

Trial Observation Report

Relatives of human rights defenders at risk:
the extra-judicial killing of Şiyar Perinçek



February 2005



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The Kurdish Human Rights Project (KHRP) is 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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Şiyar Perinçek following his shooting outside the Adana branch of the Human Rights Association (IHD), May 2004

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I. FOREWORD

1. This report comprises the findings of an international Fact Finding Mission, which on 21st December 2004, observed a part of the trial of three security officers¹. It is alleged that the security officers are responsible for the extrajudicial execution of Şiyar Perinçek on 28th May 2004 and the torture of Nurettin Başçı². The mission included representatives from the Kurdish Human Rights Project, the Bar Human Rights Committee³ and an independent Swedish organisation, 'Lawyers without Borders'⁴.
2. In preparation of its report, the mission also spoke to the team of advocates representing Şiyar Perinçek and Nurettin Başçı and to members of the Adana branch of the İHD⁵. Full details of those spoken to are detailed at paragraphs 40 and 52 of the report.
3. In particular, the mission sought to examine the real impact of legal reforms introduced to protect human rights in Turkey. The report is to be read in light of the decision of the European Council to open negotiations on 3rd October 2005 for Turkey's accession to the European Union.

II. INTRODUCTION

4. On 28th May 2004 at around 3pm, Şiyar Perinçek was shot dead by a security officer outside the office of the Adana branch of the İHD. Mehmet Nurettin Başçı whom he was with, was arrested by the police and is currently being held on remand in Adana Kürkçüler F type prison. Nurettin Başçı has accused the police of subjecting him to torture during his detention. It is believed that the killing of Şiyar Perinçek amounted to an extrajudicial execution (this is a subject which is examined in more detail at paragraph 60 of this report).

III ACCOUNT OF THE VICTIMS' CASE

5. Nurettin Başçı was driving a motorbike with Şiyar Perinçek as passenger in Adana, when an unmarked police car drove after them. In the car were three police officers dressed in civilian clothes; the chief of police, a superintendent and another officer. As the car approached the motorbike, the police officers opened the car doors and hit the motorbike. This caused Nurettin Başçı and Şiyar Perinçek to fall to the ground.
6. Two witnesses who were members of the Adana İHD and who were in the İHD office at the time, went to the window after hearing a gunshot. Nurettin Başçı was seen to run away, but it is believed that Şiyar Perinçek was shot and was lying on the ground. The police caught Nurettin Başçı, arrested him and put him into the police car. He was then driven away. One of the police officers was seen to kneel on Şiyar Perinçek's shoulders/back. According to an Amnesty International press release, the same police officer shot Şiyar Perinçek in his back⁶.
7. One witness was sure that although wounded, Şiyar Perinçek was still alive at this point, because he could see his hands moving. Şiyar Perinçek also held back his head and so the witness could see and identify him. It is believed that there were 3 shots in total; 1 shot was fired at Şiyar Perinçek and the other 2 shots were fired as a warning, when Nurettin Başçı ran away.
8. Şiyar Perinçek was taken to Adana state hospital 20 minutes later. The same Amnesty International press release alleges that Şiyar Perinçek was taken out of the hospital despite his serious condition in order to identify the houses of assumed associates and then returned to hospital. As a result, three other men were detained⁷ at the Anti-Terror Branch of the Police Headquarters in Adana.
9. It is alleged that the police prevented people from seeing Şiyar Perinçek when he was in hospital Şiyar Perinçek underwent surgery but died 2 days later. The hospital did not have an intensive care unit. It is believed that the lack of the same may have contributed to his death.
10. It is alleged that Nurettin Başçı was detained unofficially at the anti-terrorist

branch of the Adana police headquarters from 15.00 (*i.e.* the time of the incident) until about 23.50. He has alleged that he was tortured during this time.⁸ It is alleged that the police then brought Nurettin Başçı's brother to the police station at about 23.30, but recorded his name on their records as Nurettin Başçı. A record therefore existed as to the official detention of Nurettin Başçı from 23.30 onwards. Nurettin Başçı was then taken by the police to the hospital, the police stating that Nurettin Başçı had only been officially detained since 23.30. It is believed the times of detention were deliberately altered so as any traces of torture could not be linked to the police. After being taken to the hospital, Nurettin Başçı was taken back to the police station. Nurettin Başçı was denied the right to see his lawyers on 28th May but after presenting a complaint to the Public Prosecutor, his lawyers were able to see him on 29th May. They reported seeing evidence of torture (bruising) on his body.

IV DEFENCE⁹

11. It is alleged that Şiyar Perinçek and Nurettin Başçı were members of the PKK¹⁰ and were preparing for armed activity in Adana. Şiyar Perinçek and Nurettin Başçı realised that they were being followed by the police and Şiyar Perinçek (who was the passenger) allegedly fired a shot from his gun at them. As Şiyar Perinçek was firing the shot, the motorbike crashed into the police car. Both Şiyar Perinçek and Nurettin Başçı fell as a result. It is then alleged that one of the police officers warned Şiyar Perinçek to 'stop and hand himself over'. However, Şiyar Perinçek fired twice at this officer and as a result, the officer fired a shot back at Şiyar Perinçek¹¹. Şiyar Perinçek was wounded as a result of this gun shot and died in Adana state hospital on 30th May 2004. At the hearing on 8th November 2004, the defence also disputed the timing of the incident. According to the indictment report in the preliminary file, Nurettin Başçı was arrested on 28th May at around 00.30 at Quarter 23rd Street (further away from the incident than alleged).

V INDICTMENT

12. A report about the incident was prepared by a group made up of representatives from İHD, Organisation of Human Rights and Solidarity for the Oppressed (MAZLUM-DER), Confederation of Public Workers' Unions (KESK) and the Turkish Human Rights Foundation (TİHV). The group sent a copy of the report to the Human Rights Commission of the Turkish Grand National Assembly (TBMM), the President, the Prime Minister, the Justice and Interior Ministries, the Deputy Prime Ministry for Human Rights, Adana Governor's Office, Adana chief prosecutor's office and prosecutor's office [at the Adana State Security Court].
13. The report led to the opening of a trial against the police officers. The indictment is contained in Appendix 1 and is translated in full. In summary, the police officers have been charged with '*Breaching their duty and killing a person by using unnecessary force*'. The Adana İHD instructed advocates from various members of the Bar in the South East of Turkey, to represent Şiyar Perinçek and Nurettin Başçı. Legal representation is provided on a *pro bono* basis.

Court Hearings to Date

14. Three hearings had taken place when the mission observed the trial on 21st December 2004.¹² Lawyers Without Borders observed the first two hearings and their observations are contained in a short report¹³. In summary, on November 8th (there is a misprint on the report as it reads 'October 8th'), the lawyers for the victims complained of the delay in receiving documentation, particularly as the final autopsy in relation to Şiyar Perinçek was still unavailable. Further, the clothes of Şiyar Perinçek could not be located and therefore the court would not grant a request to examine the same.

VI. HEARING ON 21ST DECEMBER 2004 AT THE HEAVY CRIMINAL COURT IN ADANA¹⁴

Court room and personnel

15. Although listed at 9.30 am, the hearing did not start until 10 am. It finished at 12 pm. There was some initial difficulty in entering the court room. Police officers demanded to know who we were and whether or not we had identification showing that we were lawyers. Failure to have such identification resulted in our handbags being searched. This initial encounter with the police suggested that some people may have been excluded from the court room, despite the refusal of the court on November 8th to exclude the public from the hearings¹⁵.
16. There was a large police presence, with some ten officers standing near the door in the court room. The press were also in evidence outside the court room. There were 12 lawyers representing the victims. 7 of those sat to the left of the court room, with 3 of those lawyers undertaking the advocacy. The remaining 5 lawyers sat on the front bench allocated for the public. Members of the public sat behind them. The case has generated huge interest and there was insufficient seating for all members of the public. The 2 lawyers for the defence sat on the right of the court room.¹⁶ The defendants were not present.
17. Three judges sat at the bench (a raised platform), the president sitting in the middle. The public prosecutor sat next to them on the far right. One of the judges was asleep for most of the hearing. Above the bench was written in gold capital letters '*Adalet Devletin Temelidir*' (meaning 'justice is the basis of the state'). A woman sat at a desk in front of the bench and typed the proceedings verbatim onto a computer¹⁷. Another man (the court clerk) stood next to her and called the witnesses when appropriate. The clerk called all the names of the advocates present before the hearing began. The President judge opened the hearing by stating that the autopsy report had arrived at court, as had the report of İHD.¹⁸

Witness 1¹⁹ – Dr. Necmi Çekin (chairman of Forensic Medicine and author of autopsy report)

18. The typist asked the witness to confirm his name and date of birth. He then took an oath. The president judge questioned him. The witness stated that Şiyar Perinçek²⁰ had been received 'naked'. They had wanted his clothes but had not yet received them. He confirmed that the clothes were very important due to the need to establish the distance of the shooting. He had completed the autopsy with his colleague.

Witness 2 – Dr. Mehmet Kobaner (Surgeon who operated on Şiyar Perinçek)

19. Preliminaries as above. The president judge began the questioning. The witness said that Şiyar Perinçek was taken to the hospital after the shooting. He was operated on and after 3-4 days, he died. Şiyar Perinçek was sometimes conscious, sometimes unconscious. For some of the time, he did not want to talk, he did not even want to give his first name or surname. There was no place in another hospital to which Şiyar Perinçek could be transferred.
20. Şiyar Perinçek's clothes were taken off, this was usual procedure. Other (hospital) workers undertook this task. The witness did not know what happened to the clothes.
21. The witness was asked by the lead advocate for the victims²¹ whether the police were present during any time after the operation. The witness did not know. In answer to questions put the president judge, he explained that the bullet went into the middle of Şiyar Perinçek's chest. He did not undertake the surgery himself, but was present when the operation took place. A report was written after the operation. The witness then said that bullets went into the middle of Şiyar Perinçek's chest and back. The police came and went to the hospital as it was a criminal case. He telephoned the police and told them that although they could come and go, they had to be careful because Şiyar Perinçek's condition was severe.
22. In answer to questions put to him by the lead advocate for the victims, the witness stated again that Şiyar Perinçek was sometimes conscious and

sometimes unconscious. He let the police come and go. Permission was given for the police to do this at the beginning, not prior to each and every visit that was made.

23. The president judge took over the questioning. The witness said that he had told Şiyar Perinçek that he could talk to him, but Şiyar Perinçek did not want to. However, 3 hours before his death, Şiyar Perinçek tried to get up and tried to talk to the witness. The witness thinks that Şiyar Perinçek may have tried to say something but he could not be sure.
24. One of the defence advocates asked him whether there had been any consultation with other departments in the hospital. The witness said that they contacted the doctors in the relevant departments (*i.e.* the neurology department).

Witness 3 – Worker responsible for organising the ambulance

25. Preliminaries as above. The witness was questioned by the president judge. The witness could not recall calling the ambulance and did not add anything further.

Witness 4 – Tamer Soyadlı (Police officer who attended the hospital after the incident)

26. Preliminaries as above. The president judge asked the witness about the clothes of Şiyar Perinçek. The witness stated that he had only received Şiyar Perinçek's belongings and not the clothes. He did not know anything about the clothes. He confirmed that the belongings comprised a cigarette lighter, paper with writing on it (which also contained traces of a chemical).

[At this stage, one of the advocates for the defence came into court – see footnote 17].

27. The president judge then read out the defence statement and the facts on the indictment. The main advocate for the victims confirmed that they would be producing their own written statement as well.

Witness 5 – Hüseyin Göröl (civilian eyewitness)

28. Preliminaries as above. Questioning was again commenced by the president judge. The witness stated that he was passing by when he heard 2 gunshots. The police were chasing a man and he heard gunshots. After chasing him, the police got the man to the police car. The witness then saw another boy, lying on the ground. The police were dressed in civilian clothes. The man who was chased said ‘OK, I surrender’. He did not say this verbally but put his hands up and threw himself to the ground. There was another man on the floor. He did not see whether the police shot the boy whilst he was on the ground.
29. The president judge asked Nurettin Başçı to stand up. He then asked the witness whether or not he could identify Nurettin Başçı as being the man who ran away. The witness said that he could not remember. The witness went on to say that it was a coincidence that he was passing by at the time.

Witness 6 – A. Bakır (Eyewitness - member of İHD Adana)

30. Preliminaries as above and questions from the president judge. The witness said that he did not know the police officers involved personally. He said that at the time of the incident, he was in the İHD office in Adana. He heard 2 gunshots and then went to the window. He saw a boy running away, who was then put in a taxi by the police. Another boy lay on the ground. The police fired 2 shots to the boy on the ground. The boy was then taken away by ambulance.

[At this point, one of the advocates for the defence interrupted and said to the judge that the witness was not impartial because he was an İHD member and the İHD had made a report about the incident. The judge did not appear to respond]

31. One of the defence advocates asked the witness whether he used his mobile phone. The witness said that he did not call the ambulance but he did call a friend of his. The president judge then asked him about the number of gunshots. He stated that before he came to the window, he heard 1 gunshot and heard 2 shots afterwards. The witness stated that he did not see his face²². After they arrested him (presumably Nurettin Başçı), he did not hear any gunshots. He

(Nurettin Başçı) went out of sight, down the side of the building.

Other matters arising

32. No further witnesses were called. The lead advocate for the victims presented a number of 'application' forms to the president judge. He stated that there had been no investigation into the gun that was fired by the police officer. In addition, Şiyar Perinçek's clothes were missing. They wanted witnesses who completed the receipts for the clothes. They also suspect that Şiyar Perinçek's fingerprints were taken by the police when he was unconscious.
33. The president judge stated that he had taken an application for another report (but did not give a decision about the application).
34. The lead advocate for the victims then stated that a further witness should have attended court today and that this was an attempt to destroy the evidence. Although one of the witnesses declared that he had given the clothes to the responsible officer, that officer stated that he did not have the clothes.
35. Another advocate for the victims then made an application for the trial in which Nurettin Başçı is a defendant to be linked to the current trial [again, no decision was made by the judge in respect of this application].
36. The president judge said that he would give some time to the lawyers to look at the autopsy report and the other reports. He would summons the witness who did not attend today.
37. The lead advocate for the victims then stated that he wished to know whether or not the police had any report or file on (Nurettin Başçı) stating that he was with the PKK. The defence advocate replied by saying that he did not have anything.

Future Hearings

38. The next hearing in relation Şiyar Perinçek's and Nurettin Başçı's complaint will

take place on 8th February 2005. According to the lawyers representing Şiyar Perinçek and Nurettin Başçı, there have already been two or three hearings in relation to Nurettin Başçı's trial²³. The next hearing for Nurettin Başçı will take place on 10th January 2005 at the 7th Criminal Court in Adana. At present, very little is known of Nurettin Başçı's case. There are apparently no witnesses in this case. The lawyers intend to request that full details are disclosed by the police but they anticipate that this will be refused.

VII INTERVIEW WITH ADVOCATES REPRESENTING THE VICTIMS

40. Those present:
- Av. Mustafa Cinkılıç
 - Av.Bek
 - Av. Öztürk Türkdöğen
 - Av. Hatice Can
 - Av. İrfan Eser
 - Av. Sevil Aracı
 - Av. Murat Taşkiran

Problems with the legal system and procedures (with specific reference to the case of Şiyar Perinçek and Nurettin Başçı)

41. The State Security Courts²⁴, which dealt with anti-terror offences, were abolished in June 2004 and replaced with special criminal courts. Nurettin Başçı's case is being heard at such a court (see above). Although Nurettin Başçı now has the right to see his lawyers whilst in detention, (a right which was not previously afforded to those suspected of terrorist activity), the procedure of the new court remains unchanged; only the name has changed.²⁵ In particular, despite a change in name, the prosecutor's role also remains unchanged. The lawyers anticipate that Nurettin Başçı will be on remand for about a year. This duration was considered to be normal. Nurettin Başçı has alleged that he is

- being tortured whilst on remand.²⁶ The lawyers stated that the authorities would not permit human rights organisations to visit Nurettin Başçı in prison.
42. Where the police are the defendants (as in the instant case), the lawyers for the victims do not reveal the identity of their witnesses in advance. This is because they are afraid that the witnesses will be pressurised by the police and subject to harassment or worse. Instead, the lawyers will inform the judge that they will be presenting some evidence, but without detailing the identity of the source.
 43. Destruction of evidence by the police is a common fear of many lawyers and human rights activists. The advocates used the instant case as an example:
 - a) The crime scene report prepared by the police has gone missing (no explanation appears to have been given as to its absence);
 - b) The clothes which Şiyar Perinçek was wearing at the time of the incident have gone missing (as stated above, a police officer witness who worked at the hospital where Şiyar Perinçek was kept, has been summonsed to attend court. He has made a statement which *inter alia* records ‘I gave the clothes to a police officer’)
 44. The failure of the police and/or other state authorities to follow basic procedures is another cause for concern. At the hearing on 21st December, the advocates complained that there had been no investigation into the gun that was used to shoot Şiyar Perinçek. In addition, although a report has been prepared which allegedly proves that Şiyar Perinçek used a gun and fired it, the report is concerned only with the presence of gunpowder and not the fingerprints of Şiyar Perinçek. The advocates are also concerned that such material has not been collected according to the correct procedures. It is essential that a material such as gunpowder is placed in a glass tube but in the instant case, it was placed in an envelope and sent to the criminal laboratory. That is why the advocates asked one of the doctor witnesses (on 21st December) as to whether or not a formal investigation was conducted on Şiyar Perinçek’s hand²⁷; the report was completed in an arbitrary fashion by the police officer.
 45. None of the police officers have been suspended from work or have faced any disciplinary hearings. They did not attend court on 21st December.²⁸ The lawyers were not surprised about their lack of attendance at court and said it was usual practice.²⁹ The lawyers added that even if the police officers are found guilty and punished, the police officers will escape punishment by going into hiding.³⁰ They stated that they have experienced similar cases.

46. The lawyers anticipated problems with the fact that Nurettin Başçı's trial was running concurrently with the trial of the police officers. They have requested that the trial of the police officers be concluded prior to Nurettin Başçı's trial, but know that this request will not be adhered to in practice. The legal system allows for the police officers to be sentenced in relation to torturing Nurettin Başçı at the same time that Nurettin Başçı is sentenced in relation his alleged PKK involvement. The lawyers appreciate that Nurettin Başçı is one of the key witnesses to the incident on 28/5/04.
47. Despite the assertions of the police, it is denied that Şiyar Perinçek had a gun. Further, no bullets belonging to the gun of the police officer have been found. It is believed that the only gun used in the incident belonged to the police officer(s)
48. The lawyers wanted to emphasise that they did not expect the police officers to be punished. They strongly believe that some evidence has been destroyed³¹. Their goal therefore, was to take the instant case to the European Court of Human Rights by highlighting 2 issues: firstly, the destruction of evidence and secondly, the failure to conduct the investigation properly.
49. The lawyers are also concerned that the defence used by the police officers (namely, that the victim also fired a gun), is similar to the one used by officers in other recent cases³². This was felt to indicate that the police were using 'dirty' or 'illegal' guns to try and frame innocent people. The lawyers are concerned that such guns are being kept in a 'storehouse'. Further, the lawyers believe³³ that the gun which is alleged to have been used by Şiyar Perinçek was the same gun used by the Anti-Terror police in Adana on 18th March 2004 (a person was injured in the head as a result). This incident is apparently the subject of another court case.

