”. The Commission noted that the article had aimed to provide a political explanation for the recrudescence of violence over the previous few years, and that, therein, the applicant had expressed his ideas in relatively moderate terms, not associating himself with recourse to violence or inciting the population to use illegal means. In its view the applicant’s conviction constituted a form of censorship which was incompatible with the requirements of Article 10.

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<sup>41</sup> *Lingens v Austria* (1986) 8 EHRR 407

<sup>42</sup> *Prager and Oberschilk v Austria* (1995) 21 EHRR 1 (para 34)

The Court reiterated the fundamental principles underlying its judgments relating to Article 10 and stated “freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual’s self-fulfilment”. The Court went on to say that the demands of pluralism, tolerance and broadmindedness require its extension to ‘information’ or ‘ideas’ which shock and disturb, without this there can be no democratic society. The exceptions outlined in Article 10 must be construed strictly. Referring to *Wingrove v The United Kingdom*<sup>43</sup> the Court noted that there is little scope under Article 10(2) for restrictions on political speech or on debate on matters of public interest: “In a democratic system the actions or omissions of the government must be subject to the close scrutiny not only of the legislative and judicial authorities but also of public opinion. Moreover, the dominant position which the government occupies makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means are available for replying to the unjustified attacks and criticisms of its adversaries.” The Court concluded that the applicant, writing in his capacity as a trade union leader, does not encourage the use of violence and that the conviction was disproportionate to the aims pursued and accordingly not “necessary in a democratic society” constituting a violation of Article 10 of the Convention.

(2) *Arslan v Turkey* (23462/94) – 8 July 1999

The applicant was the author of a book entitled “*History in Mourning, 33 Bullets*” which won the Yunus Nadi Prize. The book was published in 1989 and republished in 1991. It is accompanied by a preface attributed to Musa Anter, a well-known pro-Kurdish politician and leader writer whose main theme was the Kurdish question in Turkey and who was murdered in 1992. He was charged with disseminating separatist propaganda under Article 146 ss. 3 and 6 of the Criminal Code. He was found guilty and sentenced to six years and three months imprisonment and confiscation of the book was ordered. The Court noted that the dominant position which the Turkish government occupies makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means are available for replying to the unjustified attacks and criticisms of its adversaries (para. 46). The Court observed that the book was not a ‘neutral’ description of historical facts and that through his book the applicant had intended to criticise the action of the Turkish authorities in the south-east of the country and to encourage the population concerned to oppose it. Further that the virulence of the style conferred a certain amount of vehemence to this criticism. In finding a violation the court observed (para. 48) that the applicant

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<sup>43</sup> 25 November 1996 Reports 1996-V pp.157-58 SS 58



was a private individual and that he made his views public by means of a literary work rather than through the mass media, a fact which limited their potential impact on ‘national security’, ‘public order’ and ‘territorial integrity’ to a substantial degree. The Court noted that although certain particularly acerbic passages in the book painted an extremely negative picture of the population of Turkish origin and gave the narrative a hostile tone, they did not constitute an incitement to violence, armed resistance or an uprising. Finally the Court was struck by the severity of the penalty imposed on the applicant and the persistence of the prosecution’s efforts to secure its conviction.

(3) *Öztürk v Turkey (22479/93) – 28 September 1999*

The applicant was the owner of a publishing house in Ankara. He published a book by N. Behram entitled *A Testimony to life – Diary of a death under torture*, an account of the life of Ibrahim Kaypakkaya, who in 1973 had been one of the founder members of the Communist Party of Turkey – Marxist Leninist, an illegal Maoist organisation. At the request of the public prosecutor, a single judge of the National Security Court made an interim order for the seizure of the copies of the second edition. As a result, 3195 copies were seized, including 3133 at the applicant’s publishing house. The applicant was found guilty of inciting the people to hatred and hostility on the basis of a distinction between social classes, an offence under Article 312 ss. 2 and 3 of the Code. He was sentenced to a substantial fines and the confiscation of the book. He submitted that this conviction breached Article 10 of the Convention. The Court was of the opinion that the book did not give a neutral account of the events of Kaypakkaya’s life but a politicised version. Through his book the author intended, at least implicitly, to criticise both the Turkish authorities’ actions in the repression of extreme left-wing movements and the conduct of those alleged to be responsible for Kaypakkaya’s death. Albeit indirectly, the book thus gave moral support to the ideology which the subject had espoused. The Court reiterated that there is little scope under Article 10(2) of the Convention for restrictions on political speech or on debate on matters of public interest. Further the Court reiterated the sentiment outlined in *Ceylan v Turkey* in relation to the restraint in resorting to criminal proceedings. The court discerned nothing which might justify the finding that the applicant had any responsibility whatsoever for the problems caused by terrorism in Turkey and considered that use of the criminal law against the applicant cannot be regarded as justified in the circumstances of the case.

The Court took the view that it was not established in the present case that at the time when the edition in issue was published there was a “pressing social need” capable of justifying a finding that the interference in question was “proportionate to the legitimate aim pursued”. The Court found that there was a violation of Article 10.

## Turkey's progress towards EU accession

On 10 December 1999 at the European Council Meeting in Helsinki, Turkey was accepted as a candidate for accession to the European Union. On 8 December 2000 the European Commission published its EU Accession Partnership Draft Agreement outlining pre-conditions to be satisfied before accession negotiations could be commenced. The third main pre-condition was Turkey's fulfilment of the 'Copenhagen Criteria'<sup>44</sup> as set out at the Copenhagen European Council 1993 for all candidate states. The first criterion to be achieved is, '*the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.*' This is otherwise known as the 'Political Criteria'.

It is clear considering Turkey's dismal record before the ECHR<sup>45</sup> that there was considerable work to be done to achieve adherence to the first criteria. Between October 2001 and June 2002, 1874 applications regarding Turkey were made to the European Court. Of these, the majority (1125) were related to Article 6 (right to a fair trial), 304 were concerned with Article 5 (right to liberty and security), 246 applications were made under Article 3 (prohibition of torture), 104 pertained to Article 11 (freedom of assembly and association) and 95 concerned Article 10 (freedom of expression). In the same year the Accession Partnership identified various goals to be achieved including,

*'a review of the Turkish Constitution and other relevant legislation, with a view to guaranteeing the rights and freedom of all Turkish citizens as set forth in the European Convention for the Protection of Human Rights'*<sup>46</sup>

As part of the pre-accession strategy the European Commission reports regularly to the European Council on progress made by each candidate country in preparing for membership.<sup>47</sup> On 19

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<sup>44</sup> *Ibid.*

<sup>45</sup> Turkey has the worst record of violations out of all the signatory states. Almost one-quarter of the 19,000 cases outstanding at the ECHR in 2001 concerned Turkey. Between October 2001 and

<sup>46</sup> Other goals identified were the abolition of the death penalty, ratification of the ICCPR and ICESCR, the lifting of the state of emergency in Southeast Turkey, aligning the constitutional role of the National Security Council as an advisory body to the government and ensuring cultural diversity and guaranteeing cultural rights for all citizens.

