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In the Wake of the Lifting of State of Emergency Rule

**Report of a Fact-Finding Mission
to Southeast Turkey**



Kurdish Human Rights Project



**BAR HUMAN RIGHTS
COMMITTEE
OF ENGLAND AND
WALES**

Bar Human Rights Committee

Human Rights Association

In the Wake of State of Emergency Rule Report of a Fact-Finding Mission to Southeast Turkey

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

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The Human Rights Association (IHD) was established by 98 human rights defenders on 17 July 1986. IHD strives for the creation of social, political and cultural conditions that are in line with the democratic standards and human dignity in Turkey. During 15 years of existence, the IHD has organised more than 70 symposium/conference and public debates on several human rights issues and more than 15 campaigns on specific issues ranging from freedom of opinion to the abolition of the death penalty.

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Table of Contents

Foreword	7
Executive Summary	
1. In the Shadow of the Police and Security Forces	15
a. The Impunity of Police and Military Personnel	19
2. Freedom of Association and the Democratic Process	20
a. Civil Society Organisations	23
3. Trade Union Rights	28
4. Freedom of Expression	30
a. Legal Restrictions on the Use of the Kurdish Language	31
5. Resettlement and Return	35
6. The Legal System	39
a. National Security Council	39
b. State Security Courts	41
7. Authorities of Local Administration	45
8. Conclusion and Recommendations	47
<u>Appendix A:</u> European Parliament resolution on Turkey’s application for membership of the European Union (COM(2002) 700- C5-0104/2003 – 2000/2014(COS)), June 2003	48
<u>Appendix B:</u> Human Rights Association human rights report January To July 2003.	

Foreword

From 1987 to 2002, state of emergency legislation governed the majority of provinces in the Kurdish regions in Southeast Turkey. The legislation, known as OHAL, conferred broad administrative and legal powers upon specially created Regional Governors, effectively rendering the region a police state. The predominantly Kurdish population was denied a range of fundamental civil, political, social, economic and cultural rights. In November 2002, the Turkish Parliament voted to lift OHAL throughout the Southeast in its efforts to meet EU standards of democracy and human rights. The question is: would the lifting of OHAL lead to a truly democratic future for the Kurds, sufficient to allow Turkey to join the EU?

In June 2002, the Turkish Parliament voted to end OHAL in two regions of the Southeast as part of its process of democratisation and legislative “harmonisation” with the EU Copenhagen criteria of human rights and democracy. In August 2002, the Kurdish Human Rights Project (KHRP), Bar Human Rights Committee of England and Wales (BHRC) and the Diyarbakir branch of the Human Rights Association (IHD) sent a delegation to Southeast Turkey to assess the impact of the lifting of OHAL and reforms passed under the harmonisation programme in a number of previously inaccessible Kurdish areas.¹

The OHAL was lifted in its entirety on 30 November 2002 at the same time as the Justice and Development Party, or AK Party, won a landslide victory in the Turkish general election. In June 2003, KHRP, BHRC and IHD sent a second delegation to the region to assess whether the lifting of state of emergency had had a concrete effect on the population of the Southeast.

Having determined at the European Council summit of 12 to 13 December 2002 that Turkey had not yet met the Copenhagen criteria, the European Council will reassess

¹ See KHRP, BHRC, IHD, “The Lifting of State of Emergency Rule: A Democratic Future for the Kurds?” (London) November 2002

Turkey's candidacy for EU accession in 2004. Discussions will be held with a view to opening accession negotiations with the Turkish Government.

The fact-finding mission delegation concluded that Turkey is far from achieving the degree of reform and implementation necessary to meet the criteria of democracy, human rights and rule of law required for accession to the EU. Even in those areas where OHAL has been lifted for almost a year, an effective police state continues to dominate all aspects of daily life. Reforms to the laws governing freedom of expression and association have, to date, largely failed to be implemented in practice. The criminal process remains in need of urgent and extensive reform. There has been an almost complete failure to secure the safe return of displaced villagers who were forcibly removed from their homes by Turkish security forces during a campaign of village destruction and evacuation that peaked in severity during the mid-1990s. The Fact-Finding Mission concluded that, as the relationship between Turkey and the EU nears an important crossroads, a great deal must be done to ensure the effective development and implementation of truly efficacious Constitutional and legislative reform.

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Executive Summary

State of Emergency Legislation (OHAL) served until November 2002 as a justification for draconian restrictions on human rights and the rule of law in the Southeast regions of Turkey, mainly populated by Kurds. From 20 to 29 June 2003, the Kurdish Human Rights Project (KHRP), in conjunction with the Bar Human Rights Committee of England and Wales (BHRC) and the Human Rights Association (IHD), sent a Fact-Finding Mission to Southeast Turkey to investigate the practical effects of the lifting of OHAL in November 2002. The delegation also evaluated the ongoing process of democratisation and legal reform which has been carried out by successive Turkish governments in the pursuit of EU accession.

KHRP, BHRC and IHD first sent a Fact-Finding Mission to assess the impact of the lifting of OHAL in August 2002. In its report *The Lifting of State of Emergency Rule: A Democratic Future for the Kurds?*, it found there to be widespread and endemic violations of numerous articles of the European Convention on Human Rights. These violations were found to be attributable to the wealth of unfettered discretionary powers that continued to be exercised by the police and military forces which controlled the Southeast region even in the aftermath of the lifting of the OHAL in some provinces.

Findings of the Fact-Finding Mission

The delegation found that almost a year since the state of emergency was lifted in its entirety, and in spite of ongoing legal reforms, *a catalogue of human rights violations continue almost totally unabated.*

- *Impunity of the security forces* – In the absence of any effective independent scrutiny, police and military operatives in the Southeast region continue to harass and intimidate the Kurdish population. The number of arbitrary detentions, coupled with torture and ill-treatment, appear to have dramatically risen since the end of 2002. The delegation uncovered stark examples of an escalation in police

and military misconduct in recent months that strongly suggest there is a concerted campaign of provocation calculated to derail the democratic process, thereby securing the continued impunity of operatives within the region.

- ***The inadequacy of the democratic process*** – The Constitutional Court’s threats to close down the pro-Kurdish People’s Democracy Party HADEP led the party to withdraw from the general elections in November 2002. Reconstituted under the name DEHAP, pro-Kurdish politicians remain effectively excluded from the democratic process by a combination of onerous electoral conditions placed upon political parties in Turkey and the intimidation of political activists and voters in the run-up to the elections. There is concern over the ongoing attempt to have DEHAP proscribed alongside its predecessors is inexcusable.
- ***Restrictions on freedom of association and expression*** – Constitutional and legislative amendments were found to be grossly inadequate in enabling non-governmental organisations (NGOs) and activists to exercise their right to assemble or protest. Legal attempts to hold any form of public meeting are routinely crushed with ferocious brutality by the security forces. The repeal of Article 8 of the Anti-Terror Legislation is rendered largely impotent due to the existence of draconian prohibitions on dissenting forms of speech contained within the Turkish Penal Code. Associations such as the IHD are subjected to raids and unregulated surveillance, as are trade unions, which are further restricted by both official and unofficial practices aimed at the alienation and victimisation of their members. As a corollary, reforms to the laws on the use of minority languages in broadcasting and education have not enabled the transmission of a single broadcast in Kurdish, or the creation of a single Kurdish language class respectively.²

² See Dunbar, R. & KHRP, ‘Turkey’s August 2002 Reform Package and the Kurdish Language: A Glimmer of Light?’ (2002) KHRP LR 2

- ***The absence of any coherent national programme for the return of Internally Displaced Persons (IDPs)*** – In spite of recent political rhetoric, there is no effective national programme for the return of the thousands of Kurdish villagers who were forcibly evacuated from their homes during the armed conflict between the State and the PKK and operations by the Turkish security forces between 1987 and 2002. Many villages, crops and surrounding forests were arbitrarily destroyed during this period, resulting in the destruction of livelihoods and the ghettoisation of former villagers in cities across Turkey. The fact-finding mission (FFM) found that fewer than 5 per cent of IDPs have safely returned to their villages.³ Those who attempt return even in the absence of governmental assistance are often violently opposed by the village guards, who were integral to the process of displacement and remain armed and active despite being officially disbanded with the lifting of the state of emergency. These guards are literally operating in a legal vacuum, outside any higher authority and with total impunity.

Legislative reforms will continue to be ineffective as long as the military maintains its grip over the Turkish machinery of state:

- ***Institutional opposition to reform*** – Although the current momentum of the reform process is evidence of the likely veracity of the Government's claim to be pursuing a degree of genuine democratisation, there is powerful opposition among some of Turkey's most influential institutions. The National Security Council, on which the military enjoys a heavy presence, retains a privileged position of influence that overarches the Turkish Parliament in the formation of policy and the passage of new laws. The reforms contained in the seventh Harmonisation Package, passed on 7 August 2003, make only a half-hearted attempt to address the Council's undemocratic interference in the parliamentary process and to increase the role of elected officials within it. Under the Turkish legal system itself there has also been a wilful failure to participate in the implementation of reforms. This is particularly true within the State Security Courts which remain

³ Interview with Ridvan Kizgin, Chair of Bingöl branch IHD, Bingöl, 21 June 2003

the *de facto* judicial arm of the military irrespective of the removal of militarily appointed judges, as exemplified by the total absence of the observance of equality of arms during the retrial of Leyla Zana and her colleagues. Similarly, the role of Turkish Public Prosecutors both in bringing repeated and unfounded prosecutions against pro-Kurdish writers, lawyers and activists, and in refusing to pursue genuine prosecutions against the security forces, reflects the entrenched ideological opposition to effective change. The fact-finding mission concluded that only the abolition of both the National Security Council and State Security Courts, coupled with a radical overhaul of the prosecutorial process, would have any significant effect in changing the underlying opposition to real democratic change.

