A CHILDREN'S CHOIR FACE TERRORISM CHARGES: JUVENILES IN THE TURKISH JUSTICE SYSTEM

TRIAL OBSERVATION REPORT

September 2008

Kurdish Human Rights Project
KHRP
Celebrating 15 Years of Advocacy

Bar Human Rights Committee
OF ENGLAND AND WALES

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BAR HUMAN RIGHTS COMMITTEE OF
ENGLAND AND WALES

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Kurdish Human Rights Project is an independent, non-political human rights organisation founded and based in London, England. A registered charity, it is dedicated to promoting and protecting the human rights of all people in the Kurdish regions of Turkey, Iraq, Iran, Syria and elsewhere, irrespective of race, religion, sex, political persuasion or other belief or opinion. Its supporters include Kurdish and non-Kurdish people.

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State Parties recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

UN Convention on the Rights of the Child, Article 40

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LIST OF ABBREVIATIONS

CRC	Convention on the Rights of the Child
DRC	Declaration of the Rights of the Child
ECHR	European Convention on Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
KHRP	Kurdish Human Rights Project
PKK	Kurdistan Workers' Party
UDHR	Universal Declaration of Human Rights

1. INTRODUCTION

The Kurdish Human Rights Project (KHRP) dispatched a mission to Diyarbakır from 17 to 19 June 2008 to observe proceedings against three members of a children's choir who were facing trial at the city's Heavy Crimes Court under anti-terror laws for singing a Kurdish song at a world music festival in San Francisco in October 2007. The prosecution had alleged that the rendition of *Ey Reqip* (Hey Enemy) amounted to dissemination of propaganda on behalf of the Kurdistan Workers' Party (PKK), the outlawed armed movement which claims a pro-Kurdish agenda.

There had been some international interest in this case, as well as in parallel proceedings against six younger children who were being prosecuted before the Diyarbakır Juvenile Heavy Crimes Court in connection with the same performance. However, the trial of the three older children was held *in camera*, with KHRP mission members as the only observers, and the trial of the six younger children was held completely in private, with no observers permitted. [1]

In the event, the older children were acquitted at their first court appearance on 19 June, after the prosecutor recommended this outcome. Although the accused admitted singing or being involved in the singing of *Ey Reqip*, the judges overseeing the case found that they had no intention to commit the offence of disseminating terrorist propaganda and were therefore not culpable under the relevant laws. The six younger children being tried separately were also eventually cleared of the charges against them at a second hearing in their case. These acquittals, combined with an earlier decision to drop charges against four other children in connection with the San Francisco concert, prevented any exploration of the question of whether *Ey Reqip* was in fact a piece of terrorist propaganda.

Despite the outcome, the proceedings highlight flaws in a justice system that allows young children to face trial in an adult court under anti-terror legislation in connection with nothing more menacing than a performance at an overseas music

1 Throughout this report, the accused children will not be mentioned by name. Where it is necessary to refer to specific individuals, only their initials will be used. Given the high level of media reporting on the case, the intention here is not to keep the identities of the accused secret but simply to respect their privacy.

festival. Prior to their acquittals, the children had already spent over six months with the threat of a substantial jail sentence hanging over their heads. In the context of Turkey's moves towards accession to the European Union, the case is representative of a recent pattern of prosecutions that limit international opprobrium by ending in acquittals but which nonetheless serve the purpose of sending a clear message to those whose behaviour is perceived as a challenge to the secular, Turkish nationalist establishment.

Besides being present at the Diyarbakir Heavy Crimes Court on 19 June for the trial of the three older children, mission members also used their time in Diyarbakır to interview a range of relevant actors, including many of the accused children, the defence lawyer representing them, prosecutors involved in the two sets of trial proceedings, youth workers associated with the choir and local human rights defenders.

Following on from this introduction, Section 2 of this report lays out the background to the prosecutions, including an account of the United States tour that resulted in the trial proceedings and a brief history of the song at the heart of the case. Section 3 goes on to explore the criminal proceedings against the children, including the laws that they were charged under and the subsequent trial process. Sections 4 and 5 are given over to placing the case in the context of broader issues surrounding the treatment of juveniles in the Turkish justice system and restrictions on freedom of expression and cultural and language rights in Turkey. The authors conclude by summarising the lessons to be learned from this episode and offering recommendations to the Turkish government and the EU concerning steps that should be taken in order to avoid similar human rights violations in future.

2. BACKGROUND TO THE TRIAL

Fourteen children – seven girls and seven boys – took part in the October 2007 singing tour of the US that resulted in the trial proceedings observed by KHRP. They undertook the trip as members of the Yenişehir Municipality Children's Choir, which supports impoverished children from the Yenişehir area of the city of Diyarbakır in south-eastern Turkey. Accompanying them was choir mistress Duygu Bayar. Funding for the trip appears to have been provided by the municipality authorities and unnamed businessmen in Diyarbakır.[2] It was also supported by a Kurdish businessman in the US and other Kurdish families resident there, who provided accommodation for the children during their stay in the country.[3]

During their visit to the US, the choir performed songs in eight languages – including Turkish, Armenian, Kurdish and Arabic – in cities across California. Their rendition of the song *Ey Reqip* during a world music festival in San Francisco, which sparked the criminal proceedings against them back home in Turkey, was apparently given in response to requests from audience members.[4] Prosecutors alleged that the children gave the performance in front of a PKK flag, though mission members understood that the flag was the same used by the Kurdistan Regional Governorate in northern Iraq, with the traditional Kurdish colours of red, yellow and green.[5]

Written in 1938 by the Kurdish poet Dildar while he was serving time in an Iranian jail for pro-Kurdish political activities, *Ey Reqip* later became the national anthem of the short-lived Kurdish Mahabad Republic that existed for a matter of months in 1946 in what is now north-western Iran. It is currently the national anthem of the Kurdistan Regional Governorate in northern Iraq. The prosecution in the Yenişehir Children's Choir case claimed that *Ey Reqip* is also associated with the PKK and that

2 TO interview with Fırat Anlı, Mayor of Yenişehir Municipality, 19 June 2008, Yenişehir. Mr Anlı indicated to the mission that he had been under pressure to disclose the names of businessmen who contributed funding for the trip.

3 TO interview with Fırat Anlı, Mayor of Yenişehir Municipality, 19 June 2008, Yenişehir.

4 TO interview with eight choir members, 18 June 2008, Yenişehir Municipality Youth Centre.

5 See the indictments against the children in Appendices A and B.

it has been played by Roj TV, a Kurdish satellite television channel that is alleged to have links with the armed movement, at the beginning and end of its broadcasts.

On the basis of this claim about the song's associations with the PKK, on their return to Turkey, 13 members of the choir were indicted under anti-terror legislation in connection with the San Francisco performance. Mission members were not able to clarify with certainty how prosecutors in Turkey had first become aware of the children's rendition of *Ey Reqip*. One local official interviewed speculated that an observer in the US, probably someone from the Turkish consulate, had notified the authorities.[6] It is also worth noting that the festival had been covered by various newspapers and on Roj TV. During the trial, it became apparent that the judges had photographs of the concert in their files. Media reporting was also cited as evidence in the indictments against the children.[7]

Despite inquiring with various interviewees, mission members were unable to determine whether criminal charges had also been filed against Duygu Bayar, the choir mistress who travelled with the children to the US. The mission was told that, having returned with the choir to Diyarbakır following the contentious San Francisco performance, she had subsequently travelled back to the US to study.[8] The indictment against the older children includes information about the responses of Duygu Bayar to the accusations against the choir, suggesting that she had been contacted by prosecutors at some stage in the process.[9] The mayor of Yenişehir municipality, Fırat Anlı, was under the impression that she too had been indicted in connection with the San Francisco concert and other sources corroborate this claim.[10] The children's defence lawyer, Baran Pamuk, however, was not certain whether any indictment had been issued for Duygu Bayar.[11] None of the individuals whom mission members encountered during their time in Diyarbakır appeared concerned by the choir mistress's absence and none seemed to think it remarkable that the children should have been left to face the consequences of the choir's activities on their own. Though further individuals working at the Yenişehir Municipality Youth

6 The interviewee in question did not wish to be named as the source of this conjecture.

7 See Appendices A and B.

8 TO interview with Fırat Anlı, Mayor of Yenişehir Municipality, 19 June 2008, Yenişehir; TO interview with Baran Pamuk, children's defence lawyer, 18 June 2008, Yenişehir.