<sup>47</sup> In its 1998 report on Turkey the EU Commission concluded: '*On the political side, the evaluation highlights certain anomalies in the functioning of the public authorities, persistent human rights violations and major shortcomings in the treatment of minorities....The Commission acknowledges the Turkish*

March 2001, Turkey published its National Programme of Action outlining the reforms it planned to make in order to fulfil the Accession Partnership. With regard to legislative changes pertaining to freedom of expression the first reform package was adopted in February 2002 and brought amendments to Articles 159 and 312 of the Turkish Penal Code as well as to Articles 7 and 8 of the Anti-Terror Law. The third reform package of August 2002 introduced an additional amendment to Article 159. The first Amendment to Article 159 reduced prison sentences (the maximum penalty was reduced from six to three years imprisonment) and abolished fines for criticising Turkish laws. However the actual definition of the offence remained unchanged. In the second amendment the scope of the provision was amended in the following way: expressions of criticism of the institutions are no longer subject to penalties unless they are intended to insult or deride those institutions. The notion of intention and as noted by the European Commission, ‘...only practice will allow the assessment of the full impact of this amendment.’<sup>48</sup>

As evidenced by the prosecution of Mr Vefa, this amendment has had little effect in practice. Many lawyers interviewed by the delegation expressed concern that the constitutional changes so trumpeted by the Turkish government in its negotiations with the European Commission are not being used in practice. Considering the afore-mentioned observations in relation to the trial it would seem that consideration of ‘intention’ is rather too subtle for consideration by the court. The defence of lack of intention was properly pleaded by the Defence but not commented on by either the prosecution or the judge. What is distinctly lacking in the Turkish system is any indication that reforms are taken into account by those who make the decision to instigate proceedings (be it the prosecutor’s office or in fact the Ministry of Justice). If there was any real recourse to the rule of law then a measured decision would be made as to whether an offence has been committed, considering both the evidence in the case and the elements of the offence as amended by the Constitutional Reform Package. That this clearly does not happen is simply another confirmation of the fact that criminal sanctions are being used for political purposes in order to silence those who pose an obstacle to the government agenda.

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*Government’s commitment to combat human rights violations in the country but this has not so far had any significant effect in practice.’*

<sup>48</sup> 2002 Regular Report on Turkey’s Progress Towards Accession [Com (2002) 700 final]

## Conclusion and recommendations

There are five specific areas of great concern to the delegation;

- a. The ongoing violations of Article 10 (freedom of expression) of the European Convention as evidenced by the prosecution of Mahmut Vefa.
- b. The continuing rise in breaches of fundamental human rights by the Turkish government.
- c. The outlawing of HADEP and suspension from political life of 46 of its members; and moves to ban its successor party DEHAP.
- d. The continuing failure of the Turkish government to address the grievances of large sections of the Kurdish population who have been deprived of their homes, land and cultural and spiritual existence as a result of forcible 'evacuation' of their villages during the 1990s.
- e. Turkey's lack of adherence to international standards concerning infrastructural development.
- f. Given its involvement in this case, that the UK government has a moral responsibility to ensure that Mr. Vefa's rights of freedom of expression and a fair trial are upheld; and that the prosecution of Mahmut Vefa will be noted by Export Credit Agencies, including UK's ECGD, should a new application for the Ilisu dam project be submitted for consideration.

Although the Ilisu dam project is currently on hold following the withdrawal of international backing, Turkey is attempting to find further backers for the project. In any case, the WCD records Turkey as possessing over 200 similar projects at various stages of development at the current time.

The European Commission has published another annual report on Turkey's progress towards accession (see appendices). All of the above are of great relevance to its consideration of the 'Political Criteria'. It is vital that the Commission properly recognises that the reforms introduced by Turkey have little or no effect on the situation in practice and that far more wide-ranging and institutional reform is required. Simply tinkering with sentencing powers and terminology is ineffective to safeguard human rights in a legal system suffering from such numerous and grave deficiencies. Such meaningless and merely aesthetic reform is not going to

transform the worst human rights record in Europe. It must be made clear to Turkey that paying lip-service to human rights is an unacceptable way to approach the process of harmonisation and that ultimately such an approach will fail in its objective.

It is submitted here that all the above areas of concern are directly relevant to the European Commission's role in ensuring the political criteria are met. This role must be approached with more scrutiny of the reality lying behind Turkey's claims of improving democratic standards. The EU cannot simply be contented with changes in the wording of the penal code or the constitution. The evidence indicates insubstantial improvements in legal standards and no real comprehension in the lower courts of what the reforms mean. At the heart of any EU monitoring of the application of democratic standards must be consultation of the affected population especially in the Southeast. At present it is clear that those in the population traditionally relied upon to express views, lawyers and politicians, are being targeted by the authorities to reduce effective debate and criticism of policy. Thus the Turkish authorities are removing the cornerstone of democracy while at the same time claiming to have improved democratic standards. The KHRP urges the European Commission to:

- i) require information from the Turkish authorities as to the methods introduced to educate judges, prosecutors and police officers about recent legislative reforms;
- ii) establish a sub-committee dedicated to monitoring the implementation of apparent changes in Turkish law. This sub-committee would liaise with NGOs and send fact-finding missions. Individual cases like that of Mahmut Vefa should be given special attention and raised with Turkish officials;
- iii) raise with the Turkish authorities the recent decision to take away HADEP's political status and render the organisation illegal;
- iv) require the Turkish authorities to produce a document setting out their approach to resettlement and/or compensation for affected populations in the Southeast;
- v) appoint a body to examine and monitor large-scale development and dam projects in Turkey to ensure compliance with international standards. This body should examine closely applications for Export Credit Guarantees involving member states.

## Appendix A

### *Legal review of Ilisu (Hasankeyf) Dam and evacuated villages*

#### A. Introduction

I believe there should be a debate regarding the data in the Impact Assessment Report regarding the Ilisu dam and Hydroelectric power station compiled by the DSI [State Water Concern] and the way the problem of evacuated-burnt villages was set out. This report, while set forth as the government view, approached the question of the evacuated/burnt villages in the area of the project virtually as if this was a normal event. Let alone the fact that this report did not go into how this problem would be resolved, the property rights of the people concerned were also ignored and this fact was virtually presented as a successful outcome for the authorities.

On examination of the structure of the report the following topics are investigated under the heading of Bio-physical environment: climate and hydrology geology, underground resources, flora, fauna, water supply and quality; while under the heading Social environment the following topics are examined: cultural heritage and archaeology, other uses of agriculture and soil, population, administration, public health, while topics such as bio-physical impact, social impact and environmental impact are looked at under the heading Impact assessment.

We will not refer to a majority of the topics listed above, bearing in mind the technical characteristics of the report and our sphere of expertise.

We shall make evaluations regarding the topics listed under the heading Social impact, i.e. resettlement of population, units of settlement to be affected, number of persons affected, number of persons who could make an application to take advantage of compulsory purchase or right of re-settlement.