What will happen before and/or at the hearing on 8th February 2005

50. The lawyers said that overall, they will be waiting for new witnesses and looking for new material. In particular, they anticipate taking the following steps:
 - a) They will consider and give their opinion about the autopsy report, prior to the hearing;

- b) They will give a report about the witnesses (and their statements) that were called at the hearing on 21st December;
 - c) They will verify that there was no altercation between Şiyar Perinçek, Nurettin Başçı and the police³⁴;
 - d) They will consider whether there are any other witnesses that are material to the case.
51. In addition, the lawyers state that there are conflicts between the reports prepared by the doctors. They intend to take advantage of these ‘conflicts’. The lawyers are also hoping to obtain reports from the 3 lawyers who visited Nurettin Başçı at Adana police station on 29th May 2004³⁵.

VII INTERVIEW WITH REPRESENTATIVES OF İHD

52. Those present:
- Mihdi Perinçek (East and Southeastern Anatolia region)
 - Sabri Kahraman (Adana Branch)
 - Ethem Açıklalın (Adana Branch)

Discussion about Torture

53. In its report³⁶, the Commission concluded that the Turkish government is “seriously pursuing” its policy of zero tolerance and that torture is no longer systematic.
54. However, this claim was vigorously disputed by the İHD. It was confirmed that despite recent legislative changes, torture is still practised by the state, and this included both physical and psychological torture. Further, every human rights defender had suffered torture at some point. This is due to the fact that they are always seen as opponents of the state and because they attempt to highlight the failings of the system³⁷. One member of the İHD stated that on one occasion, the police blindfolded him and broke his hand. Despite the fact that he managed to get a trial opened against the police officers, he himself was punished and was

sentenced to 45 days imprisonment. This was just one example of how it was still difficult to obtain convictions against state perpetrators. In addition, it was felt that it was no coincidence that Şiyar Perinçek was shot outside the Adana branch of the İHD. Rather, this was seen as an act to intimidate those involved with defending human rights.³⁸

55. The police security forces continue to be present during medical examinations of detainees (and were present when Nurettin Başçı was examined in the instant case). This is in direct contravention of the current law which states that medical examinations of detained persons are now to be carried out without the presence of the security forces, except when the doctor requires otherwise.³⁹ Although this might be a situation where a further medical report would assist, the İHD stated that such reports are rarely taken into consideration by the prosecutor.
56. Overall, whilst the changes in legislation have been welcomed, it was felt that torture was still systematic in Turkey. Anger and disappointment was expressed at the statement contained in the Commission's report that this was no longer the case. It was also the first time that the international community had reached such a conclusion and they were shocked, in view of both previous reports and their own experiences generally. It was also felt that the Commission report had not properly considered the human rights abuses still experienced by the Kurdish people.
57. There are 5 principles which an İHD will use in order to determine whether torture is systematic:
 - The incident
 - The continuity of the incident
 - The extension of these incidents (in geographical terms)
 - The lack of response or reaction to abuses committed by the state *e.g.* in the case of Şiyar Perinçek and Nurettin Başçı the police officers have remained in employment
 - The failure to punish state perpetrators

IX CONCLUSION

Turkey's Progress Towards EU Accession

58. The Helsinki European Council decided in 1999 that Turkey was a candidate state to join the European Union on the basis of the same criteria as applied to other candidate States. With this decision in mind, the European Commission assessed how the Copenhagen criteria would apply to Turkey in an 'Accession Partnership'.⁴⁰ As stated at paragraph 1 of this report, a series of legal reforms were introduced by the Turkish government, designed in part to address the abuses of human rights.
59. In its report of October 6th 2004, the European Commission found that "*Turkey sufficiently fulfils the political criteria*", with the recommendation that talks should begin. At its summit in Brussels on December 16th -17th, the European Council acted upon that recommendation and decided to open negotiations for Turkey's full membership of the European Union.

Continuation of Human Rights Violations

60. The legal reforms introduced to protect human rights are to be welcomed and it is right that in some areas, improvements have been made⁴¹. However, the mission notes that there still exists an alarming level of human rights violations. According to a report released by the Diyarbakir Human Rights Association, the total number of violations experienced in the southeastern and eastern regions in 2004 increased from 6,472 in 2003 to 7,208 in 2004. Further, a worrying trend of killings by the security forces is emerging, including that of Şiyar Perinçek. These killings (some of which are listed below) are believed to have been extrajudicial executions:
- Ahmet Kaymaz and his 12 year old son, Uğur Kaymaz, were shot and killed by security forces on 21st November 2004, in the Kızıltepe district of Mardin. Ahmet and Uğur were preparing for a journey to İskenderun at the time of the incident, and loading their truck with various items.

The truck was parked about 40-50 metres outside their house. At around 4.30 pm when Ahmet and Uğur Kaymaz were outside, gunshots were heard by other members of the family. Ahmet and Uğur had been shot and both died shortly after the incident. Officials alleged that Uğur had been involved with the PKK and that Ahmet had therefore been ‘harbouring’ or ‘housing’ a terrorist. An investigation into the killing took place, which has resulted in an indictment and a trial being opened against the members of the security forces involved⁴²

- Fevzi Can was shot dead by a soldier on 28th November 2004, in Şemdinli, Hakkari. He was trying to take his livestock to the village when he was shot. Officials alleged that he was a terrorist (PKK) and a livestock smuggler. It was also alleged that at the time of the incident, he was given a warning to stop but ignored this warning. On 3rd December 2004, a soldier, Murat Şener, was arrested for the killing and sent to Van military prison. However, he was released on the first day of his trial. There are concerns as to the length of time it took for the public prosecutor to attend the scene of the crime and a fear that vital evidence may have been lost and/or destroyed as a result⁴³
- Yücel Solmaz (a member of the Medical Workers’ Union trade union), was killed by security forces on 26th December 2004 in Van. Solmaz and 4 of his friends were approaching a checkpoint⁴⁴ in their vehicle, when 4 masked soldiers indicated to them to stop. As they did so, the soldiers pointed their guns at the group in the vehicle and shot dead Solmaz. Officials allege that the soldiers asked them to stop but this was denied by the other men present, who stated that they were about to stop the vehicle but the soldiers shot Solmaz whilst he was still inside the car

Climate of Impunity

61. The mission observes that there has been a failure generally to introduce measures which properly addresses the climate of impunity. This is also noted by the Human Rights Watch, which stated “*Few torture cases result in prosecutions, and fewer in convictions*”⁴⁵. On the other hand, legislative changes, specifically designed to safeguard human rights, are often not adhered to. The Commission’s conclusion that a ‘zero-tolerance policy’ is in place must

therefore be questioned in light of this information. Whilst the conclusion of the Commission may reflect what should happen in theory, it does not, in light of the information obtained, reflect what is happening in practice. Of equal concern is the allegation that human rights defenders are often tortured as a result of showing their opposition to the human rights abuses. As was observed in the Conference paper presented at the European Parliament, such violations of the right to freedom of expression indicate *'rather more than the continuation of "some practical restrictions"'*.⁴⁶

Failings in the Legal System and Procedures

62. The trial observation and later interviews also revealed significant failings in the legal system. Such problems hinder the administration of justice and indicate a strong bias towards state perpetrators. Human Rights Watch stated that the independence of the judiciary *'remains prejudiced by the continuing arrangement of the minister of justice's chairing the High Council of Judges and Prosecutors, that deals with appointments and promotions within the judiciary'*.
63. Most revealing was the concession of the victims' advocates that the police officers on trial would probably not be punished (due to the lack of evidence) and even if they were, the police officers would go into hiding. Already, the advocates' focus is on taking the case of Şiyar Perinçek and Nurettin Başçı to the European Court of Human Rights. It is a sad indictment of the legal system that lawyers have realised that justice simply cannot be achieved at a domestic level. Overall, it is clear that there remains a strong climate of impunity.
64. The new Penal Code, to be introduced in April 2005, is unlikely to remedy these problems. One advocate observed that provisions relating to freedom of expression still need to be improved. In addition, the provisions relating to death by torture have yet to be implemented. The Diyarbakir Bar Association has already identified potential difficulties with the new definition of torture and has proposed significant amendments to the draft, which it believes will address the problems of impunity.⁴⁷

Main Areas of Concern

65. The Turkish Code of Criminal Procedure has adopted trial in absentia as an exception, only in cases where light sentences are involved *i.e.* where the offence is punishable by a fine, imprisonment for up to two years and/or confiscation. However, police officers charged with torture are exempt from appearing personally before the court (*ibid* footnote 30). Further evidence of impunity can be found in other legislative provisions, such as:
- a) Article 15 of the Anti-Terrorism Law provides that superiors and officers of the security forces who have duties in the fight against terrorism shall be defended by three lawyers for offences committed by them in connection with their duties and that the fees of these lawyers shall be paid out an appropriation to be included in the budget of the institution concerned, independently of the tariff or minimum fees for lawyers. These provisions apply also to offences committed during the execution of judicial duties. As a result, the offence of torture, which is the offence with the highest likelihood of being committed during the execution of judicial duties and those who commit this offence, are legally protected
 - b) Article 154 of the Criminal Procedure Law provides that the office of the public prosecutor shall directly prosecute civil servants who have abused their power or been negligent. However, Article 154/5 states that police superiors, guilty of the same offences, shall be subject to the trial procedure applicable to judges in connection with their duties
 - c) Supplementary Article 7 of the Criminal Procedure Law, which was introduced by Article 5 of Law No. 4963 dated 30 July 2003, provides that investigations and prosecutions against persons who have committed offences specified in Articles 243 and 245 of the Turkish Criminal Law shall be treated as urgent business and dealt with as a matter of priority and that hearings in legal actions for such offences shall not be adjourned for more than thirty days unless necessary and shall continue during the judicial holiday (*e.g.* each hearing has been adjourned in the instant case for more than thirty days)
66. There are no legislative provisions which deal with the suspension from duty of members of the security forces who are prosecuted for torture and maltreatment.⁴⁸

67. In cases involving defendant police officers, witnesses are forced to remain anonymous until the last minute so as to avoid pressure and/or harassment from the police. There do not appear to have been any legislative changes which address this problem.
68. The seating arrangement in the court room remains unsatisfactory. Firstly, the prosecutor sits next to the judges (and retires through the same door). This arrangement suggests a lack of impartiality and independence. Previous fact finding mission reports have also commented on this apparent inequality of arms.⁴⁹ Secondly, due to the position of the witness stand, each witness had his back to the lawyers for victims. This required the witness to turn around, each time an advocate for the victims asked a question, which placed the advocates at a disadvantage.
69. There are serious problems relating to the way in which the evidence is collected and presented. These are best summarised as follows:
 - a) Most of the evidence is collected as the hearings progress (e.g. in the instant case, the autopsy report, a key document, was only available at court on 21st December). This arguably, has put the victims' lawyers at a disadvantage, as they are having to prove their case without full knowledge of the facts
 - b) The lack of disclosure of evidence in Nurettin Başçı's own case also means that his lawyers are having to prepare a case without knowledge of all relevant facts
 - c) Court identifications (such as when the fourth witness was told by the president judge to identify Nurettin Başçı in court) can potentially undermine a case and are highly prejudicial. A witness' memory will inevitably fade between the date of the incident and the court hearing (in the instant case, some seven months)
 - d) The indictment sets out the defence, which gives the impression that those allegations form part of the case to be 'disproved' by the victims
 - e) There is real danger that when someone (such as Nurettin Başçı) is a defendant in another trial, he will be prejudiced by the evidence given in the other case
70. Legislative provisions which safeguard the rights of detainees are not being respected in practice.⁵⁰

X OVERALL CONCLUSION

71. On the basis of the information obtained, the mission reaches the following conclusions. The areas of concern (detailed at paragraphs 64-69) not only suggest that there is a lack of compliance with domestic legislation but also suggest that several international standards have been breached. With specific reference to the case of Şiyar Perinçek and Nurettin Başçı, those alleged breaches can be listed as follows (the nature of the alleged breach is summarised in brackets):
- a) The independence and impartiality of the judiciary (the composition of the court room and the seating arrangement of the prosecutor and the judges)
 - b) The right to equality of arms (the exemption of the police officers from attending their own trial; the failure to provide evidence in a timely fashion so as the case against the police officers can be fully prepared; the form of the indictment; witness' fear of reprisals from police officers)
 - c) The failure to prosecute and investigate offences (the evidence which has allegedly gone missing and the alleged failure of the police to apply correct procedures when examining and/or collecting the evidence)
 - d) The right to a fair hearing (the failure to disclose evidence in the case against Nurettin Başçı and the fact that the case will run concurrently with the trial against the police officers)
 - e) The right to legal counsel (Nurettin Başçı was denied the right to see his lawyer on the first day of his detention)
 - f) [Depending on the progress of the case and the evidence obtained, there are potential breaches of (a) the prohibition against torture, inhuman and degrading treatment, in relation to the treatment of Nurettin Başçı during detention (b) the right to life, in relation to the killing of Şiyar Perinçek [and others] (c) the right to an effective remedy]

XI RECOMMENDATIONS

For the Turkish Government

- To implement measures which will provide for the independence and impartiality of the judiciary
- To abolish those articles of the Turkish Criminal Code of Procedure which allow law enforcement superiors to be privy to a trial procedure different from other defendants
- To provide protection to witnesses who fear reprisals as a result of their identity being made public
- To amend the Turkish Code of Criminal Procedure to include provisions which recognise that alleged state perpetrators should in certain circumstances, be suspended from duty
- To ensure that current legislative provisions are adhered to, most notably those (a) which prohibit the presence of security personnel during the medical examination of a detainee (b) which give detainees the right to immediate legal counsel
- To ensure compliance with the relevant international standards
- To implement measures which will ensure that evidence is collected and disclosed in a timely fashion so as cases can be properly presented
- To ensure that members of the judiciary, lawyers and security personnel are educated about legislative changes

For Non-Governmental Organisations

- In view of the concerns raised by the lawyers, to monitor (a) the trial against the police officers (b) the trial against Nurettin Başçı
- To monitor compliance with the relevant international standards
- To initiate and maintain contacts with human rights organisations in Turkey
- To maintain dialogue with the European Union on the issues raised in this report throughout future discussions on accession

APPENDIX 1

Indictment to the Adana Chief of Security Court of defendants Davut Ozates, Mesut Gurken and Erhan Ciloglu in connection with killing of Siyar Perincek

REPUBLIC OF TURKEY
ADANA
STATE SECURITY COURT
HEAD PUBLIC PROSECUTOR

PREPARATION NO : 2004 / (25) 23070
CASE NO : 2004 / 12036
INDICTMENT NO: 2004 / 726

INDICTMENT TO THE ADANA CHIEF OF SECURITY COURT

PLAINTIFF: KH

VICTIM: **MEHMET NURETTIN BASCI:** Son of Seydo and Ikram born in 1973 resided in Kemalpaşa Mah.15.sk.NO:19 Incirlik/ Adana, continues to be detained in the F type Prison.

KILLED VICTIM: **SIYAR PERINCEK-** Son of Mihdi and Fatima born in 1979 was registered at the registry office of the Merkezbaglar - Diyarbakir

DEFENDANTS: **1- DAVUT OZATES-** son of Mustafa and Hatice born in 1969 registered at the registry office of the Merkez Sanayii Kirikkale and is employed as head of Police security Department

2- MESUT GURKEN – Son of Recep and Yeter born in 1972 registered at the registry office of Sahinbey Burc

Kale Gaziantep and is employed in Adana Polis Security Department as an Superintendent

3- ERHAN CILOGLU- Son of Seyfettin and Huliye born in 1077 registered at the registry office of the icel-Tarsus employed in Adana police security department as an attendant

OFFENCE: Breaching their duty and killing a person by using unnecessary power behind intent.

DATE OF OFFENCE: 28.05.2004 and after this date

DATE OF DETENTION: 26.09.2004-27.09.2004

EVIDENCES: Indictment, Witness statements, Autopsy reports, incidents records and arrest records, Experts and Doctor reports and all preparation reports

ARTICLE: 1- TCK (Law of Turkish Republic)article 452, 49/1,31,33 (for Defendant Davut Ozates)
2- TCK article 245 (for defendant Mehmet Gurken, Erhan Ciloglu)

THE PREPARATION DOCUMENT AND SUPPLEMENTS CONSIDERED

The defendants named above were Head of Adana Police Security Department and superintendent in the department. On the date of the offence they received a complaint that Siyar Perincek and M. Nurettin Basci members of PKK/KONGRE-GEL came to Adana and were planning to make an operation involving the use of guns. SIYAR PERINCEK and M.NURETTIN BASCI realised that they were being followed by the police at the Turkusagi junction on D400 motorway. SIYAR PERINCEK sat at the back of the motorcycle when he realised they were being followed by the police and fired at the police vehicle following them behind. While he was firing at the police vehicle

following them behind, their motorcycle crashed into the second police vehicle which was following them on the next line next to their motorcycle. The crash caused them both to fall down. Superintendent Defendant Davut Ozates got out from the vehicle that crashed into the motorcycle and gave the warning, “to stop and hand himself over.” However SIYAR PERINCEK started to fire towards this person twice while he was trying to stand up. D. OZATES fired back once and as a result S. PERINCEK was wounded. He was then taken to Adana State hospital by number 112 Ambulance he were he died on 30.05.2004.

M. NURETTIN BASCI made a complaint against police officers and stated that during the arrest of members of terrorist organization, and arrest of people who were helping and harbouring them, he was ill-treated during his interrogation in detention. He also stated that he fell down when the defendant and police officers crashed in to the motorcycle he was driving. He then ran away from the scene of the incident to another neighbourhood but he was found by the police officers. While the police were trying to arrest him he struggled with the officers and he then received injuries and bruises. Although it was confirmed that his injuries were caused in that way we request that our courts do consider the medical reports and other evidence in the file.

We make an application for punishment of the defendants Davut Ozates for alleged killing of a man by breaching his duty and acting beyond the intended power, and punishment of the other defendants MESUT GURKEN and ERHAN CILOGLU for ill-treating the victim according to the above TCK articles

TEVFIK LOGOGLU

Adana Head Public Prosecutor.

APPENDIX 2

Report from Trial Observations by Lawyers without Borders in Turkey November 5-8 2004

Torture Trial against the Mardin Police

Lawyers without Borders, Sweden (AuG) observed the continuation of the joint cases of Kamile Cigi and Handiye Aslan in Mardin District Court on November 5, 2004.

KPHR has given a trial observation report from November 2003 and the cases are still only in preparatory stage. The Kamile Cigi case commenced with the first hearing 11.10.2000 and the Aslan case commenced 02.05.2003. The cases are scheduled for trial sessions once a month.

Kamile Cigi was allegedly raped and tortured during her three separate arrests 1992-1993. Cigi was arrested due to the suspicion of hiding the PKK in her house. The policemen in Mardin are indicted. The Police records contain no filing of her arrest. Kamile Cigi claims she can identify the men. As she is residing in Germany and has applied for asylum there, the photos of the policemen have been forwarded in April 2004 by the Court to German authorities for their legal assisting in the identification. The Court still awaits the German report. During the Court hearing on November 5, the Court decided to request a medical report on the victim's present mental health upon request by the Defence.

AuG has attended a number of hearings in the cases. The Court was initially critical to our presence but is now more welcoming. We were invited to the Judge's office for an interview after the Court session. He informed of the present training in human rights and new legislation due to the adjustment to European standards and the incorporation of the human rights charter ECHR and expressed his support to the development.

Our main concern is the time involved to conclude one case and the number of difficulties that hinder due cause of justice. In the Aslan case, in an earlier trial session, part of the crime could not be tried as the period of prosecution had expired during the trial period. The decision is appealed to higher court. The victims are relying on pro rata legal representation by the Human Rights Association in Istanbul and Diyarbakir. Initially

the police men could not be summoned as the Court could not find their addresses even though they were still state employed. Some of the police officers attend the hearings. The delays may result in obstruction of justice.