9 A translation of the indictment is available in Appendix A.

10 See, for example, Amnesty International USA, "Children's Choir Director Still Wanted for Terrorist Propaganda", 18 July 2008, available at www.amnestyusa.org/document.php?lang=e&id=ENGNAU2008 07185521 (last accessed 28 August 2008).

11 TO interview with Baran Pamuk, children's defence lawyer, 18 June 2008, Yenişehir.

Centre had also clearly been involved in organising and supporting the choir, the mission saw no indication that any had been investigated.

The day before observing the 19 June trial hearing in the case of the three older children, mission members had an opportunity to meet with eight members of the choir, including seven of those who had been charged.[12] The meeting took place at the Yenişehir Municipality Youth Centre and was also attended by a youth worker and the manager of the centre. This centre is open daily until about 7pm and offers a range of activities and help with school work for internally displaced children from this deprived area. All of the children charged in connection with the San Francisco performance appeared to come from large families whose parents would have been amongst the millions of people displaced from villages in south-eastern Turkey as a result of the conflict that began in 1984 between state security forces and the PKK.

12 The interviewees included the three older children due to face trial the following day, four of the younger children facing separate criminal proceedings, and an eighth member of the choir who was not charged.

3. THE TRIAL

a. Charges

On their return from the US in November 2007, the three older children – all of them boys who were between the ages of 15 and 17 at the time of the tour – were charged under Article 7/2 of the Law on the Fight Against Terrorism (Law No. 3713), which governs propagandising on behalf of terrorist organisations, and Article 31/3 of the Turkish Criminal Code, which governs the reduction of prison sentences in cases involving those between the ages of 15 and 18.[13]

Under Article 7/2 of the Anti-Terror Law, an individual convicted of disseminating propaganda in support of a terrorist organisation can be punished with a prison term lasting between one and five years. According to the same law, such propaganda can include actions as broad as, "Carrying the emblem or the signs of the terrorist organisation in a way to demonstrate that s/he is a member or supporter of the organisation, chanting slogans, broadcasting by using audio devices or wearing uniforms on which such emblems and signs belonging to terrorist organisation are placed."

Article 31/3 of the Turkish Criminal Code (as amended by Law 5377 of 29 June 2005) states:

> Those who have not reached the age of 18 but are over 15 at the time of the offence shall be imprisoned for a term of from 18 to 24 years where the offence is punishable by heavy life imprisonment; and a term of from 12 to 15 years where the offence is punishable by

13 Law No. 3713, which was first passed in 1991, was later amended by Law No. 5532 on 29 June 2006. The amended legislation will be referred to throughout this report as the Anti-Terror Law.

> life imprisonment. Other penalties shall be decreased by one third and in this case the term of imprisonment for each act shall be not greater than 12 years.

In line with these adjustments, the maximum prison term that could be handed down to a child aged between 15 and 18 convicted of propagandising on behalf of a terrorist organisation would be over three years.

In the case of the ten younger children who were also originally charged under Article 7/2 of the Anti-Terror Law, this was in conjunction with Article 31/2 of the Criminal Code, which governs reduction of sentences for those over the age of 12 but under the age of 15.

Article 31/2 of the Criminal Code (as amended by Law 5377 of 29 June 2005) says of accused children in this age group:

> Where the offender is aware of the legal significance and consequences of the offence and has developed the faculties of autonomous action with respect to the offence in question, they shall be imprisoned for a term of from 12 to 15 years, where the offence is punishable by aggravated life imprisonment, and a term of from 9 to 11 years where the offence is punishable by life imprisonment. Other penalties shall be decreased by one half and in this case the term of imprisonment for each act shall be not greater than seven years.

As mentioned in the introduction to this report, the charges against the four youngest members of the choir were eventually dropped before the case went to court. In their indictment against the six remaining children who eventually stood trial, the prosecution noted that a doctor had concluded that this group – who included three girls and three boys, all of whom were between the ages of 13 and 14 at the time of the tour – were capable of understanding the nature and consequences of their alleged crime.[14] If successfully prosecuted and convicted on those grounds, they would therefore potentially face two and a half years in prison.

Mission members query both the legal legitimacy of the charges employed by prosecutors, and also the appropriateness of using these charges in this particular context.

In relation to the legitimacy of the charges themselves, mission members note that the very wording of the provisions of Turkish anti-terror legislation governing

14 See Appendix B.

dissemination of "terrorist propaganda" pave the way for the very kinds of violations of freedom of speech witnessed in this case and are in need of urgent amendment.

A series of provisions in international law enshrine the right to freedom of expression, one of the most relevant in this context being Article 10 of the European Convention on Human Rights (ECHR).[15] The scope of this article is extremely broad, protecting not just expression, but also the conditions necessary for expression. The same article does explicitly allow certain restrictions of this right, and the European Court of Human Rights has long recognised that states are entitled to place restrictions on the media as part of efforts to combat terrorism. However, even in a context of political violence, Article 10 protects ideas and information and the locus of the Court's concern is "on the distinction between expression that may be 'offensive, shocking or disturbing' and expression that goes further and is an incitement to violence."[16] Similarly, Article 19 of the International Covenant on Civil and Political Rights (ICCPR), in enshrining the right to freedom of expression, allows for restrictions but only insofar as these are provided by law and are necessary in order to ensure respect of the rights or reputations of others, or for the protection of national security, public order, or public health or morals.[17] International standards also make clear that restrictions on freedom of expression in the name of national security should also be unambiguous and precise.[18]

In the Turkish domestic context, freedom of expression is enshrined in Article 26 of the country's constitution, which guarantees the right of each citizen "to express and disseminate his thoughts and opinion by speech, in writing or in pictures or through other media, individually or collectively". Exercise of this freedom is to be restricted for the purposes of "protecting national security, public order and public safety, the basic characteristics of the Republic and safeguarding the indivisible integrity of the State with its territory and nation, preventing crime, punishing offenders, withholding information duly classified as a state secret, protecting the reputation

15 For the full text of this article, see Appendix D. Turkey ratified the ECHR, with certain reservations, in 1954. Article 13 of the CRC, which Turkey ratified with certain reservations in 1995, explicitly states that freedom of expression is to be afforded to children. This article is also available in Appendix D.

16 H. Davis, "Lessons from Turkey: Anti-Terrorism Legislation and the Protection of Free Speech", in *European Human Rights Law Review*, Issue 1, (2005), p. 78.

17 For the full text of Article 19 of the ICCPR, see Appendix D. Turkey ratified the ICCPR, with a reservation to Article 27 governing minority rights, in 2003.

18 Principle 1.1, Johannesburg Principles on National Security, Freedom of Expression and Access to Information, UN Doc. E/CN.4/1996/39(1996). For the full text of Principle 1.1, see Appendix D.

and rights and private and family life of others, or protecting professional secrets as prescribed by law, or ensuring the proper functioning of the judiciary".