- ***The democratic deficit at regional level and the Bingöl earthquake*** – The earthquake that struck Bingöl in the Southeast region on 1 May 2003 seriously damaged up to 80 per cent of houses within the city, leaving many of its inhabitants homeless and killing over 200 people. Even those houses left standing are considered to be unstable and thousands of people are forced to sleep on the streets. However, the locally elected Mayor was unable to take basic action due to the gross misconduct of the local Governor, who exercised his far-reaching discretionary powers in a manner which massively exacerbated the crises. The Governor was responsible for policemen firing on a crowd which had gathered to protest at the lack of aid and assistance the day after the earthquake. There are also credible allegations that he deliberately prevented NGOs from distributing aid to the city's Kurdish civilians.

The fact-finding mission (FFM) concludes that whilst the ongoing process of democratisation must be actively encouraged, the Turkish Government must do a great deal more if it is to achieve the massive degree of institutional change necessary to meet the EU Copenhagen criteria for human rights and the rule of law in time to open accession negotiations at the end of 2004. The following measures are considered to be essential:

- ***Enhancing transparency and accountability*** – In order that police and military operatives no longer feel that they can violate fundamental human rights with impunity an overhaul of the entire Turkish criminal process will be necessary. Investigations and prosecutions of police and military personnel must be genuinely independent and robust. Integral to achieving this will be the abolition of the National Security Council and State Security Courts as currently constituted.
- ***Respect for democratic pluralism*** – The continued exclusion of the Kurds from the democratic process at national and local level is clearly irreconcilable with the principles of the EU Copenhagen criteria. The effective representation of Kurdish interests at national level requires a reduction in the 10 per cent threshold for parliamentary participation. At local level, the far-ranging restrictions still placed on political activism in the Southeast region and the harassment and intimidation of individual activists must be totally eradicated. As a corollary, vast improvements must be made to existing reforms of minority language rights.
- ***The campaign for a General Amnesty*** – In order for there to be a meaningful dialogue between the Turkish Government and the Kurdish population, a number of conditions must be removed from the controversial ‘Return to Society’ or ‘Repentance Law’ that was adopted by the Turkish Parliament on 29 July 2003, and is widely perceived to be derisive and unacceptable within the Kurdish population. An unconditional general amnesty is a precondition for a lasting peace.
- ***National assistance in the return of IDPs*** – The mass displacement of Kurdish villagers is an issue of extreme urgency. In recognition of this a national programme of economic assistance in the return of Internally Displaced Persons (IDPs) must be properly established and implemented. In circumstances where

return to villages is impossible, IDPs should be re-housed in a manner that is respectful of their social and cultural traditions.

The EU strategy towards Turkey is critical. Outside assistance in the implementation and monitoring of reforms will be essential if real change is to be effected. External training and assessment of the Turkish security forces may also be required. ***The ongoing reforms of the Government should be encouraged, but international pressure for effective and lasting improvements must be intensified.***

1. In the Shadow of the Police and Security Forces

As noted in the *Lifting of State of Emergency* report, the lifting of OHAL was an act of enormous symbolic significance to the people of the region.⁴ Perhaps the most important immediate effect was psychological – the beginning of the return of a sense of normality in the lives of people who have endured an atmosphere of violence and destruction for nearly two decades. In spite of this, the mission found that the lifting of OHAL had been of little immediate practical significance to the dissolution of the police state which governs the people of the Southeast region.

In areas such as Bingöl and Tunceli, where the lifting of OHAL has now been effective for almost a year, it had been thought that the mission would encounter a much diminished police and military presence and that a sense of greater freedom would be tangible in the daily conduct of the Kurdish population. Whilst it is true that there are now fewer military checkpoints in operation when travelling between cities in the Southeast, strategic checkpoints in a number of areas continue to restrict movement. While travellers are now stopped less frequently, it is impossible for locals to travel between cities without investigation of identity cards and invasive questioning⁵. The mission first experienced a checkpoint before reaching Tunceli. The soldiers manning it were initially suspicious of the delegates, ordering them out of the taxi and demanding to see identification. Members of the mission were then asked for details of their origins and the purpose of the visit, and were required to sign a form which appeared to be a personal disclaimer, although the details were not made clear. One soldier stated that the mission was entering a volatile area, where there have been ‘many problems’ in recent months, and that they could not guarantee the security of its members. During a bus journey between Bingöl and Diyarbakir the delegation encountered three more checkpoints, at each of which all passengers had their cards studied and at one of which a passenger without his identification was aggressively questioned by a soldier.

⁴ KHRP, BHRC, IHD, “The Lifting of State of Emergency Rule: A Democratic Future for the Kurds?”, *op. cit.*

The practices of police personnel within the cities visited were even more indicative of the oppressive control still maintained by security forces in the region. This was particularly true in Diyarbakir, one of the last areas in which OHAL was officially lifted. Three plain clothes officers were waiting for the arrival of the mission near to the hotel, and promptly informed the interpreter that they would be following the mission to each of its interviews, where they would wait outside. As with the previous mission it was not clear whose orders they were acting under and no reason was given for their presence. The offices of DEHAP, the Democratic Peoples' Party (DEHAP) in Bingöl are under constant watch by police officers who log the details of everyone entering or leaving the building. Individual members of DEHAP are constantly followed and the presence of security forces is often evident outside their homes.

Even more arbitrary is the conduct of the military personnel and village guards who patrol and inhabit areas that were evacuated and destroyed in military operations during the armed conflict between 1987 and 2002. The village guards, who remain armed and active despite being officially disbanded with the lifting of OHAL, are literally operating in a legal vacuum, outside any higher authority and with total impunity. The specific problems faced by the internally displaced villagers, predominantly Kurds, who remain at the mercy of such forces will be examined later in the report.

Any legal justification for these widespread practices has been categorically removed since the end of OHAL, yet though the physical presence of the security forces is now less obvious, the underlying sense of deep-rooted oppression and arbitrarily exercised power remains a constant.

Interviewees from non-governmental organisations (NGOs) and political parties stated that legal reforms continue to have little or no impact on the ground. For example, one of the most celebrated legislative amendments was contained in the third Harmonisation Package passed in February 2002, whereby the legally permissible length of *incommunicado* detention for persons suspected of offences within the jurisdiction of the

⁵ Interview with Feyzullah Karaaslan, Mayor of Bingöl, Bingöl, 21 June 2003.

State Security Courts was reduced from four days to 48 hours. Under the same amendment, other categories of detainees may now be held *incommunicado* for a maximum of 24 hours. However, incidents of torture and ill-treatment are most likely to occur within the first 24 hours of detention⁶, thereby rendering these reforms glaringly ineffective. According to information received by KHRP, there were 142 reported incidents of torture in the first half of 2003 in the district of Diyarbakir alone; in comparison with 228 incidents for the entire year of 2002. This counters the view of the Parliamentary Human Rights Committee of Turkey, which claims that torture is steadily decreasing.

The figures indicate a more widespread and alarming trend developing within the region. A wealth of reports and interviews with the mission led to the conclusion that the actions of police and security forces in recent months have become increasingly unpredictable and provocative. Specifically, there has been intensified military activity and huge increases in detentions since the beginning of 2003, rising from a reported 89 detentions in the month of December 2002 to 425 detentions in January 2003.

The previous mission concluded that detentions and surveillance are arbitrary in the sense of almost being random, or at least reflecting the decisions of individual gendarmes or their commanders at any particular time, so that practice may vary in a way that appears to be almost whimsical.⁷ By contrast, this mission found evidence that in recent months there has been a concerted campaign of escalating aggression on the part of police and security forces. Strikingly, there was a common sentiment among many of the mission's interviewees that the military is initiating a broader campaign to stir up tensions. Some even expressed concern about a "deep state" organisation secretly at the head of the campaign, allegedly composed of remaining leaders from the military coup, members of illegal groups including the Mafia, and former security directors and representatives of JITEM (the gendarme's intelligence agency).

⁶ As confirmed by the Council of Europe's Committee for the Prevention of Torture (CPT) 2003 report.

⁷ Op. cit. p. 9

Highly credible examples of harassment, intimidation and outright provocation were provided to the mission. In one incident, two teenage boys in the village of Hani were publicly paraded by local police officers with human excrement smeared across their faces on 23 April 2003 after a teacher alleged that they had made rude remarks in Kurdish. The boys, aged 14 and 15, were also beaten. The police officers accused of subjecting the teenagers to inhuman treatment remain on active duty despite being under investigation by the local Public Prosecutor. It remains common practice for police and military personnel to remain operative throughout such proceedings. Furthermore, the IHD Diyarbakir Branch launched an independent investigation into the incident, which has uncovered claims that local policemen have been intimidating witnesses.

Another highly inflammatory incident is the murder of Ali Keleş, an Elderman in Gulluce village, Bingöl district, and prominent local DEHAP member. Masked men, who the security forces claim were members of the PKK, forcibly removed Mr. Keleş from his home and shot him two days before the mission arrived in Bingöl. The incident was subsequently reported in the local media, where it was noted that the Elderman had been arrested by local police a week earlier and questioned for four days on the grounds that he was himself an alleged member of the PKK. DEHAP representatives in the city also noted a similar shooting in Diyarbakir two days earlier and were convinced that such acts could only be the product of covert military operations.

