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Tel: 020 7287 2772
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Email: khrp@khrp.demon.co.uk

Calendar of events

10 December
Human Rights Day 2001

14–25 January 2002
UN Working Group on the Optional Protocol to the Convention Against Torture, Geneva

14 January–1 February
UN Committee on the Elimination of Discrimination against Women, 26th Session, New York

14 January–1 February
UN Committee on the Rights of the Child, 29th Session, Geneva

28 January–8 February
UN Working Group on the Rights of Indigenous Peoples, 7th Session, Geneva

February
Foreign Office (UK) Seminar for UK NGOs to Discuss European Court Evaluation Group Report, London

4–8 February
UN Working Group, Committee on the Rights of the Child, 30th Session, Geneva

18–22 February
UN Working Group on the Right to Development, 2nd Session, Geneva

21–22 February
OSCE Parliamentary Assembly, Vienna

4–22 March
UN Committee on the Elimination of Racial Discrimination, 60th Session, Geneva

18 March–5 April
UN Human Rights Committee, 74th Session, New York

18 March–26 April
UN Commission on Human Rights, 58th Session, Geneva

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Project information

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

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

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

Aims
- To promote awareness of the situation of Kurds in Turkey, Iran, Iraq, Syria and the Caucasus.
- To bring an end to the violation of the rights of the Kurds in these countries.
- To promote the protection of the human rights of the Kurdish people everywhere.

Methods
- Monitoring legislation, including emergency legislation, and its application.
- Conducting investigations and producing reports on the human rights situation of the Kurds in Turkey, Iran, Iraq, Syria and the Caucasus by sending trial observers and fact-finding missions.
- Using reports to promote awareness of the plight of the Kurds on the part of the committees established under human rights treaties to monitor the compliance of states.
- Using the reports to promote awareness of the plight of the Kurds on the part of the European Parliament, the Parliamentary Assembly of the Council of Europe, the national parliamentary bodies and inter-governmental organisations including the United Nations.
- Liaising with other independent human rights organisations working in the same field, and co-operating with lawyers, journalists and others concerned with human rights.
- Offering assistance to indigenous human rights groups and lawyers in the form of advice, training and seminars in international human rights mechanisms.
- Assisting individuals in the bringing of human rights cases before the European Commission of Human Rights.

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Kurdish Human Rights Project

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winter 2001

Issue 15/16

An historic victory!

Ilisu Dam campaign succeeds as UK company withdraws from Ilisu

On 13 November, the Kurdish Human Rights Project alongside its partners in the Ilisu Dam Campaign achieved a resounding victory in the struggle against the controversial Ilisu dam in Southeast Turkey, as Balfour Beatty, the lead contractor, announced its withdrawal from the project on social, environmental and economic grounds. On the same day, Balfour Beatty's Italian partner, Impregilo, also withdrew from the Ilisu project.

The news was greeted with jubilation by campaigners and by those whose homes, lands and livelihoods were threatened by the dam. Speaking from the city of Batman, one of the key urban centres in the region that would be seriously impacted by the dam, Mayor Abdullah Akin passed on the joyful words: "The people are celebrating."

Ilisu campaigners celebrate on stage with comedian Mark Thomas (centre) on 14 November, the day after construction company Balfour Beatty announced its withdrawal from the Ilisu project.

The companies' withdrawal effectively means that the Ilisu Dam project no longer has the financial support of the UK, US and Italian governments. Balfour Beatty had applied for export credit support from the UK Export Credit Guarantee Department (ECGD) and from the US Ex-Im Bank. With the company's withdrawal, both agencies have now ceased to be involved in the project. Impregilo's application to the Italian export credit agency, SACE, is also now withdrawn. Without extensive foreign support, it is unlikely that the project can go ahead. The cost of the project – £1.8 billion – renders it impossible for Turkey to shoulder alone, particularly in the current economic climate.

Balfour Beatty admits that the project failed to meet the conditions laid down by the agencies for export credit support, relating to resettlement, cultural heritage, consultation with downstream states and water quality. The

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Director's Letter

Dear Friends,

The year 2001 has proven to be hugely successful for KHRP. Through the year, KHRP has worked hard to implement its core projects in litigation and training, fact-finding missions and trial observations, research and publications and public awareness. Once again, we were able to play a pivotal role in the protection and development of human rights in the Kurdish regions. Our momentous end-of-the-year victory in the Ilisu Dam struggle was a wonderful way to finish off a year of dedicated hard work.