The use of anti-terror legislation against members of the Yenişehir Children's Choir, however, reflects the ability of the authorities to continue to restrict freedom of expression despite these constitutional guarantees and despite recent positive reforms in this area. The choir's performance at the San Francisco music festival clearly did not meet the criteria laid down in international law for it to be considered a form of expression liable to legitimate restriction. Their rendition of *Ey Reqip* did not jeopardise the rights or reputations of others. In the view of the mission, it also cannot sensibly be considered to have amounted to incitement to violence or a threat to national security, public order, or public health or morals, especially since it occurred not on Turkish soil but in the US.

The restriction on freedom of expression witnessed in this case is facilitated by the wording of Article 7 of the Anti-Terror Law. The European Commission noted in its 2006 report on Turkey's progress towards EU accession that the definition used in current Turkish law for the crimes of "propaganda" and "praise" of terrorism is not in line with the Council of Europe Convention for the Prevention of Terrorism.[19] Far from being unambiguous and precise, the definition of propaganda provided for by this legislation is extremely broad. Further, the Anti-Terror Law does not require that such propaganda must include the intention to incite a terrorist offence, or that it must have caused a danger that such an offence would be committed, both of which are necessary elements of the definition of "public provocation to commit a terrorist offence" employed in the Council of Europe Convention on the Prevention of Terrorism.[20]

Irrespective of the factual bases and legal legitimacy of the charges filed against members of the Yenişehir Children's Choir, mission members also take issue with the appropriateness of dealing with any case of this kind involving children under the age of 18 by means of a criminal prosecution.

In the context of prosecutions of juveniles, states have a duty to secure the best interests of each child[21] and a corresponding duty to ensure that measures affecting children who are accused of breaking the law are proportional to the gravity of the alleged offence and take into consideration the personal circumstances of the

19 Commission of the European Communities, Turkey 2006 Progress Report (COM (2006) 649 final), 6. Available at http://ec.europa.eu/enlargement/pdf/key_documents/2006/Nov/tr_sec_1390_en.pdf (last accessed 5 August 2008).

20 Article 5, Council of Europe Convention on the Prevention of Terrorism, available in Appendix D.

21 CRC, Article 3(1), available in Appendix D.

juvenile or juveniles in question.[22] Both the Convention on the Rights of the Child (CRC) and UN Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") provide that states should give consideration, wherever appropriate, to dealing with child offenders without resorting to a formal trial, provided that human rights and legal safeguards are fully respected.[23] Rule 11 of the Beijing Rules outlines examples of community programmes which, with the consent of the juvenile, or her or his parents or guardian, may be used to deal with such cases. These include "temporary supervision and guidance, restitution, and compensation of victims".

Given that all of the suspects involved in this case were under the age of 18 when they were arrested and/or charged[24], and bearing in mind the benign nature of the behaviour in question, as discussed above, mission members contend that opting to pursue criminal prosecutions was very clearly disproportionate and inappropriate.

b. The Trial Process

Charges were filed against all children involved in the case in November 2007. The older children were subsequently indicted and tried by the Diyarbakır Heavy Crimes Court and the younger accused were indicted and tried by the Diyarbakır Juvenile Heavy Crimes Court.[25]

The decision to try the three older children in an adult court is a clear violation of international human rights agreements calling for the use of tailored criminal institutions and special protective measures in cases involving juveniles, both during the trial itself and at all other stages in the legal proceedings.

Children are entitled to all of the same fair trial guarantees and rights which apply to adults.[26] In the case of children, however, international standards go even further.

22 Rules 5 and 17.1, the UN Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), available in Appendix D.

23 See Article 40 (3)(b) of the CRC and Rule 11 of the Beijing Rules, both available in Appendix D. Turkey ratified the CRC in 1995. The Beijing Rules were adopted by the General Assembly in 1985.

24 There is an emerging consensus in international law that a child is anyone under the age of 18. See, for example, Article 1 of the CRC and Rule 11(a) of the UN Rules for the Protection of Juveniles Deprived of their Liberty, both available in Appendix D.

25 See Appendices A and B for copies of the indictments.

26 International standards in relation to fair trial rights include those laid down in Article 6 of the ECHR and Article 14 of the ICCPR, both available in Appendix D.

In general, the Universal Declaration of Human Rights (UDHR) asserts that childhood is entitled to "special care and assistance".[27] In the same vein, the Declaration of the Rights of the Child states in its preamble that, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth."[28] Other international agreements and declarations that have affirmed this need for special protection include the ICCPR[29] and the International Covenant on Economic, Social and Cultural Rights (ICESCR).[30]

In the specific context of legal proceedings, the CRC and the ICCPR underline the need to promote each child's physical and mental wellbeing and sense of dignity and self-worth, as well as the desirability of ensuring that children involved in criminal prosecutions are rehabilitated and reintegrated into society.[31] Such requirements are based on the precepts that children should be spared the stigma of crime as far as possible, and that infractions of the law by children should be addressed by educational measures rather than punishment.[32] Even more specifically, and in keeping with other international human rights standards, Article 40(3) of the CRC encourages state parties to "promote the establishment of laws, procedures, authorities and institutions specifically applicable to children" in relation to criminal prosecution.[33]

The proceedings observed by KHRP were, however, a very long way from the wording and the spirit of such international standards. Far from being a specialist juvenile court, the Diyarbakır Heavy Crimes Court where the older children were tried usually deals with serious criminal and terrorist charges against adults. When mission members visited the court to attend the 19 June trial hearing, they noted a long list of scheduled cases, all linked to anti-terror legislation, including prosecutions for drug trafficking and handling weapons. The possibility of trying juveniles in adult courts is provided for by Article 9 of Turkey's recently-amended Anti-Terror Law, according to which children over the age of 15 can be tried before

27 Article 25 (2). See Appendix D for the full text of this article. Turkey signed the UDHR in 1949.

28 See also Principle 2 of the DRC, available in Appendix D.

29 Articles 23 and 24, available in Appendix D.

30 Article 10 (3), available in Appendix D. Turkey ratified the ICESCR in 2003.

31 Article 40(1) of the CRC; Article 14(4) of the ICCPR; Rule 1 of the UN Rules for the Protection of Juveniles Deprived of their Liberty. See Appendix D for full texts of these provisions.

32 See Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, NP Engel, 1993, pp265-66.

33 See also Rule 2.3 of the Beijing Rules, available in Appendix D.

High Criminal Courts for terrorism offences, rather than in the specialised juvenile courts that would ordinarily handle cases involving this age group.

Mission members observed a number of trial hearings at the Diyarbakır Heavy Crimes Court and, other than that the children's hearing was held *in camera*, with mission members the only observers allowed in the courtroom, the trial process appeared to be identical to that used for adult defendants. There was not even any attempt to have the case moved up the list of hearings due to be held on the same day, in order to prevent the children from having to wait amongst a throng of adults milling around outside the courtroom.

A particular requirement under the CRC and the Beijing Rules is protection of the privacy of children accused of crimes, in order to shield them from stigmatisation.[34] However, even the decision to hold both cases *in camera* – an apparent acknowledgement of the need to protect the privacy of juvenile defendants – was of limited value. It was clear that there had been no more substantial attempts, either at the court on the day of the trial hearing or prior to that time, to limit publicity surrounding the alleged crime at the heart of the proceedings. As noted previously in this report, the case received both domestic and international media coverage. During mission members' meeting with members of the children's choir the day before the trial hearing the three children who were due to appear in court the following day were called away for a telephone interview with the BBC.[35] Media interest was such that at least one local journalist had to be turned away after entering the public gallery in an effort to watch the 19 June hearing.