Representatives of NGOs and political parties suggested that the increased aggression was calculated to inflame the population and lead to the creation of conditions tantamount to a *de facto* state of emergency. Mehmet Yural, member of the board of the Human Rights Foundation of Turkey, voiced the widely-held view that the police and military forces are working to derail the process of reform in order to evade the scrutiny which robust parliamentary and legal processes would expose their conduct to. To Mr. Yural and many others, it is “obvious” that such forces have a vested interest in resurrecting the *de facto* state of emergency, as this has long provided the justification for their absolute and unfettered control of the Southeast.

a. The Impunity of Police and Military Personnel

Equally troubling as the escalation in violent and intimidating conduct in recent months is the apparent failure of the Turkish legal process to investigate and prosecute such acts. For example, in spite of human rights abuse in Bingöl, there have been no investigations into police activities and consequently no convictions of police.⁸ The mission was informed that the police were not controlled in Tunceli and that investigations into misconduct were delayed. İrfan Neziroğlu, secretary for the Parliamentary Human Rights Committee⁹ told the mission that their studies into the Southeast region suggest that an increase in investigations by the public prosecutors means that the security forces no longer feel that they can act with total impunity¹⁰. However, evidence suggests that while there has been an increase in investigations, there remains a woeful shortage of effective prosecutions. The US State Department's figures for 2002 suggest that, by the end of November 2002, prosecutors received 980 cases alleging torture by police and gendarmes. Of these, 456 cases were processed, resulting in 147 indictments, of which 91 cases were completed, resulting in 16 convictions, 49 acquittals, 15 suspended sentences, and 11 case dismissals.¹¹

Numerous reasons can be put forward for this failure. These include intimidation of witnesses and doctors and the presence of police forces during medical examination of detainees. Moreover, there remains an absolute dependency on the good faith of public prosecutors, who enjoy a position of power greatly superior to that of defence lawyers and an alarming ideological proximity to the judges on the State Security Courts (DGM).

⁸ Interview with Feyzullah Karaaslan, Mayor of Bingöl, *op. cit.*

⁹ The Committee was established in 1990 by a 'Special Law'; It consists of 24 MPs who are appointed by political parties in proportion to the number of seats won during the General Election and is authorised to conduct studies and investigations upon the request of MPs, individuals and NGOs. However, it is only empowered to issue non-binding recommendations.

¹⁰ Interview with İrfan Neziroğlu, secretary for the Parliamentary Human Rights Committee, Ankara, 24 June 2003

¹¹ 'Country Report on Human Rights Practices' for 2002 published by the United States Bureau of Democracy Human Rights and Labor on March 31 2003.

2. Freedom of Association and the Democratic Process

The earlier mission was concerned about the legitimacy of the democratic process in Turkey, with particular reference to the November 2002 elections. Previous electoral experiences suggested that there may be numerous restrictions placed on both pro-Kurdish political parties and voters in the region, accompanied by incidents of intimidation and harassment of political activists¹². Turkey has a longstanding practice of banning a succession of pro-Kurdish political parties; a practice that has been condemned by the European Court of Human Rights in cases brought by, among others, the United Community Party of Turkey (TBKP), the Socialist Party, the Freedom and Democracy Party (OZDEP), the People's Labour Party (HEP) and the Democracy Party (DEP).

Due to fears that it would be banned, the People's Democracy Party (HADEP) campaigned under the Democratic People's Party (DEHAP) in the 2002 general election. The party obtained nearly 2 million votes, achieving 6.2 per cent of the national vote. It was the leading party in 12 provinces in the Kurdish regions, scoring an average of 47 per cent of votes in Diyarbakir, Batman, Sirnak, Hakkari and Van. However, the Turkish electoral system denies parties with less than 10 per cent of the vote nationwide from securing parliamentary seats. The 10 per cent threshold is itself an onerous restriction on pluralism and continues to deny the Kurdish minority from taking part meaningfully in the democratic process.

As anticipated, the Constitutional Court permanently banned HADEP on 13 March 2003. Over forty HADEP members including its founders have been banned from becoming a member, founder, administrator or inspector of any political party for five years. The Court of Appeal's Chief Prosecutor then asked the Constitutional Court to ban its successor party DEHAP. Such action would inevitably contribute to feelings of anger and resentment currently being fostered by the police and military forces in the Southeast.

¹² During the general election in 1995 a number of HADEP candidates were victims of extra-judicial killings. In the 1999 elections HADEP representatives in Mersin claimed to have witnessed votes disappear after the media reported HADEP to be leading the polls with 6,000 votes.

The decision to ban HADEP received immediate condemnation from the President of the European Union, who expressed “great concern” at this erosion of political pluralism.

The execution of the November 2002 elections did see some improvement in the region. In Tunceli for example local people were generally able to cast their vote free from overt military coercion.¹³ However, there were electoral irregularities purportedly intended to prevent DEHAP from achieving the 10 per cent threshold. These irregularities included the production of incorrect voters’ lists, the invalidation of votes for DEHAP, and the intimidation of voters.

DEHAP representatives in Bingöl, Diyarbakir and Ankara noted that the insupportable and violent restrictions often placed by the police on political activities are sometimes being substituted by more institutionalised forms of harassment.

As a corollary, the distribution of political power within the Southeast has not improved with the removal of emergency rule. The Mayor of Bingöl, Feyzullah Karaaslan, informed the mission that despite having a democratic mandate his civic authority continues to be crippled by the broad and incontestable powers of the post-OHAL Regional Governor. The latter’s competences and discretionary judgments are in practice indistinguishable from those previously exercised by local governors under OHAL. According to the Mayor, the Governor of Bingöl is actively seeking to create public disillusionment with the city’s civic authorities by obstructing the implementation of even the most basic improvements to public amenities. The Mayor continues to be refused access to military compounds in the city.

A number of the allegations that surround the Governor’s handling of the provision of aid and assistance after the earthquake that struck Bingöl earlier in 2003 warrant further comment later in the report, but there is also a more endemic problem with the structure

¹³ Interview with Kemal Tolga, human rights activist, Tunceli, 20 June 2003

of local politics in Southeast Turkey. The centralisation of power at national level is a major stumbling block on the road to democratisation.¹⁴

Mustafa Kurban, the Bingöl branch Chair of the Republican People's Party CHP, cited the centralisation of power at national level as a major stumbling block on the road to democratisation. Although the state of emergency has been lifted in its entirety for almost a year, very little authority has been devolved to locally-elected administrations. In fact, the mission of power at local level falls almost exclusively with the Governors, who are without a democratic mandate and plainly do not have the trust or respect of the population.

The mission questioned the Parliamentary Human Rights Committee in Ankara about widespread claims that Regional Governors continue to act with unfettered discretionary authority and with total disregard for national legislation. As evidence of genuine government action in this regard, the mission was informed of a report of the Committee which concluded that a number of Governor's had been abusing their powers, which led to their dismissal.¹⁵ However, while such initiatives must be welcomed, Governors remain unaccountable and are consistently drawn from a pool of ex-police and military personnel. For example, the current Governor of Bingöl, who was heavily criticised in interviews on the Fact-Finding Mission throughout the Southeast, is a retired Security Director.

Mesut Değer, the CHP Parliamentary Deputy for Diyarbakir, believes there is strong evidence that ministerial circulars issued to guide the conduct of Governors are often deliberately inconsistent with constitutional and legislative reforms. Mr. Değer claims that such circulars actually encourage ongoing illegal practices. For example, he cites a circular issued by the Minister for the Interior which details unofficial methods for restricting the application of legislation entitling parents to give their children traditional

¹⁴ Interview with Mustafa Kurban, Chair of Bingöl branch of Turkey's opposition party CHP, Bingöl, 21 June 2003

¹⁵ Interview with Irfan Neziroğlu, Secretary, Parliamentary Human Rights Committee, Ankara, 24 June 2003

Kurdish names. In addition, he reported allegations that Governors literally invent laws and regulations in order to justify their conduct, safe in the knowledge that they remain immune from judicial review of their actions. He is seeking to raise the issue of circulars in Parliament, but noted that their contents are classified as state secrets and are therefore protected from parliamentary scrutiny.

a. Civil society organisations

Civil society organisations, necessary to strengthen democratic institutions, are frequent targets for raids and harassment. For example, on 6 May 2003, members of anti-terror forces and, crucially, the Prosecutor of Ankara State Security Court raided both the headquarters and the local branch of IHD, both in Ankara, at 9.00am. The raids lasted over two hours. The State Security Court had reportedly ordered the operations as “preliminary investigations” towards a public prosecution for “helping an illegal organisation” under Article 169 of the Turkish Penal Code and Article 312 of the Anti-Terror Law. Much of the office equipment was confiscated including confidential files and details of future projects and campaigns.

As a result of their work, founders and members of IHD have been subjected to ongoing harassment including arbitrary arrests, detention, torture, extra-judicial killings and “disappearances”. The Ankara headquarters of IHD has not only been raided, but was also the site on 12 May 1998 of a failed assassination attempt against then IHD President Akin Birdal. Thirteen shots were fired, hitting Mr. Birdal’s lungs, shoulders and legs.

There has been a general increase in legal actions against members and affiliates of IHD, demonstrating institutional support for opposition to democratic reforms. IHD members have been subjected to a total of 437 prosecutions in the last two years. Such institutional acts of harassment are demonstrative of the failure of legal reforms to impact upon some of the most grievous violations of civil and political rights in Turkey.¹⁶

¹⁶ As a result of the raid, 45 people have been fined for possession of confiscated publications and received a sentence of three months imprisonment, which was subsequently commuted.