In 2002, KHRP will be celebrating its 10th anniversary. We look forward to presenting a series of key events throughout our anniversary year where we hope to see our many friends and supporters. Planning for new missions to Turkey, Armenia and Azerbaijan has already begun, and following on our Ilisu victory, we also have planned to expand our work in a new KHRP Environmental and Human Rights Unit.

While there is still enormous work to be done in the fight for Kurdish human rights, with 10 years of strong experience behind us, all of us at KHRP feel more prepared than ever to persevere in our struggle to help bring a permanent end to the violation of human rights of all those in the Kurdish regions.

Kerim Yildiz
Executive Director

KHRP Mourns the Loss of KHRP Board Director Michael Feeney

The Kurdish Human Rights Project has suffered a huge loss this autumn following the death of Michael Feeney, one of the founding members of KHRP in 1992, who passed away in Galway, Ireland on 29 September.

Michael, who had suffered a long slow illness, had been a member of KHRP's Board of Directors up until his death, and his passing leaves KHRP and the hundreds of people in the wider Kurdish and refugee communities of Britain with the loss of a great campaigner and tireless ally in the struggle for human rights.

Michael first became involved with the Kurdish issue in the late 1980s through his work in the Roman Catholic Diocese of Westminster where he worked as an employment development worker in the Diocese's Social Action Team. In late 1989, Michael became deeply involved in the Kurdish refugee crisis in London as thousands of Kurds fleeing from persecution and war in Southeast Turkey poured into Britain within the space of just seven weeks. The UK government dealt harshly with these Kurdish refugees and hundreds were detained or removed – illegally as the courts later ruled – and those who did manage to stay in Britain were denied welfare support. It was Michael who rolled up his sleeves and set to work to figure out a solution for the thousands of Kurdish refugees who were forced on to the streets with no support and nowhere to turn. Within days of the crisis, the church at Stamford Hill where Michael's Social Action Team was based began providing volunteers and facilities to help. Grassroots groups began to campaign and Cardinal Basil Hume visited, bringing the media spotlight along with him.

Michael Feeney (1949–2001)

From 1989 to 2000, Michael served as the Director of the Westminster Diocese Refugee Service and he was also a

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Editorial

At the close of 2001, this end-of-the year double issue of *Newsline* presents a wide array of news and updates on KHRP's work, key issues in European Court litigation, and reports from the Kurdish regions.

This year has witnessed the beginnings of several disturbing tendencies at the European Court of Human Rights – most notably the rise in attempted friendly settlements by Turkey in cases involving torture and extra-judicial killing as we reported in the last issue of *Newsline*. In this issue, human rights academic Jeremy McBride examines the consequences of the Court's approach in the KHRP-assisted case of *Akman v Turkey* (see page 4). In addition, there is key information on the recent report on the Court's functioning prepared by the Evaluation Group to the Committee of Ministers (see pages 8-9). KHRP plans to lobby on the proposed Court reforms and has already begun working with fellow NGOs to assist in this work (see page 9).

Happily, this issue also brings with it the joyful news that Balfour Beatty, the lead contractors in the dreaded Ilisu Dam project in Southeast Turkey, have withdrawn from the project (see cover story). Working to highlight the human rights consequences of the project alongside our many colleagues from around the world and on the ground in Turkey, KHRP and the Ilisu Dam Campaign have achieved a huge victory not only for Kurds in the region who stood to be harmed by the dam, but also for those struggling internationally against similarly destructive large-scale energy projects that take no account of human rights and the environment which our governments attempt to support with taxpayers' money. The international success story of the Ilisu Campaign will stand as a beacon for all those who are waging similar struggles today across the world.

Update on *Ocalan v Turkey* case at European Court

Final submissions in the *Ocalan v Turkey* case were delivered on 28 September 2001 to the European Court of Human Rights in Strasbourg (top photo). The case focuses on the abduction of the jailed Kurdistan Workers' Party (PKK) leader and the death penalty sentence imposed on him. The case involves Articles 2, 3, 5, 6, 8, 9, 10, 13, 14, 18, and 34 of the European Convention on Human Rights. The middle photo, published in November 2001 by *Özgür Politika*, is the first photo that's been taken of Ocalan since 1999. The photo shows Ocalan in prison on Imrali Island where he is being held in solitary confinement. Imrali Island is infamous for holding previous political figures including Turkey's Prime Minister and Foreign Minister who were imprisoned following the country's 1960 military coup and later executed on the island. In October 2001, Mark Muller travelled to Moscow for the Ocalan case (bottom photo). As a lead lawyer in the Ocalan case, Mr Muller went with his team to Russia to gather evidence for the case which is currently pending before the European Court.

An historic victory! *continued*

Campaign had documented these failures in reports following fact-finding missions to the Ilisu region, arguing that Ilisu could not satisfy the governments' conditions under current political conditions in Southeast Turkey.

