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## Calendar of events

### 17-27 September

OSCE Human Dimension Implementation Meeting – Warsaw

### 22-24 September

Internal Displacement Conference, Ahmed Kurdish Centre – Washington, DC

### 24 September – 5 October

UN Preparatory Commission for the Establishment of an International Criminal Court – New York

### 28 September

UN Informal Day of Consultations of the Commission on Human Rights – Geneva

### 1-12 October

UN Working Group on the Optional Protocol to the Convention Against Torture – Geneva

### 15 October

Kurdish Association Conference: "Uniting in Diversity: A Kurdish Perspective" – Sydney, Australia

### 22-23 October

OSCE "Human Rights: Advocacy and Defenders" Meeting – Vienna

### 24 October

United Nations Day

### 24-30 October

UN International Disarmament Week

### 16 November

UN International Day for Tolerance

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## Project information

### The organisation

The KHRP is a non-political, independent human rights organisation, founded in December 1992 and based in London. Its founding members include human rights lawyers, barristers, academics and doctors.

The Project is registered as a company limited by guarantee (company number 2922108) and is also a registered charity (charity number 1037236).

The KHRP is committed to the protection of the human rights of all persons within the Kurdish regions of Turkey, Iran, Iraq, Syria and the Caucasus, irrespective of race, religion, sex, political persuasion or other belief or opinion.

### Aims

■ To promote awareness of the situation of Kurds in Turkey, Iran, Iraq, Syria and the Caucasus.

■ To bring an end to the violation of the rights of the Kurds in these countries.

■ To promote the protection of the human rights of the Kurdish people everywhere.

### Methods

■ Monitoring legislation, including emergency legislation, and its application.

■ Conducting investigations and producing reports on the human rights situation of the Kurds in Turkey, Iran, Iraq, Syria and the Caucasus by sending trial observers and fact-finding missions.

■ Using reports to promote awareness of the plight of the Kurds on the part of the committees established under human rights treaties to monitor the compliance of states.

■ Using the reports to promote awareness of the plight of the Kurds on the part of the European Parliament, the Parliamentary Assembly of the Council of Europe, the national parliamentary bodies and inter-governmental organisations including the United Nations.

■ Liaising with other independent human rights organisations working in the same field, and co-operating with lawyers, journalists and others concerned with human rights.

■ Offering assistance to indigenous human rights groups and lawyers in the form of advice, training and seminars in international human rights mechanisms.

■ Assisting individuals in the bringing of human rights cases before the European Commission of Human Rights.



# newsletter

summer/autumn 2001

Issue 14

## Turkey's Prison Crisis: Death Toll Reaches 65

**The current prisoners' protest movement in Turkey first started in October 2000 when more than 1000 political prisoners began hunger strikes in protest against the Turkish Government's decision to move political prisoners from the country's traditional "dormitory-style" prisons into the 1-person and 3-person cells which characterise the newly-constructed "F-type" prisons.**

Despite promises from the Justice Minister in early December 2000 that no prisoners would be transferred until Turkey's Anti-Terrorism Law was amended to protect against isolation, on 19 December 2000,

the State implemented its "Return to Life" military operation in 22 prisons in order to begin the transfer. This bloody four-day operation left 30 prisoners and 2 soldiers

*Sinan Dönmez, the son of deceased death faster Gülsüman Duman Dönmez, places flowers on his mother's coffin.*



dead, but failed to end the prisoners' protest. Since December 2000, some 33 death fasters – most of whom are in their 20s – have died. Despite their attempts to help mediate between authorities and prisoners, human rights groups and independent professional associations including the Human Rights Association of Turkey (IHD), the Medical Association of Turkey, the Contemporary Lawyers Association and the Contemporary Journalists Association, have suffered repeated repression by the State, including office raids, temporary closures and indictments for "support of illegal organisations".

In addition, despite a chilling official forensic report which clearly blames the December deaths at the Bayrampasa Prison on State authorities, Turkey has not carried out an effective investigation into this prison disaster and has failed to provide redress to the victims. It has also failed to prosecute those responsible for committing the violations.

Unlike the situation in most European prisons where 1- and 3-person cells are welcomed as appropriate for prisoners' privacy and mental well-being, for the majority of Turkish and Kurdish political prisoners, living in a cell isolated from others amounts to a particular form of mental torture. If one adds to that the wholly justified fear of ill-treatment and torture in isolation in Turkish prisons, it becomes easy to understand the motivation behind what has been seen as the prisoners' blind determination against the solitary confinement system

*Continues on Page 4 alongside article on the KHRP Prison Crisis Observer Mission to Istanbul and Ankara.*

### Director's Letter



**Dear Friends,**  
We are deeply saddened by the violent attacks in the US, and by the real possibility that many more innocent lives will be lost in future months. It has been a sad month for human rights whose central tenet is that the dignity of the human person is sacrosanct.

Better news came at the recent UN conference on racism held in South Africa, where the UN agreed to combat racism worldwide. However, the UN's honourable intentions have often failed to result in concrete action.

Similarly, the Turkish, Iranian, Iraqi and Syrian governments have been permitted to pay mere lip-service to their human rights obligations, while violations of Kurdish rights continue.

Turkey has taken little effective action to reform, despite the large number of adverse European Court of Human Rights judgments in cases brought by KHRP and others.

No peaceful future can be envisaged unless governments are made to account for their human rights violations. The time has come for the member states of the Council of Europe to consider another inter-state case against Turkey, as occurred during the 1980s. Across the world, people must be given effective legal avenues to protect their human rights.

**Kerim Yildiz**  
Executive Director

## Khatami wins again but Iran's Kurds remain sceptical

On 8 June Mohammad Khatami was returned to power in presidential elections in Iran, winning about 77% of the popular vote in a landslide victory that secured him a second term. Khatami even surpassed the 70% that brought him to office four years ago, though this time on a lower turnout. His nearest rival, former Labour Minister Ahmad Tavakoli, came a distant second with less than 16% of the vote.

Khatami's re-election may be viewed as a boost to reform, but it remains to be seen whether this new mandate will enhance his ability to press ahead with his reform programme in the face of the hard-line clerics who oppose it. Khatami's first term was dogged by the dominance of the clerics within non-elected institutions such as the judiciary, the Council of Guardians, religious foundations and the militia, who prevented him from enforcing constitutional guarantees of civil rights. A prime example has been the repression of freedom of expression (see *Newsline* 11/12).

While Iran's Kurds generally welcomed Khatami's re-election, they too are sceptical about his ability to deliver reforms that will bring about an improvement in their situation. The 7.5 million Kurds in Iran want greater freedom to use their language. Although Article 15 of the Constitution provides for teaching to take place in different languages in schools, teaching in the Kurdish language has not been permitted in schools in the Kurdish areas. They are also pressing for greater economic investment in the Kurdish areas to combat high levels of poverty and unemployment, and for greater Kurdish representation in the local administration of those areas and a higher level of participation in government.

## Editorial

The European Court judgment in the KHRP case, *Akman v Turkey* (see page 8), presents a troubling precedent. Although the parties attempted a friendly settlement, KHRP has, on behalf of the applicant, appealed the Court's decision to strike out the case, arguing that the statement submitted by Turkey is insufficient in a right to life case. The Akman case concerns the security force killing of the applicant's 22 year-old son in front of his family in their home. Although the Government agreed to pay £85,000 in compensation for this horror and stated its regret for "the occurrence of individual cases of death resulting from the use of excessive force as in the circumstances of Murat Akman's death," the Government's declaration failed to address many of the fundamental human rights questions raised by this tragic case of extra-judicial killing.

The precedent set by the Court's acceptance of the terms of the Government declaration will permit States to buy off claims and avoid the stigma of the Court finding them in breach of the Convention. It will either put pressure on applicants to settle their claims through fear of having them settled by the Court or discourage applicants to even enter into friendly settlement negotiations, if they face being struck out on unacceptable terms. Perhaps most worrying, however, is the suspicion that the Court came to its judgment for reasons of expediency. By striking out Mr Akman's claim the Court avoided a long fact-finding hearing and possibly a merits hearing. Given the Court's ever-increasing workload, the Turkish proposal must have been tempting.

What is the higher goal of the European Court of Human Rights? We hope that the Court will remember its all-important mandate to offer justice and redress for the victims of gross human rights violations as Murat Akman and his family surely were and reverse its decision in the Akman case.