On 15 May 2003, the European Parliament adopted a provisional resolution noting that, “Turkey has amended most of its legislation regarding freedom of speech and association, but [the European Parliament] regrets that these amendments still leave ample scope for repressive actions by the police and that little has changed on the ground.” Guenther Verheugen, the EU Commissioner responsible for enlargement, also condemned the raid as “unacceptable” and “a violation of human rights”.

The previous mission noted the vibrancy of civil society in Turkey and the extent to which various groups strive collectively to further their aims, utilising whatever means are available in the exercise of the fundamental right of freedom of association.¹⁷ Recent legislative reforms have professed to extend the application of this right in a number of ways in the pursuit of accession to the EU.

Article 10 of the Law on Meetings and Demonstrations has been amended by the third Harmonisation Package to read the following:

“In order for a meeting to be held, a notice signed by all members of the organisational committee must be submitted to the governorate or the prefect¹⁸ with jurisdiction over the locale of the meeting at least 48 hours before the meeting and within working hours.”¹⁹

This amendment reduces the required period of notice from 72 hours. Yet it does not alter the blanket discretion of the Governor or district Governor to declare illegal, and thereby prevent, legitimate requests for meetings held by civil society organisations. Applications to utilise this amendment have been repeatedly rejected regardless of the purpose of the meeting. For example, in March 2003, an application to hold a panel discussion on the effects of the war in Iraq on women and children was rejected. That month, a further application to stage an exhibition of pictures studying the effects of the state of

¹⁷ As contained in Article 11 of the ECHR.

¹⁸ Governor or district Governor

emergency on children and the local environment was also refused.²⁰ Governors are not required to give any reasons for their decision to reject an application.

Turkish law does entitle organisations and political parties to read publicly press releases without seeking any prior approval. However, despite the legislation, the law is frequently not respected in practice. The Chair of Diyarbakir branch of IHD, Mr. Demirhartis, was indicted for reading a press release providing the monthly statistics of human rights violations without having requested permission; in spite of the fact that such permission is not required. In a further incident in Tunceli, on 20 June 2003, 23 people were detained because they had not obtained permission to read publicly a press release.²¹ The press release concerned a statue for peace which had been erected in Tunceli in 1996. It had then been denounced as a “terrorist” statue.²² In a further incident on 6 June 2003, security forces reportedly began shooting in the streets, without provocation. While buildings were damaged, there were no human injuries.

The huge potential value of this right has been further diminished by the subsequent ill-treatment of those who participate in such readings, or even observe them, by the police and gendarmerie. In Diyarbakir in June 2003, attempts to read a press release calling for a General Amnesty for PKK members and sympathisers was met with a sudden and ferocious attack by the local police. Erkan Erenci, a member of the Diyarbakir DEHAP executive board, told the mission that at least 18 people, including women and children, were seriously wounded, and up to 54 people were detained.²³ Mr. Erenci was present during the reading and showed the mission heavy bruising covering his entire torso. He further noted that the details of those persons detained overnight were not recorded by the local police. DEHAP representatives who petitioned for an investigation days later were beaten again on the steps outside the Public Prosecutor’s offices. A whole series of

¹⁹ Unofficial translation by the KHRP.

²⁰ Interview with Ridvan Kizgin, *op. cit.*

²¹ The detainees included two of the delegation’s interviewees: Hasan Gigeek, trade unionist, and A. Hayder Beltan, Chair of Cultural and Social Association. Interviews, Tunceli, 20 June 2003

²² *Halka ve Olaylara Tercuman*, 18 June 2003

²³ Interview with Erkan Erenci, member of the Diyarbakir DEHAP executive board, 22 June 2003

attempts to read press statements calling for a General Amnesty in cities throughout Turkey during the last two months have met with a similar fate.

Even when local security forces choose not to oppose violently the public reading of a press release, a range of legal charges can be employed to prevent the lawful association of activists. At a public reading in a public square, twenty people were arrested, detained for a number of hours and received summary traffic fines on charges of obstructing a public highway at the reading. Kemal Tolga, a veteran campaigner for Kurdish rights, later showed the mission the public square in which the reading had taken place. It appeared to be a very suitable place for a public gathering which would not obstruct a public highway. He also reported an incident in the same area the week before during which soldiers in plainclothes fired indiscriminately towards a similar gathering.

When organisations do successfully exercise their right to freedom of association the results can be even more abhorrent. This was exemplified on 14 June 2003 by the sexual torture of an executive member of the Women's section of DEHAP in Istanbul, Gülbahar Gündüz. Ms. Gündüz has been participating in the campaign for a General Amnesty. At 9.00am, four plainclothes men carrying radios and describing themselves as police officers forced her into a car. Ms. Gündüz claims to have heard a person on the street tell her abductors to leave her alone; the men responded by identifying themselves as police officers. Ms. Gündüz reportedly lost consciousness when the men hit her head against the car. She was driven to an underground room without windows. The men told her that she should not be leading political activities because she is a woman and that this would be a lesson to her. The men reportedly beat her and extinguished cigarettes against her face. She also claims that one of the men forced his penis into her mouth. After eight hours, she was pushed from a moving car onto the street near Gaziosmanpaşa. Ms. Gündüz had previously been arrested and threatened on 8 March 2003 during demonstrations for International Women's Day. According to the IHD in Ankara, a subsequent attempt to read a press release drawing attention to the torture of Ms. Gündüz resulted in the police attacking the mainly female campaigners without warning.

3. Trade Union Rights

The mission interviewed several members of the Bingöl branch of KESK, a confederation representing public sector employees including teachers, technicians and drivers in universities and schools, as well as workers in the health, transportation and energy (especially electricity) services. In addition to the normal grievances concerning pay and conditions, public sector workers in Turkey face particular difficulties. They complain that their employers place severe burdens in the way of membership and effective exercise of their right to become members of trade unions. These take many forms, including threats of dismissal and what is called “internal exile” of active trade unionists.

The members of KESK unanimously said the situation in the working place and in general had not improved. On the contrary, various methods of harassing trade union members were being deployed. For example, teachers had been gathered by the Governor and ordered not to speak about politics or union subjects. Union members are also not to be appointed for any administration or managerial duties. One public servant in a school was fired for participating in a DEHAP meeting and for putting up a poster which read: ‘Learning of native language is a right’.

Similarly, governors order the removal of the circulation of announcements and information to union members.

The practice of internal exile, the compulsory transfer of an employee to a part of the country far from home without the possibility of being accompanied by spouse and family, is ongoing.²⁴ One of the mission’s interviewees, who had himself been exiled for three years from Bingöl to Zongoldac at the Black Sea, said he had eight friends who were still exiled. He also reported that he was beaten by two policemen following his request for permission from the Governor to hold a demonstration in support of Mayday, the international working class holiday. The Public Prosecutor refused to investigate the incident.

²⁴ *op. cit.*

4. Freedom of Expression

The protection of the right to freedom of expression²⁵ has also been the focus of reforms in the pursuit of EU accession. In particular, the abolition of Article 8 of Anti-Terror Law No. 3713 contained in the sixth Harmonisation Package has been hailed by lawyers in Turkey, including Yusuf Alatas, as an important *prima facie* step in enabling people to voice their opinions freely. The prohibition on “propagating separatism” contained in Article 8 had been a primary tool of oppression in the Southeast region, used to jail thousands of politicians, intellectuals and human rights campaigners for the expression of potentially any opinion in support of the Kurds. For the first six months of 2003, there were 131 prosecutions under the Article (many of which are ongoing), in comparison with 101 for the entire year of 2003.

Commentators in Turkey point to a fundamental limitation to the effective operation of this repeal. Vice-President of DEHAP, Nazmi Gür, voiced the widely-held opinion that a number of articles of the Turkish Penal Code will provide ready replacements for Article 8 of the Anti-Terror Law due to their demonstrably open application. A prime example is Article 312 of the Penal Code which states that it is a crime to incite racial, ethnic or religious enmity. This has been frequently used to prosecute persons who state, or even imply, an opinion that the Kurds have a unique or different identity. Lengths of sentences under Article 312 have in fact been recently extended. Despite the fact that such changes are irreconcilable with the EU harmonisation process, the members of the Parliamentary Human Rights Committee appeared to be unaware of the amendments.

More positively, Article 159 of the Turkish Penal Code was amended by the third Harmonisation Package so that the offence of criticising the state no longer “requires” punishment by criminal sentencing, provided that such criticism is not intended to be insulting or derisive. Yet whilst this amendment is to be welcomed²⁶, the undefined

²⁵ As contained in Article 10 of the ECHR.

²⁶ For example, the Turkish Government provided data to the U.S. Country Report on Turkey for 2002 that by the end of last year the Constitutional Court had overturned approximately 50 judgments under Article 159 as a result of the amendment.

notion of “insulting the state” continues to provide scope for ongoing prosecutions, with the determination of guilt a matter of broad judicial discretion. Similarly, Article 169 of the Turkish Penal Code which provides that it is a criminal offence to “aid an illegal organisation” continues to be employed for spurious prosecutions. Mesut Değer, the Republican People’s Party CHP representative for Diyarbakir claims that his Party advocates reform of this article due to its perpetual abuse in prosecutions against Kurdish politicians and activists.