When the time came for the 19 June hearing in the case of the three older children, the accused entered the courtroom and took their places in the dock. Besides their court-appointed defence lawyer, no adults – either from their families or from the youth centre – were present to support them. They were each addressed directly by the most senior of a panel of three judges and responded articulately to his questioning. They occasionally glanced at the public gallery, which KHRP mission members understood was to check that they were still present. One of the accused denied singing *Ey Reqip* in San Francisco, but admitted playing a drum during the performance. A second accused admitted singing a solo and, when confronted with a photograph of a child making the "V" sign, acknowledged that it was him. Use of the "V" sign in Turkey is most common amongst the country's Kurdish population and is widely assumed by state officials to have pro-PKK connotations. The third accused denied any involvement whatsoever in the singing and insisted that he had

34 Article 40(2)(b)(vii) of the CRC, and Rules 8 and 21 of the Beijing Rules. See Appendix D for full texts of these provisions.

35 For an example of the BBC's coverage of the case, see "Kurdish Child Choir Case Dropped", available at http://news.bbc.co.uk/1/hi/world/europe/7462728.stm (last accessed 28 August 2008).

merely acted as a stagehand. Neither of the two other judges on the panel nor the prosecutor asked any questions of the children, and none appeared to take a great deal of interest in following the proceedings.

Once the senior judge had finished questioning the accused, the prosecutor read out a prepared speech in a voice so low that it was virtually inaudible. The overarching message was a call for acquittal on the grounds that the accused lacked the intention to commit a crime (i.e. the dissemination of terrorist propaganda). The judges showed no visible signs of surprise at the prosecution's argument and duly granted the requested acquittal. Mission members found this development remarkable. From a reading of Article 7/2 of the Anti-Terror Law, it had been mission members' understanding that questions regarding the children's intention had no bearing on whether they were to be convicted or acquitted. According to the mission members' interpretation of the legislation, there were two individually necessary and jointly sufficient conditions for a conviction in this case: firstly, a court finding that the children had sung *Ey Reqip*; and secondly, a finding that the song was a piece of terrorist propaganda. Since at least one of the accused admitted singing *Ey Reqip* during the San Francisco concert, mission members had therefore understood that an acquittal could only come about if the judges were to rule that the song did not in itself amount to a piece of terrorist propaganda.

One possible explanation is that the prosecution may have opted for this outcome with a view to minimising international indignation surrounding the trial, particularly given the level of media coverage and the presence of international observers in the courtroom. Such cases have become particularly sensitive in recent years, in the context of Turkey's moves towards accession to the EU. It is also notable that the decision to acquit the children at this stage in the trial process avoided any discussion of the central issue of whether or not *Ey Reqip* is terrorist propaganda and thereby sidestepped any risk of setting a legal precedent that it is not.

After the senior judge announced the court's ruling, the court-appointed counsel responsible for representing the children submitted paperwork laying out what would have been his case, which was based entirely on denying that *Ey Reqip* is a PKK song.

The six younger members of the Yenişehir Children's Choir facing separate legal proceedings in relation to the San Francisco concert had first appeared in court on 1 May. Defence lawyer Baran Pamuk indicated that they had accepted the charges against them at the 1 May hearing but was unable to confirm whether they had entered a formal plea. At that hearing, their case was adjourned until 3 July, ostensibly to allow time for what might be termed "social enquiry reports" to be obtained. Yenişehir mayor Fırat Anlı speculated that the real reason for postponing a decision

at the 1 May hearing was the juvenile court's wish to allow the adult Diyarbakır Heavy Crimes Court to set the strategy for the case in its dealings with the older children.[36] The younger children were eventually acquitted at the 3 July hearing. In principle, mission members welcome the fact that the six younger children were at least tried by a court specifically tailored to cases involving juveniles, though it is impossible to speak about the appropriateness of the courtroom procedures employed without having been able to observe the trial proceedings. It is worth noting, however, that the Diyarbakır Juvenile Heavy Crimes Court sits in exactly the same building as the adult Heavy Crimes Court, just in different courtrooms.

It is of course difficult to assess the impact of this whole experience on the mental wellbeing of the children involved from both age groups. When the mission met with members of the choir on the day prior to the 19 June court hearing, it was noted that the younger children appeared to be reacting to the attention being paid to them much as one would expect from young teenagers. The older members, however, appeared to be more aware of the gravity of the situation. In general, they seemed apprehensive about their forthcoming court appearance. Though the overall impression given by the children was one of stoic resignation, KHRP mission members noted that the whole legal process was clearly an intimidating experience.

Although mission members noted that the senior judge overseeing the 19 June trial hearing did not speak to the children in a harsh or aggressive manner, by the time of this hearing the children had already spent more than six months with the threat of a very substantial jail sentence hanging over their heads. This goes against the principle that cases involving juveniles must be dealt with and concluded expeditiously, whether or not the accused are held in detention.[37] During the pre-trial period, the accused from both age groups had also been required to go through the process of providing testimony to the prosecutor and their homes had apparently been searched.[38]

It should also be emphasised once again that the children were forced to undergo much of this process without visible support from adult family members and youth workers. When mission members asked about the lack of family support on the day of the court hearing, they were told that this merely reflected the parents' trust in the youth centre staff. However, the mission believes it is also inevitable that the parents should have felt harassed by the whole affair, particularly given the decision

36 TO interview with Fırat Anlı, Mayor of Yenişehir Municipality, 19 June 2008, Yenişehir.

37 Article 40(2)(b)(iii) of the CRC and Rule 20 of The Beijing Rules. The full texts of these provisions are available in Appendix D.

38 TO interview with eight choir members, 18 June 2008, Yenişehir Municipality Youth Centre.

to search their homes as part of the investigation. The mission was told that some children who had previously sung in the choir were no longer allowed to do so by their parents.[39]

While mission members welcomed the decisions to acquit both groups of children, it remains clear that the decision to charge them and subject them to the trial process in the first place was nevertheless a clear breach of their human rights. The mission was deeply discomfited to see how a singing tour abroad – which should have been an exciting and valuable experience for children from this socioeconomically deprived region of Turkey – had met with such an intimidatory, repressive reaction from the authorities. In the view of the mission, the moves against the children were clearly intended to frighten them and their families, and to send a message that public deviations from the secular, Turkish nationalist ideology associated with the official establishment will not be tolerated.

39 *ibid.*

4. JUVENILES IN THE TURKISH JUSTICE SYSTEM

The decision to charge members of the Yenişehir Children's Choir with terrorism offences and to try some of them before an adult court reflects the broader failure of the Turkish state, and in particular the security forces and criminal justice system, to respect international standards with regard to the need to afford special protection to juveniles.

The apathy of the Turkish state in this regard is illustrated by its failure to meet its commitments in terms of reporting to the UN Committee on the Rights of the Child, the expert body that monitors state parties' compliance with the CRC. Turkey was due to submit its last two reports to the Committee on the situation of children's rights within its borders on 3 May 2007 and 3 May 2002. At the time of writing, however, both of these reports are yet to materialise. The most recent observations that the Committee has been able to make on feedback from Turkey were adopted as long ago as June 2001, in response to a report submitted by Turkey in July 1999 and additional information supplied in the interim.[40]

At the time, the Committee expressed concern that criminal responsibility extended to children as young as 11, that there were only a small number of juvenile courts in operation, that the Juvenile Courts Law only covered those between the ages of 11 and 14, and that even members of this age group might not be subject to the Juvenile Courts Law if they lived in areas under a state of emergency or were accused of committing a crime falling under the jurisdiction of state security courts or military courts. A wide range of other issues about which the Committee expressed concern included cases of incommunicado detention of children in police or *gendarme* custody without access to a lawyer; reports of torture and/or ill-treatment of children, especially in pre-trial detention; and the failure to investigate all such alleged cases of torture and convict the perpetrators, thus creating a "climate of impunity". The Committee also noted that detention was not being used as a measure of last resort, that pre-trial detention periods were long, that conditions of imprisonment were

40 Committee on the Rights of the Child, *Report on the Twenty-Seventh Session (Geneva, 21 May – 8 June 2001)*, pp. 18-31. Available at http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/5b1df9e703b19060c1256adb0036f084/$FILE/G0143817.pdf (last accessed 1 September 2008).

poor, and that insufficient education, rehabilitation and reintegration programmes were provided during detention.