It will be crucial for the judgement of evidence if the Court will accept the medical report that is not issued by a government hospital. The judge indicated in our interview that not all doctors are trusted to give reports and therefore it is up to the Court to evaluate it as evidence. Next court hearing is scheduled for December 3, 2004.

The victims were represented by the attorneys Sila Talay and Nadide Kurul.

Death Shooting by Adana Police

AuG observed the trial hearing in Adana heavy Crime Court on November 8, 2004.

Background

On 28.05.2004, around 3 pm, the son of a high ranked officer of Human Rights Organisation (HRA) in Adana, Siyar Pernicek, Kurd, was killed by the police in one of the main streets of Adana. The incident occurred outside the HRA office with the chairman of HRA partly as witness.

In the report filed to the court and prosecution by the lawyers representing the victims the following event has resulted in the indictment of three high ranked police officers in Adana.

A police car with the chief of police and two other police officers forced to stop a motorbike with two men travelling on the road. The bike was forced to the side of the road. One man run away from the bike but was a while later arrested. The other man fell off the motorbike and was lying on the ground where the police shot him. He was transferred to a state hospital with allegedly no emergency facility where he died. The victim's lawyers claim the killing was an execution and against unarmed men.

The police claim the two men were suspected of links to an illegal organisation (PKK) and that the shooting took place as the men were armed.

The man who was arrested is now in detention and is allegedly tortured with electrical shock on his testicles, fake executions, shooting close to his ears and so called Palestine hanging. He is claimed to be in bad psychological condition.

The first trial hearing took place on October 4, 2004.

Adana Court Hearing on October 8, 2004

The court room had more than 20 lawyers present on behalf of the victim and the victim's family but was formally represented by four lawyers. The Media gave great attendance to the case.

The accused police officers were not present during the trial. They had requested the trial should be closed to the public which was denied by the Court. The victims' representation moved for the arrest of the police officers. The request was denied by the Court. At the trial the lawyers complained of the delay in documentation. The final autopsy is still not available as evidence. A request for the clothes of Siyar Perinceks to be examined to give evidence of the shots could not be granted as the clothes could no longer be located. It was the responsibility by the security police. During the hospital treatment only the police had access to see Mr Perinceks as the hospital was surrounded by the police. People' offering to give blood was allegedly not admitted to the hospital.

The timing of the incident was disputed. The defence claimed the arrest took place late at night according to a police report. The lawyers of the victim claimed the police report was wrong in giving the time as there was an eye witness and as the press wrote about the incident the next morning and due to press stop the incident could not have happened during late night.

The hearing lasted one hour. Next court hearing will take place on December 21, 2004, 9.30.

The Court was represented by three judges with the prosecutor sitting next to the judges at the bench.

Victims represented by among others Reyhan Yalcindag

The Defence was represented by two lawyers.

General remarks

AuG met with a number of lawyers at HRA and Human Rights Foundation both in Mardin and Adana. In general the speed of formal changes in the law is considered as a sign of improvement and a contributor to a positive development in Turkey. However the implementation is still not in place to meet the International standards. In Adana for example, 42 torture cases have been reported during 2004. In only two cases has the court accepted the medical report provided by the lawyers of the victims. Human right violations are more frequently reported now which has lead to an increase of cases handled by the human rights organisation. It may be a sign that people are more eager to report state violence. The trials where the state representatives are convicted for crime of torture are still rare.

Summery Report November 11, 2004 drafted by Marie Alwå von Baltenau for Lawyers without Borders, Sweden.

APPENDIX 3

‘The EU, Turkey and the Kurds’

A Conference at the European Parliament

Brussels

22 – 23 November

The Kurdish Human Rights Project

Medico International

The Rafto Foundation

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TURKEY, KURDS, EUROPE AND THE EU ACCESSION PROCESS

What is to be Done?

The Challenge Ahead

We are gathered here on the eve of one of the most momentous decisions to be taken by the European Union so far this century. There can be little doubt that the EU decision to grant Turkey candidate accession status will radically change the lives of Turks and Kurds in both Turkey and the Kurdish regions forever. It will also have a profound affect on Europe's own vision of itself. The European Union must decide whether Europe is an exclusive Christian fortress or a pluralist, multi cultural Union capable of reaching out to those on the edges of Europe. No one should be in the slightest doubt that the impending accession process will determine the nature of the European Union and Turkey in the 21st Century. Turkey does not just stand at an important cross road, it *is* the cross road for Turks, Kurds and Europeans, and the decisions that the EU takes now will seal the fate of all of us for the next half a century or more.

So what is to be done! As supporters of Kurdish rights what should be our response to this accession process? How should the EU approach the Kurdish question? How should the Kurds and their supporters approach the EU? What should be our response to the EU Commission Report and its recommendations to the Council as to how to proceed regarding Turkish accession? Should we support it or reject it or demand a set of preconditions? These are all difficult questions but ones to which we must find answers if we are to take advantage of the opportunities that this process presents.

The Challenge to Europe's Political Leaders

How should we all approach these fundamental questions? The lessons of history offer a partial guide. Many of the delegates to this Conference may recall the negotiations over the Customs Union in 1995. The echoes of that debate continue to reverberate today and the lessons of that experience are worth recalling. At that time, Turkish Prime Minister,

Tansu Ciller, warned the European Parliament that Islamic Fundamentalism would take over Turkey if it did not ratify the Customs Union. According to her, the only way Europe would get the improvement in the human rights situation it sought was through incremental reform and by backing Turkey to the hilt in its struggle with its perceived internal and external foes. Yet within a year the Kurds had tasted, and we had witnessed, the sour fruits of that unhappy association – further village destruction, displacement and assassination. Many leading MEPs have since admitted that they were duped by the Turkish Government and that no significant reform or improvement in human rights occurred in Turkey until AKP rested control from the traditional political elite in 2002. It is deeply ironic that it is a pro-Islamic party that has harnessed the dynamic effect of the EU accession reform process. Suspicions continue as to AKP real motives but such concerns are surely irrelevant if the effect of the process is to introduce fundamental change and democratic reform. The crucial question is will it?

The first point to make is that the 2004 accession process is a much different animal from the one used by the EU in its negotiations with Turkey over the Customs Union in 1994. There can be little doubt that the 2002 Copenhagen criteria of the European Council set out a much more detailed, concrete and meaningful set of accession conditions that Turkey is required to meet in order to obtain candidate status. This is readily apparent when the Copenhagen criteria is compared to the relatively puny set of non-binding commitments obtained by the European Parliament before it gave its positive approval to the Customs Union in 1995. The second point to make is that there has been some real progress in fundamental legislative reform in Turkey over the last two years, unlike in 1994. While many informed political commentators initially believed that reform in Turkey had only been politically possible because of the European Union Council's insistence upon it (and that without such insistence the AKP reform agenda may well have been perceived as a Trojan horse through which hidden Islamic policies would later be promoted against the interests of the traditional state) there is now little doubt among such commentators that if the three pillar approach recommended by the European Commission is adopted by the European Council on December 17, there will be further entrenched reform and radical change across all sectors of Turkish society

However, the big question for those who are involved in the Kurdish issue is how all this radical change will affect the Kurds and their legitimate rights. Will they be encompassed by this process or bypassed? Will their rights be respected and entrenched in a new democratic Turkey or will they be lost in a sea of broad self congratulation by Turkey and Europe about economic integration? In one sense the omens do not look good. In recent years EU political leaders have singularly failed to issue any statement on the Kurdish issue or promote any democratic platform or meaningful political dialogue about the

issue. Some of these policy makers take the view that the Kurdish conflict can be slowly solved through the EU accession process itself without the need for an express political settlement. In their view, the process of legislative and economic reform in Turkey will, by necessary implication, ameliorate the Kurdish conflict over time. They argue that the social and economic whirlwind of reform will inevitably lead to greater prosperity, stability and individual freedom across the board. But will this be enough? Is further political and diplomatic action needed by Europe's elected leaders on this issue? Should the accession process specifically include a chapter on the Kurdish issue?

The KHRP rejects this gradualist argument and believes much more needs to be done. Although it takes no view as to whether the Kurds constitute a people or a minority, it submits that the Kurdish issue will remain a touchstone issue for Turks, Kurds and Europeans throughout the accession reform process irrespective of that debate. It will remain an issue for Kurds because the bitter experience of the past has demonstrated that whatever the level of repression, Kurds will continue to see themselves as Kurds and demand that others do the same. It will remain an issue for Turks because the expression of Kurdish identity is still currently met with outright hostility both politically and legally. And it will remain an issue for the EU, whether it likes it or not, because the issue of democratic reform in Turkey is fundamentally tied to ideological reform. A truly pluralist democracy cannot be constituted in Turkey without reform to the official ethnic nationalist ideology of the state. The greatest threat to this ideology is the existence of Kurds and the public expression of their culture and human rights. It follows that if democratic reform is predicated on ideological reform, and the greatest test of ideological reform is recognition of minority rights, then the Kurdish issue must, by definition, remain a touchstone issue for all parties. Everyone has an interest in it and no party can achieve their aims without some form of resolution to it.

It is for this reason that the KHRP is both supportive and critical of the current stance of the European Council and Commission regarding the conditions set for Turkey's accession. Too often the political leaders of Europe have conveniently chosen to forget the past when it comes to the Kurds. Too often, whether by design or inadvertence, they have conspired with Turkey not to notice Kurdish existence and pain. It would appear that some believe that a form of collective amnesia about the past, together with the promise of gold and a New Jerusalem tomorrow, will be enough to see off the issue. But history tells us otherwise. When the international community seeks to turn a blind eye and ignore the plight of a people or a minority which has been subjected to unremitting injustice, those same elements come back to haunt it. One need only look to the Middle East to see examples of that fact.

Yet, ironically, the key to progress on the issue is obvious. In one sense, all Europe's political leaders need do is to ensure that Turkey actually complies and signs up to existing international commitments concerning minority and human rights in a way that actually gives the Kurds the political and civic freedoms they so desire. So why are they so reticent about expressly insisting upon this ostensibly sensible and morally modest demand? The answer is that in reality many of Europe's leaders are all too aware of the fragility of Turkey's democracy and of the hidden powers that secretly rule behind the façade of its so-called and much heralded "Republican Democracy". They also know that what drives these hidden powers within the military and "deep state" is their adherence to a cult of ethnic nationalism. Many European leaders do not want to risk alienating those shadowy powers by provoking an unnecessary backlash against AKP reforms. But are they right to be so timid and will such timidity yield the results they desire?

In the view of the KHRP, one of the fundamental obstacles to reform is the shadowy forces embedded in the so called "deep state". These forces will not just disappear into the night without a fight. Moreover, the whole *raison d'être* of these forces is predicated on the ideology of ethnic nationalism. The reason why the security forces hold such prominence within governmental and judicial institutions and circles in Turkey is that they are seen as the ultimate "protectors of the nation", a concept which itself is defined by outdated notions of ethnic nationalism. It follows that if European leaders truly support full democratic reform in Turkey they must help Turkish democrats remove these forces from within the state structure and the only way this can be done in practice is to challenge the ideological constraint that places them there. This cannot simply be achieved through legislative reform precisely because these hidden forces, protected by ideologically motivated provisions in the Constitution, float above and beyond parliamentary and administrative enactments and practice. It follows that the same ideological constraints that lead to the suppression of Kurds also lead to the suppression of a wider democracy in Turkey.

The KHRP believes that European political leaders need to understand this fundamental reality. Yet this analysis is not new. The KHRP recalls that 10 years ago, within the secure confines of another Brussels Conference Hall, the KHRP and Medico International held another international conference on the Kurdish conflict in South East Turkey. On that occasion the Conference brought together numerous Kurdish, European, and American intellectuals, parliamentarians, trade unionists, party representatives and human rights activists in an attempt to stop the bloodshed which had engulfed Kurdistan and to kick start a democratic process to resolve the Kurdish conflict in Turkey. On 13 March 1994 this International Conference duly issued a Final Resolution calling upon the countries of the European Union to stop exporting military hardware to Turkey for use against

its Kurdish civilians and to help create a democratic platform in order to promote a non violent, peaceful resolution to the conflict. The resolution called upon Turkey to stop its onslaught upon the Kurdish civilian population and demanded that Europe take steps to ensure that Turkey complied with its CSCE (now OSCE) commitments regarding minorities and human rights obligations under the European Convention of Human Rights. The Resolution argued that a democratic dialogue was only possible if Turkey respected the right to freedom of expression and association guaranteed under the Convention and permitted Kurdish parties to organise legally and unhindered in Turkey. This, in turn, was only possible if Turkey underwent fundamental political and ideological reform. This Conference clearly demonstrated how the Kurdish conflict was, therefore, intimately tied up with the issue of ideological and democratic reform in Turkey.

Many of you will recollect that Conference. Many more will recollect just how dire those times were for Kurds in Turkey. Just one week before the start of the 1994 Conference Leyla Zana and her DEP colleagues were stripped of their parliamentary immunity and unceremoniously thrown into jail for simply uttering Kurdish while taking their parliamentary oath. Their real crime had been to call for a peaceful and negotiated resolution to the Kurdish conflict. They had wanted to come to the Brussels Conference to alert Europe and the West to the systematic destruction of Kurdish villages by Turkish security forces. They wanted to tell the people of Europe about the displacement of 3 million Kurds and protest about the state induced assassination of hundreds of Kurdish politicians, intellectuals, writers, lawyers and activists across Turkey. Above all they wanted to enlist Europe to help stop the endless cycle of violence which had engulfed their country. In the event, the DEP MP's were arrested and prohibited from attending by the Turkish Government.

Yet the message of the Conference fell on deaf ears within the corridors of power in Europe with further devastating results for the lives of ordinary Kurds. The link between the Kurdish issue and true democratic reform in Turkey was lost in the scramble to ensure negotiations over the Customs Union reached a satisfactory conclusion for both parties. In the event, the European Parliament quickly ratified the Customs Union in the forlorn hope that the potentially liberalising effect of such a union might just do the Parliament's political job for it, thereby obviating the need for the Parliament to set its own clear political conditions. Those hopes were to be quickly dashed by subsequent events. This should constitute a salutary lesson for EU leaders and policy makers.

Sensing it may have been duped, in January 1995, the European Parliament gave Leyla Zana the Sakharov Prize for freedom of thought. For some observers this was a

profoundly ironic and ultimately disingenuous gesture that illustrated both the vanity and duplicity of Europe towards the Kurds. How could elected politicians really believe in the liberating effect of the Customs Union when despite massive international protest one of their own languished in jail for simply expressing her constituency's interests? But if the Turkish Government thought they could silence Zana's message by physically stopping her from going to Brussels they were to be sorely mistaken. Leyla Zana quickly became a beacon for a people hitherto shrouded in official darkness. From the confines of her prison cell she and other political colleagues, together with a host of NGOs and solidarity organisations, put the Kurdish issue firmly on the European political map. Now after ten long years in jail, Leyla Zana has finally completed the journey to Brussels that she started so long ago. Today she delivers the same message she would have delivered all those years ago - one of peace and reconciliation - but in a radically different political landscape. The crony regime of Tansu Ciller has gone. For the first time in Turkey a non establishment party without Kemalist roots has taken power and is using the EU Accession process to introduce reforms that go way beyond anything previously envisaged by Turkey's other orthodox parties. Some of these reforms are merely cosmetic but others do hint at a fundamental transformation in the political culture of Turkey. The big political question for Europe's elected politicians today is whether Europe will finally listen to Leyla Zana's political message? We know that the present European Parliament will do its best to ensure that her message is heard. But will Europe's national leaders be brave enough to confront the forces of reaction in Turkey and for once give grass roots democrats the backing they need today and not tomorrow. The KHRP believes that we in this Conference hall in 2004 must ensure that this time the EU and the European Parliament not only listens but also acts. Put simply, the time has come for Europe to stop giving prizes to the Kurds and to start giving them the freedoms which all human beings are entitled to enjoy.

The Challenge to the European Commission

So if that is our message to the politicians of Europe what should be our message to the technocrats of Europe sitting in the European Commission? The Commission is of course vitally important for while the Council will take the political decision it is the Commission that in practice will oversee and construct the detailed architecture of the accession reform process. How then might we bring home to the Commission the fundamental reality behind Turkish political life outlined above? What should be our response to the EU Commission 2004 Report and its recommendations as to how to proceed regarding Turkish accession? Should we support it or reject or demand a set of other preconditions to its three-pillar approach to accession?

Once more, the answer to these questions partly depends upon our conception of the Turkish State and in particular, about where it has come from and where it is going. In fact there is little disagreement in public between Turkey and the EU as to where Turkey should go. There seems almost universal agreement that if Turkey is to join the EU and function within a single market it must turn itself into a normal European pluralist democracy where minorities are respected. Here even the Kurds agree. The real bone of contention with the Commission, however, concerns our mutual conception of where Turkey is today and how far it has to go both politically and legally. This is the real nub of the issue. Is Turkey's human rights problem simply a development issue or is it the result of a deeper political malaise? Is there an ideological constraint on democratic reform as argued by the KHRP or is democratic reform merely a technical matter of implementing agreed legal reforms over a period of time as implied by the Commission 2004 Report?

In broad terms the KHRP applauds and adopts much of the Commission's three pillar approach to the accession process. However, the KHRP reiterates that the prevalence of ethnic nationalism within Turkey acts as an ideological constraint on democratic reform which cannot be cured solely by piecemeal reform or without some form of democratic dialogue taking place between Turkey's constituent parts about the future constitutional structure of the state. This ideological constraint goes to the very heart of the Turkish State's conception of itself and can only be lifted once the State has constitutionally and practically redefined its nature and purpose. A constitutional resettlement is an absolute pre-requisite if Turkey is to become a true democracy and this should include recognition of Kurdish rights. It is the ethnic-nationalist element of Atatürk's secular ideology which has historically required the State to suppress all manifestations of Kurdish culture and existence. The exhibition of Kurdish culture constitutes an anathema to the "unity and indivisibility" of the Turkish State. This is because "indivisible unity" continued to be exclusively defined by recourse to the cultural characteristics of being a "Turk". In its 2004 Report the European Commission cites its own startling contemporary example of how this disposition persists within official circles notwithstanding the impending accession vote. "In March 2004," it reported, "RTUK (broadcasting authorities) ordered the closure for 30 days of ART TV, a local television channel broadcasting from Diyarbakir, on the grounds that it had violated "the principle of the indivisible unity of the state" when, in August 2003, it broadcast two Kurdish love songs. If this broadcaster is closed for a second time, its license will be revoked."

Yet, despite these sanctions, and previous decades of unremitting repression, the one thing the State has been unable to suppress, how ever much it tries, is the sheer historical fact of Kurdish existence in Turkey. Throughout this period Kurds have continued to

bravely exhibit their existence in spite of repression. By the end of the 20th Century it was clear that neither the Kurds nor their culture were likely to go away or disappear from Kurdistan or Turkey, save for another ethnic genocide. If the history of the 20th Century has taught us anything it is that you cannot eradicate or erase the history and existence of even the most down trodden of indigenous people. Yet this is precisely what the Turkish State has tried to do. It is this ideological crusade that is the root cause of Turkey's endemic chronic political instability throughout the late 20th Century. Ethnic nationalism is the last outdated ideological construct of the 20th Century which has to be dismantled if Turkey and the Kurds are to be set free. Like other authoritarian ideologies of the 20th Century, ethnic nationalism has contorted natural political, economic and social development. Turkey has been placed in a political straight jacketed for eighty years and been strangled by overly rigid and dogmatic precepts. These precepts have set peoples against peoples, minorities against peoples, and neighbour against neighbour. The imposition of artificial ideological imperatives has literally obliterated all attempts at ethnic reconciliation and cohesion. But now for the first time in three generations Turkey has a chance to free itself from its own ideological chains.