After more than two years struggling to reveal the full extent of disastrous human rights, cultural and environmental impacts of the project, KHRP hopes the sustained campaign against the Ilisu Dam has sent a strong message to governments, companies and financial institutions about the need for binding human rights and environmental standards to govern their involvement in projects like Ilisu.

Executive Director of the Kurdish Human Rights Project and Chairman of the Ilisu Dam Campaign, Kerim Yildiz, expressed his delight at the news, "Balfour Beatty's withdrawal has vindicated what we at the Campaign have been saying all along: that the Ilisu Dam would be a human rights, environmental and cultural disaster. This Campaign, strengthened by the unity of human rights and environmental groups working together, has helped to establish a precedent in sending a clear message to governments and companies that projects like Ilisu are simply not acceptable. This Campaign not only stopped the Ilisu Dam but has also helped to establish the beginnings of a democratic platform in Turkey where people can discuss possible alternatives to disastrous projects like Ilisu."

The Ilisu Dam Campaign will continue to monitor the project closely, although it is now probable that Ilisu has effectively been stopped due to the consortium's collapse. Sulzer Hydro, the company which heads the dam consortium, has said that it is looking for a partner to replace Balfour Beatty. However, a well-placed Turkish source told Channel 4 news, "Other European firms won't be interested now and the Ilisu project may not go ahead." The Campaign will also continue to work with international institutions to ensure that other companies do not become involved and that Ilisu is once and for all truly stopped. Meanwhile, KHRP extends grateful thanks to everyone who has supported the Ilisu Dam Campaign – without such widespread support, this victory would not have been achieved.

The Ilisu Dam Campaign was founded by the Kurdish Human Rights Project, with Friends of the Earth, the Corner House and comedian Mark Thomas in March 2000, following a fact-finding mission to the region. The Campaign generated widespread public support and action, achieving saturation media coverage, and used many tactics, including the credible threat of legal action, fact-finding missions to the region, press coverage, grassroots letter writing, demonstrations, public meetings, coalition building, international networking and shareholder activism. The groundswell of public furore around Ilisu helped to make the project so controversial that even a huge multinational like Balfour Beatty was forced to listen.

To stay updated on Ilisu, see www.ilisu.org.uk.

continued
founding member of the Asylum Rights Campaign. KHRP Executive Director Kerim Yildiz, as a newly arrived refugee himself in the late 1980s, first met Michael in 1988. As their friendship developed, Michael became more concerned with the plight of Kurds back in Kurdistan and also with the hardships faced by many Christian Kurds. Beginning with his first trip in 1989, Michael travelled to Southeast Turkey many times and in 1992 he went as a member of the Parliamentary Human Rights Group's fact-finding mission to the region. Despite being detained and intimidated repeatedly during these trips, Michael persevered resolutely and courageously in his mission to fight for Kurdish human rights.

As one who helped to first establish KHRP in December 1992 and who constantly played a leading role in the steady growth of the KHRP mission, Michael's contribution to KHRP is inestimable. All of us at KHRP will miss his warmth, his determination, his humour and perhaps most of all – his deep commitment to the fight for human dignity and freedom.

A memorial service in honour of Michael will be held on 17 January 2002 at Westminster Abbey. All those who knew and loved him are invited to attend.

Emergency Rule in Turkey extended as State violence continues

On 30 October, Turkey's National Security Council (MGK) decided once again to extend the State of Emergency (OHAL) in four predominantly Kurdish provinces of southeastern Turkey – Diyarbakir, Hakkari, Sirnak and Tunceli. The National Security Council, composed of Turkey's top military leaders and ministers, decided to extend Emergency Rule into March 2002. Emergency Rule, which was first imposed in 13 provinces in 1987 during Turkey's war with the Kurdistan Workers' Party (PKK), provides provincial Governors with a full array of "police state" powers including the right to use military force to suppress gatherings deemed to be "illegal demonstrations".

At the same time Emergency Rule in the Southeast was being extended (this time under the guise of protecting Turkey against "foreign support to possible terrorist acts in the country"), violence against members of the legally-elected pro-Kurdish HADEP party has risen to an alarming level. Like the many other pro-Kurdish parties before it, HADEP has been a regular target of harassment and intimidation by Turkish authorities. At the start of 2001, two HADEP officials "disappeared" on 25 January after having last been seen entering the Gendarmerie headquarters in Silopi (see *Newsline* 13 – spring 2001).