In the absence of further reporting by Turkey to the Committee, a number of recent examples serve to illustrate the ongoing failure of the Turkish state to protect the rights of children. These are especially prevalent in south-eastern Turkey, where the context of the long-running conflict between state security forces and the PKK, in combination with the de facto state of emergency that remains in place in many areas, has paved the way for extreme action by officials against children suspected of links with the armed movement and other forms of unrest. At the end of March 2006, for instance, local media reported that five children were killed when police opened fire on demonstrators in Diyarbakır. Some 213 minors were said to have been initially detained in connection with the same unrest, over 90 of whom were formally arrested. According to local media, most were allegedly subjected to torture or other forms of mistreatment in custody.[41] The same institutionalised disregard for the importance of childhood and the special vulnerability of children was displayed in the course of a crackdown on demonstrations that took place in March 2008 in the south-eastern cities of Hakkari, Siirt, Van and Yüksekova after local authorities refused to permit traditional Newroz celebrations. The authorities responded using extreme force, with videos and photographs widely circulated in the media of riot police baton-charging unarmed civilians. One video appeared to show police deliberately breaking the arm of a 15-year-old Kurdish child in the town of Colemerg, who had already been restrained.[42] Recent research by KHRP has also noted reports of violence carried out against children by police officers both in and out of custody as a result of greater powers granted to the police by amendments to the Police Powers Law in May 2007.[43]

In most of the examples cited here, the conduct of the officials involved would amount to serious violations of human rights irrespective of whether the victims were adults or children. The fact that the victims here are minors, however, underlines the need for the Turkish authorities not only to prevent these kinds of abuses in general but also to offer special protection to those under the age of 18. As these cases illustrate, the decision to charge members of the Yenişehir Children's Choir with terrorism offences and to try some of them before an adult court is representative of deeply institutionalised attitudes towards children within the Turkish security forces and justice system, which result in disregard for their special vulnerability and leave them exposed to abuse.

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41 Bia News Centre, Kemal Özmen, 'All Diyarbakır Child Prisoners Released', 1 June 2006. Available at http://www.bianet.org/english/kategori/english/79870/all-diyarbakir-child-prisoners-released (last accessed 29 August 2008).

42 KHRP Press Release, "KHRP Condemns Ongoing Violence against Civilians in Turkey and Syria since Newroz Festival", 2 April 2008.

43 KHRP, *The Situation of Kurdish Children in Turkey*, due for publication later in 2008.

5. BROADER RESTRICTIONS ON FREEDOM OF EXPRESSION AND CULTURAL AND LANGUAGE RIGHTS IN TURKEY

As noted in Section 3 of this report, the Yenişehir Children's Choir case represents a clear violation of freedom of expression, as defined and protected under international law. In fact, the case is consistent with far broader restrictions on freedom of expression and cultural and language rights in Turkey.

As discussed in Section 3, freedom of expression is protected both by international law and the Turkish constitution. International standards also enshrine cultural and language rights. The ICCPR, for example, states that members of ethnic, religious or linguistic minorities "shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language".[44] Numerous agreements, including the ECHR and the ICCPR, also set out frameworks for the protection of minority groups from any form of discrimination.[45] The ideals enshrined in such agreements do not, however, reflect practices on the ground in Turkey.

Though the situation in Turkey with regard to freedom of expression has improved somewhat in the last ten years, recently there have been signs of regression. The number of prosecutions for expression of non-violent opinions almost doubled in 2006, compared with 2005, and continued to increase in 2007.[46]

As noted previously, the use of the Anti-Terror Law to restrict freedom of expression in the Yenişehir Children's Choir case is facilitated by weaknesses specific to this legislation, including an unacceptably broad definition of "propaganda". But the Anti-Terror Law is not the only legislation used to restrict freedom of expression in Turkey. In practice, the Criminal Code has also commonly been employed for this

44 Article 27, available in Appendix D.

45 See, for example, Article 14 of the ECHR and Article 26 of the ICCPR, both available in Appendix D.

46 Communication from the Commission to the European Parliament and the Council, *Turkey 2007 Progress Report,* SEC (2007) 1436, 6 November 2007, pp14-15. Available at http://ec.europa.eu/enlargement/pdf/key_documents/2007/nov/turkey_progress_reports_en.pdf (last accessed 27 August 2008).

purpose. This has particularly included use of Article 301, which until April this year criminalised "denigration of Turkishness, the Republic, the institutions and organs of the State". Amendments to Article 301 on 30 April substituted "Turkish Nation" for "Turkishness" and "The State of Turkish Republic" for "Turkish Republic", leaving the article still extremely problematic from the point of view of freedom of expression. Other aspects of the Criminal Code that have been used to restrict free speech include Articles 215, 216, 217, 220/8, 300, 301, 302, 305, 319, 324 and 331.

Official harassment of individuals for expressing non-violent opinions does not always result in convictions, an outcome that tends to provoke significant international criticism, and which has become particularly problematic of late given Turkey's ambitions to join the EU. Rather, KHRP has also noted a pattern of cases where prosecutions fall short of convictions but nonetheless serve to send a clear message to the accused that it is not in their interest to broach controversial subjects. On 13 February 2008, for example, KHRP observed the acquittal of the Kurdish publisher Ahmet Önal, who had been charged with supporting an armed terrorist organisation in connection with a book he published, *Diaspora Kürtleri* (Diaspora Kurds), which included a paragraph discussing the role and influence of the PKK amongst Kurds in the former Soviet Union.[47] According to Mr Önal's lawyer, the case was one of 12 pending against his client in the courts at the time. With Mr Önal having been denied legal aid or public assistance with his legal expenses, these cases were likely to exact a severe financial toll on his publishing business.[48] It is KHRP's belief that such cases are intended to send a clear message to those being targeted. The aim is to obstruct publishing and journalism that diverges from the views endorsed by the secular Turkish nationalist establishment, and more broadly to inhibit public discussion of crucial political, social and historical issues. The prosecution of members of the Yenişehir Children's Choir appear to be the latest development in this trend. It is crucial that local human rights defenders and international observers should continue to draw attention to cases of this kind and the threat that they represent to freedom of expression in Turkey, even where prosecutions fall short of convictions.

The issue of freedom of expression is deeply intertwined in Turkey with questions of cultural and language rights. Given that *Ey Reqip* is a decades-old song by a high-profile Kurdish poet and is well-known enough to have been made the national anthem of the Kurdistan Regional Governorate in Iraq, singing it could sensibly be seen as an expression of Kurdish culture of the kind protected by such agreements as the ICCPR. In this respect, the case against the members of the Yenişehir Children's Choir can be understood in the context of broader restrictions in Turkey on

47 KHRP Trial Observation Report, *Persecuting Publishers, Stifling Debate: Freedom of Expression in Turkey,* (KHRP, London, May 2008).