It follows from this analysis that if the AKP Government is genuine about its intention to transform Turkey into a stable and democratic state in Europe in the 21st Century it has to begin to recognise the reality of Kurdish existence and thereafter peacefully resolve its crisis with the Kurds. It further follows that if Europe is serious about Turkey becoming a stable democratic state it too must seek to resolve the conflict and abolish its ideological roots. The KHRP has little doubt that in time the ideological construct of ethnic nationalism will be dismantled or simply internally combust under the weight of history. But how much pain must ordinary people in the region endure before this happens or the EU and Turkey's new political masters finally find the political will to confront this problem?

This is why the KHRP says the foregoing historical analysis remains as apposite and pertinent today as it was at the last Brussels Conference in 1994. It is of immense relevance to the argument about democratic reform and the EU accession process. Its importance to the debate about accession should not be underestimated simply because it has been repeated constantly in pro Kurdish public meetings across Europe time after time, to little or no avail. It is material not only because it is true but because it strikes at the heart of the problem concerning Turkey and its desired entry into Europe. In short, there can be no genuine and enduring democratic progress, political stability or peace without political and ideological reform. Ideological reform and the resolution of the Kurdish issue remain the real keys to progress in Turkey.

So what does the European Commission have to say on these matters? Well the short answer is very little. The most striking fact about the EU, individual member states, and the Commission's declarations concerning the reform process in Turkey is the manifest failure to refer to the political dimension of the Kurdish issue and/or to expressly refer to or insist upon the need for ideological reform. This omission was more intelligible back in 1994 but is little short of incredible in 2004. Back in 1994, only those persons who had had first hand experience of what it was like to be a Kurd in Turkey understood the need for express ideological reform. Since then European policy makers have been made aware of the pernicious effects of the anti-democratic and outdated nature of Turkish nationalist ideology through a welter of ECHR cases, fact finding missions, trial observations, and economic and social campaigns conducted by numerous Kurdish and European NGO and solidarity organisations over the last 10 years, many of whom are represented here today. The KHRP salutes all of those who have been involved in that work.

However, despite the official silence over ideological reform, the KHRP has first hand experience that many of Europe's policy makers both within the EU and national member states now quietly share the foregoing historical analysis. Many have told the KHRP that they broadly accept that Turkey can only truly become a stable, democratic country once it recognises the legitimate rights of its Kurdish population. One policy maker said it was about as obvious as the recognition of a two state solution is to the resolution of the Israeli-Palestinian conflict. So why does the foregoing historical analysis find little if no expression in the numerous reports released by EU institutions regarding Turkey's accession to the EU? Why is it that despite the tacit recognition of the force of this argument this analysis remains in official quarters "an analysis that dares not speak its name"?

Is it because European States are at pains not to be seen to interfere with the so called "internal political affairs" of another country? Is it because they fear risking the wrath of a NATO ally whose geopolitical and strategic position is paramount to the stability of the region? Is it because Europe is simply unwilling to deal with the resolution of such a difficult and far away issue as the Kurdish conflict? Or is the real reason why Europe has been so consistently unwilling to fully confront the political dimension of Turkish reform process is because it is ultimately unwilling to incorporate Turkey and its political reality into Europe as a fully fledged European partner? Perhaps there is a bit of truth in all of these things. But whatever the true explanation may be one thing remains certain - the Kurdish question will continue to haunt both Turkey and Europe for as long as both parties ignore it.

Yet despite this historical disposition, there are signs of a discernible and dawning acceptance in some important quarters that both parties will have to address the issue sooner or later, especially if the European Council adopts the Commission's recommendation to start accession talks with Turkey on 17 December 2004. In the view of the KHRP, a positive accession vote on 17 December will convert the ideological debate over the "Kurdish Question" into an existentialist question for both Turkey and Europe which both parties will be unable to duck as they enter into the Commission's more structured and detailed reform process. Such a process will not simply ask of Turkey what type of state it aspires to be, it will also ask of Europe what type of Union it aspires to be. Will it be a truly liberal, democratic and pluralistic Union both in ethos and in practice? Or will it be a Union that essentially rests upon the promotion of member state self-interest and which merely plays lip service to higher ideals concerning political freedom as binding myths rather than truths grounded in concrete reality? This is a question that many of Europe's politicians know in their heart of heart they must now ask themselves and answer. It is a question they can no longer avoid indefinitely. Turkey's accession process will define what Europe really stands for and is, as much as it will define Turkey in the 21st Century. Given the explosive effect of the Kurdish conflict, it follows that if Europe is serious about embracing Turkey into its bosom it also has to be serious about democratic reform in Turkey if it wants to avoid exporting instability and the Kurdish conflict into its own body politics. In short, it must resolve to deal with the Kurdish issue and ideological reform in Turkey in some manner, either as part of the accession reform process or as a pressing international issue which challenges its geopolitical and strategic interests *per se*.

It is for this reason that the KHRP treats aspects of the European Commission's 2004 Report and Recommendations to the European Council with a degree of scepticism. Although the KHRP agrees with much of the Commission's analysis on many technical human rights issues and likewise congratulates the Turkish Government for the adoption of its reform packages (a fuller analysis of the content of the report is made in the attached Background Paper), it notes with profound regret, that the European Commission hardly refers to the political dimension of Kurdish conflict at all, save only in the context of its effect on various piecemeal legal reforms. In fact there is a detectable weariness on the part of the Commission to refer to Kurds or the conflict. Phrases such as "the situation in the Southeast" are used instead. Instead of dealing head on with the issue of ideology it refers obliquely to "rapidly evolving mentalities" without telling us what this refers to or means. Why is it, for example, that the 2004 Report is completely silent on the central relevance of the Kurdish conflict when in its own 1998 Report the European Commission concluded that "a civil and non-military solution must be found to the situation in South-east Turkey, particularly since many of the violations of civil

and political rights observed in the country are connected in one way or another with this issue.” Although the 2004 Report did refer to the need for “the normalisation of the situation in the Southeast” and a strategy for “the establishment of conditions for the full enjoyment of rights and freedoms by Kurds” nothing more concrete was said as to how those conditions could be established. Given that the European Commission’s task is not to take the political decision concerning accession but to simply give the European Council “an objective assessment” of the true state of development in Turkey in respect of its compliance with the Community *acquis* and the Copenhagen criteria, the KHRP is concerned at the extent of the Commission’s present reticence to even refer to a people and a conflict that has engulfed and defined Turkey’s political history for the better part of the last quarter of the 20th Century. Surely more has to be done if political stability is to be ensured?

What are the possible reasons that can account for this marked reticence? Is it because the Commission shares the fear of many of Europe’s elected leaders about a Turkish backlash if the Kurdish issue is raised directly or is its omission in the Report explicable on the basis that the Commission does not view the Kurdish issue as either central to Turkey’s democratic deficit or the EU accession process? The KHRP believes that both the European Council and the people of Europe deserve to be told what the position of the Commission is on this issue. Or is it the case that the Commission has privately recognised the centrality of the Kurdish and ethnic nationality issue to the issue of democratic reform but has chosen not to tackle it head on? Has it decided instead to continue to merely insist on incremental legal reform in the hope that the totality of the reform process will gradually and irreversibly change the political culture in Turkey? If this is the case then again it should say so for this disposition has significant implications for how the European Council and supporters of Kurdish rights should approach any subsequent accession process. In the view of the KHRP, the Commission is under a clear duty to objectively assess and elucidate all the relevant and material issues which are central to the accession reform process. The Commission should set out squarely and fairly why it believes that Turkey’s political and ideological problems, including the Kurdish question, can be solved merely by piecemeal legal, judicial and legislative reform, if that is indeed what it believes. For its part, the KHRP believes that Turkey will only become a stable pluralist democracy capable of entering Europe if it confronts its past and its outdated anti democratic nationalist ideology. Furthermore, it believes that long term political stability and peace can only be achieved if some form of democratic platform is created which allows all segments of Turkish and Kurdish society a chance to debate and influence the character and nature of a reformed Turkish State that is finally at peace with itself and its people.

The Challenge to the People of Europe

What then is to be done! Given the above historical context, the KHRP recommends that this Conference adopts the following initial position in respect of the Turkish-EU Accession Process and recommends that the following action be taken by all those who support the right of Kurds to exercise their civil and political rights as guaranteed under the European Convention of Human Rights, which must include the right to freely participate in the ensuing democratic debate about the future of their homeland:

The Basis of a Conference Resolution

- (1) The Conference should express its conditional support for the Turkish Government's recent reform packages but urge further ratification and full and unconditional compliance with international instruments concerning minority and human rights and other relevant rights guaranteed under international law;
- (2) The Conference should declare its broad support of the Commission's recommendation to the European Council that it should grant Turkey candidate status to attempt to accede to the European Union over the course of the next few years;
- (3) The Conference should also express conditional support for the three pillar approach of the European Commission to any future accession process provided that approach includes within the relevant pillars the development of concrete proposals concerning the domestic recognition and respect for Kurdish rights as provided for under international law. This must include a constitutional resettlement in Turkey in which the existence and rights of the Kurds is recognised within any new Turkish Constitution;
- (4) The Conference should call upon the European Commission to fully and publicly clarify its position over the issue over ideological reform and the resolution of the Kurdish issue. In particular, the European Commission should be asked whether it stands by its 1998 conclusion that "a civil

and non-military solution must be found to the situation in South-east Turkey, particularly since many of the violations of civil and political rights observed in the country are connected in one way or another with this issue.”

- (5) Irrespective of such clarification, the Conference should demand that the Commission endeavour to use its good offices to actively develop a democratic platform whereby the constituent elements of Turkey, including the Kurdish people, can freely enter into dialogue and debate with the Government over possible reform to the Constitution and an end to ethnic hostilities;
- (6) The Conference should set up a standing European Civil Commission on Turkish EU Accession consisting of European, Turkish and Kurdish elected politicians, NGO's, intellectuals, human rights activists whose task would be to monitor and conduct regular audits of the European Commission's performance in ensuring Turkey's compliance with the accession criteria across the board. This should specifically include a Council of Europe monitoring unit to track whether Turkey has complied with judgments of the European Court of Human Rights and ratified relevant outstanding Council of Europe Conventions;
- (7) The Conference should recommend that the newly constituted European Civic Commission set up a select advisory committee whose task would be to identify concrete constitutional and legislative measures aimed at dismantling out-dated ideological provisions and practices within Turkey which hinder the drive for democratic reform. These measures would then be submitted to the European Commission for consideration. Chief among these measures should be the constitutional recognition by Turkey of the existence of the Kurdish people within Turkey and ratification of the Council of Europe Convention on the Protection of Minorities. A similar committee with a specific remit regarding resolution of the Kurdish conflict should also be established to help foster a democratic platform for dialogue;

- (8) The Conference should also call upon all political parties and individuals who represent the Kurds in the Region to issue a declaration in relation to their position in respect of the EU accession decision and the initiatives proposed by this Conference. In particular, the Conference should call upon all parties engaged in the Kurdish conflict whether in Turkey or Northern Iraq to cease military hostilities and commit themselves to non violent forms of conflict resolution, so as to help the Commission foster and establish the beginning of a democratic platform for dialogue between all the constituent parts of, and peoples of, Turkey and where relevant, Northern Iraq.

Mark Muller

Kerim Yildiz

Written and presented on behalf of the KHRP for the purpose of engendering discussion at the conference. A more detailed analysis of the EU's position on Turkish accession, putting forward the position of the conference organisers, follows in the Background Paper.

THE EU, TURKEY AND THE KURDS: A BACKGROUND PAPER

Introduction

This conference has been convened by the Kurdish Human Rights Project, Medico International and the Rafto Foundation in order to exchange ideas and formulate a constructive and coherent response to Turkey's impending commencement of accession negotiations with the European Union.

17th December will be a date of historic importance for the Kurds and Turks. Whatever the exact decision reached by EU leaders on the future path of Turkey's accession bid, there can be no doubt that Turkey's future and the future of the Kurdish people will be intractably tied up in Europe. As such, we cannot afford to ignore events unfolding in Brussels.

Many Kurds are supportive of Turkey's bid to join the EU, and it is our argument that on balance, accession is ultimately desirable. EU membership and the accession process itself impose important checks and balances on the behaviour of the Turkish State, as well as stimulating debate on human rights, democracy and the rule of law, and pressing forward the reform process. In particular, accession offers the Kurds concrete legal and political opportunities to protect and promote their rights. Already, despite well-founded reservations over Turkey's fulfilment of key human rights criteria, it is undeniable that the prospect of accession has triggered rapid and far-reaching legislative reforms since 2002.

However, the existence of substantial gaps in the reform process itself, the limitations on Turkey's implementation of reform on the ground and the marked failure to address the Kurdish issue mean that accession cannot legitimately go ahead for several years. There are significant question marks over whether even the Copenhagen Criteria for the commencement of formal accession negotiations have so far been fulfilled. The recently published European Commission Report on Turkey's progress towards accession presents a considerably sanitised version of the current human rights situation in Turkey, an issue which is addressed at some length in this paper. Premature accession would bestow undue legitimacy on the Turkish governing regime as international human rights standards continued to be violated, and would discredit the EU's ostensible commitment

to human rights.

We are committed to the principle that Turkey be allowed to accede to the EU only when she has fulfilled all the necessary conditions, including in the fields of human rights and peace and security. It is essential that the situation in Turkey is closely monitored, and that political imperatives and the dictates of international security strategies are not permitted to detract from the importance of a genuine realisation of international human rights standards and the achievement of a lasting solution to the Kurdish issue. It is the responsibility of human rights organisations and civil society representatives to ensure that this is so, and we must not shy away from adopting a critical approach to EU decision-making.

The accession process, with its attendant stipulations in the fields of minority and human rights, presents an unprecedented opportunity to mainstream Kurdish concerns and bring the Kurdish issue to the fore of political debate in Brussels and beyond. Voices advocating the placing of security and justice at the centre of accession negotiations must be heard.

Turkey's Route to Accession

Turkey applied for associate membership of the EEC in 1957, and entered into an Association Agreement in 1963 which offered the future possibility of full membership. For decades, though, economic flux and internal strife militated against accession. An application to become a full member was turned down in 1987, a time when the conflict in the Kurdish regions of Turkey was gaining momentum. At length, the relaxation in violence which occurred in the late 1990s, combined with the 1993 decision of the Copenhagen European Council that the 'associated countries' would be offered the chance of membership,⁵¹ set the groundwork for Turkey's progression to candidature in 1999.⁵²

Following the decision to grant candidature, the European Commission devised Turkey's Accession Partnership⁵³ detailing how she would meet the Copenhagen Criteria, minimum standards which must be fulfilled before formal accession negotiations can commence. The document was revised during 2002, and in the same year the European Council agreed that accession negotiations would open "*without delay*" if, following a Commission report on Turkey's fulfilment of the Copenhagen Criteria and a subsequent recommendation by the Commission on the appropriateness of opening negotiations, EU leaders decided that Turkey met the required standards.⁵⁴ October 2004 saw the

issuing of the report and recommendation by the Commission, and we await the decision of the EU leaders on December 17th.

Background

Turkey's accession bid is progressing against a complex backdrop of issues relating to European politics, international security and economic affairs.

On the one hand Turkey's forthcoming accession is strongly welcomed in some parts, including by Britain and the US, as potentially creating a 'bridge' between Europe and the wider Muslim World. In today's climate of alienation, such a move has the potential to endow the EU with a strategic reach into the heart of the Middle East, and to establish an example of a progressive, secular state with a majority Muslim population within the European fold. It is further anticipated that membership could finally secure a lasting resolution of the conflict in Cyprus.

At the same time, the prospect of Turkish membership has met a lukewarm reception within parts of the EU, including France and Germany, and hopes have been expressed for a temporary postponement of the commencement of accession negotiations in December. This is in part attributable to concerns that Turkey's size and underdevelopment will potentially generate strain on EU budgets. Moreover, the presence of a large, poor, and overwhelmingly Muslim State within the borders of Europe is generating substantial disquiet. The dictates of electoral politics within the EU suggest that European governments may move to allay public fears that Turkish membership would alter the cultural makeup and geographic reach of the EU, and 'flood' it with immigrant labour. Turkey's admission would stretch the borders of the EU to Iraq, Iran and Syria.

However, probably the most significant impediment to accession, at least on paper, is the continued criticism of Turkey's human rights record. For years, Turkey has lagged behind Europe in meeting even the most basic human rights standards, while democracy and the rule of law have been slow to take hold. Cases brought by the Kurdish Human Rights Project to the European Court of Human Rights against Turkey have established unequivocally and as a matter of public record that the most severe abuses of human rights in the Council of Europe are taking place in Turkey.

It is hoped within the leadership of the EU that the process of entry negotiation will provide clear incentives for further reform, and it is apparent that Turkey's course towards accession has so far had a 'civilising' influence on government behaviour. Nevertheless,

although many Kurds are supportive of the accession process on this basis, there remain concerns that the desire to bring Turkey into the European fold may overwhelm objective analysis of whether or not Turkey meets the required standards. As such, the accession process may be accelerated at the expense of a genuine commitment to human rights and the achievement of an enduring solution to the Kurdish issue.

The Kurds and Accession

The Kurds in Turkey comprise around 15 million of Turkey's population of 63 million, potentially making up over 3% of the inhabitants of the European Union and thus representing a significant population group. Kurds are, on the whole, supportive of Turkey entering the EU. For them, accession presents the possibility of an end to decades of repression and abuse, and offers an unprecedented chance to ensure that their identity is acknowledged and respected. It should also open doors to enhanced dialogue on the resolution of ongoing armed conflict.

It is currently anticipated that the process of accession negotiations will be drawn out, with predictions that full membership will not occur until 2019.⁵⁵ During this period, Turkey will be obliged to address the many outstanding concerns over human rights and the protection of minorities. Turkey's accession, and her allocation of pre-accession funding, will be conditional upon Turkey moving towards the *acquis* of community law, and the Commission is under a duty to act if she does not.

Further, the EU has undertaken to continue to closely monitor and review political reforms in order to ensure their sustainability during the negotiation process, and to recommend suspension of negotiations in case of a serious and persistent breach of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law.⁵⁶ Prime Minister Erdogan has argued that suspension of negotiations would show a lack of respect for Turkey's democratisation process and conflict with the EU's own principles,⁵⁷ and certainly the provision is unusual, but it is also very much a necessary condition to check any slowing or reversal in the reform process. The Commission further recommends that existing legal obligations in line with the *acquis* must be fulfilled before the opening of negotiations on related chapters can occur, and that long transition periods may be necessary. Thus Turkey's accession negotiations are currently set to be characterised by a gradualist approach, with ample opportunity to submit to review procedures and ensure that the situation of the Kurds is adequately addressed. Whether or not the accession process will be unduly accelerated remains to be seen.

Accession negotiations will also provide unprecedented political space to press for human rights and the rule of law, and to draw attention to the plight of the Kurds. Already, the course of accession candidature has directed some attention towards the Kurdish situation in Turkey; during a fact-finding tour preliminary to the Commission's October report, EU Enlargement Commissioner Guenter Verheugen visited Diyarbakir and stated that Turkey must do more to improve the rights of the Kurdish minority.⁵⁸ The Commission has further expressed a commitment to strengthening political and cultural dialogue between Turkey and the EU under the third pillar, stressing that civil society will play the most important role in any such dialogue.⁵⁹ Dialogue and debate engaged in by NGOs and civil society actors can provide an important platform for the exchange of ideas, and assist Turkey in devising and implementing reform.