The mission was deeply concerned at threats made to its interviewee Mr. Ridvan Kizgin, Chair of the Bingöl branch of IHD. In early July 2003, Mr. Kizgin participated in several press conferences to raise awareness of the publication of a report which detailed increases in human rights violations during the first half of 2003. On 8 and 9 July 2003, Mr. Kizgin was telephoned by persons claiming to be from the Provincial Command of the Gendarmerie. He was ordered to report to the local Commander to retract his statements made during the press conferences; and to issue a new statement denying an increase in human rights violations. Recalling that thirteen board members of IHD were victims of extrajudicial killings following similar telephone calls during the 1990s, Mr. Kizgin refused to comply and did not retract his statements.

Indeed, this is not the first time that Mr. Kizgin has been subject to harassment for his activities with IHD. In addition to five investigations currently pending against him, Mr. Kizgin has been indicted in a total of 47 cases. He has been detained four times and subjected to heavy torture. His most recent detention was in 2002, following his public reading of a press release. During this detention, he was heavily insulted but not tortured.

a. Legal Restrictions on the Use of the Kurdish Language

The prohibition on the use of any language other than Turkish for the purposes of campaigning in the November 2002 elections represented a further massive restriction of the right to freedom of expression. There have, however, been a number of reforms

relating to the use of the Kurdish language which, though they cannot be examined in detail in this report, are worthy of brief assessment.²⁷

In relation to broadcasting, the third Harmonisation Package amended Article 4 of the Law on the Establishment of Radio and Television Enterprises and Their Broadcasts²⁸ (the RTUK Law) to the effect that there may now be broadcasts in languages “traditionally used by Turkish citizens”, with the proviso that such broadcasts must not “contradict the fundamental principles of the Turkish Republic... and the indivisible integrity of the state with its territory and nation”.

This amendment represents an important ideological shift in its recognition of the existence of domestic languages other than Turkish. However, the new section of Article 4 of the RTUK Law also stipulates that the principles and procedures for such broadcasts “shall be determined through a regulation to be issued by the Supreme Board [of the RTUK].” Perhaps unsurprisingly, the regulation that was subsequently issued contains a number of onerous restrictions and has choked any worthwhile utilisation of the provision. Specifically, broadcasts in minority languages including Kurdish can only be aired on state-owned television and radio stations and cannot exceed a total of two hours’ airtime per week on television, or four hours per week on radio. None of those interviewed by the mission were aware of any programmes being aired in Kurdish as a result of this amendment.

In relation to more general freedom of expression in the media in Turkey there continues to be a large amount of centralised control, with gross restrictions placed on those few independent newspapers which are written in Turkish, but which have a pro-Kurdish or ‘leftist’ slant. Although there has been greater access to such publications within Southeast Turkey since the lifting of OHAL²⁹, distributors and those who stock such

²⁷ Dunbar, R. & KHRP, ‘Turkey’s August 2002 Reform Package and the Kurdish Language: A Glimmer of Light?’, *op. cit.*

²⁸ Law No. 3984 of 20 April 1994.

²⁹ Selahattin Demirtaş, Chair of IHD Diyarbakir, stated in an interview with the delegation that 29 newspapers and magazines that were previously banned from the region are now in theory available. Interview, Diyarbakir, 22 June 2003

materials in the region are subjected to serious abuse by the police. The Chair of Diyarbakir IHD, Selahattin Demirtaş, cited ten examples in the first half of 2003 of local distributors alleging that the police arrested and tortured them. These included a 17-year-old boy who was subjected to a beating and mock execution for distributing *Yeni Özgür Gündem* in the Diyarbakir area.

Another massive restriction on the use of the Kurdish language is the prohibition on the teaching of children in Kurdish. In recognition of this, Article 11 of the third Harmonisation Package purports to enable Kurdish language schools to be established for the first time in Turkey. Paragraph (c) of Article 11 amends Article 2 of the Law on Foreign Language Education and Training³⁰ by adding that:

“Private courses subject to the provisions of the Law on Private Educational Institutions No. 625... can be opened to enable the learning of different languages and dialects used traditionally by Turkish citizens in their daily lives.”

No doubt referring to the familiar proviso that such courses must not be “against the fundamental principles of the Turkish Republic... and the indivisible integrity of the State,” the Ministry of National Education placed a number of obstacles within the procedural regulation which brings the amendment into force. For example, such courses must be held in private institutions and taught by fully qualified Turkish-speaking teachers. In summary, the combined effect of the overall restrictions, coupled with the fear of persecution for involvement in such an undertaking, is such that no courses have yet been established successfully.

Many activists spoke passionately to the mission about the importance of institutional recognition of Kurdish as a national language of Turkey. Renowned human rights lawyer Yusuf Alataş believes that only when Kurdish is taught in state schools, where it can be treated as a registered qualification and recognised as such by employers, will the segregation of the Kurds from mainstream Turkish society be properly addressed. The

³⁰ Law No. 2923.

current criminalisation of the Kurdish language must surely be more damaging to the indivisibility of the Turkish state than a process of state-funded national integration would be.

In recognition of the inadequacies of existing reforms to minority language legislation, the sixth Harmonisation Package amends Articles 4 and 32 of the Act on the Establishment and Broadcasts of Radio and Television Stations so that *both private and public* radio and television stations are to undertake broadcasts in languages and dialects used by Turkish citizens traditionally in their daily lives. It is essential to note that as with many of Turkey's reforms, the efficacy of procedures established for implementation could again prove to be of vital importance. The degree to which the Turkish Government is both willing and able to ensure the effective operation of its measures will become clear in the coming months.

5. Resettlement and Return

A policy of forced displacement of Kurdish people was instated from 1985 onwards.³¹ Initially, this was restricted to the border areas with northern Iraq and Syria, purportedly to cut off the communication and logistical links of the PKK. In 1987, the military governor-general of the OHAL regions was empowered not only to clear villages but to deport their inhabitants under Decree 285. In the early 1990s the process of mass forced displacement began in earnest. In 1990, new legislation provided for the central co-ordination of mass displacement; for the heavy censorship on reporting events in the Southeast; and for a huge degree of impunity to both the military and village guards (Decree 430). The evacuation of villages no longer seemed targeted; rather, village evacuations became a general policy of disrupting Kurdish communities by forcing them to leave their rural settlements. Security forces adopted new tactics tailored towards rendering evacuated villages uninhabitable. The burning of forests, torching of crops, killing of livestock and firebombing of homes not only impelled villagers to flee, but also prevented them from returning to inhabitable domiciles. The intention was not simply to remove people from potentially troublesome areas, but to make it as difficult as possible for them ever to return.

In a series of cases brought by KHRP, the European Court of Human Rights determined that security forces had destroyed the applicants' homes and property deliberately, in violation of the European Convention on Human Rights.³² The problem of those displaced wanting to return home bulks large in Turkish domestic politics. Yet, there remains no effective government action for returning those who were forcibly evacuated to their villagers. The mission was informed of estimates that 5 per cent of displaced villagers have returned. They do not receive any government assistance.³³

³¹ For a detailed historical overview on Kurdish displacement see KHRP, Corner House, *"This is the Only Valley Where We Live": The Impact of the Munzur Dams* and also for details on forced evacuation KHRP *"Internally Displaced Persons: the Kurds in Turkey ?"* June 2002

³² See *Akdivar and Others v. Turkey* (99/1995/605/693), *Mentes and Others v. Turkey* (58/1996/677/867), *Selcuk and Asker v. Turkey* (12/1997/796/998-999), *Bilgin v. Turkey* (23819/94), *Dulas v. Turkey* (25801/94) and *Orhan v. Turkey* (25656/94)

³³ Interview with Mustafa Kurban, CHP in Bingöl, 21 June 2003; Interview with Ridvan Kizgin, Chair of IHD Bingöl, 21 June 2003.

In spite of political announcements there is still no clear application procedure for people who wish to return. Applications are handled arbitrarily. In addition, security reasons often serve as a pretext to refuse applications.

Moreover, the government is not in control of the military and of the village guards, which leads to situations where villagers have obtained permission to return but are threatened or physically impeded from returning by gendarmerie or village guards. For example, on 20 June 2003, villagers who tried to return to their village of Özalp were verbally threatened by the army. The fact that the villagers had obtained a permit from the district Governor was ignored; reflecting that the security forces are not under the control of the government. The Mayor of Bingöl, Feyzullah Karaaslan, illustrated the additional problem that governors frequently do not provide permission to return to villages. This was challenged by Mustafa Kurban of the CHP in Bingöl.

In addition, one of the most significant obstacles to the return of displaced persons is the threat of violence from village guards.³⁴

The village guard system was established during the armed conflict as a form of reserve for the military. Armed and subsidised by the government, village guards became uncontrolled but locally powerful militias. To date, the village guard system has not been dissolved and village guards have not been systematically disarmed. Instead, an unknown number are still occupying the homes and land of the evacuated villagers who were forcibly displaced. There have been a number of incidents where villagers who were granted permission to return to their village faced violence, and sometimes were killed, by village guards. One such case followed the destruction of the village of Nuretten in the Malazgirt province after April 1994. The case is currently pending before the European Court of Human Rights following an application by KHRP on behalf of 38 Kurdish

³⁴ Interview with Yavuz Binbay, Centre for Activities in Social Rehabilitation and Adaptation (SOHRAM), Diyarbakir, 22 June 2003

villagers who were displaced.³⁵ The land that was once owned by the applicants has been occupied and utilised by village guards since 1994. Following several unsuccessful applications, the District Governor granted temporary permission to return to Nurettin for the purpose of harvesting the land. Assurances were provided for the security of the returning villagers. In early July 2002 a number of villagers returned to Nurettin to begin reaping the hay. The village guards then warned the villagers that if they tried to take the hay away they would be killed. The Malazgirt District Command and the District Governor's Office were informed of the threats but no security presence was provided for the villagers by the authorities. Village guards beat three of the men with rifle butts and pitch forks, then shot and killed them.