# KHRP Develops European Convention Training and Advocacy Project in Armenia and Azerbaijan

**In 1996 Armenia and Azerbaijan were granted special status with the Parliamentary Assembly of the Council of Europe and in the same year the two countries applied for membership of the Council of Europe. Since then experts from the Council of Europe have been assisting the authorities in those countries to evaluate and amend national legislation so as to bring it into conformity with the standards of the European Convention on Human Rights.**

On 25 January 2001 Armenia and Azerbaijan signed the European Convention on Human Rights and both countries are committed to ratifying the Convention by January 2002. Once this occurs, Armenia and Azerbaijan will be bound to apply the Convention and their citizens will be able to petition the European Court of Human Rights if they are not able to uphold their Convention rights through the domestic courts.

Since last year, KHRP has been developing a project that aims to ensure the participation of civil society in the promotion of human rights in Armenia and Azerbaijan. Building on its experience gained in using the law and procedure of the European Convention on Human Rights in Turkey, working with local partners, KHRP is exploring the possibility of developing similar programmes in these two new member states of the Council of Europe, both of which have significant Kurdish populations. Recently, the Council of Europe invited KHRP to provide a legal expert to take part in training on the European Convention on Human Rights for prosecutors in Azerbaijan. At the end of August 2001, KHRP Legal Team member, Jemima Stratford, a barrister from Brick Court Chambers, travelled to Baku, Azerbaijan to lecture on fair trial rights.

In both Armenia and Azerbaijan, significant human rights problems have been recognised in recent years, many of which could be challenged under the European Convention on Human Rights. In Armenia, the security forces have allegedly been involved in extra-judicial killings. There have been arbitrary arrests and ill-treatment of detainees. The alleged human rights abuses perpetrated by the security forces have rarely been adequately investigated.

As the US Department of State has documented, there are also significant problems with poor prison conditions, the length of pre-trial detention, restrictions on press freedom

and discrimination against religious minorities. In Azerbaijan too the US Department of State and Amnesty International have both reported a number of recent human rights problems including the failure to register political parties, the detention of peaceful demonstrators, the detention of members of religious minorities, the lack of an independent judiciary and imprisonment of conscientious objectors. As KHRP reported in its June 2000 report, *Azerbaijan & Armenia: An Update on Ethnic Minorities and Human Rights*, there have also been widespread allegations of torture and ill-treatment of pre-trial detainees in the country. Speaking at the recent Convention signing ceremony, President Aliyev of Azerbaijan acknowledged that reforms had recently been necessary within the Azerbaijani criminal justice and prison systems, and to ensure the free development of the media and NGOs.

The KHRP Armenia and Azerbaijan project is designed to build on KHRP's successful experience in Turkey and is to be implemented in three phases. In the initial development phase, which is under way, KHRP is to identify and begin to work with partner organisations in the two countries in order to establish the most effective role for KHRP. This will include identification of key providers of legal services in the human rights field and their needs as regards training and other forms of support in relation to both the law and procedure of the Convention. It will also involve consultation with partner organisations to identify key aspects of the application of the Convention to Armenia and Azerbaijan, such as an evaluation of what would constitute exhaustion of effective domestic remedies (in accordance with the admissibility criteria in Article 35 of the Convention), and the likely substantive areas of domestic law which are potentially most vulnerable to challenge under the Convention.

In the second phase, KHRP will bring together a highly

experienced legal team to provide practical, focused training on the European Convention on Human Rights for practising lawyers, academics, human rights organisations and law enforcement agencies. The content will depend on the needs of the target groups identified during the first phase, but is likely to include the substantive Convention law and Court procedure as well as the effectiveness of domestic remedies in relation to the Convention. This training is to include practical case studies in respect of both procedural and substantive matters. KHRP also plans to develop an internship scheme whereby practitioners from the region would be placed at our London office.

In the third phase, the Advocacy and Litigation phase, KHRP will offer advice, assistance and other forms of support in taking cases to the European Court of Human Rights. Advice on Convention law and procedure will be given to lawyers and NGOs litigating cases before the European Court, and in some cases members of the KHRP Legal Team may represent applicants in conjunction with partner NGOs and lawyers in Armenia and Azerbaijan. Advice and assistance would be offered for all stages of Convention cases, from the lodging of the initial application to the supervision of the enforcement of judgments by the Committee of Ministers.

The central aim of this exciting new KHRP project is to provide sustainable advice and assistance, which will enable project partners to disseminate their expertise within Armenia and Azerbaijan and which will enable them and other lawyers and NGOs to continue providing advice and assistance on the European Convention to applicants in those countries. The period leading up to the ratification of the Convention and the early years after ratification will be immensely important in the development of human rights standards in Armenia and Azerbaijan. The first cases to go before the Court from these countries will therefore be of great significance. The KHRP Armenia and Azerbaijan project seeks to make the most of this historic opportunity to ensure the wide dissemination of expertise on both the law and procedure of the European Convention.

## **IHD Vice President and Torture Victim Arrested in Turkey**

On 9 August, KHRP was alarmed to discover that our colleague in Diyarbakir, Osman Baydemir, a leading human rights defender in Turkey and the Vice President of the Human Rights Association of Turkey (IHD), was arrested while he was taking part in a delegation investigating allegations of torture and human rights abuses in Southeast Turkey. Along with other international human rights organisations, KHRP was relieved to hear that Mr Baydemir was released on 10 August after authorities told him that he had been arrested because of a "mistake" in police records. However, serious concerns still remain for the 18 year-old boy, Rasim Acan, who had been giving testimony about his torture to the delegation when he was arrested with Osman Baydemir on 9 August. Rasim Acan, who remains in prison now awaiting his trial for "insulting the military", has reportedly been subjected to torture in custody, including electric shocks to his testicles and toes, hanging by the arms and death threats.

For information on Amnesty International's Urgent Action on Rasim Acan's case, go to AI's website at [www.amnesty.org](http://www.amnesty.org).

## **Contemporary Journalists Association of Turkey Visits KHRP Offices to Discuss New Joint Project Work**

**Journalists Can Dundar and Vedat Cuhadar of the Contemporary Journalists Association of Turkey (Çağdaş Gazeteciler Derneği – CGD) visited KHRP's offices on 20 July in order to discuss the details of a new joint KHRP/CGD project on Freedom of Expression. This project is to include a series of new publications in Turkish produced through the joint efforts of KHRP and CGD over the course of the next year. The first of these Turkish language publications will be a series of key KHRP case reports including the case of *Aksoy v Turkey* and also KHRP's first case at the European Court of Human Rights, *Akdivar v Turkey*.**

The CGD is a non-governmental organisation of professional journalists which was formed in 1978 in Ankara with the aim "to help promote press freedom in Turkey and to allow people to read news that is not the result of oppression or censorship." There are six CGD offices across Turkey in Ankara, Istanbul, Izmir, Bursa,



CGD at KHRP's offices (left to right): Can Dundar, KHRP Deputy Director Fiona McKay, Vedat Cuhadar and KHRP Executive Director Kerim Yildiz.

Eskisehir and Antalya. Over the years, KHRP has continued to have a fruitful relationship with CDG. The CGD in collaboration with KHRP published a Turkish language version of KHRP's December 2000 case report, *Özgür Gündem v Turkey: Violations of Freedom of Expression*, which dealt with the European Court case brought by members of the pro-Kurdish newspaper, *Özgür Gündem*, who had suffered a relentless campaign of violence and intimidation that included extra-judicial killing, arson, abduction,

office raids and the eventual closure of the newspaper.

Considering Turkey's continuing violations of freedom of expression (see *Box on Freedom of Expression below*), this new KHRP/CGD project hopes to arm human rights activists and lawyers on the ground in Turkey with clear analyses in Turkish of recent European Court cases that have involved not only the issue of freedom of expression, but also extra-judicial killing and torture, village destruction and 'disappearances'.



KHRP Deputy Director Fiona McKay in Iran, May 2001.

### **KHRP Deputy Director attends Seminar in Tehran**

In May 2001, KHRP Deputy Director Fiona McKay was invited to take part in a Seminar on International Courts and Tribunals held in Tehran. The Seminar, for legal practitioners from the Middle East, Central Asia and the Caucasus, was organised by UNITAR, PICT (the Project on International Courts and Tribunals) and IPIS, an Iranian think-tank. Fiona was asked to make a presentation on the International Criminal Court.