The prospect of accession has already demonstrated itself to be an effective catalyst for transformation in Turkey. In December 1999 Turkey initiated a process of constitutional and legislative reform, which has received greater impetus from November 2002 with the election of the current AKP government. Important reforms have taken place in combating torture, lessening the role of the military in government, reducing checks on freedom of expression and association, and improving the cultural rights of the Kurds. The groundwork for these reforms was laid by years of courageous efforts by Kurds and human rights activists in Turkey, defying anti-democratic legislation and braving harassment and torture to uphold fundamental rights. Their contribution to increased respect for human and minority rights in Turkey today must be recognised. Evidently, Turkey has an enormous amount of work still to do, but she deserves credit for the growing consensus in Turkey in favour of liberal democracy and the strengthening of civil society.

Eventual EU membership will impose legal and political obligations upon the Turkish government's treatment of its Kurdish population. The Treaty of the European Union sets out that the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law, and that discrimination based on nationality, gender, race or ethnic origin is prohibited.⁶⁰ The Union's Charter of Fundamental Rights obliges the institutions and bodies of the Union to comply with human rights standards, and these standards must also be respected by Member States when they are implementing Union law.⁶¹ In addition, EU Directives impose direct and legally enforceable obligations on Member States to prohibit racial and other forms of discrimination, and to provide practical support to victims of discrimination.⁶²

Accession, then, doubtless heralds significant advantages for the Kurds in terms of enhanced protection of their rights. However, if considerations extraneous to the

achievement of justice and security in Turkey are allowed to hasten accession, this may undermine attempts to ensure the full realisation of human and minority rights in Turkey. Forging ahead with accession before the situation of the Kurds and other remaining human rights problems are adequately addressed would attach unwarranted legitimacy to Turkey's behaviour, and so detract from attempts to demonstrate the significance of the outstanding need to resolve the Kurdish issue.

Why do we Support Accession?

The projected improvements in the prospects of the Kurds in Turkey achieved through accession which we have detailed above illustrate why we support the accession process. Turkey has achieved far more in terms of progress towards fulfilling international standards on human rights and achieving democratisation in the past two years than over previous decades, and accession offers realistic possibilities for facilitating dialogue and reaching an end to years of armed conflict, repression and abuse for the Kurds. Quite simply, for the Kurds Turkey is much better inside than outside the EU. From the inside, Turkey can be brought under the sway of liberal democratic ideals, and transgressions of acceptable behaviour can be controlled through political influence and legal enforcement.

The Decision of the Council

On December 17th, EU leaders are set to decide upon whether or not to open formal accession negotiations with Turkey, and, if so, under what conditions negotiations should advance. Decisions on the commencement of official accession negotiations are formally based upon fulfilment of the criteria for EU membership as determined at the Copenhagen meeting of the European Council in 1993.⁶³ The political elements of the Copenhagen Criteria require that candidate countries should have achieved:

“The stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities”

At the Helsinki European Council of 1999, it was stated that Turkey was a candidate for EU membership on the basis of the same criteria as other candidates.⁶⁴

Since the establishment of the Accession Partnership, the European Commission has been submitting annual reports to the Council on Turkey's progress towards fulfilment

of the Copenhagen Criteria. The most recent report,⁶⁵ submitted on 6 October, formed the basis of a Commission recommendation on the desirability of opening accession talks. This recommendation will inform the decision to be taken on 17 December by the Council of Ministers as to whether to begin negotiations on entry.

The recommendation issued by the Commission⁶⁶ may be described as a 'qualified yes'. It was agreed by the Commissioners that negotiations could last until as late as 2019, and no date was set for the start of the 10 to 15 year negotiating process. As mentioned above, talks could be suspended by a qualified majority in the Council of Ministers in the event that Turkey strayed substantially from EU political and economic standards, and ultimately no guarantee of EU entry is made.

Opening Accession Negotiations

KHRP, Medico International and the Rafto Foundation, along with other human rights groups, has very serious concerns that while Turkey's steps towards meeting the European *acquis* are much to be welcomed, her progress is by no means sufficient to warrant the beginning of accession negotiations.

There can be no doubt that Turkey has made vast strides towards meeting international standards on human rights, democracy and the rule of law. The current government has staked much on achieving EU accession, including substantially reducing the traditional influence of the military in government and refusing to pander to the religious right on issues such as education. The 'carrot' of EU membership has encouraged a dynamic series of reforms, marked by consistent improvements in human rights generally, and in increased respect for the rights of the Kurds. Measures have been taken to address the endemic problem of torture, halting progress has been made towards freedom of expression and association, several questionable provisions in Turkey's penal code have been repealed, and groundbreaking measures have permitted limited state broadcasting in Kurdish and the opening of the first Kurdish language schools.

In addition, not all sectors of Turkey's political establishment are supportive of EU entry, or of the reforms implemented in the course of the Accession Partnership which substantially reduce the power of the unaccountable state. Thus a decision to delay accession negotiations in December could prove a regressive step, jeopardising the current regime's reform programme and the progress in human rights made to date.

However, it is argued that none of these factors can outweigh the importance of assessing

whether or not Turkey has genuinely fulfilled the political elements of the Copenhagen Criteria. It is well documented that although there has been resistance to Turkey's accession in some quarters, Turkey's strategic importance to the EU has meant that the Union has not, as promised, applied the same standards to Turkey as it did to the other accession states. Instead, it may have 'lowered the bar'.

The Commission Report

The Commission Report⁶⁷ has provided the basis for the Commission's recommendation that the EU commence accession negotiations with Turkey. Although the Report is by no means wholly positive, criticising both substantive gaps in Turkey's reform programme and failures to adequately implement new legislation, it is argued that the report as a whole is an inadequate representation of the reality of the situation in Turkey.

It fails in its wording and emphasis to reflect the depth and severity of the continued human rights violations in Turkey, at times glossing over significant shortcomings in the reform process and presenting ongoing violations as mere qualifications to generally encouraging progress. In a number of sections a positive 'spin' is put on Turkey's failings, even where serious and ongoing abuses of key human rights are detailed at length, sometimes by emphasising Turkey's efforts at compliance rather than the results she has achieved. A constructive approach is certainly desirable, but not to the extent of 'toning down' the seriousness of the current continued violations. Other important factors central to any assessment of the situation in Turkey are substantially overlooked, notably the Kurdish issue.

Overall, the evidence presented in the Report of continued violations, as well as its omissions, are very difficult to reconcile with the largely positive picture painted and the subsequent recommendation of the Commission that the political aspects of the Copenhagen Criteria are fulfilled.

Torture

The Commission's assessment of Turkey's success in her professed 'zero tolerance' approach to torture is indicative.

Detailed consideration is given in the report to the range of progressive legislative and administrative measures, undoubtedly to be welcomed, which Turkey has enacted in her

endeavour to eradicate torture. This is qualified with the statement that

“Turkey still needs to pursue vigorously its efforts to combat torture and other forms of ill-treatment by law enforcement officials.”

A number of low-key references are later made to the fact that the obligation to inform relatives of the whereabouts of detainees is still *“not always respected”*, that security forces continue to be present during medical inspections, and that *“despite reforms prosecutors are not always promptly and adequately conducting investigations against public officials accused of torture”*. In view of the fact that incommunicado detention, a lack of substantiating medical evidence and impunity of officials carrying out torture are key contributory factors to the continued occurrence of torture, the persistence of these practices is perhaps underplayed.

Much attention is given in the Report to whether or not torture can be defined as ‘systematic’ in Turkey, and the Commission conducted a fact-finding mission in September 2004 to decide on this point. It is concluded that the Turkish Government is *“seriously pursuing”* its policy of zero tolerance, and that torture is no longer systematic. However, a number of NGOs strongly dispute this claim. The IHD, a KHRP partner human rights NGO in Turkey, has alleged that since prosecutors, judges, forensic medical experts and the police do not pursue torture cases, torturers were being protected, and torture is therefore in fact systematic.

In many senses, given the seriousness of torture as a violation of human rights, the debate over whether torture is ‘systematic’ can be regarded as one of semantics. It is noted in the Commission Report that although torture methods such as suspension by the arms and electric shocks are now very rare, less detectable torture methods continue to occur, and that the number of complaints of torture outside formal detention centres has *increased* substantially, suggesting that the problem has been displaced rather than resolved. Further, the report identifies that *“numerous”* cases of ill treatment including torture continue to occur.

In view of the fact that torture is defined by the international community as one of the most severe violations of human rights and subject to an absolute prohibition under international law,⁶⁸ the fact that reported cases of torture and ill-treatment remain *“numerous”* suggests that torture levels in Turkey are unacceptable whether or not torture is described as ‘systematic’. It is also difficult to see that the Turkish State’s failure to combat the *“numerous”* cases of torture and ill-treatment taking place is consistent with the *“stability of institutions guaranteeing ... human rights”*, as required under the

Copenhagen Criteria for the commencement of formal accession negotiations. For the EU to countenance opening accession negotiations with a country in which torture continues to reach these levels, when it has itself proclaimed a prohibition on torture in the Charter of Fundamental Rights,⁶⁹ is questionable to say the least.

Freedom of Expression and Association

Here again, it is doubtful whether the positive approach adopted by the Commission with regard to Turkey's progress is borne out by the reality.

It is noted in the Report that although there has been a decrease in cases filed under specific articles, as well as a number of other positive developments, non-violent opinion is still being prosecuted and punished in Turkey. Specifically, sentencing of journalists, writers and publishers continues for reasons that contravene the standards of the ECHR, and the amended articles of the Penal Code and the Anti-Terror Law are still used to prosecute and convict people exercising freedom of expression, as are other provisions pre-dating the amended legislation. Allusion is also made to the regularity with which cases are filed against members of the press, which is held to be "*a significant deterrent*" to freedom of expression through the media.

Despite these extensive qualifications, the Report's section on freedom of expression opens with the statement that

"the situation of people sentenced for the non-violent expression of opinion is now being addressed."

With regard to freedom of association, much of the new legislation detailed in the Report either remains hypothetical as it is not yet in force, or is yet to be implemented. In reality, a host of legislative and administrative provisions continue to place substantial limitations on the capacity of associations to operate openly and effectively, to hold public meetings without state intimidation and to liaise with overseas organisations. The Report further refers to over 98 court cases or investigations launched against the IHD between October 2003 and August 2004 as indicative of substantial continued judicial harassment imposed on human rights defenders. It is noted that:

"civil society, in particular human rights defenders, continues to encounter significant restrictions in practice."

Despite these observations, which are rightly listed in the Report and are undeniably indicative of immense problems in the fulfilment of international standards on the rights to freedom of expression and association, the European Commission has recommended on the basis of its Report that:

“Although some practical restrictions still exist, the scope of fundamental freedoms enjoyed by Turkish citizens, such as freedom of expression and assembly, has been substantially extended. Civil society has grown stronger”.

As such, it is recommended that the Copenhagen Criteria are fulfilled.

It is submitted that the evidence of serious and persistent violations of the rights to freedom of expression and association detailed in the Commission Report denote rather more than the continuation of “*some practical restrictions*” in a broader context of encouraging progress.

Political Representation

The inability of the minorities, including the Kurds, to achieve adequate political representation in Turkey is a substantial impediment to the realisation of democracy, and is inadequately addressed in the Commission Report.

Cursory reference is made to the barrier to minorities achieving representation in parliament due to the requirement that parties attain a 10% threshold in elections, which effectively serves to preclude minority political parties with strong regional support from participating in national government. It was reported elsewhere that the political party DEHAP gained more than 45 per cent of the vote in the five largely Kurdish provinces in the November 2003 elections, but received no Parliamentary seats due to receiving only around 6 per cent of the total national vote.⁷⁰ Brief mention is also made in the Commission Report of prosecutions pursued during the March 2004 elections for speaking Kurdish during political campaigning.

These factors deserve fuller analysis. The exclusion of pro-Kurdish political parties from parliament and restrictions on electioneering in Kurdish fundamentally inhibit the realisation of genuine, participatory democracy for the Kurds. They are effectively prevented from participating in public affairs, and their capacity to be represented politically is significantly undermined leaving them unable to protect their rights and interests.

Cultural and Linguistic Rights

Turkey was conceived along nationalist lines as a unitary, secular state, and has long repressed minority cultural and linguistic rights. Moves to realise international standards in this area are evident, but important issues remain to be addressed and are not granted sufficient consideration in the Commission Report.

Language is an essential component of cultural identity, and the Kurdish language has been progressively undermined for decades. It is certainly true as the Commission Report states that there has been important progress since 1999, and Turkey's Seventh Harmonisation Package allowed the opening of the first language school teaching in Kurdish. The Commission also refers to the restrictions remaining on teaching in Kurdish, and these are of considerable importance; regulations provide that only pupils attending regular school may participate in classes, courses will only last for 10 weeks and no more than 18 hours per week, and lessons must not contradict the 'indivisible unity of the state with its nation and country'.

However, despite the significance of Kurdish language teaching to sustaining Kurdish culture and identity, reference is not made in the Report to Article 42 of the Constitution which maintains that "*no language other than Turkish shall be taught as a mother tongue to Turkish citizens*". As such, there is no provision for the teaching of Kurdish in state schools, so precluding children from receiving education in their mother tongue.

A further linguistic issue of significant importance to the protection of the human rights of the Kurds, that of continued bureaucratic restrictions placed in the way of parents wishing to give their children Kurdish names, fails to find reference at all in the Commission Report. Apparent concessions were made in the Sixth Harmonisation Package, which allowed parents to give their children Kurdish names. However, a circular of 23 May 2002 remaining in force clarifies that a ban exists on the use of names including the letters "q", "w", and "x" (common letters in the Kurdish language) due to the letters not existing in the Turkish alphabet. There are reports of authorities refusing to register Kurdish names even without these letters and of children being assigned alternative names since the reform was passed. There is also evidence that adults making applications to change their names are drawing the attention of security forces and there have been individual reports of harassment.⁷¹

Children

The Commission Report considers children's rights principally from the perspective of the failure to adequately combat child labour, though brief mention is also made of low school attendance in the Southeast.

In fact, there are multiple factors impeding the full realisation of children's rights in Turkey, and particularly in the Southeast.⁷² In the first place, children suffer widespread neglect and physical and sexual abuse. The Committee on the Rights of the Child has noted that such offences are infrequently reported, and that where reports are made the police rarely intervene.⁷³ The Committee also expressed concern over the apparent lack of resources to deal with domestic violence and abuse, including child sexual abuse. Girls continue to be subject to early and non-consensual or forced marriage; a study in the Southeast found that 36.9% of women were married before the age of 15, and that the vast majority of these marriages were arranged.⁷⁴ These issues are barely addressed in the Report.

Children also suffer compound social and economic marginalisation, and those subject to displacement generated by the conflict in the Southeast are especially vulnerable to inadequate shelter, poor nutrition, disease, and limitations on access to health and education.⁷⁵ Street children, to whom a succinct reference is made in the Commission Report, often live an extremely precarious existence and receive very little assistance from the State.⁷⁶

The Kurds

Perhaps the most glaring omission from the Commission Report is the failure to address the Kurdish issue in any kind of substantive and coherent manner.

The Commission Report essentially appears to adopt a piecemeal approach to the situation in the Kurdish Southeast which consists of dealing with the occasional Kurdish dimensions of a series of discrete human rights violations. Thus where the Commission considers freedom of expression, the lifting of restrictions on broadcasting in Kurdish is examined at some length, and in the section on cultural rights the opening of the first language schools is detailed.

However, the Report's section on minority rights barely refers to the Kurds, and makes

no attempt to analyse their situation as a group or people within Turkey. Very little is made of the absence of the Kurds from the state definition of a minority contained in the Turkish Constitution, despite the fact that the Kurds make up nearly a quarter of Turkey's population, and this is an issue of substantial importance for the political and legal status of the Kurds. Furthermore, this and Turkey's failure to sign the European Framework Convention for the Protection of National Minorities or to adhere to any other minority protection treaty is not placed in the context of her deep rooted antipathy towards her Kurdish population.

Whether this is through deference to those who do not believe the Kurds should be defined as a minority is unclear, but the part of the Report referring to the situation in the Southeast does little more to set out a comprehensive analysis of the complex and deep-rooted problems there. The circumstances of the internally displaced are rightly referred to as "*critical*", and reference is made to legislative changes established to address this and related issues, as well as to continued barriers to return. The issue is considered, though, simply at face value as a failure of the Turkish Government to adequately deal with displacement.

The Kurdish issue is not, then, ignored in the Report, but is treated as if resolution were possible through responding to the Kurdish dimension of an assortment of unrelated human rights abuses which should not be specifically differentiated from Turkey's overall record on compliance with the Copenhagen Criteria. The only reference to the problems faced by the Kurds as a comprehensive issue is where the Report identifies that

"The normalisation of the situation in the Southeast should be pursued through the return of displaced persons, a strategy for socio-economic development and the establishment of conditions for the full enjoyment of rights and freedoms by the Kurds."

It is later asserted in the Commission Recommendation that "*the process of normalisation has begun in the Southeast*".

Beyond this, there is no consideration afforded to the political context within which restriction of the human rights of the Kurds occurs, and no analysis of the impact of the conflict in the Southeast. The report never appears to intimate that state sponsored impediments to the return of hundreds of thousands of Kurds to their homes or continued violations of their human rights has any kind of ethnic dimension. The grave need for constructive political dialogue between the parties, or for a politically negotiated solution to the Kurdish issue is not mentioned.

It must be asked, then, whether the Commission's approach constitutes an adequate response to the Kurdish issue, and can be regarded as an appropriate departure point for the commencement of accession negotiations.

The Kurdish inhabitants of Southeast Turkey have been subject to repression and attempts to crush their identity for decades. The Turkish state has long been predicated on the concept of an overarching unified national identity, an ideology that stretches back to the days of Atatürk. The imposition of cultural homogeneity has been seen as vital to securing Turkey's future as a national republic, and the expression of alternative identities is not traditionally tolerated. The Kurds, as by far the largest non-Turkish ethnic group in Turkey, have endured a particularly brutal and long-standing policy of subjugation and marginalisation.

The Turkish State's behaviour towards the Kurds is, then, rooted in hostility towards Kurdish identity, and cannot be separated from their status as Kurds. As such, human rights violations which bear no overt relation to Kurdish cultural or other rights will frequently have a Kurdish element. Torture, for example, remains most prevalent in the Kurdish-dominated Southeast, but there is no acknowledgement in the report that Kurds may be particularly vulnerable to torture.

Furthermore, it is difficult to conceive that the complex and enduring difficulties faced by the Kurds in Turkey can be resolved by occasional reference to individual human rights violations. Despite some improvements since 1999, Kurds have been subject to continual harassment and coercion through spurious judicial decisions, arbitrary detention and torture, their rights to free expression and association have been violated where they have sought to assert their Kurdish identity and they have suffered the effects of protracted armed conflict between the PKK and the Turkish State and subsequent displacement.

The Commission's approach fails to grasp the complexities of the compound array of interlinked human rights violations and injustices taking place in the Kurdish regions, or to address the need for a negotiated political solution to the problem. It also precludes encouraging Turkey to address the situation of the Kurds as a cohesive issue. Such an approach is unlikely to result in genuine and lasting resolution for the Kurds, and it is hard to avoid the conclusion that the Commission is skirting around this extremely important yet highly sensitive issue for fear of offending the Turkish Government. Certainly, there has been a marked failure by the Commission to consult adequately with Kurdish groups and representatives, and to take into account Kurdish views.