In compiling this evaluation we shall endeavour to set out the problems of evacuated villages in the region as a whole and the Ilisu dam and Hydroelectric power station in particular, the property problems of people living in this area and the victims of cadastral and compulsory purchase activities.

#### A- Village burning and evacuation measures, causes and results

The problem of villages-units of settlement evacuated and burned as a result of the 15-year environment of conflict continues to be topical and is continuing to create a large group of injured parties. In this context democratic mass organisations have been unable to be a power to resolve the problems of millions of people or even to identify the problems and submit plans to resolve these problems in concert with national or international bodies. It will be appropriate to look at the historical reasons and make a brief assessment of the current position in order to illustrate the seriousness of the situation.

1- Village Evacuation Measures – Southeast (Region under State of Emergency) – Causes and results: Due to Turkey being situated in the Middle East there are many ethnic groups, and people of different religions and sects. Since its foundation, that is since 1923, the military-bureaucratic edifice governing the country has promoted a long-term comprehensive, widespread “TURKIFICATION” campaign as part of efforts to create a homogenous nation in the country. This campaign has continued without letting up until the present day. As a result of this many ethnic group and religious minorities were either assimilated (Bosnians,

Adjarian Georgians etc) or were forced to leave the country (Greeks of Asia Minor, Armenians, Yezidis etc). However, despite these efforts at forced assimilation the Kurdish ethnic group/people, who constitute a large population in the country and resident in the south east of the country, have put up great resistance, rebelling against the central government on many occasions. In a report published by the Turkish General Staff the number of Kurdish rebellions was given as 28. The armed conflict launched by the Kurdistan Workers' Party (PKK) in 1984 was called the 29th rebellion by many in the media and others.

The armed clashes that began in the border regions of the Southeast gradually began to spread throughout the whole of the region and even into area of the Mediterranean and Black Sea region close to areas of Kurdish population. This spread from 1990 onwards led to the conflict being described as a "low-intensity war". As a result of these clashes more than 30,000 people died according to official figures.

With the broadening of the clashes and their development towards a mass structure resulted in a change in the strategy of preventing clashes with traditional gendarme forces, replacing this with an all out campaign of counter attack to prevent incidents. The normal administrative structure was abolished in a large part of the region and a State of Emergency Region established. This Regional Governate is itself an unlawful structure, binding 23 provincial administrations to itself against the clashes. Its powers, in additions to those invested in it at its inception, were increased by Decrees with the Force of Law. One of these decrees, no. 435, authorised the evacuation of villages. Within this framework central governments concentrated on two forms of activity from 1990 onwards, believing that operations against the PKK forces would not be successful. These were:

- a) the rapid arming of the local people residing in a scattered way in the region as village guards under the Temporary Village Guard system to be used against the PKK
- b) the speedy evacuation and burning of villages, hamlets and single isolated houses whose inhabitants did not become village guards

It was thus calculated that without the necessary support base amongst the people the PKK militants would not be able to shelter in the area and would be annihilated in operations. These are the fundamental underlying reasons for the evacuation and burning of around 3,500 villages and hamlets in this part of the country. Villages began to be evacuated in 1990 in line with the above strategy. Approximately 3-4 million people were forcibly displaced from the region. Hardly any villages or hamlets without village guards remained in the region. Impartial sources that may be consulted in this regard are reports of the Human Rights Association IHD and Human Rights Foundation. Both organisations are independent NGOs.

The incidents of evacuation/burning of villages began in 1990, reached a peak in 1993-94-95 and still continue in a reduced way. Villages whose inhabitants were suspected of assisting PKK members were evacuated or burnt in line with the decision of Gendarme post commanders or village guards without any reason being given. This evacuation and burning was carried out without any rules and with no compensation being paid, villages and hamlets that, in the phrase of the armed forces and village guards were "not pro-government", were evacuated.

When in 1994/95 these incidents reached such dimensions that they were impossible to conceal the authorities had to admit their existence, claiming they were being perpetrated by PKK members. However, independent sources, people in the region and injured parties have insistently pointed out that this number of villages have been evacuated and burnt by the security forces and village guards.



A reply by the Interior Minister to a question in parliament in 1995 gave the following totals of evacuated and burned villages by province:

Province	Evacuated		Displaced	
	Village	Hamlet	Household	Population
Batman	37	54	1,880	13,839
Bingöl	150	194	7,151	44,540
Bitlis	76	95	2,878	21,896
Diyarbakır	115	196	7,580	43,420
Elazığ	8	6	531	3,522
Hakkari	38	93	2,736	21,713
Mardin	184	58	6,772	38,200
Muş	30	65	2,177	16,100
Siirt	86	82	4,624	31,437
Şırnak	96	110	7,686	45,184
Tunceli	154	657	4,437	22,407
Van	8	64	1,141	8,643
Total:	982	1,674	49,593	310,921

The above data is that announced by the Interior Minister and covers up to 1995. Village evacuation/burning has continued after that time. The most recent reports of the Human Rights Foundation of Turkey indicate the number of villages and hamlets as at least 3,500. A report by the IHD has given a figure of 3,246.

According to research carried out by the Migration Research Commission of the Turkish Parliament 2,663 units of settlement have been evacuated. All these reports and documents are sufficient to clearly demonstrate that a systematic, conscious, centralised administrative practice of village evacuation/burning was carried out by the government in the Southeast of Turkey.

## 2- Measures of Village Evacuation/Burning – Domestic Legal Situation

Article 125 of the Turkish Constitution states: “Recourse to judicial review shall be open against all actions and acts of the administration..... the administration shall be liable to compensate for damages resulting from its actions and acts.” This provision covers administrative responsibility.

Additionally, there is also a provision regarding criminal responsibility. Article 369 of the Turkish Penal Code contains the following provisions: “Whoever sets afire and partly or completely burns buildings or other structures, harvested or standing crops or grains .... , shall be punished by heavy imprisonment from 3 to 6 years.” Articles 370 and 371 contain similar provisions. Article 516 also contains a provision envisaging prison sentences of 1 to 3 years for those who damage property. Although this is the legal position in the event of the person committing the act being a public official the implementation of the laws becomes almost impossible.

First and foremost in order for public servants to be put on trial for committing these offences the obstructive provisions of the Law on Trial of Public Servants of 4 February 1329 [1913] has to be overcome, which is almost impossible. In order for a prosecutor to initiate a prosecution the superior of the public servant has to give permission. This permission is called “May be taken to court”. Without this permission a court or prosecutor cannot carry out an investigation. (Article 4 of Law on Trial of Public Servants) In order to prove the non-functioning of this legal situation it

is necessary to look at the structure of the law. The person granting permission and the person who is to be tried work in the same public institution. In the previous process provincial and district administrative councils made the decision as to whether a public servant should be tried. Again, public servants made the decision. Just as none of these officials were jurists they also did not have the guarantee of a judge. It is obviously impossible that these persons would give permission for the trial of soldiers and village guards who were party in an environment of conflict in which thousands of people died.