The Seminar provided a valuable opportunity to meet with legal practitioners from the region, including several of the countries in which KHRP works. It was also a chance to meet with members of the Kurdish community in Tehran, where a Kurdish Cultural Institute has recently been established.

## **Freedom of Expression in Turkey for the First Half of 2001**

**The Human Rights Violations Monitoring Commission of Mazlum-Der, a national NGO in Turkey with branches throughout the country, has published the first of its two bi-annual reports on Freedom of Expression in Turkey which details the legal proceedings taken against those who expressed their opinions between January and June 2001 in Turkey. These freedom of expression cases involve singers, writers, human rights defenders, trade unionists, poets, publishers, priests and imams, academics and doctors.**

The Mazlum-Der report reveals that in the first six months of

2001, one hundred and sixty-one people were accused under Turkey's Criminal Code on the basis of written articles or for speeches they had made and a total of 183 cases were lodged against these "thought criminals". Some writers had more than one case filed against them regarding the same article or speech they had penned. The total imprisonment demanded by prosecutors in these cases totals 1,151 years. While six people were acquitted, nine were sentenced to a total of 17 years and 8 months imprisonment. During this same period, Turkey's Court of Cassation ratified a total of six years and four months imprisonment for four writers who were then imprisoned.

Continued from Page 1.

introduced by the F-type model. Although pleas have been lodged by human rights groups and medical associations from around the world as well as from international monitoring bodies including the UN Special Rapporteur on Torture and the Council of Europe's Committee for the Prevention of Torture (CPT), Turkey seems unwilling to come up with a solution in this crisis and it appears that the tragic death toll will continue to grow.

### **KHRP provides human rights training in Kosovo**

**On 1-2 July, KHRP took part in a human rights training seminar for Kosovan Serbs in Brezovica, a Serbian enclave in southern Kosovo, near the Macedonian border. The seminar was organised by the Council of Europe, in conjunction with the OSCE, and was the first of their seminars for Serbian lawyers from Kosovo. The seminar conducted by KHRP Legal Director Philip Leach focused on the criminal justice system and the relevant principles contained in the European Convention on Human Rights (primarily Articles 5 and 6) which has been incorporated into the domestic law of Kosovo.**

# **Turkey's Prison Crisis: Kurdish Human Rights Project Participates in Observer Mission**

**Between 5-11 May 2001, KHRP Public Relations Officer Sally Eberhardt travelled to Istanbul and Ankara as part of a Euro-Mediterranean Human Rights Network fact-finding mission to investigate both the current crisis surrounding the opening of "F-type" prisons in Turkey (see cover story) and the ensuing repression of human rights defenders who have tried to serve as peaceful mediators in this emergency situation.**

The observer mission, composed of representatives from KHRP, the World Organisation Against Torture (OMCT) and the Tunisian League for Human Rights, interviewed a wide range of Turkish non-governmental organisations and individuals involved in the prison crisis including: relatives of death fasters; a political prisoner from the Bayrampaşa Prison who lived through the "Return to Life" operation and is lodging a case against Turkey at the European Court of Human Rights; the Ministry of Justice's Director General of Prisons and Detention Centers, Ali Suat Ertosun; the Contemporary Journalists Association of Turkey; the Medical Association

of Turkey; the Contemporary Lawyers Association; and members of the the Human Rights Association of Turkey (IHD) in Ankara and Istanbul. On 7 May 2001, the mission also observed a trial against the IHD at the State Security Court in Ankara. At the hearing, the defence counsel argued that the case should be dropped as the IHD's interest in the prison crisis and criticism of the Government's prison policy follows from their official mandate to monitor the human rights situation in Turkey. The defence further argued that as the Committee for the

Prevention of Torture (CPT) criticised the Government's actions since December 2000, so too does IHD have the moral and legal right to criticise Government actions which result in human rights violations. The trial was postponed on 7 May and has continued to be postponed. *A full report from the Prison Observer Mission, including updates on cases brought against other human rights defenders since May and the latest reports on the death fasters and solidarity hunger strikers who continue their protests, will be available in September. For copies, please contact KHRP directly.*



KHRP Public Relations Officer Sally Eberhardt (second from right) at the Contemporary Journalists Association of Turkey's office in Ankara during the observer mission on Turkey's prison crisis.

## **KHRP Presents Paper at Geneva Conference**

**On 2 August, KHRP Executive Director Kerim Yildiz travelled to Geneva to participate in a panel on "The Rights of People" organised by the World Organisation Against Torture (OMCT). At the panel, which took place at the UN building, Mr Yildiz presented a paper on the European Court of Human Rights and other existing international human rights mechanisms. Fellow speakers included Eric Sottas (President of OMCT), Karen Parker (International Educational Development) and Ismet Cheriff Vanly (President of KNK).**

## **Human Rights Association of Turkey (IHD) Celebrates its 15th Anniversary**

**KHRP sends a message of congratulations and sincerest thanks to the Human Rights Association of Turkey (IHD) which celebrated its fifteenth anniversary on 17 July. Over the years, the IHD has been at the forefront of the struggle for human rights in Turkey and despite continued campaigns of violence and intimidation waged against them - which has led to the deaths of several IHD members and the frequent closure of their offices - they have continued to persevere in the fight for justice across Turkey and have served as an inspiration for fellow human rights defenders internationally.**

## **Syrian Repression of Kurds and Dissenters Continues**

**Throughout the summer, there have been continuing reports of an escalation in political arrests and detentions without charge in Syria.**

On 27th August, security forces targeted a bookshop specialising in Kurdish-language books, arresting the owner Mohammed Hamo. Mr Hamo was originally from the town of Efrin which has a high Kurdish population. He was taken to the security force facilities in the Al-Ashrafeye area of the northern city of Aleppo.

Other recent arrests also include members and supporters of the Syrian Human Rights Association, human rights lawyers and activists, independent members of Parliament, members of the Syrian opposition, journalists, doctors and academics.

All political prisoners in Syria are vulnerable to mistreatment. The corpse of detainee Muhammed Mustafa Snoon was tragically delivered to his family in the village of Kalaly on 22nd July. One of those arrested, Mr. Riad Al-Turk, suffered a heart attack less than a day before his arrest on the 31st August. Mr. Al-Turk had only recently been released after almost twenty years incarceration as a political prisoner.

Breaching the principle of due process, only one of those recently arrested has been given a concrete charge. It is imperative that the others are either charged and provided with lawyers, or released without delay.

According to Syrian human rights organisations, many of the several thousand detainees arrested and imprisoned in Syria in the last two decades still remain missing. Over 1,200 political prisoners are known to remain in detention.

# Women On Trial: KHRP Conducts Trial Observation in Istanbul

**Between 27 and 30 June, a KHRP delegation was in Istanbul to observe the trial of 5 women charged under Article 312(2) of the Turkish Penal Code and Article 8(1) of the Anti-Terror Law before the State Security Court (DGM). The delegation was headed by Margaret Owen, a human rights lawyer and international advocate of women's rights. The other members were Omer Moore, a solicitor in private practice in London and Tina Devadasan, KHRP Projects Officer.**

On 10 and 11 June 2000, a congress was held to address the systematic sexual violence perpetrated by State officials against women in custody. The congress, 'Against Sexual Violence in Custody,' was organised by several NGOs and focused on the information gathered by the project *Legal Aid for Women Raped or Sexually Assaulted by State Security Forces* in a report documenting the stories of victims. Participants of the congress, including NGO representatives and lawyers working against sexual violence, and the victims themselves, gave testimony and spoke about their experiences. This resulted in two State investigations against nineteen of the speakers. As a result of the first investigation, proceedings were initiated against all nineteen participants before the Criminal Court in Istanbul under Article 159 of the Turkish Penal Code. The second investigation culminated in charges being brought against five women speakers including Fatma Karakas, one of the lawyers and founders of the Legal Aid for Women project, and Kamile Cigci, victim of a brutal rape, along with Fatma Kara, Nahide Kilici and Zuenep Owayolu who were amongst the organisers of the congress, before the State Security Court in Istanbul.