On the same day the National Security Council extended the State of Emergency, HADEP member Burhan Kockar was murdered in front of his family in his home during a raid by 10 masked Turkish police officers. This killing followed two months of heightened harassment against HADEP that began on 1 September with hundreds of arrests of HADEP members during World Peace Day rallies. On 20 September, a bomb exploded in HADEP's Cizre office and in mid-October, 37 HADEP supporters, including many of the leaders of the party's Youth Branch, were taken into custody for questioning during a police raid of the party's office in Cigli. Masked police raids against HADEP members in their homes also continued into November and many key HADEP officials including the Central District Secretary and Province Administrator have been arrested.

In addition to the violence waged against HADEP, other key human rights groups in Turkey have also been victim to harassment. In early September, the Human Rights Foundation of Turkey (TIHV) in Diyarbakir, known internationally for their work in the rehabilitation of torture victims, was raided by police without a search warrant on behalf of the Public Prosecutor's Office. Patient files as well as details about the Foundation's doctors were seized. Likewise, members of the Human Rights Association of Turkey (IHD) – a group with a long history of facing harassment and intimidation – have also been detained by police, including a torture victim who was giving testimony to the IHD when he arrested along with the Vice President of the IHD in Diyarbakir (see *Newsline* 14 – summer/autumn 2001) in August.

Despite Limited Constitutional Changes, Turkey still has a Long Way to go in EU Accession

On 13 November, the European Union released its "2001 Regular Report on Turkey's Progress toward Accession". As this Report makes clear, although the package of 34 changes to Turkey's 1982 Constitution recently adopted in Turkey offer the hope of "strengthening guarantees in the field of human rights and fundamental freedoms," the true test for Turkey's progress will be when such freedoms are actually guaranteed in practice. In late October, a report made to the European Parliament similarly stressed the "magnitude of reforms that remain to be realised in [Turkey's] human rights field". This Parliamentary report also stated that the changes made to Turkey's Constitution were still not up to "today's democratic standards" further noting that "torture and the degrading treatment of prisoners continues to be frequent, freedom of expression is abnormally restricted, and several thousand people are today incarcerated for offences which we would consider differences of opinion".

The changes made to Turkey's Constitution on 3 October fall short of criteria set out in the EU's Accession Partnership with Turkey. Critically, the reform package offers only limits on the circumstances in which the death penalty can be imposed rather than its complete abolition as required by the EU. Similarly, although the October reforms include some loosening of Turkey's bans on minority language rights, education in Kurdish remains forbidden as are any broadcasts deemed to be to "threats to national security". In addition, the reforms offer no attempts at a solution to the Kurdish question.

Commenting on Constitutional changes allowing for greater freedom of the press, the EU Progress Report notes, "For it to become fully effective, legislative changes are needed. The content of these changes will be crucial for the future enjoyment of this right". Freedom of expression also remains hindered by the fact that the crime of making "statements challenging the unity of the State" has been modified under the new reform package to now read as "activities challenging the unity of the State". This change is likely to be interpreted by officials as a green light to continue restricting freedom of expression. Earlier this year, in its Interim Resolution ResDH (2001) 106, the Committee of Ministers of the Council of Europe, citing 18 recent European Court cases involving Turkey's violation of Article 10 (freedom of expression) including the KHRP-assisted cases of *Özgür Gündem v Turkey* and *Aslantas v Turkey*, pressed Turkey to immediately erase the consequences of criminal convictions against applicants and to further bring about the urgent reforms necessary to bring Turkish law into full conformity with Article 10.

The October reforms have also failed to address the practices that facilitate torture, most notably incommunicado police detention and a lack of prompt access to legal counsel. Under Emergency Rule in parts of Southeast Turkey which has recently been extended into 2002, detainees currently can be held for up to ten days incommunicado.

The EU Progress Report clearly sets out many of Turkey's other key shortcomings in human rights, including its judicial failures. As the Report states: "There is continuing concern regarding the extent of independence of the judiciary in practice. . . the fact that the Supreme Board of Judges and Prosecutor in charge of appointments and postings, is chaired by the Minister of Justice, puts into

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“Neither friendly nor a settlement”

Human Rights Academic Jeremy McBride Reviews the Consequences of the European Court’s Decision in the KHRP Case *Akman v Turkey*

The European Court of Human Rights rightly has, like all courts, means to ensure that the list is not clogged up with cases no longer requiring its attention. Thus Article 37 of the Convention authorises it to strike out any case where there is no intention to pursue it, the matter has been resolved or ‘for any other reason established by the Court’ continued examination is no longer justified[1]. The need for the first and second of these grounds can readily be appreciated but any concern about the seemingly far too open-ended nature of the third – whose use was intended by its drafters to be used only in circumstances comparable to the first two grounds – ought to be assuaged by the overriding obligation on the Court to continue the examination of a case ‘if respect for human rights as defined by the Convention. . . so requires’. This qualification on the power to strike out a case is essentially similar to the limitation on settlements between parties that can be accepted which in the past has ensured that a State cannot simply buy off an applicant but must also address the underlying human rights problem that has given rise to his or her application. However, confidence that this qualification will continue to be applied in an appropriately rigorous manner – whether in connection with an apparent settlement or any other supposed ground justifying a case to be struck out – has been severely shaken by the Court’s rulings in three cases against Turkey, Akbay[2], Akman[3] and I I, I S, K E and A Ö[4].