In Tunceli the mission was informed that displaced persons are not allowed to return home to the villages in the region for reasons of security. It was reported that there were no signs of investment in the rebuilding of villages in the Tunceli region as had been announced politically.

Mr. Tugal pointed out to an additional obstacle to return being in the process of creation: the Munzur dam project³⁶ under construction near Tunceli. In his opinion the dam was not built for economic reasons as it was not efficient enough in producing electricity. Instead, he suspects that the main aim of the project is to prevent villagers from returning to their homes and to force them to live in "centralised villages" which are more easily controlled.³⁷

It is evident that a project to help displaced villagers to return their original villages requires a comprehensive approach. In the view of Mr. Binbay of SOHRAM in Diyarbakir, international organisations and European countries should co-operate in a project to ensure the return of villagers. Indeed, it has been suggested that government projects such as the "Southeast Action Plan" are ill-conceived, under-funded and even

³⁵ *Unal and 37 Others v. Turkey (7556/03)*

³⁶ See KHRP, Corner House, "*This is the Only Valley Where We Live: the Impact of the Munzur Dams*", *op. cit.*

stand in the way of international co-operation. While such government projects have been presented to the media; the projects have not materialised in practice and details of the proposals are scarce. The Political Officer of the Representative of the European Commission to Turkey, Ms. Sema Kilicer, even informed the mission that it had not been presented with any information about the plan.

³⁷ This view was confirmed by the findings of a KHRP Fact-Finding Mission to the region: see KHRP, Corner House, *“This is the Only Valley Where We Live”: The Impact of the Munzur Dams*, April 2002.

6. The Legal System

The mission concluded that, while the passing of the Harmonisation Packages represent a positive step symbolically, there has been a widespread failure to implement the reforms on the ground. Human rights lawyers, non-governmental organisations IHD and Human Rights Foundation of Turkey (TIHV) and DEHAP all shared the view that the change of *mentality* required to implement the reforms had not taken place and had not been sufficiently encouraged by the government³⁸. Such encouragement is necessary in order to convince bureaucratic institutions and the judiciary to apply and implement the reforms in a non-arbitrary manner. The only interviewee to counter this view was the Secretary of the Human Rights Inquiry Committee, Mr. Irfan Neziroğlu.

On the contrary, it is evident that human rights violations in the regions have increased, not decreased, in recent months. In spite of the legislative amendments, IHD reports indicate that the number of reported complaints of torture and ill-treatment has risen by 147 per cent since 1999 (from 594 complaints in 1999 to 876 in 2002). In Bingöl, the Chair of IHD Mr. Kizgin calculated that the number of reported human rights violations in the first half of 2003 (637) had increased by 129 per cent from the same period of 2002 (491); and 228 per cent from the same period of 2001 (280). Mr. Kizgin also reported that even high-ranking officials had stated that the Bingöl administration was a special administration, different from other provinces.

a. National Security Council

The seventh Harmonisation Package, adopted by Turkish Parliament on 7 August 2003, is concerned *inter alia* with the role of the National Security Council (MGK).

To date, the army's predominant role in Turkish political debate has been manifested by the MGK, a highly influential and non-democratic policy-making body. At present, the

³⁸ Interview with Ridvan Kizgin, Chair of IHD Bingöl branch, *op. cit.*; Interview with Yusuf Alatas, human rights lawyer, Ankara, 25 June 2003.

MGK is composed of the Chief of General Staff; the commanders of the army, airforce, navy and gendarmerie; the President; the Prime Minister; the Minister of Foreign Affairs; the Minister of Internal Affairs; the Minister of Defence. Under the Turkish Constitution, the MGK expresses opinions, makes recommendations and oversees the implementation of its recommendations. Due to the significant influence it exerts, it has so far caused the government to accept its recommendations as factual orders.

In the late 1990s, the MGK has interfered increasingly with domestic and foreign politics on the basis that the military retains the competence to determine the boundaries of “national security”. Critics accuse the MGK of considering itself the “guardian of Kemalism”.

The seventh Harmonisation Package reforms concerning the MGK have been trumpeted as a major breakthrough towards eliminating the influence of the institution.³⁹ The reforms limit the role of the MGK to an advisory body with no executive powers. Effective implementation of the reforms will depend on changes in underlying mentality and the rigour with which the reform is implemented.

The reforms propose the establishment of a post of Deputy Prime Minister, to be appointed by the Prime Minister to oversee the co-ordination and monitoring of the MGK’s advisory decision. Moreover, the reforms appear to confer a greater amount of discretion to the Council of Ministers in Turkey in the decision whether or not to apply the recommendations of the MGK (“*in the event that advisory decisions are accepted...*” [emphasis added]).⁴⁰ It remains to be seen whether the Council of Ministers will see fit to sidestep the influence of the military and to overrule the recommendations of the MGK.

³⁹ Frankfurter Allgemeine Zeitung, 1 August 2003: “The most important change (of the 7th reform package) concerns the deprivation of power of the National Security Council and its secretariat general.” Financial Times, 31 August 2003 “EU diplomats yesterday heaped praise on Turkey after its parliament curbed the powerful armed forces and agreed to offer an amnesty to the outlawed Kurdistan Workers party”.

⁴⁰ KHRP translation of Art 24 of the seventh Harmonisation Package amending Art 4 of the Law regarding the National Security Council: “*The National Security Council shall take advisory decisions regarding national security and the determination and implementation of the State’s national security policy within the framework of the definitions relating to the national security policy of the state and reach views for the securing of the necessary co-ordination. It shall notify these advisory decisions and views to the Council of*

The reluctance of the government to challenge the influence of the MGK was ironically exemplified in the drafting of the seventh Harmonisation Package itself. The original draft asserted that the role of the MGK in establishing “national policy on matters related to agreements made and to be made within the framework of national security” would be subject to a request from the government. In doing so, the government would have the ultimate say in determining whether or not the MGK’s input was required: the MGK’s role would, in future, become more passive. However, the military objected that it had not approved this draft proposal, which was thereafter excised from the seventh Harmonisation Package by the government.⁴¹ The incident demonstrates the reluctance of the military to relinquish its predominant role in Turkey’s political fora.

Further proposals that the MGK would only reconvene between 4 and 6 times per year (as opposed to the current 12) have also reportedly been rejected by the military. The military also added a caveat to the proposal to appoint a civilian as General Secretary of the MGK: that such an appointment would require the consent of the General Staff. Whether or not the appointment of a civilian will, in practice, balance the influence of the MGK will also depend on its implementation in practice, as “militarist” thinking can be found among civilians as well as the military.

b. State Security Courts

The predominance of the military over the organs of the state is further exemplified by the State Security Courts (DGM), established to handle offences relating to the state of emergency. As noted by the previous mission, the lifting of OHAL will merely be a cosmetic change if the courts established under the same military predominance to deal with offences relating to the state of emergency are also not abolished.

Ministers and fulfil the duties it has according to law. The Prime Minister may appoint a deputy prime minister to submit advisory decisions and views to the Council of Ministers and, in the event of acceptance by the Council of Ministers, to carry out the necessary co-ordination and monitoring of the implementation of these advisory decisions.”

DGMs were re-introduced to the judicial system in 1983 under Article 143 of the Constitution in order to handle offences touching on the “indivisible integrity of the State”. Since that time, the jurisdiction of the courts has been modified and limited to offences committed “against the State” and those involving arms or narcotics which have a connection with terrorism. DGM jurisdiction has assumed that of the traditional courts in all matters concerning state security. Consequently, in effect, these courts adjudicate on matters of human and civil rights.

The crucial importance of the DGMs is in their extraordinary rights and special investigation procedures. The mere fact that there are no more military judges on DGMs does not have an effect on the courts’ practice because “it is not the outfits of the judges which are decisive.”⁴² The attitude of the civilian judges in making national security paramount is no different from that of the military judges.⁴³

Trial observations undertaken by KHRP and BHRC have long demonstrated that the procedure and methods applied in the DGMs do not conform to the principles of the right to a fair trial or to equality of arms. The ongoing retrial of Leyla Zana and three other imprisoned Democracy Party (DEP) parliamentarians at Ankara State Security Court raises renewed concerns that the procedure and methods applied in the DGMs may not conform to the right to a fair trial (Article 6) under the European Convention on Human Rights (ECHR).

Leyla Zana, Selim Sadak, Hatip Dicle and Orhan Dogan are receiving a domestic retrial following ratification of the 3 February 2003 Harmonisation Package which grants a right to defendants to have a retrial where the European Court has ruled that the original trial was unfair. The DEP parliamentarians were convicted in 1994 by the Ankara State Security Court of membership of an armed gang and sentenced to 15 years’ imprisonment. KHRP has assisted the DEP parliamentarians in taking a series of cases to

⁴¹ Turkish Daily News, 19 July 2003

⁴² Interview with Semih Güner, Ankara Bar Association, Ankara, 24 June 2003

⁴³ Interview with Yusuf Alatas, lawyer of Leyla Zana and three other imprisoned DEP parliamentarians, 25 June 2003, Ankara.

the European Court, which ruled in July 2001 that the DEP parliamentarians had not received a fair trial.