The indictment states that 'Karakas has said in her speech that women experience sexual assault and rape during custody; that especially in the Kurdish regions, Kurdish women experience rape; and that during village raids, sexual assault and rape have had occurred'. What the five defendants had in common in their speech, it would seem, was the use of terms such as 'Kurdish women' and 'Kurdish regions'. These women are alleged, therefore, to have expressed "propaganda against the State's indivisibility" and to have openly "incited people to enmity and hatred by pointing to class, racial, religious, confessional or regional differences". These are



*Rape in Custody Trial Observation in Istanbul (from left to right): KHRP Projects Officer Tina Devadasan, Kristiina Koivunen, Margaret Owen, Omer Moore, the two defendants and two defence lawyers Gulseren Yoleri and Eren Keskin.*

serious offences under Turkish law and the defendants face the prospect of up to a maximum of 6 years imprisonment. If convicted, there is every possibility that Fatma Karakas could lose her licence to practise the law.

Apart from the KHRP delegation itself, there were a number of other observers including representatives from a number of Embassies. The defence team was headed by Eren Keskin, ably assisted by Gulseren Yoleri and Gulizar Tunceli.

Fatma Karakas was not present at Court as she was representing a client in another case and Kamile Cigci was also not able to attend as she was in her hometown of Mardin in southeastern Turkey being prosecuted on a similar charge.

The remaining defendants gave their statements which were then summarised by the Chief Judge. The defence team also made their submissions. The Court said it could not proceed any further because two of the defendants were not before the Court. The trial was adjourned until 11 September 2001.

The delegation went on to interview the Chief Public Prosecutor, Muzaffer Yalcin, as well as representatives from several other NGOs including the Human Rights Association of Turkey (IHD), the Peace Mother's Initiative, the Dicle Women's Cultural and Arts Centre, the Working [Toiler] Women's Union (EKB), the Women's Rights Enforcement Centre, the Minority Rights Study Group, the Immigrant's Association for Social Co-operation and Culture (Goc-Der) and the Foundation for Social Jurisprudence Research (TOHAV). Meetings were also held with Professor Sebnem Fincan Korucu of the Institute of Forensic Medicine and Dr. Ufuk Sezgin of the Psycho-Social

Trauma Centre at the University of Istanbul (CAPA).

Despite being party to the Convention against Torture, the Convention on the Elimination of all forms of Discrimination against Women and the European Convention on Human Rights which guarantees freedom of expression and freedom of association, and having adopted the UN General Assembly Declaration on the Protection of Human Rights Defenders, the Turkish State continues to restrict and punish the expression of views with which it disagrees. The 1982 Constitution goes so far as to state "No protection shall be given to thoughts and opinions that run counter to Turkish national interests..." giving the State an extremely wide scope to restrict and punish the expression of views which runs counter to its own, especially in instances when it is perceived the Kurdish issue is raised.

The question remains, why were these proceedings brought at all? As defence lawyer Eren Keskin put it to the Court, "... my clients were not relating a story or expressing an opinion... they were merely giving a factual account of their experiences..."

# Children on Trial: Trial Observation in Diyarbakir

**In April 2001, two British lawyers went to Diyarbakir, Southeast Turkey on behalf of KHRP to observe the trial of a group of 13 children charged in the State Security Court. The delegation comprised Angela Gaff, a specialist in international child rights and practitioner in children's cases in UK courts, and Dr Mary Hughes, a barrister and also a specialist in child law.**

The children, aged between 11 and 18, had been arrested in January 2001 following a demonstration in the Kurdish town of Viranshir. They were initially held and questioned without the presence of lawyers, and some said they had been ill-treated and deprived of food, questioned in Turkish and forced to sign confessions even though some of them only spoke Kurdish. After being detained for a week they were released and charged, accused of supporting an illegal organisation, of participating in an unauthorised demonstration to protest changes in prison regulations, and shouting slogans in support of the PKK.

The hearing, one of a series that has taken place in the case, was at the State Security Court in Diyarbakir. It was adjourned in order for those children under 15 to be examined by a doctor to establish

whether or not they understood the nature of the offences and, therefore, were competent to stand trial.

The arrest, ill-treatment and prosecution of children in the State Security Courts is not unusual in Southeast Turkey. Statistics compiled by the Diyarbakir Bar Association show that between 1989 and 1997, 654 children between the ages of 11 and 17 were tried and sentenced in the Diyarbakir State Security Courts (DGM).

Turkey is a party to the UN Convention on the Rights of the Child 1989, which includes principles applying to juvenile justice. The treatment of children in the Turkish judicial system was sharply criticised by the United Nations Committee on the Rights of the Child, which monitors compliance with the Convention, when it heard the periodic report of Turkey in June of this year. In its Concluding Observations (UN doc CRC/C/15/Add.152) the Committee expressed its concern that children falling under the jurisdiction of the State Security Courts are not dealt with in juvenile courts and that children as young as 11 (the minimum level of criminal responsibility) are dealt with in the ordinary State Security Courts along with older children and adults. It also expressed concern about children being held in detention, sometimes incommunicado, and subjected to other forms of ill-treatment.

A full report of the Trial Observation Mission, including an analysis of the relevant international human rights standards, will be available from KHRP.

# Turkey continues to be found guilty by

## Six Newest European Court of Human Rights Judgments in KHRP Cases

### Unprecedented European Court ruling condemns Turkey for prosecuting human rights lawyer in 'disappearances' case

**Cemile ŞARLI v Turkey (24490/94) ('disappearance')**

**The case of Cemile Şarli v Turkey concerns the 'disappearance' of the applicant's son and daughter, Ramazan and Cemile Şarli, following their detention in the village of Ulusoy in the Tatvan region of Southeast Turkey in December 1993, and the State's subsequent criminal proceedings against the human rights lawyer who represented Mrs Şarli in her application to the European Court of Human Rights regarding these 'disappearances'.**

Mrs Şarli alleged that her children were taken away by members of the State security forces on 24 December 1993 and had not been seen since. Mrs Şarli also claimed that Mahmut Sakar, the lawyer who took down the statement which formed the basis of her application to the European Court, was prosecuted by Turkish authorities specifically for his involvement in the application.

In its 22 May 2001 judgment, the European Court supported Mrs Şarli's claim that the Turkish State had failed to properly investigate her children's disappearances, and found Turkey to be in violation of Article 13 (right to an effective remedy) of the European Convention on Human Rights. It also found Turkey to be in violation of Article 34 (formerly Article 25 § 1 – not to hinder the right to make an individual application) of the Convention for subjecting Mahmut Sakar, a lawyer with the Human Rights Association of Turkey (IHD) from Diyarbakir, to unjust legal prosecution during the time he represented Mrs Şarli. In its judgment, the European Court acknowledged that Mr Sakar had been unjustly charged with "making propaganda against the State" by submitting Mrs Şarli's application to the European Commission. This is the first such decision of the European Court of Human Rights.

Under Article 41 (just satisfaction), the Court awarded Mrs. Şarli £23,000 in damages and legal costs.

### European Court Orders Turkey to Pay £78,500 for Death in Custody of Young Kurdish Man

**Mustafa TANLI v Turkey (26129/95) (extra-judicial killing)**

**The case of Mustafa Tanli v Turkey concerns the death in custody of the applicant's son, Mahmut Tanli, a twenty-two year-old Kurdish man who died whilst under interrogation in police custody.**

On 27 June 1994, Mahmut Tanli was arrested and taken into police custody during a police search of his village. The following day, Mahmut Tanli died during interrogation, allegedly of a heart attack.

In the investigation carried out by the Public Prosecutor, police officers stated that Mahmut Tanli had gone pale and collapsed after being told they had evidence that he was involved with the PKK. Although a forensic examination was carried out before the burial, it was found to be inadequate. The body of Mahmut Tanli was later exhumed in 1995, but due to deterioration of the body it was not possible to determine the cause of death.

In its 10 April 2001 judgment, the European Court of Human Rights found Turkey to be in violation Article 2 (the right to life) and Article 13 (right to an effective remedy) of the European Convention on Human Rights.

In finding Turkey to be in violation of Article 2, the Court stressed that where an individual was taken into police custody in good health and died, it was incumbent on the State to provide a

plausible explanation. Mahmut Tanli was in good health when he was taken into custody and did not have any medical history of illness. In addition, the post mortem procedure had been defective in fundamental aspects, notably because there had been no dissection of the heart. The examination of the body had been insufficient to rebut the allegations made by the applicant that Mahmut Tanli was tortured to death. Accordingly, the Court ruled that Government had failed to provide a proper explanation for the death of Mahmut Tanli in violation of Article 2. Furthermore, the inadequacy of the forensic investigation led the Court to conclude that the authorities had failed to carry out an effective investigation into the circumstances surrounding Mahmut Tanli's death, an additional violation of Article 2.