In addition to this one of the powers given to the Regional Governor is that of evacuating villages. Article 8 of Decree with the Force of Law no. 430 of 16 December 1990 states: "No criminal, financial or legal responsibility may be claimed regarding the actions of any Regional Governor or provincial governor within the boundaries of the State of Emergency Region. No application may be made to an legal authority for this purpose." Consequently, Regional or provincial governors ordering the evacuation or burning of villages within the boundaries of the State of Emergency Region are not legally responsible. On most occasions there is no need for this as authorities do not feel the need to even examine complaints regarding public servants. All those who have been Regional Governor have denied evacuating any villages. In the region where 3,500 villages have been evacuated/burnt not one state official has been tried. Despite it being stated in the report of the Migration Research Commission of the Turkish Parliament that 80 units of settlement had been completely or partially evacuated the people concerned have not been able to bring a case to court despite all their efforts. In this regard the testimony of former Regional Governor Doğan Hatipoğlu to the Commission is instructive. He said that "There was generally a lack of co-ordination between authorities, we would usually be informed that a village was being evacuated at the time or shortly after when informed by the villagers of mayor, no one addressed the questions of who was doing the emptying or why."

Although this is the case an insufficient amount of research has been carried out in this field. It has yet to be established exactly how many villages, hamlets and single dwellings have been evacuated, how many people have been displaced, to which parts of the country they moved or what problems they faced. Of course there are reasons for this but none of these should be deemed a sufficient excuse.

#### B- Villages evacuated and burnt within the area of the Ilisu Dam and Hydroelectric Power Station Project and legal problems

##### 1- The number of burnt and evacuated villages and units of settlements within the area of the project

The Ilisu Dam and Hydroelectric Power Station Project affect the provinces of Batman, Siirt, Şırnak, Diyarbakır and Mardin. It should not be forgotten that Mardin, Siirt and Şırnak in particular were the centre of the 15-year conflict. Consequently, it is a fact that most of the villages in the area have been evacuated. In the report it is stated that 50 of 82 entirely affected units of settlement were evacuated and burnt while 38 of 101 partially affected units of settlement were evacuated. Thus 88 of 183 units of settlement that will be affected by the project have been evacuated/burnt. Although there is no exact data it is apparent that there are more evacuated units of settlement that will be affected by the project. According to unconfirmed data this figure is around 105.

Again, according to the report, the number of displaced persons from the area of the project is 15,581. Of these, it is said that 8,600 have benefited from compulsory purchase or the right of resettlement. We also wonder how these figures were reached and what they are based on. How

was a figure reached regarding how many people lived in previously evacuated and burnt villages? It is stated that the 1997 census was used as a basis. However, at the time of this census these villages had already been evacuated or burnt and the inhabitants had moved to provincial capitals, the Çukurova region or to the larger cities of Turkey. No census officers even went to any of these villages. Even if they had gone there would have been no one to count. There is consequently a need for an explanation. Whatever the figure is does not affect the fundamental problem, which is that of the violation of property rights.

2- The situation of property owners and those living in the units of settlement evacuated/burnt within the area of the project

Firstly, in most of the areas within the scope of the project, with the exception of Bismil district, no cadastral [survey] work has been carried out. Consequently, it is not known how much agricultural land and orchards will be affected by the project. The figures given in the report are far from accurate. Cadastral work is continuing and has not begun in many areas. The implementation of the project without determining the property rights of those who have been displaced will lead to irreparable losses and violations of human rights. Even if we accept the figures given in the report an answer is needed to the question of what will happen to the property rights in the 88 units of settlement evacuated and burnt. In order to find an answer to this question it is necessary to examine the Cadastral Law of 21.06.1987, Law no. 3402. Let us look at the law article by article. Article 2 contains the provision: “places within the provincial and district boundaries shall constitute the cadastral areas of that province”. Article 3 contains the provision: “A cadastral team shall consist of at least two technicians, the neighbourhood or village mayor and three experts..... In villages at least 6 persons shall be selected by the village association within 15 days.... In the event of this not being done or the selected persons not being competent the local authority shall appoint the same number of persons.” In this situation it will therefore not be possible to establish a cadastral team in the evacuated and burnt units of settlement or to determine property rights there. When it is considered that most of these areas will soon be submerged it is obvious that thousands of people will suffer a violation of rights. The provision whereby the local authority can appoint experts would lead to even more severe violations. Due to there being no inhabitants left only village guards will be able to be experts. Bearing in mind the tribal/feudal character of the region and political family/tribal animosity of village guards this will lead to thousands of losses of rights and subsequent legal disputes. This will lead to serious consequences, disputes and blood feuds.

Article 4 of Cadastral Law makes provision for the study area, declaration and objections: “Every village in the cadastral area shall constitute the cadastral study area. The cadastral director shall announce at least 15 days before the study begins with the usual means in the district centre, study area and neighbouring village and municipality.... Boundaries determined by cadastral technicians may be challenged within 7 days. The cadastral director shall examine this objection and make a decision in 7 days. An objection may be made to this decision at the cadastral court within 7 days, and the final decision shall be made within 15 days.”

It is obvious that work carried out on this basis would lead to more rights violations. It is unclear how the inhabitants of evacuated villages would be informed within 7 days. Without resolving these problems work would only create more problems.

Article 7 of the same law makes provision for the restriction of real estate and the determining of land ownership etc. In this article documents and the statements of other persons shall be utilised in the determining of property owners. It is therefore debatable what will happen to the rights of thousands of citizens who are no longer in their villages.

Article 11 makes provision for the proclamation of the results of the cadastral survey: “The cadastral director shall arrange and hang the lists of the surveys in the mayor’s office and the directorate. Appeals shall be made within 30 days. Complainants may open a case in the cadastral court within 30 days.” How will people who have moved to other parts of Turkey see, hear or be able to lodge objections? When these provisions are considered along with those of articles 13 and 14 it will become clear how serious the outcome will be. While article 13 covers the rules for determining the owners of real estate article 14 deals with establishing the ownership of land where there are no title deeds. When it is considered that most of the fields, orchards and vineyards in the area do not have title deeds the gravity of the situation will be understood. Article 14 states: “Ownership of land between 10 and 25 acres without title deed shall be ascertained with documents proving active use of the land for 20 years, or through expert or witness statements and the land registered in that person’s name.”

When the situation of land in the villages – the figure given is 88 – is compared to article 14 the following points emerge: most of the land is unregistered. It would be impossible to find the witnesses, experts and local mayor in the evacuated villages during the survey work. In this situation experts to be appointed by the authorities would almost certainly be village guards, as there is no one else left in the area. Won’t they make declarations on their own behalf or in the name of relatives? Experience demonstrates that one of the most characteristic aspects of survey work is for experts to make false declarations in order to benefit the family or tribe. In this situation how will recourse be created for the displaced inhabitants of these places? They will not even be able to go to the survey work, for security or other reasons, or they will be prevented from doing so by the village guards.