48 *Ibid*., p. 22.

articulations of Kurdish culture and harassment of those who publicly express this culture. The 2007 report on Turkey's progress towards EU accession, adopted by the European Parliament in May 2008, stated that Turkey had made "no progress" in the area of cultural rights. Children whose first language is not Turkish, it was noted, are unable to learn their mother tongue in the country's public schooling system. With regard to the Kurdish language specifically, all courses both in the public and private schooling systems were closed down in 2004 and remained unavailable. The same report also noted that use of languages other than Turkish remained illegal in the political sphere, that restrictions continued to apply on media broadcasting in Kurdish and that no measures had been taken to facilitate access to public services for those who do not speak Turkish, though interpretation is usually available in courts.[49]

Recent examples serve to show how such policies play out in practice. On 27 June 2008, for instance, a Diyarbakır court acquitted two mayors – Osman Baydemir and Yurdusev Özsökmenler – who had been charged and faced up to two years in prison for printing a brochure on waste disposal in Kurdish.[50] The trial again reflected a pattern of prosecutions which avoid controversial convictions but nonetheless serve to send a strong message to those involved. In a similar case in June 2007, the Council of State fired the mayor of Sur municipality and disbanded the Municipal Council for providing multilingual municipal services, which the court ruled was contrary to provisions in the Turkish constitution stating that Turkish is the language of the state and that no other language should be taught as a mother tongue.[51]

In the view of the mission, the attempt of the prosecution in the Yenişehir Children's Choir case to portray *Ey Reqip* as a pro-PKK anthem entailed an effort to completely isolate it from any cultural context. In reality, however, it was clear to the mission that no such clear distinction between politics and culture exists in this instance. In this regard, the examples cited above help to show how the Yenişehir Children's Choir case can be usefully viewed through the lens of an established pattern of official harassment in connection with expressions of Kurdish culture.

49 Communication from the Commission to the European Parliament and the Council, *Turkey 2007 Progress Report*, SEC (2007) 1436, 6 November 2007, p. 22.

50 Bianet, "Acquittal in Kurdish Brochure Trial", 1 July 2008. Available at http://www.bianet.org/english/kategori/english/108002/acquittal-in-kurdish-brochure-trial (last accessed 29 August 2008).

51 Communication from the Commission to the European Parliament and the Council, *Turkey 2007 Progress Report,* SEC (2007) 1436, 6 November 2007, p. 22.

6. CONCLUSION

The acquittal of all of the children involved in the Yenişehir Children's Choir case was of course a welcome outcome. But this should not be allowed to mask the fact that, right from the start, the legal proceedings against the choir members were inappropriate and clearly amounted to intimidatory harassment. In the case of the older children tried before the Diyarbakır Heavy Crimes Court, at least, the proceedings also largely ignored the internationally accepted human rights principle that juveniles accused or convicted of breaking the law must be afforded special safeguards in order to shield them from abuse. Without having been able to observe the trial of the younger children, mission members are not in a position to comment on whether the proceedings before the Juvenile Heavy Crimes Court met international standards in this respect.

The decision to prosecute the choir members and the manner in which the process was conducted are representative of a far broader failure on the part of the Turkish authorities – especially the security forces and criminal justice system – to protect children's rights. While there is international consensus that children should be granted extra protection in recognition of their particular vulnerability to human rights violations, juveniles in Turkey face many of the same forms of mistreatment suffered by adults, including physical abuse at the hands of police officers. Rather than working proactively to address this situation, the apathy of the Turkish authorities in relation to children's rights is reflected in the years-long backlog in the country's reporting to the Committee on the Rights of the Child.

The Yenişehir Children's Choir case is also illustrative of broad restrictions on freedom of expression and cultural and language rights in Turkey. While restrictions of these rights in this particular case were partly facilitated by the unacceptable wording of Article 7/2 of the Anti-Terror Law, with its broad definition of terrorist propaganda, Section 4 of this report served to show that such problems in relation to Turkish legislation and official practices run far deeper.

Notwithstanding the eventual acquittal of those involved, the Yenişehir Children's Choir case observed by KHRP mission members serves as yet another reminder of

the need for thoroughgoing reforms of Turkish legislation and official practices in order to ensure protection of human rights in line with international standards.

7. RECOMMENDATIONS

This report urges the Republic of Turkey to:

- Uphold commitments to reform in line with EU accession negotiations and honour those obligations which follow from the negotiations, including the Copenhagen Criteria, in order to guarantee freedom of expression and cultural and language rights and the protection of children's rights.

- Honour those obligations which follow from Turkey's membership of the Organisation for Security and Cooperation in Europe (OSCE), including the obligation to play a positive role in contributing to the facilitation of freedom of expression.

- Bring all legislation into line with international human rights standards regarding freedom of expression and children's rights, including those laid down in the CRC, ECHR, ICCPR, ICESCR, UDHR, the Council of Europe Convention on the Prevention of Terrorism, the Declaration of the Rights of the Child, the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, the UN Rules for the Protection of Juveniles Deprived of their Liberty, and the UN Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"). This should include repealing Article 301 of the Criminal Code and amending other legal provisions which impede upon the right to freedom of expression, including Article 7/2 of the Anti-Terror Law.

- In the interim period prior to formal repeal and amendments of problematic provisions, commence no further malicious prosecutions in relation to the expression of non-violent opinions and withdraw those which are pending.

- Introduce further training for the judiciary, prosecutors and state officials regarding international human rights standards in order to ensure that judges and prosecutors

are aware of and protect children's rights and freedom of expression as established in the jurisprudence of the ECtHR and other international human rights standards.

- Try all children up to the age of 18 in specialist juvenile courts, with procedures adapted specifically to the needs of the child, including in cases where the individuals in question are charged under the Anti-Terror Law.

- Ensure protection of the right to privacy for children up to the age of 18 facing trial, in line with international human rights standards.

- As a matter of routine, report promptly and fully to the Committee on the Rights of the Child with regard to the situation of children's rights in Turkey and Turkey's compliance with the CRC.

This report urges the European Union to:

- Continue to closely monitor the reform process in Turkey, including the situation regarding freedom of expression and children's rights, and ensure that Turkey remains committed to reform in line with the Copenhagen Criteria. Human rights issues should be kept at the heart of the accession process.

- Continue to criticise those aspects of Turkish legislation which impede upon freedom of expression, including Article 301 of the Criminal Code and Article 7/2 of the Anti-Terror Law.

- Closely monitor the number of investigations opened and prosecutions launched in Turkey in relation to the expression of non-violent opinions, including cases where these do not result in convictions.

- Closely observe prosecutions in Turkey related to the expression of non-violent opinions to ensure that the fair trial rights of accused persons are protected.

- Closely observe prosecutions in Turkey involving children and in this regard remind Turkey of its obligation, as a signatory to the CRC, to secure the best interests of each child and to ensure that measures taken in relation to children accused of breaking

the law are proportional to the gravity of the offence and take into consideration the personal circumstances of the accused.

- Use its good offices to urge Turkey to fulfil its obligations in terms of reporting to the UN Committee on the Rights of the Child.

APPENDIX A – INDICTMENTS AGAINST THE OLDER CHILDREN[52]

6. Heavy Crimes 5395.ST. TABI-GIZLI
08/174 E
D.G. 19.06.2008

T.C.
DİYARBAKIR
PUBLIC PROSECUTOR
(CMK 250. COMISSIONED ARTICLE)

Inquiry No: 2007/1835
Core No: 2008/392
Indictment: 2008/353

INDICTMENT
DİYARBAKIR HEAVY CRIMES COURT

CLAIMANT: K.H.