In finding a violation of Article 13, the Court held that as they had found the Government responsible under Article 2 of the Convention for the death in custody of the applicant's son, the applicant's complaints were "arguable" for the purposes of Article 13, placing the authorities under an obligation to carry out an effective investigation into the circumstances of his son's death. Given the inadequacy of the *post mortem* examinations, the Court found that the applicant had been deprived of an effective remedy, and that the Turkish State had violated Article 13.

Under Article 41 (just satisfaction), the Court awarded compensation in the sum of £10,000 to Mustafa Tanli in respect of his pain and suffering due to the loss of his son, £20,000 in respect of the pain and suffering of Mahmut Tanli, and £38,754 in respect of pecuniary losses suffered by his family as a result of his death. The Court further ordered the Government to pay an additional £9,760 in legal costs.

### European Court orders Turkey to pay over £600,000 to Kurdish victims' families

**Mehmet AKDENIZ AND OTHERS v Turkey (23954/94) ('disappearance'/torture)**

**The case of Mehmet Akdeniz and others v Turkey centers on the 'disappearance' of eleven Kurdish men who have not been seen since they were taken from their village of Alaca by State security forces in October 1993.**

During the eight days when they were detained before they 'disappeared', the men were kept outside, some of them were tied up and beaten and all were kept in a state of distress and apprehension. The families of the eleven men, in their attempts to find out what had happened to the men, approached numerous authorities in the area including the Provincial Governor's office, the Kulp District Governor, the Diyarbakir Provincial Governor, the Diyarbakir Gendarmerie and the Public Prosecutors of Diyarbakir, Bingol and Kulp.

In its 31 May 2001 judgment, the Court held that the eleven men should be presumed dead since they had been missing for over seven years and accordingly found the Turkish Government to be in violation of Article 2 (right to life) of the European Convention on Human Rights. In addition, Turkey was also found to have failed to conduct an effective investigation into their disappearance, in an additional violation of Article 2. The Court also found that the treatment of the men whilst in detention constituted a violation of Article 3 (prohibition of torture and inhuman and degrading treatment) and that their detention had been "a particularly grave violation of the right to liberty and security of person" in violation of Article 5. Turkey was also found in violation of Article 13 (right to an effective remedy) and Article 34 (formerly Article 25 § 1 – not to hinder the right to make an individual application).

Under Article 41 (just satisfaction), the Court awarded the families of the eleven men a total of £382,340 in pecuniary damages, £242,500 in non-pecuniary damages and £26,600 in costs and expenses.

# the European Court

## Turkey Violates Right to Life for its Failure to Properly Investigate

**Behçet AVŞAR v Turkey (25657/94) (extra-judicial killing)**

The case of *Behçet Avşar v Turkey* concerns the abduction and killing of the applicant's brother, Mehmet Serif Avşar, in Diyarbakir, Southeast Turkey in the spring of 1994. In late April, armed men came to the Avşar's family shop and took Mehmet Serif Avşar to the gendarme headquarters. When the family made enquiries at the headquarters, the duty guard denied any knowledge of Mehmet Serif Avşar. Sixteen days later, Mehmet Serif Avşar's body – with two gunshots in his head – was found in a field outside Diyarbakir.

The applicant alleged that his brother had been kidnapped and killed by village guards acting with the knowledge and under the auspices of the authorities. In subsequent investigations, five of the individuals who had come to the shop on the day Mehmet Serif Avşar was taken away – all of them village guards being paid by the State – confessed to their involvement in the murder. A criminal prosecution was brought against the five village guards and an ex-member of the PKK on 5 July 1994. The proceedings culminated in the conviction of these six men by the Diyarbakir Criminal Court no.3 on 21 March 2000. However, there was a seventh person – a member of the State security forces – who had been involved in the incident who was never found.

In its 10 July 2001 judgment, the European Court noted that there was no convincing reason for entrusting the investigation of the murder to those who were implicated in the events in question; nor was there any indication from the Government of steps having been taken during the investigation with a view to identifying or locating the seventh person. The Court considered that these defects were not remedied by the investigation conducted by the Public Prosecutor and by the court where the steps taken were dilatory and half-hearted. The findings of the criminal court with regard to the responsibility of the village guards and the ex-PKK member were made in the absence of potentially significant evidence about security force involvement in the abduction and killing. A proper and effective investigation into this aspect of the case was necessary to clarify to what extent the incident was premeditated and whether, as alleged, it formed part of the unlawful activities carried out with the connivance and acquiescence of the authorities at that time in Southeast Turkey.

Due to the State's failure to investigate promptly or effectively the identity of the seventh person, and thereby to establish the extent of the official knowledge of or connivance in the abduction and killing of Mehmet Serif Avşar, the Court concluded that the Turkish Government was liable for his death and in breach of Article 2 in this respect.

In addition to a violation of the right to life, the Court also found Turkey to be in violation of Article 13 in that the applicant had been denied an effective remedy in respect of the death of his brother.

Under Article 41 (just satisfaction), the Court awarded a total of £60,000 in pecuniary and non-pecuniary damage to be held on behalf of Mehmet Serif Avşar's wife and children and £2,500 in respect of the applicant himself. It also awarded a sum of £17,320 for legal costs and expenses.

## Turkey Pays £68,000 for Friendly Settlement in 'Disappearance' and Village Destruction Case

**K. AYDIN, C. AYDIN and S. AYDIN and Others v Turkey (2893/95, 29494/95 and 30219/96) ('disappearance/village destruction')**

The case of *K. Aydın, C. Aydın and S. Aydın and Others v Turkey* concerns the October 1994 destruction of the applicants' hamlet

## Relevant Articles of the European Convention on Human Rights

(Note the changes made following the coming into force of Protocol 11).

### Convention

- Article 2:** Right to life.
- Article 3:** Prohibition of torture.
- Article 4:** Prohibition of slavery and forced labour.
- Article 5:** Right to liberty and security.
- Article 6:** Right to a fair trial.
- Article 7:** No punishment without law.
- Article 8:** Right to respect for private and family life.
- Article 9:** Freedom of thought, conscience and religion.
- Article 10:** Freedom of expression.
- Article 11:** Freedom of assembly and association.
- Article 12:** Right to marry.
- Article 13:** Right to an effective remedy.
- Article 14:** Prohibition of discrimination.
- Article 18:** Restrictions under Convention shall only be applied for prescribed purpose.
- Article 34:** Application by person, non-governmental organisations or groups of individuals. (Formerly Article 25).
- Article 38:** Examination of the case and friendly settlement proceedings (Formerly Article 28).
- Article 41:** Just satisfaction to injured party in event of breach of Convention. (Formerly Article 50).

### Protocol No. 1

- Article 1:** Protection of property.
- Article 2:** Right to education.
- Article 3:** Right to free elections.

### Protocol No. 2

- Article 1:** Prohibition of imprisonment for debt.
- Article 2:** Freedom of movement.
- Article 3:** Prohibition of expulsion of nationals.
- Article 4:** Prohibition of collective expulsion of aliens.

### Protocol No. 6

- Article 1:** Abolition of the death penalty.

### Protocol No. 7

- Article 1:** Procedural safeguards relating to expulsion of aliens.
- Article 2:** Right to appeal in criminal matters.
- Article 3:** Compensation for wrongful conviction.
- Article 4:** Right not to be tried or punished twice.
- Article 5:** Equality between spouses.

## of Dürüt attached to the village of Sarisaltık in Southeast Turkey and the subsequent 'disappearance' of the applicants' husband and father, Müslüm Aydın.

At the beginning of October 1994, military operations took place in Tunceli Province. On 11 October, Kasim Aydın, Müslüm Aydın's oldest son who was living in Hozat, went to Dürüt in order to take his parents and siblings to Hozat. When he arrived in Dürüt, he found that his family home and possessions had been burned, that the family's many goats had either been shot dead, were injured or were missing, and that his father was missing. Villagers told him that they had last seen Müslüm Aydın being taken away by soldiers.