If this project is implemented under these conditions it will be tantamount to handing the opportunity of land ownership on a plate to the gangs of village guards that have exploited the region for years. If the project is definitely to go ahead then the state of emergency legislation and the village guard system based on it should be abrogated. The return, if only temporary, of the inhabitants and their safety should be secured for the survey work. Otherwise, any work conducted will only mean the loss of rights for thousands of people, blood feuds and, most importantly, the enrichment of village guards.

Conclusion: The implementation of the project at this stage would, apart from the various disadvantages of the project, lead to adverse situations as regards the burnt/evacuated units of settlement. It is apparent that this would result in citizens losing rights and village guards making unjust property gains. Therefore:

- a) The Region under State of Emergency and the village guard system based on it should be abolished immediately
- b) The safe return of inhabitants to the evacuated sites should be guaranteed
- c) After an accurate, detailed cadastral survey is undertaken and the real property owners ascertained the feasibility of the project should be reviewed.

Believing no one with human feelings will say yes to the project at this stage.

Lawyer Mahmut Vefa

General Secretary of Diyarbakır Bar Association



## Appendix B - Indictment

T.R.  
Diyarbakır  
Public Prosecutor's Office

Preliminary No: 2002/9713  
Principal No: 2002/4087  
Indictment No: 2002/352

### Indictment

#### Plaintiff: Public Law

Accused: Mahmut Vefa. Lawyer in Diyarbakır Bar.  
Offence: Overtly insulting the moral personality of the Government and the military and security forces.  
Date of Offence: December 2001 – January 2002  
Article of Law: 159 of Turkish Penal Code

#### Preliminary Documents Examined

Facts: it has been established from pages 26 and 32 of an article in the December 2001-January 2002 issue no. 15 of the journal of the Bar of which the accused is a member of the management committee and general secretary, in which he writes:

“The Southeast Region is not administered by the rule of law, ..... law lies between the lips of those posted from the centre, ..... those villages and hamlets that do not have village guards are burnt and forced to leave, ..... the last of many uprisings in the Southeast was launched by the PKK, ..... etc”, and from all the documents in the file that he overtly insulted the moral personality of the Government and the military and security forces.

It is requested in the name of the public that the accused be tried and convicted in accordance with the charge. 17.07.2002

**Mithat Özcan**  
Public Prosecutor  
25672



## Appendix C

### **Early Day Motion**

#### **Ilisu Dam and trial of Mahmut Vefa**

That this House notes with concern the recent indictment of Mr. Mahmut Vefa, a leading Turkish lawyer and General Secretary of the Diyarbakir Bar Association, who is to stand trial in Turkey for “overtly insulting the moral personality of the Government and the military and security forces” in an article published in the Diyarbakir Bar Association Journal in January 2002, criticising the controversial Ilisu Dam project; further notes that, if convicted, Mr Vefa faces between one and three years’ imprisonment; draws attention to the fact that the article was based on Mr Vefa’s formal submission to the UK government of a critique of the project’s Environmental Impact Assessment following an invitation from HM Government for comments on the Ilisu dam project from ‘concerned stakeholders’, to inform its decision whether to provide £160 million backing for the dam; notes that the dam, which would have displaced over 78,000 people, is effectively on hold, after international backing was withdrawn; calls on HM Government, the EU Commission, the European Parliament and the Council of Europe to ensure that international observers are sent to observe the trial and to ensure that Turkey complies with its obligations to provide a fair trial and to protect free expression under the European Convention on Human Rights to which Turkey is a signatory.

**John Austin**





## Appendix D

Baroness Symons  
Minister for International Trade and Investment  
Foreign and Commonwealth Office  
London SW1A 2AH

14 March 2003

### **Re: Ilisu Dam and Hydroelectric Power Project: lawyer facing trial in Turkey**

Dear Baroness Symons

We are writing to draw your attention to a matter of grave importance and to request your assistance.

As you are aware, in July 2001, the Export Credits Guarantee Department published the environmental impact assessment report (EIAR) for the Ilisu dam and hydroelectric power project. In order to inform its decision whether to fund the project, the ECGD requested public comment on the EIAR. The Ilisu Dam Campaign responded by organising a formal submission from a number of experts, including a leading lawyer from Turkey. Mr Mahmut Vefa, General Secretary of the Diyarbakir Bar Association, states in his submission 'An Assessment of the Ilisu Dam and HEPP Environmental Assessment from a Legal Point of View' that the Ilisu Dam, if built, would deny local people of their property rights and exacerbate the problems of resettlement for the thousands of people who have been displaced by the Turkish authorities' practice of "village destructions" over the last decade. This paper formed a vital part of the Ilisu Dam Campaign's submission to the UK government, as Mr Vefa gave voice to the concerns expressed by numerous project-affected people and organisations.

Mr Vefa then reproduced this submission in an article in the Diyarbakir Bar Association Journal, published in January 2002. For this article, Mr Vefa now faces trial, accused of "overtly insulting the moral personality of the Government and the military and security forces". The trial will be held in Diyarbakir on 18<sup>th</sup> March 2003.

The Kurdish Human Rights Project and the Ilisu Dam Campaign, in conjunction with Friends of the Earth and the Cornerhouse, are sending a delegation to observe the trial and ensure that Turkey complies with its obligations to provide a fair trial and to protect free expression under the European Convention on Human Rights.

Given its involvement in this case, we believe that the UK government has a moral obligation to ensure that Mr Vefa's rights to freedom of expression and a fair trial are observed. We urge you to seek assurances from the Turkish authorities that Mr Vefa's rights will be upheld.

We would be grateful if you could respond to our request, letting us know what action you will be taking in this highly important matter.

Yours sincerely,

Kerim Yildiz, Director, Ilisu Dam Campaign; Executive Director, Kurdish Human Rights Project

Nicholas Hildyard, Director, Ilisu Dam Campaign; The Cornerhouse

Tony Juniper, Director, Ilisu Dam Campaign; Director, Friends of the Earth England Wales and Northern Ireland.

Andrew Puddephatt, Executive Director, ARTICLE 19

Cc:

Rt. Hon. Jack Straw, FCO

Rt. Hon, Clare Short, DFID

## **Appendix E**

### **Turkey's progress towards accession**

P5\_TA-PROV(2003)0265

[A5-0160/2003](#)

### **European Parliament resolution on Turkey's application for membership of the European Union (COM(2002) 700 - C5-0104/2003 - 2000/2014(COS))**