SUSPECT: 1-"Ş.Y." *[information redacted]*

ATTORNEY: BARAN PAMUK *[information redacted]*

52 Unofficial translation of original document provided to mission member. Throughout this translation, steps have been taken to protect the privacy of the accused children, including replacing their names with initials and redacting other personal information. In all cases where redactions have been made, this is clearly marked.

SUSPECT: 2- "G.O." *[information redacted]*

ATTORNEY: BARAN PAMUK *[information redacted]*

SUSPECT: 3- "V.M." *[information redacted]*

DEFENCE ATTORNEY: BARAN PAMUK *[information redacted]*

CRIME: PROPAGANDA ON BEHALF OF A TERRORIST ORGANISATION

DATE OF CRIME: 03.10.2007

APPLICABLE ARTICLE: 3713 numbered law 7/2, TCK Article 31/3 (independent to each suspect)

EVIDENCE: Defence of suspects, analysis of CD news relating to the subject matter (the event), manuscript of the poem 'Enemy', the published news clips in the newspapers regarding the subject matter, birth registration and record of previous convictions.

PRELIMINARY DOCUMENTS EXAMINED:

The registered suspects whose identity information is given above, of Diyarbakır province Yenişehir Municipal Borough, as part of a Youth Working Group's children's choir, attended the world music festival held in America on 03.10.2007 and sang the so-called Kurdish anthem named 'Hey Enemy' in Kurdish (which has been accepted as the anthem of the PKK, a terror organisation) in an environment where the PKK's supposed flags were displayed.

In relation to the accusations of the defendants, the defence lawyers presented a common defence before the Republic Public Prosecutor. On 3.10.2007 the children's choir from Yenişehir Municipal Borough, the choir teacher being Duygu Özge BAYAR, was invited to the world music festival on behalf of Turkey, went to America and performed in San Francisco and San Diego cities throughout the festival.

The choir known as a children's choir sang the chosen Kurdish songs within the framework of the program. The choir teacher Duygu Özge BAYAR stated that the poem 'Hey Enemy' was demanded by the audience, that they only worked one day

on practising it and that it was performed the next day. She denied the charges by stating that they did not know the meaning of the song.

According to the result of the investigation, with the Youth Working Group children's choir from Diyarbakır Yenişehir Borough having been invited from Turkey to the world music festival organised in America on 03.10.2007, the accused individuals in charge of the choir went to America and, despite the fact that it was not present on the programs, the so-called anthem 'Hey Enemy' (which they accepted as the anthem of the PKK, an illegal terror organisation) was sung in Kurdish in a setting where the terrorist organisation's so-called flags were displayed. It is understood from the evidence gathered that the suspects committed the crime of making propaganda for the PKK, an outlawed terrorist organisation.

Based on the stated facts and due to the crimes committed by the suspects and according to Articles 250-252 of the CMK the court has reached the decision that the trial should be carried out in private and also decides that the suspects should be penalised in accordance with the aforementioned applicable clauses.

It is in public interest to demand and claim a decision.

AHMET KARACA 38116
Public Prosecutor

APPENDIX B – INDICTMENTS AGAINST THE YOUNGER CHILDREN[53]

Next Hearing Date: 03.07.2008

DİYARBAKIR
PUBLIC PROSECUTOR

Enquiry No: 2008/2699

Core No: 2008/2028

Indictment No: 2008/517

INDICTMENT
DİYARBAKIR JUVENILE HEAVY CRIMES COURT

CLAIMANT: K.H.

SUSPECTS:

1- "R.P." *[information redacted]*
2- "İ.K." *[information redacted]*
3- "Ş.T." *[information redacted]*
4- "S.M." *[information redacted]*
5- "S.A." *[information redacted]*
6- "A.Ç." *[information redacted]*

DEFENCE ATTORNEY: BARAN PAMUK *[information redacted]*

53 Unofficial translation of original document provided to mission member. Throughout this translation, steps have been taken to protect the privacy of the accused children, including replacing their names with initials and redacting other personal information. In all cases where redactions have been made, this is clearly marked.

CRIME: Making propaganda on behalf of an illegal terror organisation

DATE and LOCATION of CRIME : 03.10.2007- USA San Francisco

APPLICABLE ARTICLES: TCK 37/1 Article with guidance 3713 no.7/2-b
TCK 31/2, 5395 no C.K.K Article 5

EVIDENCE: Defence of suspects, analysed reports, article by the Governor of Diyarbakır, enclose of photos from file and all the file.

INVESTIGATION DOCUMENT EXAMINED

The PKK (Partiye Kalkeren Kurdistan), the aim of which is "To separate East and South East regions of the country by terror and violence to establish an independent Kurdish state", and which, in accordance with this aim has been using widespread violence and terror operations against our country since 1984, killing 35.000 people, is a terrorist organisation.

Between 03.10.2007 and 07.10.2007 the Youth Working Group Choir from Diyarbakır Province Yenişehir Municipal Borough attended the world music festival in America, and between 03.10.2007 and 07.10.2007 they performed songs in various languages in San Francisco, Los Angeles and San Diego and, as stated above, the identified suspects aged between 12 and 15 took roles as vocalists and percussionists in the choir. On 03.10.2003, during the world music festival in San Francisco, in a setting where the so-called flags of the PKK were displayed, the suspects sang the so-called Kurdish anthem 'Hey Enemy', which has been accepted by the outlawed terrorist organisation and is broadcasted internationally on and by Roj TV (a pro-PKK channel) at the opening and closing of its broadcasting. By singing Hey Enemy they have been making propaganda on behalf of the terrorist organisation. A report given by a doctor states that the suspects understand the legal effect of and acknowledge the consequence of the alleged crimes and also that the suspects are capable of understanding the nature of the alleged crimes and that suspects aged over 15 are to be prosecuted before the Diyarbakır public prosecution in accordance with Article 250 and the investigation to be conducted by the same office.

It is submitted that the suspects should be tried for their alleged crimes and punished in proportion to their actions according to the applicable Articles as mentioned above.

ERKAN YILMAZ

Public Prosecutor- 37021

Note: The allegations of making propaganda of a terror organisation against "R.M.", "B.U.", "S.Ç.", "M.C." have been dropped.

JUVENILES HEAVY CRIMES COURT

2008/47 E

D.G. 03.07.2008

APPENDIX C – STATEMENT OF THE ACCUSED "G.O."[54]

T.C.
DIYARBAKIR
The Commonwealths Attorney General's Office

Investigation No: 2007/1835

CROSS-EXAMINATION MINUTES
(The Suspect)

STATEMENT BY *:
T.C. Identification Number: 39592463744
Name and Surname: "G.O."
Defence Lawyer: BARAN PAMUK, DIYARBAKIR
Address: *[information redacted]*
Name of parents: *[information redacted]*
Place of Birth and Date: *[information redacted]*
Registered Region: *[information redacted]*
Place of Residence: *[information redacted]*
Civil status and Child Count: *[information redacted]*
Place of Declaration: Attorney's Office

The suspect was informed of his offence and was advised of his legal rights to a defence lawyer; if he wishes to have his legal representative present as he provides a statement then he could do so. If the suspect was not in a position to obtain a defence lawyer, so long as he required the services of an attorney, the bar council would then provide the suspect with a legal representative. The suspect was also told that he had the right to notify anyone in his close circuit of his capture, as well as the right not to plead to any allegations. To avoid any suspicion, the suspect was informed of his eligibility to call for concrete evidence that might serve his case.