It was in the Akman case – which involved the application being struck out on Article 37’s third ground because of a unilateral declaration by Turkey – that a marked change in the Court’s approach first appeared. After its ruling in this case, the willingness of the applicants in the two other cases to ‘accept’ a similar declaration by Turkey comes as no surprise and the cases were thus struck out on the basis of there having been a ‘friendly settlement’. Although all three rulings were taken by the Court’s First Section, the new approach is one likely to have general support since a request to have the Akman case – and thus the basis for it being struck out – referred to the Grand Chamber for reconsideration pursuant to Article 43 has been refused[5].

The A*kman* case arose out of the killing of the applicant’s son in the course of a search being conducted by police and security forces. The circumstances of the death were a matter of considerable dispute, with the applicant alleging that his son had been shot while being restrained in a different room from the rest of his family and Turkey claiming that the death occurred after its forces had been fired upon from the upper part of the house which was dark. These conflicting submissions led the Court to fix five days for taking evidence in Ankara but there were also unsuccessful efforts to reach a friendly settlement. However, just five days before the Ankara hearing, Turkey requested that the case be struck out because of its declaration that (a) it regretted the occurrence of individual cases of death resulting from excessive use of force as in this case, (b) it accepted that the use of such force resulting in death was a violation of Article 2 and undertook to issue appropriate instructions and adopt all necessary measures – including the obligation to carry out effective investigations – to ensure that the right to life is respected in the future and (c) it offered to pay *ex gratia* GBP 85,000 to the applicant – intended to cover damages and legal expenses – in final settlement of the case. In its declaration Turkey drew attention to certain legal and administrative measures which were said to have resulted both in a reduction in the number of deaths occurring in similar circumstances to that of the applicant’s son and in more effective investigations. It also suggested that supervision by the Committee of Ministers of the execution of judgments in this and similar cases was an appropriate mechanism for ensuring that improvements would continue to be made in this context.

As the Turkish declaration recognised, A*kman* is only one of an unduly large number of cases in which the use of excessive force by the security forces and/or the failure to carry out an effective investigation into allegations about the use of such force has been found to constitute a violation of Article 2. Moreover the circumstances in A*kman* may well not have been seen as raising any issues regarding the interpretation of the Convention that were particularly novel and an enforced settlement of the case might well be seen as a tempting way to save time for an over-burdened Court. However, although such a settlement might be appropriate where the outcome is that the applicant has ceased to be a victim and there is good reason for believing the underlying problem to have been satisfactorily addressed, it is far from clear that this was so in either A*kman* or the two subsequent cases.

In the first place the declaration’s reference to excessive force did not actually resolve the dispute as to what had happened to the applicant’s son; there is a world of difference between firing in circumstances where this was not the most suitable response and the deliberate killing of someone with a determined effort then to fabricate evidence as to what had occurred. Secondly the promise of more effective investigations does not actually entail an admission by Turkey that there was none in the present case (confirmation of which might have come from the hearing of witnesses), yet the absence of one is a quite discrete violation of Article 2 from that entailed by any death resulting from the use of excessive force. This is equally true of the declaration’s failure to address the issue of whether or not Article 13 had also been violated; an affirmative conclusion is most likely given the absence of any remedy for the applicant and the obstacle to obtaining one created by the lack of an effective investigation Thirdly the declaration did not give any undertaking to try and investigate the circumstances of the case or even to consider whether it would be appropriate for criminal or disciplinary proceedings to be brought against the forces involved. Fourthly there is no basis for assessing the adequacy of the compensation proposed since the extent of the violation of the Convention has been obscured and the actual claims of the applicant must remain confidential since they were part of the friendly settlement negotiations. Fifthly the supposed acknowledgement by Turkey of a violation of the Convention would seem to be negated by is statement that the financial award was made ‘*ex gratia*’. Finally, notwithstanding the Court’s earlier rulings on killings by the security forces, it is far from clear that the reforms and undertakings by Turkey have satisfactorily resolved the problem with regard to control over the use of force in Turkey, let alone the investigation of abuses allegedly occurring there[6]. The Court may have had the benefit of more detailed information during the friendly settlement negotiations but neither the fact that the death occurred when the initial cases concerned with killings by the security forces were already well-advanced before the Strasbourg organs nor the apparent failure of the Turkish authorities to carry out an effective investigation into the circumstances giving rise to this application can really inspire much faith in due respect being accorded to Convention rights. Indeed Turkey in its own declaration seemed content with improvements continuing to be made which is hardly consistent with the immediate nature of the obligation to fulfil Convention’s requirements. Furthermore the Court is itself well aware of the recurring nature of the violations brought before it and, even though it may be reluctant to find that these amount to an administrative practice, it ought perhaps to require much more than a good faith undertaking before expressing satisfaction that respect for human rights does not require either the facts of an application to be found or