#### ***The European Parliament,***

- having regard to Turkey's application for membership of the European Union, submitted on 12 April 1987 pursuant to Article 49 of the Treaty on European Union,
- having regard to the Presidency conclusions of the European Councils of Copenhagen (21-22 June 1993), Florence (21-22 June 1996), Luxembourg (12-13 December 1997), Cardiff (15-16 June 1998), Cologne (3-4 June 1999), Helsinki (10-11 December 1999), Santa Maria Da Feira (19-20 June 2000), Nice (7-9 December 2000), Göteborg (15-16 June 2001), Laeken (14-15 December 2001), Seville (21-22 June 2002), Brussels (24-25 October 2002) and Copenhagen (12-13 December 2002),
- having regard to the Strategy Paper on enlargement - Report on the progress towards accession by each candidate countries (COM (2002) 700),
- having regard to the Commission's 2002 regular report on Turkey's progress towards accession of 9 October 2002 (SEC(2002) 1412),
- having regard to the Communication from the Commission to the Council on 26 March 2003 on Strengthening the Accession Strategy for Turkey (COM(2003) 144),
- having regard to the proposal for a Council decision on 26 March 2003, on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with Turkey, (COM(2003) 144),
- having regard to its previous resolutions on Turkey,
- having regard to the recommendations adopted on 5 and 6 June 2000 by the EU-Turkey Joint Parliamentary Committee,
- having regard to Council Decision 2001/235/EC of 8 March 2001 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with the Republic of Turkey<sup>(1)</sup>,
- having regard to Turkey's national programme for the adoption of the acquis, which it adopted on 19 March 2001 and forwarded to the Commission on 26 March 2001,
- having regard to the report of the Council of Europe's Parliamentary Assembly of 13 June 2001 on the honouring of obligations and commitments by Turkey,

- having regard to the conclusions of the EU-Turkey Association Council meeting of 16 April 2002,
- having regard to the decisions of the European Court of Human Rights concerning Turkey,
- having regard to the resolution of the Parliamentary Assembly of the Council of Europe of 23 September 2002 on the implementation of decisions of the European Court of Human Rights by Turkey,
- having regard to Rule 47(1) of its Rules of Procedure,
- having regard to the report of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy (A5-0160/2003),

A. whereas every EU citizen should have the same kind of rights and obligations in his or her Member State and whereas all citizens throughout the Union must be conscious of being protected and recognised as deserving protection against discrimination and maladministration by the authorities; whereas for that reason compliance with, and respect for, the Copenhagen political criteria are an essential precondition for embarking on the route to full membership,

B. having regard to the Presidency conclusions of the European Council of Helsinki, which conferred on Turkey the status of a candidate for membership of the European Union on the basis of the same accession criteria applying to the other candidate countries in connection with the enlargement of the EU,

C. whereas on 3 November 2002 the Justice and Development Party (AKP) won the parliamentary elections, which had been brought forward, by an overwhelming majority; whereas the people have shown their dissatisfaction with the performance of the previous governments, thus providing the opportunity for a new direction in government policy; whereas the AKP is now faced with the difficult task of implementing legal reforms and carrying out further reforms in order to bring about a properly functioning democratic state based on the rule of law, without calling into question the essentially secular nature of the Turkish state,

D. whereas the 10% electoral threshold, while it prevented a fragmented parliament, sacrificed, as a consequence, the representative nature of the parliament, which now represents only 55% of voters,

E. whereas the Constitution adopted in 1982 under a military regime does not make it possible to guarantee the rule of law and fundamental freedoms, and whereas Turkey can express its choice of a democratic constitutional model by establishing a new Constitution based on universal democratic values; whereas the on-going constitutional debate in Turkey has acquired a new dimension in the context of the enlargement debate,

F. having regard to the steps taken by Turkey in 2002 towards meeting the Copenhagen criteria, in particular through the recent legislative package and the subsequent implementation measures which cover a large number of priorities specified in the Accession Partnership; whereas these reforms contain a number of significant limitations on the full enjoyment of fundamental rights and freedoms,

G. whereas developments such as the verdict issued by the Turkish Constitutional Court, with regard to the closure of the People's Democracy Party (HADEP) and the request of the Chief Prosecutor of the Court of Appeal to the Constitutional Court to initiate similar proceedings

against the People's Democracy Party (DEHAP), show that there is an unwillingness to guarantee fundamental democratic rights in practice,

H. whereas the changes requested must imply courageous reforms and require full ratification of signed conventions and the adequate implementation of legal amendments and whereas the implementation of the reforms can only be perceptible and the democratic reforms deemed to have been achieved when they are experienced by ordinary people,

I. whereas a thorough reform of the judicial system is of crucial importance to the democratisation of the country and whereas the government has announced the abolition of the state security courts, which will be an important step in that direction,

J. whereas the reforms and the investment made by Turkey in the democratisation process will benefit all its citizens, irrespective of relations with the EU,

K. whereas Turkey's accession to the EU must be based on clear and unequivocal criteria, and whereas the statements and decisions of the European Council on Turkey over the past few decades have shown inconsistencies,

L. whereas a solution to the problem of the division of Cyprus is of vital importance to relations between the EU and Turkey, and whereas UN Secretary-General Kofi Annan's plan for the union of Cyprus forms the basis for the future structure of the island,

1. Welcomes the reforms made by Turkey since October 2001, particularly as these have been perceived by the Turkish population as a major improvement and are important signals of Turkey's willingness to make further progress towards fulfilling the Copenhagen criteria ; encourages Turkey to go ahead with the reforms and considers that these reforms need to be judged on the basis of their implementation; points out that political will to press ahead with a comprehensive state reform, in particular concerning its relationship with society and the application of human rights, is essential to the process towards EU membership;

2. Realises that this is a long process of reform in which Turkey is faced with crucial choices, and that European help will be necessary in this process;

3. Recognises that the political values of the European Union are chiefly based on the Judaeo-Christian and humanist culture of Europe, but that no-one has a monopoly on these universal values of democracy, the rule of law, human and minority rights and freedoms of religion and conscience - values which can perfectly well be accepted and defended by a country where the majority of the population is muslim; believes, therefore, that there are no objections of principle to its EU membership;

4. Notes that the short and medium-term priorities have only been partially implemented in practice, particularly as regards the Copenhagen political criteria, as agreed in the current partnership for Turkey's accession (2001);

5. Welcomes the aforementioned Commission communication, particularly as regards enhanced political dialogue and the political criteria;

6. Calls on the Turkish government to submit, as soon as possible, a clear roadmap and timetable for the implementation of the Copenhagen criteria as a prerequisite for the future improvements concerning reform of the Turkish state,