54 Unofficial translation of original document provided to mission members. Throughout this translation, steps have been taken to protect the privacy of the accused children, including replacing their names with initials and redacting other personal information. In all cases where redactions have been made, this is clearly marked. The statements of the three children were broadly similar.

Due to the fact that the suspect is 18 years of age and still regarded as a minor, the bar called to duty the defence lawyer Baran PAMUK.

Questioning:

I reside in the address confirmed above. In the year 2007, in the month of June, I graduated from *[information redacted]*. *[information redacted]* which is where I met the teacher in charge Duygu Özge BAYAR. *[information redacted]* I went back to the borough and because I knew some of the kids from the choir, while I was talking to them I then came across the teacher. The teacher talked to me concerning my situation and told me that I should come. During the year 2007, from the end of August I started helping the teacher out with the children's choir. I went to America with the choir for the same purpose. Within this choir, "F.B.", "R.P.", "I.K.", "S.Y.", "A.C.", "S.C.", "R.M.", "S.M.", "S.T.", "S.A.", "B.U.", "M.C.", "V.M." and the choir's teacher Duygu Özge BAYAR were all members. Within this choir, I did not act as an active member; my responsibilities were solely to help the teacher with choir practice. We went to America with all of the people listed. No other parties attended from the municipality, only us. Our flight tickets were provided by the choir teacher but I do not know where she got them from. In America, for the whole duration of the festival our programme was in San Francisco and San Diego. Within this period of time, we stayed in a hotel. I think the hotel and other arrangements were made by the organisers of the festival. In the festival the songs were performed in eight different languages which were all known prior to the event and we prepared accordingly. The first performance was carried out in the city of San Francisco. Due to requests coming in from the audience our teacher Duygu Özge BAYAR prepared the choir for a day to learn an anthem which is known as Ey REQUIB (Hey Enemy), and the next day we performed it in Kurdish. I cannot remember whether or not they had performed this anthem in Kurdish in the other city. I only know enough Kurdish to get me by on a day-to-day basis, so I am not aware of what the words of the song mean in Turkish. I accept my declaration as stated above.

The Suspect was asked which person in charge, whether in the Yenişehir Children's Choir or Yenişehir municipality, was responsible for the actions executed.

I am not aware of who is responsible within the Yenişehir municipality. However, our choir-related proceedings are managed by the teacher.

Defence Lawyer in regards to his client, the suspect:

I am in agreement with what the suspect has declared. Relevant to this questioning is the Kurdish Iranian poet who goes by the name Dildar, dating back 68 years, in the year 1940. This anthem relates to the formation of the Mahabat Kurdish

Republic in 1946, which stood steady for a year and so this piece was regarded as the official anthem to celebrate this. Since we are on the topic, the federal Kurdish officials within the Kurdish region of Northern Iraq have also formally accepted this anthem. Due to these reasons, today you recognise the poem written 68 years ago as a prime source for propaganda lead by an organisation and this is not feasible by law. On the dates specified there were no signs of the organisation nor were the creators of the organisation born. For this reason we testify that the offence of propaganda cannot be indicted. It is left for us to say that the federal officials in the Kurdish region of Northern Iraq and our nation state have political affairs. The point of discussion is that the country's accredited representatives are often in our country for formal conventions in Ankara. This anthem is accepted by a legitimate administration and so an investigation into the piece of literature should not be permitted nor should it have an influence on this case any further. This case could cause great controversy concerning international relations. The point of the matter is; there is no mention of the word *organisation* within the anthem. Our defence dismisses this as evidence.

The terms of Article 147 within the criminal procedure code has been met and the minutes were read, the individual giving the declaration and the attendees have all signed below. 07/01/2008.

AHMET KARACA 38116TURGAY AKSIT 96522 "G.O."
Suspect

Legal Attorney
BARAN PAMUK

APPENDIX D – EXCERPTS FROM RELEVANT INTERNATIONAL STANDARDS

Convention on the Rights of the Child

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 3 (1)

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others; or

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Council of Europe Convention on the Prevention of Terrorism

Article 5 – Public provocation to commit a terrorist offence

1. For the purposes of this Convention, "public provocation to commit a terrorist offence" means the distribution, or otherwise making available, of a message to the public, with the intent to incite the commission of a terrorist offence, where such conduct, whether or not directly advocating terrorist offences, causes a danger that one or more such offences may be committed.

2. Each Party shall adopt such measures as may be necessary to establish public provocation to commit a terrorist offence, as defined in paragraph 1, when committed unlawfully and intentionally, as a criminal offence under its domestic law.

Declaration of the Rights of the Child

Principle 2

The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions

of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.

European Convention on Human Rights

Article 6 – Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

a. to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

b. to have adequate time and facilities for the preparation of his defence;

c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

e. to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Article 10 – Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference

by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 14 – Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

International Covenant on Civil and Political Rights

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2.

(a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

International Covenant on Economic, Social and Cultural Rights

Article 10 (3)

Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Johannesburg Principles on National Security, Freedom of Expression and Access to Information

Principle 1.1: Prescribed by Law

(a) Any restriction on expression or information must be prescribed by law. The law must be accessible, unambiguous, drawn narrowly and with precision so as to enable individuals to foresee whether a particular action is unlawful.

(b) The law should provide for adequate safeguards against abuse, including prompt, full and effective judicial scrutiny of the validity of the restriction by an independent court or tribunal.

Universal Declaration of Human Rights

Article 25 (2)

Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

UN Rules for the Protection of Juveniles Deprived of their Liberty

Rule 1

The juvenile justice system should uphold the rights and safety and promote the physical and mental well-being of juveniles. Imprisonment should be used as a last resort.

Rule 11

For the purposes of the Rules, the following definitions should apply:

(a) A juvenile is every person under the age of 18. The age limit below which it should not be permitted to deprive a child of his or her liberty should be determined by law;

(b) The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.

UN Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")

Rule 2.3

Efforts shall be made to establish, in each national jurisdiction, a set of laws, rules and provisions specifically applicable to juvenile offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice and designed:

(a) To meet the varying needs of juvenile offenders, while protecting their basic rights;

(b) To meet the needs of society;

(c) To implement the following rules thoroughly and fairly.

Rule 5. Aims of juvenile justice

5.1 The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence.

Rule 8. Protection of privacy

8.1 The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling.

8.2 In principle, no information that may lead to the identification of a juvenile offender shall be published.

Rule 11. Diversion

11.1 Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority, referred to in rule 14.1 below.

11.2 The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for that purpose in the respective legal system and also in accordance with the principles contained in these Rules.

11.3 Any diversion involving referral to appropriate community or other services shall require the consent of the juvenile, or her or his parents or guardian, provided that such decision to refer a case shall be subject to review by a competent authority, upon application.

11.4 In order to facilitate the discretionary disposition of juvenile cases, efforts shall be made to provide for community programmes, such as temporary supervision and guidance, restitution, and compensation of victims.

17. Guiding principles in adjudication and disposition

17.1 The disposition of the competent authority shall be guided by the following principles:

(a) The reaction taken shall always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as to the needs of the society;

(b) Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum;

(c) Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response;

(d) The well-being of the juvenile shall be the guiding factor in the consideration of her or his case.

17.2 Capital punishment shall not be imposed for any crime committed by juveniles.

17.3 Juveniles shall not be subject to corporal punishment.

17.4 The competent authority shall have the power to discontinue the proceedings at any time.

Rule 20. Avoidance of unnecessary delay

20.1 Each case shall from the outset be handled expeditiously, without any unnecessary delay.

Rule 21. Records

21.1 Records of juvenile offenders shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the case at hand or other duly authorized persons.

21.2 Records of juvenile offenders shall not be used in adult proceedings in subsequent cases involving the same offender.

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