The implications of the Commission's failure to prescribe an acceptable solution to the Kurdish issue as a precondition for the commencement of accession negotiations are potentially serious. Although there have undeniably been improvements in Turkey's treatment of her Kurdish population in recent years, it is less clear that the Turkish Government is moving towards European conceptions of minority rights. The Turkish Justice Minister reportedly said that Turkey and the EU speak "*different languages*" on minorities, and warned against engaging in a debate that would "*call into question the unity of Turkey*".⁷⁷ The idea that the expression of alternative identities is a threat to the unitary, secular state remains powerful in Turkey.

The disengagement of the Commission from the Kurdish issue is also problematic with regard to the recent resurgence of the conflict in the Southeast. The need to engage in dialogue to reach a sustainable, peaceful solution to the situation there is barely examined in the Report. The increased security threat since the end of the Kongra-Gel ceasefire in June 2004 is mentioned, although the Report assesses there generally to have been gradual improvements in security in the Southeast since 1999. Resolving conflict in the Kurdish regions is of critical importance. From 1984 the region saw over fifteen years of conflict in which abuses were widespread and more than 30,000 people, mainly Kurds, died.

What is needed is sustained and constructive dialogue on the Kurdish issue. Kurdish and Turkish representatives must sit around a negotiating table to exchange ideas and possible solutions to the situation in the Kurdish regions today. Such dialogue could act as an important step towards peace and security in the Southeast. Without debating the issues in this way, it is less feasible that a long-term, sustainable resolution will be reached. The critical situation facing the Kurds and the Turkish people is not a distant problem unrelated to European affairs; its roots are in the dissolution of the Ottoman Empire in the aftermath of the First World War, and issues such as the use of weapons exported to Turkey by Germany in unlawful acts against Kurds places the human rights situation in Turkey firmly at Europe's door. Europe has a moral and political responsibility to facilitate democratic dialogue and to assist Turkey towards a peaceful future based on full respect for the equal and fundamental rights of her Turkish and Kurdish populations.

The notion that it can be deemed appropriate to commence EU accession negotiations with Turkey before she has properly addressed the security situation in the Southeast is highly contentious. It is true that problems of armed violence are found in existing EU Member States, but these occur in the context of states predicated on democratic, consensual government, rather than where a significant proportion of the population continues to be subject to repression and state violence.

Furthermore, it is argued that stability and security, predicated on an absence of violence or armed conflict, is a touchstone of democracy. It is simply not feasible that effective, participatory democracy and a culture of respect for human rights can exist in Southeast Turkey while armed conflict continues. Moreover, the international community is no longer as tolerant of anti-democratic states as it was in the 1980s and 1990s, though oppressive treatment of the Kurdish people and the continuation of armed conflict reflect the still ingrained anti-democratic attitude of the Turkish State. The EU accession process offers possibilities for the Kurds and Turks to come together, to recognise the problem as it stands, to seek solutions and ultimately to live together in freedom and democracy. These possibilities must be realised before Turkey can be allowed to join the Union.

The Commission Report and the Accession Process

The Commission Report, then, is substantially flawed in its drawing of excessively positive inferences from Turkey's efforts to improve human rights, its overly brief or lack of reference to a number of serious human rights issues, and its failure to address comprehensively the situation of the Kurds, including the resurgence of the conflict in the Southeast.

Contrary to the recommendation of the Commission, based upon the Report, it is argued that Turkey's fulfilment of the Copenhagen Criteria is questionable, and that the defects of the report render it at least likely that considerable deference was accorded by the Commission to Turkey's sensibilities over her Kurdish population. It is also difficult to deny that factors extraneous to the realisation of human rights standards have been allowed to influence the Commission's assessment. Concerns that the accession process may be unduly accelerated and that the bar may be lowered for Turkey look to be justified.

The Commission Report is not an encouraging development for the Kurds, or for those who have suffered human rights abuses in Turkey. If this approach, based on a failure to substantially address human rights concerns and a fudging of the Kurdish issue, is to be indicative of the EU's line on accession negotiations in the future, then the projected advantages of the accession process for advancing justice and democracy in Turkey will be substantially undermined. It is of considerable importance, then, that the report is scrutinised in depth, and that concerns are raised in Brussels over the report's failings and omissions. Human rights and dialogue on the Kurdish issue must be placed at the

centre of negotiations over Turkey's entry to the EU.

It has already been stated that accession is ultimately a very positive step for Turkey and for the Kurds. However, countenancing allowing Turkey access to the EU negotiating table before the fulfilment of key human rights criteria and without significant progress towards resolving the Kurdish conflict has serious implications for the future security of Turkey's Kurdish population. It wrongly implies that Turkey's treatment of her Kurdish population is broadly compliant with international human rights standards, and weakens voices calling for much-needed political dialogue. Premature accession would place the long-term credibility of the EU at stake, jeopardising its commitment to human rights and bringing into the territory of the EU an unresolved conflict situation.

17th December and Beyond

Despite serious misgivings over Turkey's fulfilment of the Copenhagen Criteria among the human rights community, as well as reservations from some sections within EU Member States, it is virtually beyond doubt that Turkey will be given a green light, albeit with the attachment of significant qualifications, to proceed with accession negotiations on December 17th. Although she will face some opposition, powerful EU Member States as well as George W. Bush are in favour of bringing Turkey into Europe as soon as possible.

Accession negotiations themselves are likely to commence in early 2005, as recommended by the Commission, but with the proviso that a number of specific reforms are implemented beforehand. Beyond this, from the end of 2005 political reforms will be reviewed annually on the basis of a revised Accession Partnership, and as outlined earlier the Commission has undertaken to recommend suspension of negotiations where there is a "*serious and persistent breach*" of key principles including human rights.

Already, the EU and Turkey have begun preparations for pre-accession screening, the process of comparing Turkey's legislation with the body of EU law which all members must enact known as the *acquis communautaire*. From here, Turkey's position on the chapters of the *acquis* will be drawn up, and negotiations will commence to determine the terms under which Turkey will adopt, implement and enforce the *acquis*, including the granting of any transitional arrangements whereby possibilities exist for phasing in compliance with certain rules. The pace of negotiations is formally dependent on the rapidity with which Turkey progresses towards the *acquis*. The results of the negotiations are incorporated into an accession treaty to be ratified both by Turkey and by the other Member States, and it is likely that at this stage debates will occur within Member States

over the desirability of enlargement and any pertinent issues. Turkey would then become a full Member State, obliged to comply with the full range of EU legislation and rules.

It is to be hoped that the EU accession process will progress steadily and ultimately fulfil the expectations of the Kurds and others in Turkey who have suffered at the hands of the State. With constructive and sustained input from the NGO sector and civil society representatives, including monitoring developments closely, according detailed consideration to Turkey's movement towards the *acquis*, constructively criticising EU decision-making and making use of EU undertakings such as the suspension of talks in the event of a 'serious breach', accession can be made a positive force for change in Turkey. Europe must commit itself to assisting Turkey as far as possible to continue to carry out reforms, but at the same time the Turkish government must commit itself irreversibly to a path towards democracy and the rule of law. It is imperative that securing genuine fulfilment of human rights standards and a secure future for the Kurds are made pivotal to Turkey's progression towards accession, and that the decision to allow Turkey membership is based in the end on an impartial assessment of whether the necessary criteria have been fulfilled. Ongoing dialogue on the peaceful resolution of the Kurdish issue is fundamental to these requirements.

Essentially, accession is a decisively positive step, overturning years of abuse, armed violence and injustice in Turkey, but only where it occurs in the wake of a deep-rooted and sustainable culture of respect for human rights, and an lasting likelihood of peace and security in the Southeast.

Recommendations

1. Turkey should be assisted as far as possible to ensure that the accession process continues to be one of dynamic reform and improvements.
2. The Commission Report and recommendation on Turkey's progress towards accession should be closely scrutinised in consideration of whether the political elements of the Copenhagen Criteria have truly been fulfilled, and whether the Report and recommendation constitute a sound basis from which to proceed with accession negotiations.
3. Turkey should continue to make steady progress towards the *acquis*, and careful, thorough and objective analysis must be ongoing with regard to her fulfilment of the necessary political and human rights elements in this period.

A lack of progress or regressive measures should result in the suspension of negotiations, and Turkey must not be allowed to accede to the EU before she has demonstrated a genuine and durable respect for human rights.

4. The Kurdish issue must be recognised and comprehensively addressed before accession can proceed, both in terms of the continued lack of respect for the human rights of the Kurds and the need to secure a lasting solution to the armed conflict. Ongoing dialogue between Kurdish and Turkish representatives will be necessary to fulfil this end.
5. Turkey should be compelled to afford constitutional recognition to the Kurds, and to demonstrate her commitment to respect for their rights through becoming a party to the European Framework Convention for the Protection of National Minorities.
6. The Commission and other key actors within the European Union should carry out much more extensive consultations with representatives of the Kurdish community than have occurred to date.
7. The political space created by the accession process should be utilised to develop discussion and information exchange on pertinent issues in Turkey, to focus attention on the plight of the Kurds, and to adopt a constructively critical approach to EU decision-making. Human Rights and the situation of the Kurds should be placed at the centre of accession negotiations.
8. The legitimate representatives of the Kurds and Turkey should be brought together in a conference to openly discuss the Kurdish issue. Such a conference could develop a democratic platform for discussion and consultation on the Kurdish problem, building awareness of the issue and generating ideas for possible solutions.

APPENDIX 4

Human Rights Association Of Turkey, Mazlum-der, Kesik And Hrft

Report Of Research And Investigation On

- 1) The Alleged Extrajudicial Killing Of Şiyar Perinçek In Adana &**
 - 2) That Arrested Individuals Were Subjected To Torture And Ill-treatment Under Custody**
- On 28 May 2004**

On May 28 2004, Şiyar Perinçek was killed by security officers from the Adana Directorate of Security. He was killed in front of the Abdurrahim Gizer İlköğretim Okulu (Turan Cemal Beriker Avenue), a school, between 14:30-15:00 pm. After the incident, M. Gazi Aydın, M. Nurettin Başçı, Mehmet Kahvecioğlu and M. Veli Karadeniz, were detained. Allegedly, M. Gazi Aydın, M. Nurettin Başçı, Mehmet Kahvecioğlu and M. Veli Karadeniz were subjected to torture and ill-treatment during the detention period. Since the incident occurred in a plaza across the street from the Adana Branch Office of the HRA, the executive members of the branch also applied to the HRA Headquarters immediately after the incident.

COMPOSITION OF THE DELEGATION

After the application to the HRA Headquarters, a delegation was formed to investigate the allegations concerning the extrajudicial killing, torture, and ill-treatment; to interview and meet with victims, eye-witnesses, and authorities; to inform the public; to make available the results of research and investigation ; to make a contribution to protecting the right to life ensured by various international and national legislation; to prevent torture; and to demand that the perpetrators of the relevant violations are found and prosecuted.

The delegation was composed of following people:

Lawyer Reyhan Yalçındağ, Vice President of the HRA; Lawyer Şükran Buldu, member of the HRA General Executive Board and representative of the Middle Anatolia; Lawyer Selahattin Demirtaş, Chairperson of Diyarbakır Branch of the HRA and member of the Executive Board; Lawyer Şeyhmus Ülek, Vice President of Mazlum-Der; Mr. Ali Rıza Ekinci, President of the DİVES (A Trade Union linked to KESK); Lawyer Mustafa Çinkılıç, Representative of the HRFT Adana Branch and member of HRFT Executive Board; Dr. Mehmet Antmen, physician of Adana Branch of HRFT and Mr. Sabri Kahraman, member of the Executive Board of Adana Branch of the HRA.

INITIATIVES OF THE DELEGATION

The Human Rights Association gave written information to the Adana Governorship, the Adana Chief of Public Prosecutor Office, and Public Prosecutor Office of Adana State Security Court, the Chief Physician of Adana State Hospital, the Adana Forensic Medical Institution, and the Adana Directorate of Security and informed these individuals and organizations that the HRA aimed to carry out an investigation into the extrajudicial execution and torture allegations. In preparation for the research, relevant appointments were made.

On 9 June 2004, the delegation interviewed the executive board members of the Adana Branch who had witnessed the events. They also interviewed some eyewitnesses. The delegation visited Mr. Nuri Yiğit, Chief Public Prosecutor of the Adana State Security Court, Mr. Kasım Yağmur, the Prosecutor of the Adana State Security Court and Mr. Tevfik LOĞOĞLU, the public prosecutor carrying out the preliminary investigation, Mr. Mehmet TOPRAK, Head of the Human Rights Board of the Adana Governorship, Mr. Mehmet CEBE, Chief of the Adana Security Directorate, Mr. Cemal LEVENT, deputy chief of the Adana Security Directorate, Lawyer Necati ERDEM, Chairman of the Adana Bar Association, Lawyer İsmail ARISOY, Executive Member of the Bar Association, Assoc. Prof. Dr. Mehmet YAĞCI, Chief Physician of the State Hospital, Dr. Necmi ÇEKİN, head of the Forensic Medicine Institution, Op. Dr. Mehmet KOBANEL who performed the operation and Dr. Fulya KAYA, Chief of staff in 112 Emergency Service and interviewed with them. The Adana Chief Public Prosecutors Office rejected the interview request of the delegation.

On 3 June 2004 lawyer Reyhan YALÇINDAĞ, a member of the delegation, also interviewed M. Nurettin BAŞÇI and M. Gazi AYDIN, who are in a Kürkçüler F-Type Prison in Adana and took their statements regarding the allegations.

STATEMENT OF AN EYEWITNESS WHO WENT TO THE ADANA BRANCH OF THE HRA IMMEDIATELY AFTER THE INCIDENT (ON 28 MAY 2004) (NAME WITHHELD DUE TO REQUEST FOR CONFIDENTIALITY)

*“While I was sitting on a ledge in front of the place where the incident occurred on 28 May 2004 at about 15:00, I noticed a motorcycle carrying two individuals. The motorcycle was red. A person in a lead-colored civilian car following the motorcycle opened the car door and hit the motorcycle. Two individuals fell from the motorcycle. One of these began to flee. **Another individual was lying on the ground.** A tall, thin man, wearing a grey t-shirt and black denim pants, shot at the individual who was lying on the ground. He pocketed the empty cartridges. Afterwards, I realized that the man who shot the individual lying on the ground was a police officer. The police officers also arrested the other individual who had fled soon afterwards.”*

INTERVIEWS WITH OTHER EYEWITNESSES

The HRA's delegation interviewed two eyewitnesses on 9 June 2004. The eyewitnesses requested confidentiality.

The first eyewitness' statement is as follows:

“When the incident occurred, I was passing a stationer and a Turkish Airlines office that is next to the Abdurrahim Gizer İlköğretim Okulu (a primary school). Suddenly, I saw a man who was trying to escape; he was running towards me. Police officers were following him. When I arrived at the florist, I saw that other plain clothes police officers were running towards him. While the individual was running towards me, I heard the sound of a gun. At first, I thought the man had been shot. I remember that I was surprised since he did not fall after I had heard the sound of a gun. He put his hands on his head and yielded to the police officers, when the police officers arrested him. As soon as he was arrested, he was laid to the ground and searched. During the search, nothing was found. Afterwards I realized that the sound I heard was the sound of the gun that shot the other individual.”

A second eyewitness made the following statement:

“I was crossing the Turan Cemal Beriker Avenue, when the incident happened. I saw a young man lying on the sidewalk. His back was bloody. There were many armed police officers around the young man, and one of them leaned his knees against the wounded man's shoulders, and he was holding the injured man with his hands.”

STATEMENT BY THE FOURTH EYEWITNESS INTERVIEWED BY LAWYER REYHAN YALÇINDAĞ AND LAWYER SELAHATTİN DEMİRTAŞ, MEMBERS OF THE DELEGATION, AFTER HE/SHE HAD APPLIED TO THE DİYARBAKIR BRANCH OFFICE OF THE HRA ON 11 JUNE 2004

A fourth eyewitness, who requested confidentiality for now but declared that he/she will provide information about the event during a trial, made the following declaration:

*“I and my friend ... (abovementioned first eyewitness) were crossing the street in the area also known as Türkkuşu on 28 May 2004 at about 15:00. When we arrived at the corner of the THY building, we heard the sound of guns. Firstly, we heard the sound of a gun fired two times. At that moment, I saw a man running towards us. A police officer (I can identify him if I see him) was following him. He had dark hair, a moustache, a light colored waistcoat, was about 40 years old, and stood about 1 meter 70 centimeters tall. He weighed about 80 kilograms. They opened fire against the person who was fleeing. The police officer’s hands were shivering. He opened fire without a “stop” warning. But he gave warning to stop after he had opened fire. At that time, about 2-3 police officers were running towards the man who was trying to flee. One of these police officers was about 40 years old; he was bald and 1 meter 70 centimeters tall, about 80-90 kilograms in weight, has brown hair, and a moustache. If I see him, I can identify him. **The individual who was fleeing stopped when he saw the police officers running towards him. The police officers arrested and rudely searched him. Apparently, nothing was found.** They took him to the Türkkuşu crossroads at the Turhan Cemal Beriker Avenue. After about 30 seconds, we arrived there, and we saw an injured young man lying on the ground. A police officer was holding his wounded arms and he pressed his knees against the wounded person’s shoulder. While we were around there, we did not see any ambulance coming. There was no explosive material, or gun, etc. around the wounded person. We heard the individuals saying that the police officers had picked up empty cartridges on the ground after they opened fire. I left the place of the incident soon afterwards.”*

INTERVIEWS WITH MEHMET NURETTİN BAŞCI AND MEHMET GAZİ AYDIN WHO HAD BEEN ARRESTED, BY LAWYER REYHAN YALÇINDAĞ, MEMBER OF THE DELEGATION, IN THE KÜRKÇÜLER F-TYPE PRISON

Lawyer Reyhan Yalçındağ, a member of the delegation, interviewed Mehmet Gazi Aydın and Mehmet Nurettin Başcı, who has been in the Adana Kürkçüler F-Type Prison, one by one on 3 June 2004, and she took their statements concerning the case:

In summary, **Mehmet Nurettin Başçı** made the following statement:

*“I had met the individual who was killed about one or two days before the event. He told me that he had not any place to stay, so he and I went to the son of my Uncle, Mehmet Kahvecioğlu’s house to stay a night. He had told me that his name was Mustafa. I hadn’t seen him since that night. My job is distributing cigarettes. While I was doing my job in İncirlik on 28 May 2004 at about 14.00, he saw and called me. He told me that he would go to Adana. Since I wanted to go to Adana also, I took him to my motorcycle and we set off on a trip together. **When we arrive in Adana, he was going to get off at the İnönü Parkı (a park).** After we had arrived in Adana, a lead-grey color civilian car approached us and hit the motorcycle at the Turan Cemal Beriker Avenue. I lost my balance, then I recovered myself and I kept on riding. But the car hit the motorcycle again, and then the motorcycle fell down. I and the man -- whose name was Şiyar as I learned after I had been taken under custody -- fell. I was afraid so I began to flee. At that moment the rain of bullets started. He did not have a gun or such things. **If he had had a gun, I would have seen it because he wore a t-shirt suitable for summer.** He did not resist them by using a gun. I had supposed that he also fled. But afterwards I realized that he was not running with me; in other words, he did not flee. After I had fallen down and heard the sound of the gun, I was afraid, and I began to flee. As soon as I turned a corner towards the Turkish Airlines office, I saw many plainclothes police officers approaching me. Then I put my hands over my head, leaned on the wall and surrendered. While I was being put in the car on the street, I noticed that an individual had been wounded because of the police gunfire. I also told the prosecutor this. As soon as I had been arrested, they put me in a car and blindfolded me. Then I was taken to the Security Directorate. During the detention, one of my testicles and my right toe were given an electric shock. They tied my arms and told me that “...now, you will get on a helicopter.” After those words, I was forced to stand up on a chair. They hung me up by hanging my tied hands and pushed the chair. I was left hanging and I understood that “getting on a helicopter” meant being subjected to hanging. I was undressed and subjected to cold water. When they abandoned these methods temporarily, I was forced to stand up for a long time; I was subjected to hunger and went without water; I was not allowed to go to the toilet for two days. Subsequently, they squeezed my testicles and I was beaten and threatened with death and sexual torture. They also insulted me. This torture continued for two days. Once I was taken in a car while I was blindfolded. After they drove about 30-40 kilometers, I was forced to get out of the car. They told me that they would kill me. At that time, they said that they would also kill Şiyar. They fired their guns two times. When they asked me what my last wish was, I answered that I wanted to smoke a cigarette. Then they brought me back to the Security Directorate while I was blindfolded. During these two days, our lawyers were not allowed to visit us. During the period, when I was in the Security Directorate, I was again tortured and forced to sign some documents; I did not have any idea about their contents. I told the doctors about the treatments to which*

I had been subjected. But I don't know whether the doctor reported my complaints and the torture marks on my body, because the police officers were present in the examination room. I deplore the police officers. In this prison I, Mehmet Kahvecioğlu, and Mehmet Veli Karadeniz stayed together in the same cell. We had been taken under custody together. But as I know, a man called Mehmet Gazi Aydın is held in a single cell."