## *The Copenhagen political criteria*

### *State Institutions*

7. Notes that the army maintains a central position in the Turkish state and society; notes with regret that the army's excessively important role slows down Turkey's development towards a democratic and pluralist system, and advocates that Turkey must take advantage of its present government, with its strong parliamentary support, to elaborate a new political and constitutional system, which guarantees the principles of a secular system without military supremacy above civil institutions, so that the traditional power of the bureaucracy and the army (the 'deep State') can resume the forms which are customary in the Member States;
8. Considers that, in the context of state reform, it will be necessary in the long term to abolish the National Security Council in its current form and position in order to align civilian control of the military with the common practice in EU Member States; realises that the desired structural change will be very hard to accept;
9. Proposes that the military representatives should withdraw from civilian bodies such as the high councils on education and the audiovisual media, in order to ensure that these institutions are fully independent; urges the Turkish authorities to establish full Parliamentary control over the military budget as a part of the national budget;
10. Considers that a successful reform of the State will partly be dependent on the extent to which the government succeeds in handling in another way the dangers of fundamentalism and separatism, reflecting Articles 13 and 14 of the Constitution of the Republic of Turkey; considers that a relaxed attitude to Islam and to religion in general will counteract the rise of antidemocratic movements such as intolerant and violent religious extremism;
11. Stresses that the changes demanded are so fundamental that they require the establishment of a new constitution, explicitly based on democratic foundations, with the rights of the individual and of minorities balanced against collective rights in accordance with the customary European standards, as set out for example in the European Convention on the Protection of Human Rights and Fundamental Freedoms and the Framework Convention on the Protection of National Minorities;
12. Welcomes Prime Minister Erdogan's intention to establish a new Constitution emphasising the rule of law and a pluralist, participatory democracy;
13. Considers that also the Turkish concept of the nation and secular state has to be based on tolerance and non-discrimination of religious communities and minority groups; considers that the drafting of a new Constitution must facilitate the implementation of these principles;
14. Invites the Turkish government and parliament, with the cooperation of the Commission and the European Parliament if desired, to stimulate public debate on the characteristics of the State in relation to the political values of the EU, partly in connection with the outcome of the Convention, so as to strengthen its citizens' democratic awareness; calls on the Turkish authorities and the Commission to organise information campaigns to increase the awareness of Turkish citizens about the European Union and the obligations arising from membership, as well as the awareness of EU citizens about Turkey;
15. Stresses that, in order to strengthen the democratic nature of society, an active civil society is essential; considers that the establishment of free social organisations in the economic, social and

cultural fields must be promoted and encouraged by the State; emphasises the value of a fully tripartite consultation between government and social partners;

16. Considers, in addition, that ordinary people can be more closely involved in decision-making, and policy be better adapted to needs, by decentralising certain government tasks to a lower level of elected authorities, with the necessary control to ensure transparency;

### ***The rule of law and democracy***

17. Encourages the Turkish authorities to strengthen the principle of the primacy of international law over national law in the case of substantial differences relating to respect for human rights and the rule of law; considers that this measure is necessary in order for Turkey to be brought more closely in line with the standards prevailing in the Member States of the European Union; notes the modification to the Turkish Constitution which entails the acknowledgement of the judgements of the European Court of Human Rights;

18. Reiterates its conviction, expressed in its resolution of 26 September 2002 on the International Criminal Court (ICC)<sup>(2)</sup>, that the Rome Statute was ratified by all Member States and candidate countries as an essential component of the democratic model and values of the European Union, and calls upon Turkey to commit itself without delay to a process of accession to the statutes of the International Criminal Court; believes that this is a fundamental element in the relations between Turkey and the EU; points out that Turkey is the only member of the Council of Europe who has not yet signed this statute;

19. Regrets that Turkey has delayed so long with implementing the decisions of the European Court of human rights (ECHR) as it was urged to do by the Parliamentary Assembly of the Council of Europe in a resolution of 23 September 2002 (including the *Loizidou v. Turkey* case); calls on Turkish and European judicial officers and judges to exchange experiences in order to bring the Turkish legal system closer to the system currently in place in Europe; calls on the Commission and the Council of Europe to continue with the exchange programmes initiated in late 2002 and to extend them to include other forms of training;

20. Urges that an amnesty be granted to those imprisoned for their opinions who are serving sentences in Turkish prisons for the non-violent expression of their opinions; welcomes the reforms that permit the reopening of trials that violated the European Convention on Human Rights and Fundamental Freedoms; welcomes in this context the reopening of the trial against European Parliament Sakharov Prize winner Leyla Zana and three other MPs of the former Democracy Party (DEP), imprisoned since more than 9 years; calls for a fair retrial and their immediate provisional release;

21. Stresses the importance of an independent and competent judiciary; calls on the Turkish authorities to adopt active and consistent measures to improve the quality of the court system and the qualities of judges, who have a great responsibility for creating a new legal culture at the service of the citizen, by promoting the correct interpretation and application of laws at all levels (local, regional and national); calls in this respect on Turkey to participate in the AGIS framework programme of the Commission (2003-2007), especially with regard to the training projects for legal practitioners and law-enforcement officials;

22. Welcomes the Turkish government's announcement that it intends to introduce a thorough reform of the judicial system and, among other measures, to abolish the State Security Courts, and calls on the government to bring its legislation on combating terrorist crimes in line with the decisions of the European Union, seeking to cooperate with the Member States in this matter;



23. Calls on Turkey to continue its fight against corruption and to ratify without delay the relevant international conventions it has signed; stresses that, in the fight against corruption, a transparent society, including free media, independent courts and a more efficient judiciary system is essential, and that corruption cases in particular should be more public and should be monitored by the media and other watchdog organisations;
24. Calls for the electoral system to ensure that the composition of the parliament fully reflects the principle of representative democracy, especially with regard to the representation of Kurdish population and other minorities;
25. Strongly welcomes the Turkish parliament's vote on 2 August 2002 in favour of abolishing the death penalty in peacetime and the subsequent signing of Protocol No. 6 to the European Convention on Human Rights on 15 January 2003; welcomes these important steps forward but also calls for the ban to be extended to crimes committed in times of war;
26. Condemns the decision of the Turkish Constitutional Court to ban HADEP, and recommends the reconsideration of that decision; believes that this ban conflicts with the European Convention on Human Rights and the Charter of Fundamental Rights of the EU, and violates the elementary right to freedom of opinion and assembly; considers that the persecution of political parties such as HADEP and DEHAP, which is also the subject of proceedings seeking to ban it, conflicts with the principles of democracy;

***Human rights situation and protection of minorities***

27. Recalls the commitment by the Turkish government to finally eradicate torture (zero tolerance); notes with concern that torture practices still continue and that torturers often go unpunished; calls for the most active and consistent measures to be taken to combat this barbaric practice, and for the Centre for the Treatment and Rehabilitation of torture victims in Diyarbakir, supported by the Commission, to be able to continue its work unhindered;
28. Calls on Turkey to implement the international standards for prisons and to abstain from reverting to the practice of isolating prisoners;
29. Expresses its concern at the continued hunger strike in Turkish prisons and supports efforts to negotiate a solution to this matter in a way which avoids further deaths;
30. Calls on the Turkish authorities to permit all prisoners, including those arrested under the jurisdiction of the State Security Courts, to be given genuine access to legal aid; calls on the Turkish government to promptly pass legislation to abolish Article 31(1) of the Law Amending Some Articles of the Criminal Procedure Code (1992, No 3842), which denies detainees held for offences under the jurisdiction of State Security Courts the right to legal counsel for the first forty-eight hours;
31. Is deeply concerned about reports of women in detention being subjected to frequent sexual violence and rape committed by state security agents; notes that women of Kurdish origin and women holding political beliefs which are unacceptable to the authorities or the military are particularly at risk of such violence; calls for an assurance that intimate searches of female prisoners will only be carried out by female staff and that assaults will be punished;
32. Notes that the fact that people of Kurdish origin live in various countries including Turkey must not prevent Turkey from establishing a more relaxed and constructive relationship with its own citizens of Kurdish origin, as with other ethnic and religious minorities;