all aspects of it to be determined.

The Akman decision goes well beyond the suggestion of the Evaluation Group on the Court[7] that applicants should be penalised for 'unreasonable' refusal of a settlement. While an enforced settlement might well be appropriate in 'clone' cases where the problem in a series of applications has been clearly resolved through a change in law or practice, it is unjust where the scope of the violation is disputed and the effectiveness of the supposed remedy is questionable. In effect the Court is passing the buck to the Committee of Ministers to ensure that Convention obligations are properly implemented. A tougher line by the latter would undoubtedly be appropriate but the Court, in refusing to adjudicate on the cases involving serious violations of the Convention in respect of which there has been no comprehensive acknowledgement of wrongdoing or the provision of effective remedies, has shown scant regard for the notion of rights and the rule of law. Further reliance on the *Akman* precedent may diminish the workload but could also lead to less effective protection in the long term, with resulting damage to the Court's credibility. Furthermore, if Turkey does not actually fulfil its undertakings, it may find itself pressed to exercise the power under Article 37 to restore cases such as *Akman* to the list.

Jeremy McBride is a Reader in Law at the University of Birmingham and the Vice-Chair of Interights.

1 A power originally conferred on the Commission by Protocol Eight and then replicated for the Court in an amendment to its rules.
2 2 October 2001.
3 26 June 2001.
4 6 November 2001.
5 31 October 2001.
6 This seems equally true of the efficacy of protection for detainees against disappearance and ill-treatment, the subject of the two 'friendly settlements' based on declarations by Turkey making limited admissions of wrongdoing and promising to do better in future.
7 EG(2001)1, 27 September 2001.

Kurdish MPs *in Iran Submit Resignations over Continued Neglect of Kurdish* Issues

In late September, all six Iranian Kurdish MPs from Iran's Western Kurdistan province submitted a letter of group resignation from Parliament in protest over what they feel is continued discrimination against Iranian Kurds and the Sunni Muslim minority as well as "the government's inattention to the Kurdistan province". Most of Iran's 7.5 million Kurds are Sunni Muslims as well. And although Shiite Islam has been the State religion since the 17th century, Iranian Sunnis as a whole represent about 12% of Iran's population of 65 million.

Commenting on the resignation to the *Tehran Times*, MP Mohammad Mohammad-Rezaei, a Kurdish MP from Bijar, stated that more than 80% of the population in the province of Kurdistan live below the poverty line. Although the province had been at the forefront of the Iraq-Iran war in the 1970s, in the war's aftermath post-1979, Iranian Kurdistan was not allocated its fair share of currency so runaway unemployment has remained well above the national average. Expansion and development programmes are also scarce in the region and the province has remained one of the most neglected regions in Iran. Although he and his fellow Kurdish MPs have been very persistent in trying to bring such issues to the current Parliament, Mr Mohammad-Rezaei felt that they have been unable to achieve their goals despite their continued efforts and despite previous promises to the Kurds from President Mohammad Khatami for an increased role in decisions about the province. Most of the correspondence sent by the MPs to the Interior Ministry had either not received a response or else the replies were unsatisfactory. "We have asked the Interior Ministry to send delegations to the province, hoping that the problems would be settled justly," Mr Mohammad-Rezaei explained. But no such delegation was ever sent.

Commenting on other problems in the province, the MP stated that they had asked relevant authorities to account for the fact that the state-run universities awarded only 24 places per year to students from the Kurdistan province who had hoped to study dentistry, despite the fact that 40 Kurdistan students had passed the entrance exams in 1999 and 2000. "Where are the remaining 16?" Mr Mohammad-Rezaei demanded.

In addition, Reformist Kurdish MP Jalal Jalalizadeh had last year alleged in Parliament that a campaign of repression and serial killings was being carried out against Iran's Kurdish minority. He claimed that this included a prohibition of religious freedom for Sunni Muslim Kurds.