The member of the delegation observed that there were signs of torture on Mehmet Nurettin Başçı's right arm and elbow, and the victim was anxious.

Mehmet Gazi Aydın made the following statement in a summary:

"I was arrested and taken into custody by the police officers on 28 May 2004, when I was in front of the Adana Ulu Camii. I did not have a gun. After I was arrested, I was transferred to the Security Directorate and the Units of Gendarmerie as well. I was interrogated there, too. During the detention period, I was subjected to beatings and Palestine Hanging. I was forced to undress and was threatened. Since I occasionally fainted, I do not remember whether I was subjected to electric shock or not. I am almost illiterate. So I don't know what I was forced to sign in the Security Directorate, either. There are still marks of torture on my right knee. I don't know if the doctors, who examined us, reported the marks of torture on my body, since the police officers were also in the room. Once they took me to the Şiyar's room in the hospital to see him. When I saw him, he was struggling. I thought that because he suffered or because of the medicines, he was in such a condition. We did not have access to any lawyer for two days. On 1 June 2004, I was jailed and transferred to the prison. Since I was brought to the prison, I have been staying in a single cell. The officers don't meet my needs. For example, I said many times that I wanted to buy cigarettes. But they told me that since all cigarettes were sold, they could not give me any cigarette. Since I have been here, I have been taken to the Director of the Prison and the Gendarmerie Commander – specifically, I was taken out of the cell two times. The Director of the prison and Gendarmerie Commander wanted to force me to confess. They are saying that if I confess, I'll be released. I am under intense pressure. I told them that I knew my rights and I did not want to enjoy the law concerning confession."

Lawyer Reyhan Yalçındağ, a member of the delegation, interviewed Mehmet Gazi Aydın. She observed that Aydın was very anxious and frightened. Since he has been held in a single cell, he does not feel safe. Bahri Görgün, the director of the prison, was interviewed at the end of the visit and asked about Aydın's request for cigarettes and his concern about his single cell. Mr. Görgün said that because Aydın has not had any money, he had not been given cigarettes. In addition, he said that other prisoners would be put in Aydın's cell later and that he would not remain alone. After this meeting, Ms.

Yalçındağ met with Beyhan Günyeli, Aydın's lawyer, and informed her of the situation. Günyeli maintained that her client's family had sent money for him; it was not true that he did not have any money. Günyeli also maintained that the pressure on her client was being continued through the rejection of his needs, such as cigarettes, etc.

OFFICIAL VISITS OF THE DELEGATION

1) **Kasım YAĞMUR, the State Security Court's Prosecutor, who is carrying out the investigation**

He made the following statement in a summary:

"I decided to separate relevant parts of the case file and forward it to the Chief Public Prosecutor in Adana. I lodged a complaint against the security forces because torture and killing was involved. After this stage, we don't have any authority to investigate."

In spite of the fact that we stated that the family's lawyers had also been the members of the delegation and requested an examination of the case file, we were not allowed to look into the case file. He stated that there had been no decisions concerning the secrecy of the case file yet, but he had been planning to make a decision by Friday, 11 June. He added that if we insisted on looking into the file, he would make a decision relating to the secrecy of the file immediately.

2) **Nuri YİĞİT, Chief Public Prosecutor of the Adana State Security Court**

He made the following statement during the visit:

"We all are lawyers, and we believe in the supremacy of law. I have attended many seminars on human rights since 1997. I am sensitive about these issues. But the State Security Court doesn't have the authority to launch an investigation concerning torture and extrajudicial execution. For this reason, we separated the relevant part of the case file and sent it to the Adana Chief Public Prosecutors Office. So I cannot comment on the case. Rejection of the case by the State Security Court's Prosecutor is his personal legal opinion. I cannot say anything. However, if he does not want to permit an examination of the file, he must ensure that a secrecy decision is taken. We cannot do anything if he does this. It is true that the State Security Courts are exceptional courts. We are the courts based on Law No.

2845. In addition, the Turkish state is a state of law. When there is a violation of rights, perpetrators of the violation are absolutely prosecuted. Relating to the aforementioned case and torture allegations, the file was sent to the responsible prosecutors' office."

3) Tevfik LOĞOĞLU, Adana Public Prosecutor, who carried out the investigation concerning the allegation of torture and execution.

He made the following statement:

"I have not received the file yet. So I cannot say anything about the file. After I receive the file, I will examine it, and I will inform you as to whether I will give you a copy of the file or not. However, I do not have any information at this stage. I only have a report concerning the autopsy I have. The file was supposed to reach me earlier, but the Security Directorate sent the file to the State Security Court instead of to me. So I have not received the file yet. I am the prosecutor who took a part in Şiyar Perinçek's autopsy. Documents in the file I have are an examination report, a report indicating the body was given to the family, and a report of the State Hospital indicating that the killed person's clothes were given to the Security Directorate. When I receive the other relevant documents and the full file, I will make a decision about which documents I will give you."

4) Lawyer İsmail ARISOY, Executive Member of the Adana Bar Association and Member of the Human Rights Committee in the Province.

He made the following statement:

"I have followed the case in the press. However, I received the complaints lodged by lawyers, who have been interested in the case, and their report, as I am a member of the Human Rights Committee of the Governorship. We have just started to investigate the case. But concerning the part of the case which the Bar Association is interested in, you should speak to Chairperson of the Bar Association. Generally, the lawyers continuously face problems and obstacles regarding the right to defense in Adana. We have been receiving complaints about violations from the Adana Kürçüleri Prison, also. Unfortunately, it is not possible to say that our bar association is very effective on these matters. I am working in the subcommittee, which was formed under the Provincial Human Rights Committee to investigate extrajudicial execution and torture allegations. For this reason, I will monitor the matter. We will do what is needed."

5) Lawyer Necati ERDEM, Chairman of the Adana Bar Association

He made the following declaration during the visit:

“I heard that the case had been the result of a conflict, and I thought it was true. I have just heard the allegation concerning the extrajudicial execution. Examination of preliminary files and meetings between a detainee and lawyer are difficult matters in Adana. We have a written statement of the prosecutor. It says that the prosecutor does not permit the examination of the files by defenders. We have informed the Ministry of Justice in writing, but we haven’t received a response yet. We occasionally hear about torture allegations in the Kürkçüler Prison, but we haven’t received any information or documents. Regarding the matter that you were not given the copies of the documents in the case file, the Chief Public Prosecutors Office in Adana alleges that the Article 46/2 of the Law on Lawyers states that lawyers can access the case file but not at the preliminary stage. It is very clear that the treatment is illegal and arbitrary.”

After members of the delegation had told him that they had gone to the Anti Terror Branch of the Security Directorate in order to visit their clients, but that they had not been allowed to visit them for two days and that there were allegations of torture, Mr. Erdem said:

“We have not received any application from lawyers about the matter. In addition, the allegations that torture has occasionally occurred in the Kürkçüler Prison and that the prisoners were subjected to ill-treatment, especially during the counting, have also been received by the Bar Association. We will investigate the case.”

6) Mehmet TOPRAK, Head of the Human Rights Board of the Human Rights Committee in the Provinces

He made the following statement, in a summary:

“I heard about the case from the media while I was watching the news on 28 May 2004 at the end of work. We did not attempt to do anything as it was a weekend. We began to investigate the event after the Headquarters of the HRA’s fax letter dated 31.05.2004. We transferred the application to a subcommittee of three individuals and wanted them to carry out an investigation and report and present the results of the investigation to the Provincial Committee. The subcommittee has begun work, but has not yet completed

the investigation. Corresponding and interviewing with the eyewitness one by one, the subcommittee will carry out its work. We are carrying out the investigation very carefully and slowly to prevent any fault. We don't want to make any mistake by going to quickly. There is a lawyer from the Bar Association, a lawyer from the Treasury, and a representative of a non-governmental organization (Esnaf ve Sanatkarlar Odası) on the subcommittee. We will do what we can do to clarify the case. I completely agree with your determination that the right to live is a basic right. In this framework, we will investigate the case by considering all its aspects."

7) Cemal LEVENT, Deputy Chief of the Adana Security Directorate

After the members of the delegation introduced themselves and explained the aims of their visit, Cemal LEVENT, the Deputy Chief of the Security Directorate, began to talk to the human rights defenders in a very aggressive and rude way. He also used the same language when the members of the delegation tried to summarize their work and to talk about their roles in the human rights struggle which has been carried out for a long time in Turkey. In a summary he stated:

"You are individuals and institutions wearing the masks entitled to human rights defenders. I am evaluating your visit in the same way. The case is a terror matter. You are not objective. Deal with people who are beating and injuring each other and with men who are beating their wives as seen on TV screens, instead of this case. Your efforts are efforts that the other side intends. It is not an effort concerning respect for human rights."

After the above statement, stating that they had never discussed their human rights defenders identity and if he had been continuing to use same language, they could not have kept on with the interview, the members of the delegation requested an interview with the Chief of the Security Directorate and visited with Mehmet CEBE, Chief of the Security Directorate, together with Cemal LEVENT.

8) Mehmet CEBE, Chief of the Security Directorate

The members of the delegation informed him that the right to live is sacrosanct, and that they were visiting him as a part of their investigation into the allegation of an extrajudicial execution and the allegations relating to ill treatment of detainees. Mr. Mehmet Cebe could not answer the questions concerning the case, as he did not know about the case. He gave information about the case after he asked Cemal Levent, the Deputy

Chief of the Security Directorate, who was present during the visit. The members of the delegation observed that Mr. Cebe did not have any information about how the event had happened, about the gun and equipment which allegedly had been found on killed person...etc., how many bullets had hit him, how many days he had been in the hospital, which hospital he had stayed in, and that detainees could not be visited by their lawyer for two days because of the Anti Terror Branch's restrictions, etc. He did, however, ask Mr. Cemal Levent to discuss these matters with the delegation. Cemal Levent stated:

“The individuals who were being following did not obey the warning to stop issued by the security officers and so their motorcycle was hit by a car, and they fell. Because one of those who fell opened fire, the police officers shot him. As a result of the action, he was wounded and then transferred to the hospital. He was unconsciousness when he was taken to the hospital. It is true that the individuals who were taken under custody during the operations were not allowed to meet with their lawyers for two days after the event. It was because the operation was still continuing. As a result of that, their allegations concerning their ill-treatment was forwarded to the Prosecutor Office by their lawyers; the individuals were examined by the doctor and a report was prepared. According to the medical reports, there was no sign of torture on their bodies.”

Lawyer Mustafa CİNKİLİÇ, a representative of the HRFT Adana Branch Office, and Dr. Mehmet ANTMEN, a member of the executive board and doctor of the HRFT Adana Branch Office, also attended the following visits:

9) Assoc. Prof. Mehmet YAĞCI, Chief Physician of the Adana State Hospital

Stated that:

“I was on duty on that day when the wounded man was brought to the hospital. But I did not care for him personally. I got information from his doctors regarding his situation. The doctor who carried out the operation is Mehmet Kobanel. If you interview with him, you may get proper information. There is no intensive care unit in our hospital. But the effort to develop such a unit is ongoing.”

10) Mehmet KOBANEL, the doctor who carried out the operation, Expert on Heart and Vessel Surgery of the Adana State Hospital.

In a summary he made the following statement:

“The wounded man was brought to the hospital by 112 emergency service on 28 May at 15:00. I operated on him. We started the operation at 15:17. As his injury was very serious we gave him 4-5 units of blood. The bullet had entered his body from about his left armpit and had gone through and left his body from the right side of his back. The bullet had broken into pieces his internal organs. There is not any mark such as burn...etc. When the patient was brought to the operating room he was undressed. The operation lasted 1.5 hours. Then we took him out of the operating room and transferred him to a single room since we do not have an intensive care unit. I left the hospital at about 18:00 and transferred the patient to the doctor who was on duty. The patient was not taken out of the hospital during the medical treatment. I and my staff performed maximum care. He did not say anything about his identity during the medical treatment period. Indeed, he did not communicate in any way. Sometimes he recovered his consciousness and at those times he was trying to get the serum tubes out. **For this reason we had to tie his hands.** His tension...etc was normal, he could speak but he never did. Police officers entered the room whenever they wanted. We were not threatened and did not face any oppression, etc. We were not prevented from performing our duty. We may describe his death as a normal development, because his wound was very serious. As the personnel of the hospital, we did what we could. I called the Balcalı Research Hospital (Balcalı Araştırma Hastanesini) to request a room in the intensive care unit, but they answered that the unit was full.”

11) Dr. Fulya KAYA, Chief of the 112 Emergency Service

In a summary she made the following statement:

“If you want to get information about the case, you have to lodge an official application. After your application, we can provide written or oral information if those in charge permit it. For this reason we do not have to inform you. You may refer to my words in your report.”

12) Dr. Necmi ÇEKİN, Head of the Group of the Forensic Medical Institution

made the following statement:

“I and one of my colleagues carried out the autopsy. When the body was brought in, it was undressed and there were no clothes with him. Therefore we could not get any information about the shooting distance. But we carried out a detailed autopsy. And we sent a part of

a mass, which we took from the body, to the Balcalı Araştırma Hastanesi. As soon as we receive the results of the pathologic research, we will complete the detailed autopsy report.”

13) Lawyer Beyhan GÜNYELİ, Lawyer of the Adana Bar Association

Lawyer Beyhan Günyeli, lawyer of detained Mehmet Nurettin Başçı and Mehmet Kahvecioğlu, stated that she had gone, together with her colleague Sevil Aracı, to visit their clients at the Anti-Terror Branch of the Security Directorate on 29 May 2004 at 11.00 am. They waited, however, until 11:50 and after that they were not allowed to see them because the inquiries had been continuing. Therefore, they had applied to the Prosecutor's Office of the State Security Court. After they had met with the Public prosecutor of the State Security Court, they had repeated their demand at 15:20 on same day. In a summary she stated:

“Lawyer Sevil Aracı, my colleague, and I went to the Anti-Terror Branch of the Security Directorate on 29 May 2004 at 11:00 in order to visit Mehmet Kahvecioğlu and Mehmet Nurettin Başçı, our detained clients. We were told that we could not see them at that moment because the inquiry was still continuing. Our demand was rejected in spite of the fact that it was our legal right, and according to new amendments we have the right to visit our clients. And we insisted. We left the branch after we had been made to wait about 1 hour. Then we went to the justice building in order to see Mr. Nevzat İnanoğlu, the Public Prosecutor of the State Security Court, together with lawyer Sevil Aracı, lawyer Mehmet Aydın, lawyer Hüseyin Kılınç and lawyer İknur Önal. The public prosecutor told us that there was no prohibition and that we might have visited our clients. Thus our demand was accepted and again we went to the Anti-Terror Branch on the same day. The chief commissar on duty at the Anti-Terror Branch said that the visit would last only two minutes and that the prosecutors had known about this time limit. He added that the duration of the visit was out of their control. We stated that we would not accept a two-minute visit and that the prosecutor had not limited the duration. I, lawyer Sevil Aracı and lawyer Mehmet Aydın interviewed Mehmet Kahvecioğlu and Mehmet Nurettin, our clients, in a room at the entrance of the anti-terror branch between 15.20 and 15.40. Holding his arms, Nurettin Başçı begged “please take out me from here; they are torturing me.” It was observed that Mr. Başçı's left elbow was bruised; he also had deep bruises on his left shoulder and bruises on various part of his waist. According to his statement, his right and left toes and his sexual organs were subjected to electric shocks; he was taken out in a car while in detention, and a gun was fired when they arrived in an empty area. He was forced to stand up until morning, food and sleep were withheld from him, and he was not allowed to use the toilet as he needed. So together with our colleagues we prepared a report

concerning M.Nurettin Başçı's allegation and our experiences. We submitted the report and an application referring our requests to the prosecutor. We demanded that Başçı be transferred to the forensic medical institution in order for his case to be investigated and so that the torture could be reported. For this reason, we also demanded that the detention period not be extended. We submitted this to the Public Prosecutor of the State security Court. After the visit, we reported that we could not see our clients at 11.00 and we could not look at any preliminary documents.

14) Lawyer Sevil ARACI, Lawyer of the Adana Bar Association

Repeating Lawyer Beyhan Günyeli's above statements, Lawyer Sevil Aracı stated that they were not allowed to see their detained client, so they had to wait for meeting although they argued that this was not legal. The officials of the Anti Terror Branch insisted that they could not see their client, and they were not able to see any preliminary documents at any point. Mrs. Aracı also stated that when she met her client, she observed that there were several marks of torture on Başçı's body. She added that her client said he was subjected to methods of torture such as electric shocks, lack of food and drink, and beatings. Aracı also said that they signed a written report on the situation on 29 May 2004 at 15.45.

THE DETERMINATIONS

1. The Delegation of the Human Rights Association visited the place of the incident and carried out an investigation there. The delegation determined that the event in which Şiyar Perinçek was shot occurred at the Turan Cemal Beriker Avenue, in a plaza across the street from the Adana Branch Office of the HRA.
2. The Delegation examined all photos taken by representatives of the press immediately after the event. It did not find any photo indicating that anything like a gun, bomb, cartridge, or bullet was found on Şiyar Perinçek.
3. According to the findings, after the examination of the photos, the delegation determined that there were definite marks on the right front and back doors of the civilian metallic grey Volkswagen Polo (with the license number of 01 PK 677) that was parked near the

sidewalk and near the motorcycle. These findings suggest that the above-mentioned car hit the motorcycle.