On 14 October 1994, Kasim Aydın filed a petition with the Office of the Public Prosecutor of Hozat requesting an investigation into his father's 'disappearance' and the destruction of his family home. On 25 February 1995, the Hozat Public Prosecutor concluded that he had no jurisdiction to examine the complaint concerning destruction of property and referred the case to the Hozat District Administrative Council. This council concluded on 26 April 1995 that no investigation for the complaint could be conducted since the Law on the Prosecution of Civil Servants stipulated that such investigation required the prior accurate identification for the civil servants concerned. The file relating to the 'disappearance' of

Continued overleaf



Continued from page 7

Müslüm Aydın was transferred to different investigating authorities on a number of occasions. In 1998 an investigation, currently still pending, was opened by the Office of Public Prosecutor at the Malatya State Security Court following a decision of lack of jurisdiction taken by the prosecutor of the Gendarmerie General Command in September 1997. This decision concluded that although military operations had been conducted in the northern part of Tunceli between 29 September and 31 October 1994, only terrorist organisations could be responsible for what had happened to Müslüm Aydın and eight other persons who had either disappeared or been found dead in the Hozat region in September and October 1994

On 10 April 2001, the European Court received a declaration from the Turkish Government which offered compensation to the applicants in the amount of £68,000 for a friendly settlement of the case. In addition, the declaration stated, "The Government regret the occurrences of the actions which have led to the bringing of the present application, in particular the disappearance of Mr Müslüm Aydın and the anguish caused to his family. It is accepted that the unrecorded deprivation of liberty and insufficient investigation into the allegations of disappearance constituted violations of Articles 2, 5 and 13 of the Convention. The Government undertake to issue appropriate instructions and adopt all necessary measures with a view to ensuring that all deprivations of liberty are fully and accurately recorded by the authorities and that effective investigations into alleged disappearances are carried out in accordance with their obligations under the Convention."

On 10 July 2001, the two parties agreed to a friendly settlement of the case.

## KHRP to Appeal Strike Out Judgment in Right to Life Case

**Faysal AKMAN v Turkey (37453/97)**  
(*extra-judicial killing*)

**The case of Faysal Akman v Turkey concerns the killing of the applicant's son, Murat Akman, by police in front of the applicant and his family at his home in Savur.**

The case has been 'struck out' by the Court following the Turkish Government's declaration about the case and its agreement to pay £85,000 to the applicant's family.

The applicant, Faysal Akman, claims that at 6 a.m. on the morning of 20 January 1997, after about five and a half hours of gunfire in the centre of Savur, he opened the door to his home to the police who had shouted demands for entry. Five members of the security forces then entered his home. At the request of one of these men, Mr Akman called his son Murat, who appeared, holding his identity card. Mr Akman claims that the security force member took the card, looked at it, threw it on the floor and then started to shoot at Murat using an automatic rifle. Mr Akman, who at this time was being restrained, was taken to another room. Subsequently, he was allowed to go to the room where the body of his son lay. He saw the body with an automatic rifle and bullet magazines lying on it.

Mr Akman claims that the Public Prosecutor went to the house with a doctor and statements were taken from himself, his wife and his other son, Salih. After this killing of his son, Mr Akman left Savur and moved to Mardin because he feared for his family's safety and he filed a complaint with the Chief Public Prosecutor of Savur and then met with the Public Prosecutor who told him that the file was being sent to Diyarbakir State Security Court. Mr Akman claims that he was not aware of any investigation having been initiated in respect of the incident. He further states that he has seen the same members of the security forces walking about freely and on duty.

On 21 March 2001, the Court received a declaration from the Deputy Permanent representative of Turkey to the Council of Europe which included a statement that, "The Government regrets the occurrence of individual cases of death resulting from the use of excessive force as in the circumstances of Murat Akman's death notwithstanding existing Turkish legislation and the resolve of the Government to prevent such actions. It is accepted that the use of excessive or disproportionate force resulting in death constitutes a violation of Article 2 of the Convention and the Government

undertakes to issue appropriate instructions and adopt all necessary measures to ensure that the right to life – including the obligation to carry out effective investigations – is respected in the future....". The Government further agreed to pay the applicant a sum of £85,000 for a final settlement of the case.

The applicant submitted that the terms of the declaration did not determine any of the fundamental human rights questions raised by the application and he urged the Court to proceed with its decision to take evidence in the case with a view to establishing the facts.

In its 26 June 2001 judgment, the Court decided to strike out the case stating that, "having regard to the nature of the admissions contained in the declaration as well as the scope and the extent of the various undertakings referred to therein, together with the amount of compensation proposed, the Court considers that it is no longer justified to continue the examination of the application."

On behalf of the applicant, KHRP submitted an appeal of this judgment to the Grand Chamber on 10 September 2001 arguing that the Turkish Government's statement is insufficient in a right to life case. A panel of 5 judges will consider whether the appeal should be referred on to a Grand Chamber of 17 judges.

## KHRP Legal Team at European Court Fact-Finding Hearings in Ankara

**Celalettin Yöyler v Turkey (26973/95)**  
(*village destruction*)

Members of the KHRP Legal Team attended fact-finding hearings for the European Court case of *Yöyler v Turkey* in Ankara from 2–5 April. KHRP had originally lodged an application on behalf of the applicant, Celalettin Yöyler, with the European Commission of Human Rights on 11 March 1995. It was declared admissible on 12 January 1997. The case concerns the alleged burning and destruction of Mr. Yöyler's house and possessions on 18 September 1994 by Turkish security forces.

In 1994, three women from the applicant's village who were related to his extended family decided to join the PKK. On 15 September 1994, a gendarme unit commander came to the village and threatened to burn it to the ground if the women were not brought to him within three days. The applicant's family and the families of the women involved packed up their possessions and attempted to flee. However, gendarmes forced them to return to the village. There they were rounded up and a number of women were assaulted, including the wife of the applicant. On 18 September, security forces set fire to the village. The applicant estimated the cost of his family's losses to be 1.5 billion Turkish lira and alleged violations of Articles 3, 6, 8, 13, and 14 of the European Convention.

In its admissibility decision of 12 January 1997, the European Commission rejected the Turkish Government's submission that the application was inadmissible due to the applicant's failure to exhaust domestic remedies (as required by Article 26 of the Convention). It further rejected the Government's contention that the application was manifestly ill-founded (Article 27). Rather the Commission held that the case raised complex issues of law and fact under the Convention and the case then fell to be considered by the European Court.

Since the facts of the case were disputed, the Court decided to hold a fact-finding hearing. The KHRP legal team consisted of Philip Leach and Andrew Collender QC who represented Mr. Yöyler at the hearings during which the Court took evidence from thirty witnesses, including family members and those involved in the investigation. Judges at the hearing were Antonio Pastor Ridruejo (Spain), Matti Pellonpää (Finland) and Snejana Botoucharova (Bulgaria). KHRP International Board of Patrons member and renowned human rights defender, Nazmi Gür, assisted the Legal Team at the hearings.

# Newest Admissibility Decisions in KHRP Cases

**Sirin YILMAZ v. Turkey (35875/97)**  
(*extra-judicial killing/ village destruction*)

On 14 June 2001, the European Court of Human Rights declared the case of *Sirin Yilmaz v Turkey* to be admissible in respect of the applicant's complaints under Articles 2, 3, 6, 8, 13, 14, and 18 of the European Convention on Human Rights and Article 1 of Protocol No.1.

The applicant's complaint centred on the forced evacuation of his village of Biyarli and the death of his wife, Sariye Yilmaz, who was allegedly hit by artillery shells fired by State security forces.

Security forces had attempted to put pressure on villagers to leave Biyarli by confiscating property, preventing travel to and from the village by car, and invoking a food embargo which continued for nearly 3 months. At the beginning of October 1996, soldiers went to the village and told the villagers to leave by 15 October. On 7 October, a clash broke out between the PKK and the security forces at an area between Biyarli and neighboring Lice in which the applicant's wife was hit in the abdomen by flying shrapnel. She later died on the way to a health clinic in Lice.