33. Proposes the establishment of systems for the rigorous monitoring of police stations and gendarmeries by independent councils, including members of the public; demands that police officers and gendarmes be sharply disciplined and/or prosecuted whenever they deny detainees access to legal counsel, induce detainees to sign away their right to see a lawyer, fail to inform detainees of their rights, interfere with medical examinations, fail to inform relatives when people are detained, fail to register detainees on arrival, or fail to take detained children directly to the prosecutor as regulations require;
34. Calls on Turkey to ensure cultural diversity and guarantee cultural rights for all citizens, irrespective of their origin, to ensure effective access to Radio/TV broadcasting, including private media, and education in Kurdish and other non-Turkish languages through the implementation of existing measures and the removal of remaining restrictions that impede this access;
35. Calls on Turkey to take further steps - within the context of the country's territorial integrity - to comply with the legitimate interests of the Kurdish population and members of other minorities in Turkey and to ensure their participation in political life;
36. Respects the position of the Turkish language as the first national language, but underlines that this should not be to the detriment of other indigenous languages (such as Kurdish and Armenian) and liturgical languages (such as Aramaic/Syriac), the use of which constitutes a democratic right of citizens;
37. Urges Turkey to respect and to emphasize the Armenian and Syriac cultural heritages, components of Turkey's national identity;
38. Is concerned by the recent directives of the Turkish Ministry of Education demanding that primary and secondary schools in the country take part in a denial campaign concerning the oppression of minorities during Turkish history, in particular in relation to the Armenian community;
39. Notes the modifications made to Articles 159, 169 and 312 of the Criminal Code and Article 8 of the Anti-Terrorism Act, but regrets that these articles, which relate to the protection of territorial integrity and to the secular nature of the State, still restrict freedom of expression; calls on the Turkish authorities to bring these articles, as regards their form and application, in line with the European Convention for the Protection of Human Rights and Fundamental Freedoms, to lift the restrictions on the exercise of fundamental rights contained in other areas of national legislation, in particular the RTUK law of 7 June 2001, and to interpret them in this spirit;
40. Calls on the Turkish authorities at all levels (national, regional, local) to call for an immediate halt to any discriminatory activities which cause difficulties for the lives of religious minorities in Turkey, including in the field of ownership of property, donations, building and maintenance of churches and freedom of action for school boards; urges that all Christian denominations in Turkey should be permitted to maintain theological colleges and seminaries to train their clergy in respect of whom the issuance of visas and residence permits should be facilitated; calls, in this connection, for the reversal of the decision to close the Greek Orthodox Halki Seminary and for the threats of seizure against the Armenian Holy Cross Seminary in Istanbul to be finally lifted;
41. Encourages Turkey to adopt the definition of 'religious freedom' as set out in the case law of the European Court of Human Rights and promoted by the Council of Europe; encourages the Turkish authorities to bring their laws in this area in line with those enshrined in international conventions;

42. Calls for equal treatment, recognition and protection of the Alevite and Baha's communities and of different Muslim communities such as the Sufis;

43. Calls on the Turkish authorities to facilitate the work of non-governmental organisations - charitable associations such as Caritas - by granting them legal status;

44. Welcomes the ending of the state of emergency on 30 November 2002 in the last remaining two provinces of Diyarbakir and Sirnak, but calls on Turkey to contribute to the elimination of tensions with the Kurdish people and to make efforts to overcome the economic and social under-development of the regions in which these people live, to facilitate the return of former inhabitants to 'emptied villages' and returning refugees from abroad, and to bring about the removal of armed village guards in Kurdish and Syrian Orthodox villages;

45. Calls on the Turkish authorities to place any military activity in these regions under civilian control and to demand that the security forces (police and army) be answerable for their actions under all circumstances;

### ***Turkish external relations***

46. Deplores the failure of the meeting in The Hague on 10 March 2003 and calls on the Turkish Cypriot leadership and the Turkish authorities to take courageous steps so that a fair and workable solution to the problem in Cyprus can yet be reached, on the basis of the proposals of U.N. Secretary-General Kofi Annan, which is an essential condition for proceeding with Turkey's application for EU membership; urges Turkey to be fully committed to its status of candidate country and to withdraw its troops from northern Cyprus so as to pave the way for the reunification of the island and facilitate the resumption of talks;

47. Calls on the Turkish authorities to promote good neighbourly relations with Armenia in order to defuse tension and reduce the economic impoverishment of the region affected by the ban; believes that, as a first step, this could entail the opening of the borders, mutual recognition and the resumption of diplomatic relations as a step towards compliance with the political criteria;

48. Calls on Turkish and Armenian academics, social and non-governmental organisations to embark on a dialogue, or to continue their existing dialogue, in order to overcome the tragic experiences of the past which have, so far, prevented the situation from returning to normality, as pointed out by Parliament in previous resolutions, in particular, in its resolution of 28 February 2002 on EU relations with South Caucasus<sup>(3)</sup>, (paragraph 19) and its resolution of 15 November 2000 relating to Turkey<sup>(4)</sup> (paragraph 10);

49. In order to ensure the continuing improvement of bilateral relations between Turkey and Greece, encourages Turkey to act in that context in the spirit of the Helsinki conclusions and in accordance with the principles of international law which should, in this case likewise, take precedence over national law;

50. Demands that Turkey cooperate with its neighbours Iran, Syria and Iraq in order to respect and safeguard the borders while enabling their respective citizens of Kurdish origin to develop their human, cultural and economic relations; urges the Turkish Government to continue to respect the territorial integrity of Iraq and the competence of Iraq in rearranging its own administrative organisations;

51. Recommends that Turkey arrive at a settlement, based on the findings of the UN General Assembly's International Law Commission, of the disputes with its neighbours, Iraq and Syria, concerning water;

### *EU-Turkey relations*

52. Calls on the European Council to take a clear and consistent position and to take decisions in accordance with mutually recognised criteria, based on the periodic progress reports made by the Commission and the resolutions of the European Parliament;

53. Notes, in the light of the Copenhagen decision (December 2002), that the conditions for the opening of accession negotiations with Turkey have not been currently satisfied; expresses its confidence that those conditions will be met if the Turkish government pursues with constancy and determination the necessary ongoing reforms;

54. Reiterates its view that the two financial aid programmes adopted by the Commission in 2002 must be spent, as a priority, on compliance with the political criteria;

55. Reiterates its call on the Commission to work out proposals for a broader cooperation with Turkey in the medium and short term, including in the fields of energy policy, regional environmental protection, combatting cross-border crime, 'Culture 2000' and 'Media', and to optimise the potential of customs union;

56. Instructs its President to forward this resolution to the Council and the Commission, the Council of Europe, the European Court of Human Rights and to the Parliament and Government of Turkey.

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<sup>(1)</sup> OJ L 85, 24.03.2001, p. 13.

<sup>(2)</sup> P5-TA(2002)0449.

<sup>(3)</sup> OJ C 293 E, 28.11.2002, p. 96.

<sup>(4)</sup> OJ C 223, 8.8.2001, p. 182.