The Ankara State Security Court consented to retry the former parliamentarians on 28 February 2003, however it has rejected requests to acquit the parliamentarians in the light of the 9-year prison sentence that has already been served. The justification initially provided was that an acquittal could not be granted on the basis of the “case dossier and evidence”, although further justifications were provided in subsequent hearings.

Hearings in the retrial, which are ongoing, have been observed by a KHRP/ BHRC mission on 28 March 2003 and on behalf of KHRP.

As with other trial observation missions, the observers noted there is no recourse to the principle of equality of arms in the DGMs. The prosecutor sits in court elevated, literally and metaphorically, to the same status as the judge and wears identical robing to the judge; while the defence sits in the floor of the court facing both judge and prosecutor. There are further concerns regarding the hearing of evidence by witnesses. The defence was prevented from questioning the prosecution witnesses, of whom there were 26. By contrast, the defence was not even able to present one witness at the hearing on 23 May 2003. In addition, the defence was not permitted to present crucial evidence; while the prosecution failed to disclose material evidence prior to the trial.

Furthermore, little, if any, judicial consideration is given to submissions made by the defence at court. The recording of court proceedings distinguishes between the utterances of the judge and prosecutor (recorded) and those of the defence (unrecorded; summarised by the presiding judge). The defence has no right to object to the judge’s summary and, in the event that an objection is submitted, it is within the judge’s sole discretion whether or not to accept it. Furthermore, while the prosecutor was provided a computer with which to check the transcript of the proceedings as recorded by the court stenographer; the defence merely had to rely on hand-written notes. The absence of a faithful and complete

record of the proceedings may, in theory, hinder an appellate court in determining any matters which are later appealed by the defence.

By the time of the hearing on 20 June 2003, the court's conduct had shifted. The defence legal team had repeatedly requested the court to hear witnesses and other evidence, emphasising that failure to do so would prejudice the court's objectivity. The arguments successfully convinced the court to hear four of the defence's twenty witnesses.⁴⁴ The procedure for the examination of defence witnesses, however, differed from that of prosecution witnesses.

The defence witnesses were examined by the presiding judge; questioning by defence lawyers was not permitted. As with the defence lawyers, their testimony was not recorded by the court stenographer. The judge took few notes and relied on his memory by which to summarise the defence witnesses' testimony.

In this hearing, the court reportedly justified its decision not to release the defendants on the basis that the 1994 conviction was still valid. This, it was maintained, remained unchanged in spite of the European Court judgment. In a pre-trial application, the presiding judge had reportedly also referred to the guilt of the defendants.

At the hearing on 18 July 2003, the defence was permitted to call six witnesses to present testimony. The court provided a different rationale for its refusal to release the defendants pending the judgement: it maintained that it was not possible as there were still other witnesses to be heard in future sittings of the case.

⁴⁴ *ibid.*

7. Authorities of Local Administration

According to the Parliamentary Human Rights Commission, most of the Governors that were in place during the state of emergency – often retired security directors - have now been removed.⁴⁵ Moreover, according to it, there had been “misinformation” about the allegations of the abuse of power of the Governor of Bingöl in the May 2003 earthquake. However, there was an admission that specific problems had resulted from the centralisation of assistance.⁴⁶ In spite of this, the mission heard accounts of the abuse of powers by Governors.

The earthquake that struck Bingöl in the early hours of 1 May 2003 seriously damaged up to eighty per cent of houses in the area, leaving 24,000 destroyed. It measured 6.4 on the Richter scale. More than 200 people were killed. Even those houses left standing are considered to be unstable. Thousands of people continue to sleep on the streets, seven weeks after the disaster.

In opposition to the views of the Parliamentary Human Rights Committee, the mission was informed that the earthquake had exemplified that the local administration is nearly helpless in such a situation.⁴⁷

In spite of the widespread destruction, the population had not received any help from the government.⁴⁸ Despite the destruction of 24,000 houses, only 13,000 tents were distributed. The Government did not respond to requests for further tents.⁴⁹ Reportedly, the Governor in fact obstructed assistance from non-governmental organisations (NGOs) and distributed the tents to the military, rather than the homeless civilian population.⁵⁰

⁴⁵ Interview with İrfan Neziroğlu, Secretary, Parliamentary Human Rights Committee, *op. cit.*

⁴⁶ Interview with Mehmet Elkatmis, Chair, Parliamentary Human Rights Committee, *op. cit.*

⁴⁷ Interview with Feyzullah Karaaslan, Mayor of Bingöl, *op. cit.*

⁴⁸ Interview with Feyzullah Karaaslan, *ibid.*; Interview with Mustafa Kurban, Chair, Bingöl branch of CHP, Bingöl, *op. cit.*

⁴⁹ Interview with Mustafa Kurban, *op. cit.*

⁵⁰ Interview with Selahattin Demirtaş, *op. cit.*

Indeed, the Governor responded to people's protests with drastic measures. The day after the earthquake, on his instruction, civilians were fired at in front of the police building.⁵¹ Mr. Kurban stated that only 13,000 tents were distributed despite a loss of 24,000 houses. Despite the shortfall of 11,000 tents, the government did not respond.

The distribution of financial assistance by the Government, and the amount distributed, depends on the severity of the disaster. The Bingöl earthquake was not designated a first degree disaster region. Where another earthquake had occurred, in Erzincan ruled by a mayor of the Republican People's Party (CHP), it had been designated a first degree disaster region. Even ignoring the categorisation, other cities which had *not* been designated first degree disaster regions had been allocated more funding than Bingöl.⁵² The Government maintained that the city of Bingöl is indebted to the government for other reasons and therefore could not receive the funding; critics believe its treatment is evidence of discrimination against the Kurdish areas.

⁵¹ *ibid.*

⁵² Interview with Mustafa Kurban, *op. cit.*

8. Conclusions and Recommendations

The efforts made up to now by the current government to strengthen human rights safeguards are welcomed and it is acknowledged that the government has made efforts to harmonise with EU accession standards.

However, the mission is of the view that such efforts are still insufficient. The Government must encourage measures to overcome the resistance of the executive and judiciary to implement the reforms. It must be ensured that security and police officers may not be permitted to act with impunity. Full implementation is required of all of the reforms, including, *inter alia*, those governing the broadcast and education of the Kurdish language. The mission particularly considers it necessary to monitor the implementation of the seventh Harmonisation Package to ensure that the influence of the National Security Council is limited. In the view of KHRP, the seventh Harmonisation Package is insufficient and the full abolition of the National Security Council and State Security Courts is recommended.

With few exceptions, political parties and the voting population have a fundamental right to take an active part in and be represented in politics. The dissolution of pro-Kurdish political parties such as HADEP denies the Kurdish minority from participating meaningfully in politics. Current judicial proceedings aimed at banning DEHAP should be monitored. DEHAP should be given the freedom to carry out political activities such as soliciting new members, holding meetings, delivering broadcasts and issuing press releases. The 10 per cent threshold for entering parliament places further restrictions on the representation of minorities in Parliament. The threshold should be reduced.

The IDPs should be acknowledged as an important political priority. Necessary measures should be taken to resolve the obstacles to their return. This would include the dissolution of the village guard system, the granting of assistance, and the help of international agencies and experts in the design and implementation of the project.

The EU and international community must put pressure on Turkey to put an end to all violations of the right to freedom of peaceful assembly, of association and of expression. This includes judicial and other forms of persecution of human rights defenders and NGOs.

The EU should co-operate with the Turkish Government in order to identify strategies to cure deficiencies in the promotion of the rule of law and the protection of human rights, and by which to implement reforms. The impact of legislative and institutional reforms should be monitored in the ground, in particular in the former OHAL region.

Appendix A

Turkey's progress towards accession

P5_TA-PROV(2003)0265

[A5-0160/2003](#)

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

The European Parliament,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Copenhagen political criteria

State Institutions

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

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

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

The rule of law and democracy

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

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

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

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

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

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

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

Human rights situation and protection of minorities

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

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

42. Calls for equal treatment, recognition and protection of the Alevite and Baha's communities and of different Muslim communities such as the Sufis;
43. Calls on the Turkish authorities to facilitate the work of non-governmental organisations - charitable associations such as Caritas - by granting them legal status;
44. Welcomes the ending of the state of emergency on 30 November 2002 in the last remaining two provinces of Diyarbakir and Sirnak, but calls on Turkey to contribute to the elimination of tensions with the Kurdish people and to make efforts to overcome the economic and social under-development of the regions in which these people live, to facilitate the return of former inhabitants to 'emptied villages' and returning refugees from abroad, and to bring about the removal of armed village guards in Kurdish and Syrian Orthodox villages;
45. Calls on the Turkish authorities to place any military activity in these regions under civilian control and to demand that the security forces (police and army) be answerable for their actions under all circumstances;

Turkish external relations

46. Deplores the failure of the meeting in The Hague on 10 March 2003 and calls on the Turkish Cypriot leadership and the Turkish authorities to take courageous steps so that a fair and workable solution to the problem in Cyprus can yet be reached, on the basis of the proposals of U.N. Secretary-General Kofi Annan, which is an essential condition for proceeding with Turkey's application for EU membership; urges Turkey to be fully committed to its status of candidate country and to withdraw its troops from northern Cyprus so as to pave the way for the reunification of the island and facilitate the resumption of talks;
47. Calls on the Turkish authorities to promote good neighbourly relations with Armenia in order to defuse tension and reduce the economic impoverishment of the region affected by the ban; believes that, as a first step, this could entail the opening of the borders, mutual recognition and the resumption of diplomatic relations as a step towards compliance with the political criteria;
48. Calls on Turkish and Armenian academics, social and non-governmental organisations to embark on a dialogue, or to continue their existing dialogue, in order to overcome the tragic experiences of the past which have, so far, prevented the situation from returning to normality, as pointed out by Parliament in previous resolutions, in particular, in its resolution of 28 February 2002 on EU relations with South Caucasus⁽³⁾, (paragraph 19) and its resolution of 15 November 2000 relating to Turkey⁽⁴⁾ (paragraph 10);
49. In order to ensure the continuing improvement of bilateral relations between Turkey and Greece, encourages Turkey to act in that context in the spirit of the Helsinki conclusions and in accordance with the principles of international law which should, in this case likewise, take precedence over national law;
50. Demands that Turkey cooperate with its neighbours Iran, Syria and Iraq in order to respect and safeguard the borders while enabling their respective citizens of Kurdish origin to develop their human, cultural and economic relations; urges the Turkish Government to continue to respect the territorial integrity of Iraq and the competence of Iraq in rearranging its own administrative organisations;
51. Recommends that Turkey arrive at a settlement, based on the findings of the UN General Assembly's International Law Commission, of the disputes with its neighbours, Iraq and Syria, concerning water;

EU-Turkey relations

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

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

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

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

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

⁽¹⁾ OJ L 85, 24.03.2001, p. 13.