On the way back from the health clinic, the applicant met a senior lieutenant who dismissed the need for an autopsy by assuring the applicant that he would pass on a report to the relevant authorities to the effect that his wife had been struck by artillery shellfire and died as a result of the wounds. On 8 October, the captain who carried out the inquiry into the circumstances of Sariye Yilmaz's death, refused an autopsy on the grounds that the Public Prosecutor and the doctor refused to come to the village for security reasons. However, the captain said he would forward the senior lieutenant's report to the Public Prosecutor. On 10 October, the applicant went to see the Commander of the Lice Gendarme Station. The applicant refused to sign a petition prepared by the Commander, which sought to blame the PKK for the incident. Days later on 16 October, the applicant filed petitions with the offices of the Diyarbakir District Governor, the State of Emergency Region Governor and later with the Diyarbakir State Security Court requesting that an investigation be initiated concerning his wife's death and that he be given compensation by the authorities. On meeting the District Governor, the applicant found that he had not been informed of his wife's death and that the Public Prosecutor had not received the lieutenant's report. At the office of the Lice Public Prosecutor, he came across documents in his wife's case file to the effect that his wife had been killed by the PKK.

On 26 October the applicant was offered monetary compensation of 15,000,000 Turkish lira but no acknowledgement of the responsibility of the security forces. The applicant found this entirely unacceptable and filed petitions with the offices of the Minister of Internal Affairs and the Minister of Foreign Affairs. Having received no reply, he thereafter applied to the European Court of Human Rights.

The Court declared the application admissible in respect of the applicant's complaints under Articles 2, 6 and 13 of the killing of his wife by the security forces; under Article 1 of Protocol No.1 and Articles 3 and 8 of the Convention that he was deprived of the peaceful enjoyment of his possessions and was forced to leave his village as a result of a State practice in Southeast Turkey; under Article 14 that he and his family had been subjected to discriminatory treatment in the enjoyment of Convention rights; and under Article 18 that the killing of his wife and deprivation of his possessions form a part of State practice in Southeast Turkey.

**Mustafa KOKU v. Turkey (27305/95)**  
(*extra-judicial killing*)

On 26 June 2001, the European Court of Human Rights declared the case of *Mustafa Koku v. Turkey* admissible in respect of the complaints of violations of Articles 2,3,5,6,13 and 14 of the European Convention.

The application was brought by Mustafa Koku on behalf of himself and his deceased brother, Huseyin Koku. The applicant alleged that his brother, who had previously been detained in connection with a

suspected involvement with the PKK and subjected to ill treatment in police custody, had 'disappeared' following his detention. His corpse was later found in a semi-decomposed state in a riverbed.

In his application, Mustafa Koku alleges that his brother Huseyin had been victim of a violation of Article 2 on account of the intentional deprivation of his right to life. He also submitted that the authorities failed to protect his brother's right to life adequately by failing to initiate legal proceedings to identify the persons responsible for his death.

Invoking Article 3, the applicant submitted that his brother had been subjected to torture in police custody and that he himself had suffered as a result of his brother's disappearance and the lack of an effective investigation into the death. As to Article 5 the applicant claimed that his brother was unlawfully detained and not brought promptly before a judicial authority. He further complained under Article 6 of the failure to initiate proceedings, resulting in the denial of effective access to court; under Article 13 of the lack of independent national authority before which these complaints can be brought with any prospect of success; and under Article 14 in conjunction with Articles 2, 3, and 6 of an administrative practice of discrimination on grounds race or ethnic origin.

The Government alleged that there were strong reasons to believe that Huseyin Koku was killed by a member of the Elma family in revenge for his extra-marital affair with Cennet Elma, the wife of Mr Veli Elma. The Government further submitted that the investigation into the death of Huseyin Koku was still pending before the Poturge Public Prosecutor and that therefore the applicant had failed to exhaust criminal and civil domestic remedies within the meaning of Article 35 of the Convention.

With regard to criminal law remedies, the European Court decided that in assessing the effectiveness of the pending inquiry into Huseyin Koku's death, regard must be given to the time element involved in the case which forms a central part of the Mustafa Koku's complaints under Articles 2 and 13 of the Convention. It therefore joined the preliminary objection in this respect to the merits.

The Court declared all of the applicant's complaints admissible.

## KHRP Legal Team attends European Court hearing in Strasbourg

**Salih ORHAN v Turkey (25656/94)**  
(*'disappearance'/ village destruction*)

The *Salih Orhan v Turkey* case at the European Court concerns both the destruction of the applicant's village of Adrok and the ensuing 'disappearances' of the applicant's brothers, Selim Orhan and Hasan Orhan, and the applicant's son, Cezayir Orhan, in May 1994. The applicant alleges a breach of Articles 2, 3, 5, 8, 13, 14 and Article 1 of Protocol 1 of the European Convention on Human Rights. In October 1999, the European Commission took evidence in Ankara but did not produce an Article 31 report. On 31 October 1999, the case was transferred to the European Court of Human Rights.

Members of the KHRP Legal Team from the UK and Turkey represented the applicant at the European Court hearing in Strasbourg on 15 May 2001.

The KHRP Legal Team raised a specific complaint regarding General Ertürk of the Bolu regiment who had failed to give oral evidence to the European Commission. The Bolu regiment was the regiment allegedly responsible for the destruction of Adrok and at the May 2001 hearing, General Ertürk was not present. No explanation was given at any stage prior to the European Court hearing as to why the Government considered it inappropriate for the General to attend. During the hearing, the Turkish Government representative suggested that as the General had already once given evidence in a separate case before the Commission, his evidence would serve no useful purpose in the current case. The Government representative commented that there was "really no point in bringing that General before the Delegates to repeat the previous statements and that General had no further knowledge to give the Delegates other than that he had already given before".

KHRP awaits judgment in the case in the near future.

# New KHRP Reports

**Kaya v. Turkey & Kiliç v. Turkey: Failure to Protect Victims at Risk – A KHRP Case Report**

**Ertak v. Turkey & Timurtaş v. Turkey: State Responsibility in 'Disappearances' – A KHRP Case Report**

These two publications form the latest instalments in KHRP's Case Report series and deal with two cases of extra-judicial killing, *Kaya v Turkey* and *Kiliç v Turkey*, and two 'disappearance' cases, *Ertak v Turkey* and *Timurtaş v Turkey*. In addition to the detailed descriptions of the legal proceedings at the European

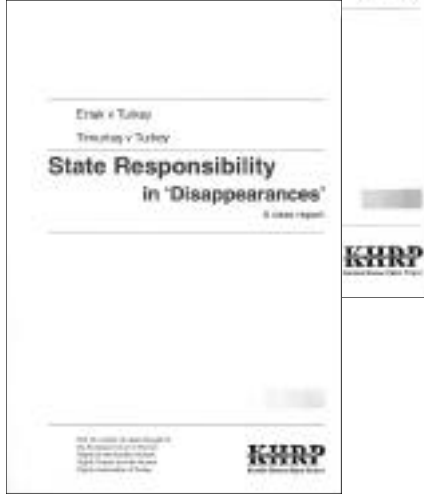
Court of Human Rights, these case reports offer summaries of the arguments raised by both parties in the cases and analyses of the rights at issue and the findings of both the European Commission and the European Court.

In 1993 the body of Hasan Kaya, a doctor practising in Elazig, was found under a bridge near Tunceli. He had been shot through the head. In the same year, Kemal Kiliç, a journalist with the *Özgür Gündem* newspaper in Şanlıurfa, was shot dead by four men on his way home from work.

The *Kaya v Turkey* and *Kiliç v Turkey* case report offers thorough analyses of the two July 2000 judgments handed down by the European Court. Both cases involved the right to life as protected by Article 2 of the European Convention on Human Rights and in both cases, the Court found that the right to life included positive obligations on the part of the State to protect such a right and to conduct an effective and thorough investigation into the circumstances of killings associated with the security forces and the gendarmerie. In each of the cases, the Court found Turkey in violation of both obligations. In the case of Mahmut Kaya, the Court also found that the victim, Hasan Kaya, had suffered inhuman and degrading treatment prior to his death, in violation of Article 3 (prohibition of torture) of the Convention.

The *Timurtaş v Turkey* and *Ertak v. Turkey* case report highlights the problem of 'disappearances' which have been prevalent in Southeast Turkey since 1984 when armed conflict between the Turkish security forces and the PKK (Kurdistan Workers' Party) began. In both of these cases, young Kurdish men were taken into custody and never seen again by their relatives, despite persistent family inquiries to the Turkish authorities. As the case report makes clear, the State of Emergency first declared in 1987 has continued to remain in place in four southeastern provinces, together with a system of State Security Courts, and the brutal violations of human rights such as 'disappearances', torture and killings connected to military rule in the region still continue today.