The six MPs were also upset about a number of leadership disputes including the transfer of Kurdistan's provincial governor, Abdollah Ramazan-Zadeh – himself a Shiite Muslim of Kurdish origin – to Tehran and the fact they were not consulted about his replacement. The MPs feared that a non-Kurd would be appointed to replace Ramazan-Zadeh who had been widely credited with reducing religious tensions in the region. The Kurdish MPs resented the fact that following their unanimous agreement on a new governor, a different man was ultimately appointed to the post. Following the announcement of the new governor, two qualified candidates from the Kurdistan province had been further suggested by the MPs as alternatives, but the Cabinet ignored the proposal and went ahead with the appointment.

"We expect the Interior Ministry to consider it our right as representatives of the province….[but] the Interior Minister has threatened to lodge a complaint against us …while he himself should respond to us," MP Mohammad Mohammad-Rezaei asserted.

In response to the MPs' resignation letter, Parliament refused to accept the resignation. "According to chamber regulations, we do not accept collective resignations," Mohammad-Reza Khatami, Deputy Speaker of the Chamber and President Khatami's brother stated. There has been no precedence for a group resignation in the Iranian Parliament and the MPs were told they could resign individually with each resignation then being reviewed by the Parliament.

Compiled from Iranian press and syndicated reports.

In Memoriam: Tony Banda

KHRP remembers the dedicated life and career of Tony Banda, a lifelong activist in the fight for the liberation of oppressed peoples of the world, including the Kurds. A devoted fighter in the Kurdish struggle for rights and justice, Tony will also be remembered for his photographs of Kurdish, Tamil and Latin American communities in Britain and abroad. On 5 November, Tony died of cancer in London. Along with other members of the Kurdish community here in London and internationally, KHRP marks the outstanding contributions and efforts made by Tony who worked so tirelessly for the Kurdish struggle.

Tony Banda (1929–2001)

KHRP *honours comedian Mark Thomas for outstanding public awareness campaign*

On 30 November, KHRP held a celebratory dinner honouring comedian Mark Thomas who has tirelessly campaigned on behalf of the KHRP and the wider Kurdish community throughout 2001 in both his television and journalism work and also throughout the course of his UK comedy tour, "Dambusters: Tales of Dissent".

The tour, which began with a series of pre-tour shows in the summer, travelled to more than 50 venues throughout Britain, including gigs in London, Belfast, Glasgow and Cardiff and has helped to generate a huge amount of new public interest in the Kurds and in the work of the KHRP.

The material in the Dambusters show focuses on much of the work Mark has done as one of the founding members of the Ilisu Dam Campaign. Over the course of his two and a half hour show, Mark brings to life many of the people he has met in the course the Campaign's work – displaced refugees, fellow campaigners, torture victims, mothers of the 'disappeared' in Turkey as well as the likes of Lord Weir, Chairman of Balfour Beatty, the construction company that was set to work on the Ilisu project, along with a band of Weir's "big business henchmen". Mark also reveals the horrors of the on-going sanctions against Iraq and the current Anti-Terrorism legislation in Britain as well as the hypocrisies inherent to the West's attitude towards the 'Good Kurds 'of northern Iraq versus the 'Bad Kurds' of Turkey. Along the way, Mark also offers details of some of KHRP's most significant cases, including the ground-breaking case of Aydin v Turkey which marked the first time the European Court held that rape in detention constituted torture for the purposes of Article 3 (prohibition of torture) of the European Convention. The Aydin case concerned the torture and rape in custody of a 17 year old Kurdish girl by Turkish security force members and in his show, Mark powerfully conveys the day that Ms Aydin travelled out of Turkey for the first time in her life in order to hear the judgment in her case at the European Court of Human Rights in Strasbourg.

Since Mark's tour began, KHRP has received a continual stream of e-mails, phone calls, letters and membership forms from people asking for more information about KHRP's work and wanting to know how they can get involved in the Kurdish issue. In addition, Mark has also generously donated all of the proceeds from his tour booklet to KHRP. With tour booklet sales well over 5,000, Mark has single-handedly generated significant funds for KHRP's future work while simultaneously boosting public awareness of KHRP's work in an unprecedented way. As one e-mail put it: "After seeing Mark Thomas earlier this year, my attention was brought to the issue of the Ilisu Dam. Having read today that Balfour Beatty have pulled out of the project I feel you and all your staff deserve praise for your efforts. Mark Thomas was an excellent ambassador for the cause and he put the points across very well and with genuine feeling. Well done."