⁽²⁾ P5-TA(2002)0449.

⁽³⁾ OJ C 293 E, 28.11.2002, p. 96.

⁽⁴⁾ OJ C 223, 8.8.2001, p. 182.

Appendix B

Human Rights Association – human rights report January to July 2003

January-July 2003 Human Rights Violations in Turkey Summary Table

I. RIGHT TO LIFE		
I.1. Extrajudicial Executions		
Extrajudicial Executions	3 deaths	
Stop Warnings, and violation of authority on arm use by officials, arbitrary firing	9 deaths	11 injured
People killed/injured by village guards	2 deaths	7 injured
<i>Total</i>	14 deaths	18 injured
I.2. Deaths In Detentions	1	
I.3. Deaths In Prisons		
People who burned themselves	2	
Deaths because of suicides	8	
People murdered or injured by other prisoners	3	11 injured
Deaths because of illness	2	
Deaths because of dead fasts or hunger strikes	2	
<i>Total</i>	17 deaths	11 injured
I.4. Enforced Disappearances		
People who might be disappeared	4 individuals	
People whose corpses were found	1 individuals	
I.5. Attacks by unidentified assailants	33 deaths	2 injured
I.6. Doubtful Deaths	7	
I.7. Deaths and injuries in armed conflicts	41 deaths	27 injured
I.8. People Murdered and Injured by Illegal Organizations	1 death	11 injured
I.9. Official Negligence and Fault		
Suicides of police and gendarmerie	9 deaths	2 injured
I.10. People attacked		
University students	69	
Journalists	13	
Teachers	5	
Members of Political Parties	7 (5 members of the DEHAP, a member of the CHP and 1 member of the municipal assemble)	
Others	3	

<i>Total</i>	97 individuals	
I.11. Explosion of Land Mines and Unidentified Ordinances	6 deaths	15 injured
I.12. Violence and Sexual Assault Against Women and Children		
I.12.1. Violence against women	21 deaths	11 injured
I.12.2. Honor killings	26 deaths	3 injured
I.12.4 Violence and assaults against children		
Sexual Assaults and Harassments	13	
Injuries	4	
<i>Total</i>	17	
I.12.5. Doubtful Women Suicides	25	
Women attempted to suicides	12 individuals	
I.13. Torture and ill-treatment		
I.13.1. The people subject to torture or Inhuman and degrading treatment under detention	451 individuals	
I.13.2. Ill treatment out of the official detention facilities	111 individuals	
I.13.3. Torture and ill treatment by village guards	11 individuals	
I.13.4. Torture in prisons	33 individuals	
I.13.5. Violence in schools	26 individuals	
I.13.6. Injuries at social demonstrations	241 individuals	
I.13.7. Threatened and forced to be reporter	99 individuals	
<i>Total</i>	972 individuals	
II. PERSONAL SECURITY, FREEDOM AND RIGHT TO FAIR TRIAL		
II.1. Arbitrary Detention	5353 individuals	
Asylum seekers and migrants taken under detention	901 individuals	
<i>Total</i>	6254 individuals	
II.2. Number of individuals who arrested	663 individuals	
II.4. Right to Fair Trial		
II.4.1. Launched Investigations	2	
II.4.2. Trials Launched between April and June	9 (8 torture and 1 sexual assault cases)	
II.4.3. Trials which are still pending on	27 (4 death in detention cases, 3 disappearances in detention cases, 8 torture cases , 6 extrajudicial killing cases , 1 retrial and 6 “others”)	

II.4.4. Trials resulted	24 (3 death in detention cases, 7 torture cases, 6 extrajudicial killing cases, 2 attacks by unidentified assailants because of political reason cases, 6 “others”)	
III. FREEDOM OF EXPRESSION		
III.1. Banned, censored, restricted, confiscated		
Banned Activities	23 (3 concerts, 4 theatre/play, showing of 2 movies, 3 poems and a competition on art, 3 panel, 1 campaign to gather signature, 1 mission visit, 1 musical, 1 festival, 1 activity on “mothers day”, 2 press statements and 1 dinner)	
Banned and Confiscated Publications		
Journals	29 (total 48 issues)	
Newspapers	13 (total 37 issues)	
Others	15 (9 books, 2 albums, 3 posters and a flyswatter)	
<i>Total</i>	57	
Closed Newspapers and Journals	14 (2 journals’ publication were stopped and 12 journals and newspapers were given total 143 days closure punishment)	
Decisions of High Council for Radio and Televisions (RTUK)		
Warned radio and television channels	59 (41 television and 17 radio channels)	
Television and Radio channels that were decided to be started process against	4 (3 television and 1 radio channels)	
Television and Radio channels that were demanded to give their defends	6 television channel	
Television and Radio channels suspended from broadcasting	11 (3 television and 8 radio channels)	
III.2. Actual Attacks and Raids		
III.2.1. Raided Democratic , political and cultural Organizations or publishing houses etc.	21 (17 newspaper and journal’s offices, 4 centers for cultural and artistic activities)	

III.2.2. Attacks on Journalists	18 individuals	
III.2.3. Arrested and detained Journalists	24 individuals	
III.3. Arrested and detained Journalists	1	
III.4. . Launched Trials		
Trials Launched under Article 312 of the Turkish Criminal Code	7	
Trials Launched under Article 169 of the Turkish Criminal Code	21	
Trials Launched under Article 159 of the Turkish Criminal Code	28	
Trials launched under Article 8 of the Anti Terror Law	7	
Others	6	
<i>Total</i>	70	
III.5. Trials that have been pending on	14	
III.6. Resulted Trials	45 (22 people acquitted, 66 people were sentenced total 53 years 6 months 7 days imprisonment and 97 billion 518 million 632 thousands Turkish Liras fine)	
IV. FREEDOM OF ASSOCIATION AND DEMONSTRATION		
IV.1. Actual Attacks	39	
IV.2. Bans and restriction	18 (demonstrations, campaigns and press statements)	
IV.3. Launched Investigations	4	
IV.4. Launched Trials	22	
IV.5. Trials that have been pending on	3	
IV.6. Resulted Trials	13 (140 people acquitted , 71 people were sentenced total 61 years 11 months 12 days imprisonment and 3 billion 492 million Turkish Liras fine)	
V. FREEDOM TO ORGANIZE		
V.2. Raided Organizations	20 (Province and district Offices of DEHAP and HADEP, TUHAD-DER, HRA Headquarters and Ankara Branch Office of the HRA)	
V.3. Banned Activities	3	
V.4. Launched Investigations	37 (against 250 members	

	and representatives of political parties, trade unions, non government organizations)	
V.5. Launched Trials	31 (against 241 members and representatives of political parties, trade unions, non government organizations)	
V.6. Trials that have been pending on	20	
V.7. Resulted Trials	26 (60 people acquitted, 83 people were sentenced total 94 years 9 months 14 days imprisonment and 28 billion 181 million 750 thousands TL fine)	
V.8. Closure demands for organizations	7 (1 political party was closed (HADEP), Trials against 1 political party and 1 association resulted with acquittal decision, Trials that against 3 political party and 1 association is still pending on)	
VIII. SOCIAL AND ECONOMIC RIGHTS		
VIII.1. Restriction on Right to Work, Discarded from job	9412 individuals	
V.III.2. Conditions for Working		
Exiled People	320 individuals	
V.III.3. Security and Health Condition in place of employment		
Deaths on job accidents	51 individuals	
Injuries on job accidents	284 individuals	
IX. RIGHTS TO EDUCATION and CULTURAL RIGHTS		
IX.2. Students prosecuted by the discipline committee of universities	324 students (because of taking part on press releases and meeting and organizing demonstration)	
IX.3. Students punished by the discipline committee of universities	101 (7 high school students and 4 university students suspended their schools. 1 student for 1 term , 14 university students for 1 month, 1 university student for 15 days, 23 university	

	students for 1 week suspension their schools, 44 students were given disapprovals and 6 students were given warnings.)	
IX.4. Launched Investigation	100 students	
IX.5. Launched Investigation	7 (122 students acquitted, 4 people were sentenced to 15 year imprisonment totally, 1 people was discarded from job)	

January-June 2003 Human Rights Violation Balance Sheet was collected from personal applications and various newspapers, journals, televisions and Internet sources.



Kurdish Human Rights Project



Bar Human Rights Committee

Human Rights Association