*Kaya v. Turkey & Kiliç v. Turkey* (ISBN 1 900175 38 X)  
*Ertak v. Turkey & Timurtaş v. Turkey* (ISBN 1 900175 37 1)



**Özgür Gündem Davası – Avrupa İnsan Hakları Mahkemesi Kararları Işığında İfade Özgürlüğü**

In collaboration with Çağdaş Gazeteciler Derneği (the Contemporary Journalists Association of Turkey), KHRP has produced this Turkish translation of the KHRP December 2000 Case Report, *Özgür Gündem v Turkey: Violations of Freedom of Expression*. The case of *Özgür Gündem* was brought by KHRP to the European Court of Human Rights on behalf of a pro-Kurdish newspaper which had suffered an unremitting

campaign of intimidation in the early and mid-1990s. The European Court of Human Rights, in its judgment of 16 March 2000, held that the Turkish Government had violated the applicants' right to freedom of expression. The case highlights the problem of media repression in Turkey and demonstrates the extreme measures which the Turkish Government has taken to ensure that the freedom to impart and receive information is severely restricted. Those associated with *Özgür Gündem* were subject to brutal human rights violations including physical attacks and threats, and to legal proceedings which resulted in proceedings, seizures of documents and finally the closing down of the newspaper. This case report provides a description of the legal proceedings, a summary of the arguments raised by both parties and brief analyses of the rights at issue and the findings of the Commission and the Court.

ISBN: 975 7866 21 0

Available only in bookshops in Turkey or through the Contemporary Journalists Association of Turkey ([www.cgd.org.tr](http://www.cgd.org.tr)).



## Upcoming Publications

- **Salman v Turkey and İlhan v Turkey: Torture and Extra-Judicial Killing – Two Case Reports**
- **Women On Trial: A KHRP Trial Observation Report**
- **Children On Trial: A KHRP Trial Observation Report**
- **Turkey's Prison Crisis**
- **"Şu Nehir Bir Dolmakalem Olaydı!..." – İlisu Barajı, Barajlar ve Kredi İhracatı Reformuna İlişkin Dünya Komisyonu (a Turkish translation of the KHRP/İlisu Dam Campaign March 2001 report, "If the river were a pen..." – The İlisu Dam, the World Commission on Dams and Export Credit Reform)**
- **Turkey and the EU (a Turkish language report)**

# Ilisu Dam Campaign Keeps the Pressure On

The summer of 2001 has been an extremely active one for the Ilisu Dam Campaign. At the widely publicised protest at the Balfour Beatty AGM on 2 May, attended by some 100 campaigner shareholders, activists raised key questions about the human rights and environmental abuses posed by the building of the Ilisu Dam in Southeast Turkey. As noted in the pages of the *Guardian*, Balfour Beatty Chairman Lord Weir, when asked whether he regretted getting involved in the decision to build the Ilisu Dam, stated, "If I had known then how controversial this project would be we could have saved ourselves a lot of trouble by not taking part in it, but this was not the case at the time."

In June, the Ilisu Dam Campaign sent a fact-finding mission to the area of Hasankeyf, where the Ilisu Dam is to be built. The mission learned with concern of instances in which State authorities were pressuring people who had been displaced from the Ilisu Dam region to sign a form that implied that their displacement was 'voluntary.' On these forms, individuals had to tick one of eight boxes explaining the reason why they "left their village". The listed reasons were health problems, to find a job, children's education, to better their living conditions, 'embarrassment' in the village, a vendetta, 'other', or because of 'terror'. Displaced villagers told the mission that the police pressured them to tick the box stating 'terror', to imply guerrilla violence, and many displaced villagers simply refused to sign this form in light of the fact that it did not allow the opportunity to give the real reason for their displacement (forcible evacuation, village burning, or State terror) and because they continue to be denied the right to return home. Displaced villagers in Istanbul also showed the Mission another form, which had been distributed to people from Mardin district in the last few months. This form, apparently from the Dargecit Governor's office, states: "Our village is in the expropriation area of the Ilisu dam. Since our village is within the reservoir of the Ilisu Dam, according to settlement code no. 251, articles of amendment 10 and 11, I want to become the owner of a city/agricultural house. I request that this be implemented." Many villagers have signed this document, afraid that if they didn't, they would lose any opportunity of compensation. Displaced villagers from Celik told the Mission, "Someone from Dargecit brought these papers and told the villagers living in Istanbul that if they did not sign this form they would not be given a house." As the Mission noted upon its return to the UK, rather than constituting "fair consultation with displaced communities" as required by international best practice, these forms have only worked to increase the atmosphere of fear and intimidation already faced by displaced villagers.

On 3 July, the UK Government finally released the long-awaited Environmental Impact Assessment Report (EIAR) on Ilisu to the public. On the same day, UK Minister for Trade and Industry Patricia Hewitt announced that the Government would accept comments on the EIAR until 7 September. On that date, the Kurdish Human Rights Project along with the Ilisu Dam Campaign and six other UK and international NGOs submitted a 200-page response to the EIAR. Among the many critiques made in this submission, the report also revealed that: dam planners do not yet know exactly how many people will be affected and have not said where and how they will be resettled; previous official estimates put the number of those affected at 78,000 people, the majority of them Kurds; that on resettlement issues alone, the dam would break 15 international guidelines on 75 counts; even with proposed water treatment plants, there is still a high risk that the dam will lead to the poisoning of the Tigris River, risking the health of the local population; that independent analysis of the EIAR's own figures reveal that the dam threatens to cut off downstream water flows to Syria and Iraq in periods of drought; and that each of the UK government's five self-imposed conditions for supporting the dam have still to be met.

"With the publication of our EIAR critique report, we are issuing a

## Office News

KHRP is happy to welcome our newest member of staff, Victoria Steward (right), who started in August as KHRP's new fundraiser. Most recently, Victoria worked as an Assistant Fundraiser with *The Big Issue* in London.



KHRP's new fundraiser, Victoria Steward

Throughout the summer of 2001, KHRP has continued to benefit from the invaluable casework and research assistance offered by legal interns from around the world who participate in KHRP's Legal Internship Programme.

In July, long-standing Kurdish intern Mustafa Gündoğdu, from the Foundation for Social Jurisprudence Research (TOHAV) in Turkey, celebrated his one-year anniversary at KHRP's office. Mustafa has continued to provide crucial work with KHRP's Kurdish and Turkish applicants to the European Court of Human Rights as well as research and liaison work with the many human rights groups in Turkey with whom KHRP works.

In August, KHRP bid farewell to Legal Intern Andrea Hopkins, who has accepted a human rights position in Northern Ireland. A qualified barrister, Andrea has worked with KHRP since September 2000. In addition to her close work with KHRP's Legal Department, Andrea served as a trial observer in December 2000 and January 2001 for KHRP and has provided the office with outstanding research and case work.

The summer saw a number of Legal Interns including American law student Stephen Vasil from Yale University, Scottish law student Clare O'Connell from Edinburgh University, British intern Reza Ispahani from the University of Nottingham and Austrian intern Iris Golden from the London School of Economics.

In addition to the Legal Interns, KHRP also extends thanks to graphic designer Yvan Henner who has created new designs for KHRP publications and Tomomi Matsuoka who is currently re-systematising KHRP's Documentation Centre and Photo Archive. KHRP also thanks the many dedicated volunteers who continue to provide KHRP staff members with invaluable day-to-day assistance including: Pinar Ceyhanilar, Sezer Marahli, Bilal Adham, Yasin Karatekin, Abdul Maki, Manuella Martin, Yüksel Özbek and Oguz Tural.

challenge to the government – drop this project now or we believe there will be strong grounds for a legal challenge," said KHRP Executive Director Kerim Yildiz.

Nicholas Hildyard of the Ilisu Dam Campaign added, "The EIAR is contradictory, incomplete, partial and in many places wildly inaccurate. In some areas – especially those that touch on the security situation in the Ilisu region – we question whether the report has been censored by Turkish authorities. On the basis of this EIAR, the UK government cannot – morally or legally – support this dam."

The government is expected to decide whether to support the dam with \$200m of export credit guarantees at some point in the autumn. UK campaigners have strong reason to believe that UK support for the Ilisu project would be in violation of the Human Rights Act, as it would bring about human rights violations in Turkey. For updates through the autumn, continue to check the Ilisu Dam Campaign website at [www.ilisu.org.uk](http://www.ilisu.org.uk).