4. Taking into consideration eyewitness's statements, the delegation did not find any evidence that Mehmet Nurettin Başçı and Şiyar Perinçek, who had fallen from the motorcycle, had guns. The eyewitnesses said there was no armed resistance from the two men.
5. The delegation received information that a police officer had pressed the injured Şiyar Perinçek's shoulders with his knees until he was taken to the ambulance.
6. Taking into consideration the event and that there were many police officers (according to Research and Determination Report on Incident Place of 28 May 2004 at 18.45, there were police officers from Region Branch of Public Security, Team of Ş.E Çıtak Police Station, Anti Terror Branch and Crime Branch), as well as eyewitness statements and statements by Başçı, the Delegation found it was not possible that Nurettin Başçı escaped from the place of the incident and that his track had been lost.
7. As a result of the police firing, Şiyar Perinçek was wounded at about 14:30. The ambulance was called 15 minutes after the event. After 5 minutes the ambulance arrived and he was taken to the Emergency Service of the Adana Public Hospital. According to the reports in the case file, he was hospitalized at 15:00. According to the search report prepared by the security officers on 28 May 2004 at 15:15, some money, a lighter, a packet of cigarettes, and a piece of paper were found during a search.
8. Şiyar Perinçek was operated on after he had been taken to the Adana Public Hospital. He was not, however, taken to a hospital where there was an intensive care unit, despite the fact that his life was still in danger. During the Delegation's visit, Dr. Mehmet Kobanel, a physician of the Public Hospital, stated that he had contacted the officers of Balcalı Research Hospital twice and demanded that he be hospitalized in the intensive care unit. The delegation found that when the patient's life was in danger, phone demands were insufficient.

9. A traditional autopsy to determine the cause of death has not yet been prepared. A report of the Medical Examination of death exists in the preliminary file.
10. The members of the Delegation did not receive any response regarding the whereabouts of the victim's clothes, which were important evidence for determining the distance of the shooting. The delegation found that the family of the victim had been given the undressed body.
11. The members of the Delegation received information from health officers suggesting that the gunfire came from a professional because of the way the fatal shot hit his heart and lungs.
12. Taking into consideration the event, the eyewitnesses, and Mehmet Nurettin Başçı's statements, and that there were many police officers, the members of the Delegation determined that Nurettin Başçı was arrested when the victim was shot. According to the reports of the arrest, the place where Başçı was arrested is apparently located in Dağlıoğlu Mahallesi, at 23rd street, and the time was 00.30. This means that arrest came 9 hours after the event occurred.
13. The lawyers who wanted to see Mehmet Kahvecioğlu, Mehmet Nurettin Başçı, Mehmet Veli Karadeniz and Gazi Aydın – all of whom had been arrested--were prevented from doing so and were not allowed to see them when they went to the Anti-Terror Branch for first time. In following visits, the lawyers determined that Nurettin Başçı had been tortured. But they were not allowed to examine the relevant preliminary documents. This information was reported and signed by security officers and lawyers. The aforementioned document is kept in the file that is at the prosecution stage.
14. The Human Rights Delegation was not prevented from carrying out its work. The Official Authorities from whom the interviews were requested were sensitive on the matters of interviews and time. The Adana Public Prosecutors Office, however, rejected a request for an interview and Cemal Levent, Deputy Chief of the Adana Security Directorate, insulted the delegation's members. He also insulted the delegation by saying that he did not consider himself a defender of

human rights.

POINTS IN NEED OF CLARIFICATION

1. Was the fact that the event occurred near the Adana Branch of the HRA only a coincidence? Did the security officers who carried out the operation know that the victim was the son of Mihdi Perinçek, the HRA representative of the South East and East Anatolian Region?
2. Why was no warning to stop given to the murdered individual and to Mehmet Nurettin Başçı, who were on the motorcycle? Why was the motorcycle hit and overturned instead of being given a warning to stop?
3. Was it possible that Şiyar Perinçek had resisted by using a gun after he fell down? Why did the police officers not raid the house that day, when they organized an extensive operation, after they were informed about him (the reports in the file confirm that their information includes the address where they stayed)? Why could they not overcome an unarmed and wounded man while he was lying on the ground?
4. Has anyone investigated the eyewitness's allegations that a police officer shot the victim while he was lying face down and not resisting?
5. Why had the ambulance arrived after 20 minutes when the closest ambulance was 5 minutes from the place of the incident? Why had the other security officers remained silent about the police officer pressing the victim to the ground?
6. If it is true that, as alleged, the victim Şiyar Perinçek resisted with a gun, why is there no sign of a gun or other explosives in the photos taken immediately after the event?
7. Why is the whereabouts of his clothes not known, despite the fact that there is no documentation concerning seized clothes in the file of the prosecution? Is it possible that his missing clothes are the result of an effort to hide evidence that might clarify the distance at which he was shot?
8. Why was Şiyar Perinçek not taken to another hospital with an intensive

care unit after the operation? Did the chief physician's office, which only phoned the Balcalı Hospital even though the patient's life was in danger, exhibit sufficient effort to save him? Why did the hospital officers allow the security officers to enter his room?

9. According to the Medical Examination and Autopsy Report prepared on 30 May 2004 at 17.20, Şiyar Perinçek died on 30 May 2004 at about 15:30. An Adana Security Directorate document stated, however, that “... *the murdered person died on 31.05.2004*”. This document was dated 31.05.2004 and concerned the prolonged detention period. It was signed by Kamil Karabörk, the Chief of the Terror Branch of Adana Security Directorate and sent to the Chief Public Prosecutors. Have competent authorities explained the contradictory situation regarding the date of death in the file?
10. Mehmet Nurettin Başçı was arrested and taken under custody at the same time as the victim was wounded. This information is based on the testimony of Nurettin Başçı, statements from eyewitnesses, and a Confrontation and Identification Report written on 29.05.2004 at 14.00. Why was it recorded on the incitement report in the preliminary file that he was arrested on **28 May 2004 at about 00.30 and far away from the place of the event**, Dağlıoğlu Quarter 23rd Street? 00.30 would mean the first hour of 28 May and about 14 hours before the event. Similarly, the date and time of the arrest are 28.06.2004 and 23.50, according to a form of the Ministry of Internal Affairs. What was the reason for showing that Başçı was arrested on different day than the murder, and at a different time? Was the brother of Nurettin Başçı also arrested and taken under the custody on 28.06.2004 at 23:30 from his house? Was the brother of Nurettin Başçı taken to the Public Hospital instead of Nurettin? Was he examined by a doctor?
11. Why were the lawyers who went to the Anti-Terror Branch not allowed to see Mehmet Nurettin Başçı, Mehmet Veli Karadeniz, Mehmet Kahvecioğlu and Mehmet Gazi Aydın, their detained clients, despite the fact that it was the second day of their detention? Similarly, why was it not possible to examine the preliminary documents?

CONCLUSION AND CONVICTIONS

Convictions

Based on its visits, findings, statements and reports in the file, along with the photo evidence and observations, the Human Rights Delegation is convinced that there is no evidence except the statements and reports of the Security Units that Şiyar PERİNÇEK was warned before he was shot or that Şiyar PERİNÇEK resisted with a gun. The Delegation gathered data casting doubt upon the allegations of the Security Units. At this stage definite data could not be gathered, but the delegation is convinced that Şiyar PERİNÇEK was killed by police officers of the Adana Security Directorate in an extra-judicial execution.

Our Delegation believes that a serious investigation should examine why Perinçek was not transferred to a hospital with an intensive care unit after the operation and why the police officers arbitrarily entered his room while he was in the hospital. The delegation also believes that the clothes of the victim have not been returned so as to obscure the distance at which the victim was shot. To determine the definite reason of death an autopsy report should be prepared.

The Delegation believes the attitudes of the Security Directorate, which prevented the lawyers from meeting with their detained clients, were arbitrary. This situation is not legal. The right to access a lawyer was violated. The delegation thinks this was done in order to hide the ill treatment and torture of the detained individuals.

The members of the Delegation are concerned that similar human rights violations may occur in the future.

Conclusion

The right to life is inviolate. The violation of the right to life falls in the category of crimes against humanity. Torture, ill treatment and inhuman treatment are also crimes against humanity. An investigation is needed to determine whether Şiyar Perinçek was murdered as a result of an extrajudicial execution; an investigation also needs to take place concerning the ill treatment and allegations of torture made by individuals taken into custody after the event. The preliminary investigation should be completed immediately and the evidence should not be hidden. The perpetrators should be tried

and punished.

Despite the fact that there is substantial evidence to believe that Şiyar Perinçek's killing was the result of extra-judicial execution and that Mehmet Nurettin Başçı and Mehmet Gazi Aydın were tortured, there has been no administrative or legal proceedings against the responsible officers. So civilians do not feel safe.

Laws are binding for everyone. The justice system should complete the process in the most effective way as soon as possible and make a fair decision. The Bar Associations and other NGOs should monitor the proceedings initiated by the Adana Public Prosecutors Office in order to make sure domestic laws are effective and that the perpetrators are punished.

The case concerning the extra-judicial killing of Şiyar Perinçek and the allegations regarding the ill treatment and torture of detained individuals should be given full attention. The Parliamentary Human Rights Investigation Committee and State Human Rights Presidency should note this report and launch an investigation immediately. They should also inform the public.

Our delegation has hopes that violations of the right to life, torture, and the ill treatment of prisoners will not continue, and believes it is important that the perpetrators of these violations be taken before the judiciary in order to prevent more from occurring.

Lawyer Reyhan YALÇINDAĞ, Vice President of the HRA

Lawyer Şükran BULDU, Member of General Executive Board and Representative of the Middle Anatolian Region

Lawyer Selahattin DEMİRTAŞ, Member of the HRA's Headquarters Executive Board, Chairman of the Diyarbakır Branch of HRA.

Lawyer Şeyhmus ÜLEK, Vice President of the Mazlum-Der

Ali Rıza EKİNCİ, on behalf of KESK, President of DİVES

Lawyer Mustafa ÇİNKILIÇ, Representative of the HRFT Adana Branch, and Member of the Executive Board.

Dr. Mehmet ANTMEN, Doctor of the HRFT Adana Branch.

Sabri KAHRAMAN, Executive member of the HRA Adana Branch

REFERENCE

¹ From the Adana Directorate of Security

² Between 17th –20th December 2004, a Fact Finding Mission also collected information surrounding the alleged extrajudicial executions of Ahmet and Uğur Kaymaz and Fevzi Can. The findings of the mission can be found in a separate report

³ All of whom are also members of 10-11 Gray's Inn Square, a barristers' chambers in London

⁴ Namely Asa Malmros and Ove Behrens

⁵ *İnsan Hakları Derneği* ('İHD'), meaning 'Human Rights Association'

⁶ Public AI Index: EUR 44/027/2004 (<http://web.amnesty.org/library/print/ENGEUR440272004>)

⁷ Mehmet Kahvecioğlu, Veli Karadeniz and Gazi Aydın

⁸ The Amnesty International press release alleges that Gazi Aydın was also tortured during detention

⁹ This is best ascertained from the indictment in Appendix 1

¹⁰ Kurdistan Worker's Party

¹¹ The defence that a 'warning' was given prior to the killing is a defence used by the police in other alleged extrajudicial killings – see paragraph 60 of this report

¹² October 4th, November 8th and December 21st (all 2004)

¹³ See Appendix 2

¹⁴ *Ağır Ceza Mahkemesi* in Turkish

¹⁵ See Appendix 2

¹⁶ One of the lawyers for the defence was 40 minutes late. He did not apologise to the court, instead remarking '*I've missed some of the evidence*'. He was not reprimanded by the court for his lateness

¹⁷ Compare and contrast this with the observations of the authors of the '*W and Torture*' trial observation report (September 2002) at page 12, which noted that there was a lack of verbatim transcription of what had been said by the defendants and their lawyers [the defendants in that trial being human rights defenders]

¹⁸ At this stage, the Jandarma brought Nurettin Başçı into court. He was handcuffed in a chair next to the main group of advocates. Judging by the reaction of most people in court, this was clearly unexpected

¹⁹ Dr. Necmi Çekin, Dr. Mehmet Kobaner and Dr. Fulya Kaya were witnesses 'summonsed' by the advocates for the victims. A. Bakır and Hüseyin Göröl were witnesses for the victims

²⁰ This witness and other witnesses referred to Şiyar Perinçek as 'the victim', although there are in fact 2 victims in the case

²¹ Mustafa Cinkılıç. The usual head of the legal team, Reyhan Yalçındağ, was not present

²² It was unclear as to whether the witness meant he did not see the victim(s) face or the police officer's face

²³ Nurettin Başçı is the defendant in this trial due to the police allegations that he is a member of the PKK and aided and assisted the PKK. Mehmet Veli Karadeniz and Mehmet Gazi Aydın are also defendants

²⁴ *Devlet Güvenlik Mahkemesi* ('DGM')

²⁵ According to the Human Rights Watch Advisory Note to Journalists (<http://hrw.org/english/docs/2004/10/04/turkey9433.htm>) "*the main problems with DGM courts was that until recently*

they included a military judge and sometimes a military prosecutor, and police were permitted to hold DGM detainees without access to legal counsel". However, it would appear that save for access to legal counsel, these reforms have not been implemented in practice

²⁶ Methods of torture include electric shocks on his genitals and psychological torture such as the firing of a gun close to his ears

²⁷ No note of this request

²⁸ The defendants did not attend the previous hearings either

²⁹ See Article 9 (b) of the Law on the Duties and Powers of the Police, which provides that a police officer who is on trial for torture may be held exempt from personally appearing before the court

³⁰ E.g. On 1st April 2003, Mehmet Yutar and Ahmet Okuducu were found guilty by the Istanbul Heavy Penal Court No. 6 in "unintentional killing" of Suleyman Yeter. Ahmet Okuducu is still on the run. The Amnesty International article of 16/11/04 entitled '*Turkey: Insufficient and inadequate – judicial remedies against torturer and killers*' contains further details about the case and discussion of the '*ineffective judicial mechanisms*' (<http://web.amnesty.org/library/print/ENGEUR440372004>)

³¹ The missing clothes of Şiyar Perinçek being the main point of concern

³² The alleged extrajudicial executions of Fevzi Can in Hakkari on 28th November 2004 and of Ahmet Kaymaz and his son Uğur Kaymaz in Kızıltepe, Mardin, on November 21st 2004

³³ Confirmed by an expert report in the file

³⁴ i.e. that Şiyar Perinçek did not use and did not point a gun at one of the police officers

³⁵ Information has since been obtained about the hearing on 8th February 2005. In summary, the police officer (of the Anti-Terror squad) who had made a statement to the effect that he had been given the clothes of Şiyar Perinçek changed his statement and said that he had not been given the clothes

³⁶ "2004 Regular Report on Turkey's Progress towards Accession" Commission of the European Communities, Brussels, 6/10/04, SEC 2004 (1201)

³⁷ See also Amnesty International Article '*Judicial Harassment of human rights defenders in Turkey – 'repeal one law, use another*' (<http://web.amnesty.org/library/print/ENGEUR440362004>) and 14/1/05 Article '*Turkey: Closure of Torture Prevention Group shocking*' ([AI Index: EUR 44/001/2005](http://www.aidindex.org/ai/aiindex.asp?ID=EUR44/001/2005) (Public))

³⁸ In addition, Şiyar Perinçek was the son of Mihdi Perinçek, the İHD representative for the southeastern and eastern region of Anatolia

³⁹ See further amendment to the Regulation on Apprehension, Detention and Statement Taking in January 2004 and Commission Report

⁴⁰ Regular Reports, Accession Partnerships, the National Plan (which the Turkish government submitted in re Şiyar Perinçek on to the revised Partnership document in 2002) and the Commission's report (published on October 6th 2004) can be found at <http://europa.eu.int/comm/enlargement/turkey>

⁴¹ According to the Diyarbakır Human Rights Association, the number of torture and degrading treatment cases decreased from 489 cases in 2003 to 338 cases in 2004. Other positive developments in 2004 included the law reform on broadcasting and education in different languages

⁴² Full details about the alleged extrajudicial executions of Ahmet and Uğur Kaymaz and Fevzi Can can be found in a separate fact finding mission report

⁴³ It is alleged that officers belonging to the Jandarme station in the same area have been involved in other similar incidents e.g. in 2003, it is alleged that İsmail Öreç was killed when his car in which he was travelling was subject to a gun attack. In addition, on 10th December 2004, 30 villagers from Xrabechar (a hamlet in the district of Semdinli), were forced to become village guards. This runs

contrary to the assertions of the authorities, that it is voluntary to become a village guard

⁴⁴ It is interesting to note that checkpoints in the south east of Turkey still exist, the apparent cessation of the ‘State of Emergency’. The mission itself encountered numerous checkpoints when travelling in the south east

⁴⁵ See Human Rights Watch report ‘A Crossroad for Human Rights?’ (<http://hrw.org/english/docs/2004/12/15/turkey9865.htm>)

⁴⁶ ‘The EU, Turkey and the Kurds’ - A Conference at the European Parliament, Brussels (22nd-23rd November) – see page 17 paragraph 5 of report (Appendix 3)

⁴⁷ See website <http://www.diyarbakirbarosu.org.tr>

⁴⁸ Compare and contrast this with Section 8 ‘Suspension from Duty’, Law No.657 on Civil Servants

⁴⁹ See e.g. ‘The Trials of Ferhat Kaya’ - Trial Observation Report by KHRP, Corner House, Environmental Defense and Friends of the Earth (England, Wales and Northern Ireland)

⁵⁰ Nurettin Başçı was denied the right to see his lawyers on the first day of his detention (28/5/04)

⁵¹ European Council in Copenhagen 21 - 22 June 1993, Conclusions of the Presidency

⁵² Helsinki European Council 10 - 11 December 1999, Presidency Conclusions

⁵³ Council Decision of 19 May 2003 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with Turkey (2003/398/EC)

⁵⁴ Copenhagen European Council 12 - 13 December 2002, Presidency Conclusions

⁵⁵ The Guardian ‘EU puts Turkey on a long road to accession’, Thursday October 7 2004

⁵⁶ Commission of the European Communities, ‘Recommendation of the European Commission on Turkey’s Progress towards Accession’, COM (2004) 656 final

⁵⁷ The Guardian ‘EU puts Turkey on a long road to accession’, Thursday October 7 2004

⁵⁸ BBC, ‘EU presses Turkey on Kurd rights’, Tuesday 7 September 2004

⁵⁹ Commission of the European Communities, ‘Recommendation of the European Commission on Turkey’s Progress towards Accession’, COM (2004) 656 final

⁶⁰ Treaty on the European Union (as amended by the Treaty of Amsterdam)

⁶¹ Charter of Fundamental Rights of the European Union

⁶² Directive 2000/43/EC

⁶³ European Council In Copenhagen 21-22 June 1993, Conclusions Of The Presidency

⁶⁴ Helsinki European Council 10 - 11 December 1999, Presidency Conclusions

⁶⁵ Commission of the European Communities, ‘2004 Regular Report on Turkey’s Progress Towards Accession’, COM (2004) 656 final

⁶⁶ Commission of the European Communities, ‘Recommendation of the European Commission on Turkey’s Progress towards Accession’, COM (2004) 656 final

⁶⁷ Commission of the European Communities, ‘2004 Regular Report on Turkey’s Progress Towards Accession’, COM (2004) 656 final

⁶⁸ Article 4 of the International Covenant on Civil and Political Rights, Article 2 para. 2 of the United Nations Convention against Torture, ICTY decision in Furundzija, 10th December 1998, para. 153.

⁶⁹ Article 4, Charter of Fundamental Rights of the European Union

⁷⁰ Report of Minority Rights Group International, “Minorities in Turkey”, July 2004

⁷¹ Report of Human Rights Foundation of Turkey, January 2004

⁷² KHRP ‘Turkey: The Situation of Kurdish Children’, October 2004

⁷³ Committee on the Rights of the Child, Twenty Seventh Session, Concluding Observations of the Committee on the Rights of the Child: Turkey

⁷⁴ KHRP ‘Turkey: The Situation of Kurdish Children’, October 2004

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ 'Turkey and EU speak 'different languages' on minorities, says minister', 4th November 2004, available at <http://www.eubusiness.com/afp/041104162026.04et8eej>





Kurdish Human Rights Project
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BAR HUMAN RIGHTS COMMITTEE
OF ENGLAND AND WALES

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