Mark Thomas on stage during his show "Dambusters: Tales of Dissent"

KHRP receives new Community Fund grant

KHRP staff and interns with the new Community Fund cheque for £172,499. This funding will support KHRP's work throughout 2002–2003.

KHRP European Convention training opens in Azerbaijan

In December KHRP will begin its new European Convention training and litigation programme with a seminar for NGOs and lawyers in Baku, Azerbaijan.

As reported in the last issue of *Newsline* (Issue 14; summer/autumn 2001) KHRP is setting up a programme of practical training and support for NGOs and lawyers in Azerbaijan on how to take cases to the European Court of Human Rights. This follows the signing of the Convention by Azerbaijan in January 2001. Ratification of the Convention will follow in early 2002 when individuals and NGOs will be able for the first time to take cases to the European Court claiming human rights violations by Azerbaijan.

About 20 leading human rights NGOs, lawyers and judges will attend the seminar which will cover the essential features of the European Convention system and practice, as well as consider potential domestic remedies in Azerbaijan and the current human rights problems which might be the subject of the first cases to go to Strasbourg.

The seminar is being conducted in conjunction with the Azerbaijan National Committee of the Helsinki Citizens' Assembly and the Bar Human Rights Committee of England & Wales. Invited participants include members of a wide range of Azerbaijani NGOs including the Human Rights Centre, the Society on Court Reforms, the Association of Young Lawyers, the Human Rights Resource Centre, the Women's Rights Protection Society, the Legal Advice Centre and the Kurdish Cultural Centre.

Roundup of Recent UK Policy Decisions Relevant to Kurdish Refugees

Over the course of the autumn, a number of significant UK policy decisions have been made which are poised to directly affect Kurdish refugees and other asylum seekers in Britain. Below is a brief chronology detailing some of the main decisions.

19 October 2001
UK Court of Appeal overturns the landmark legal decision against detention centres, previously won by Iraqi Kurdish claimants. The High Court had previously ruled that the Home Office policy of confining refugees in detention centres for essentially administrative reasons infringed refugees' rights to security and liberty under the Convention. About 90 people went on hunger strike at Campsfield detention centre following the High Court ruling.

29 October 2001
United Nations Human Rights Committee adopts a resolution severely criticising the UK's treatment of asylum-seekers and powers under the Terrorism Act.

The Committee is "concerned" that asylum seekers have been detained on grounds other than those legitimate under the Covenant, including reasons of administrative convenience. The UK is requested to closely examine its system of processing asylum-seekers to ensure that each asylum-seeker's rights under the Covenant receive full protection. The UK is also requested to end detention of asylum-seekers in prisons, which the Committee considers unacceptable. Furthermore, the Committee is concerned that the practice of dispersing asylum-seekers may have deleterious effects on their ability to obtain legal advice and upon the quality of that advice. The resolution states, "Dispersal, as well as the voucher system of support, have on occasion led to threats of physical security of asylum seekers."

Furthermore, the UK is requested to review its powers under the general Terrorism Act 2000, whereby suspects can be detained for 48 hours without access to a lawyer if the police suspect that such access would lead, for example, to interference with evidence or to alerting another suspect. The Committee states the UK has "failed to justify" these powers, whose compatibility with Articles 9 and 14 of the United Nation's International Covenant on Civil and Political Rights is "suspect".

29 October 2001
David Blunkett reveals his "radical reform for a more robust asylum system", the key points of which are:

- The introduction of Accommodation Centres, offering full board, education and health facilities. Those refusing accommodation centre places will not be eligible for any further support. The centres will have open access but applicants will be required to sleep in the centres and receive their application decisions in them.
- Removal centres, housing those who are about to be removed from the country, are to be expanded.
- The value of the voucher, now exchangeable for cash, will rise from £10 to £14 but the total value will remain at 70% of Income Support levels. 'Smart cards' will be phased in from January 2002 but are not expected to replace vouchers before autumn 2002.
- The principle of dispersal will continue unabated, away from London and the south.
- There will be a White Paper early next year to examine the need for the introduction of language and education requirements for citizenship.
- Only new arrivals from autumn 2001 will be placed in reception centres.
- Introduction of work permits as the basis for a "sensible, managed" economic migration policy to reduce the number of economic migrants using the asylum system.

8 November 2001
Gareth Pierce, the civil liberties lawyer, is due to take a challenge to the Terrorism Act 2000 in the High Court. The Act bans ("proscribes") 21 organisations on suspicion of involvement, promotion or encouragement of terrorism. Terrorism is defined as the use or threat of any action involving violence to people or property or serious risks to health and safety, designed to influence any government or intimidate members of the public anywhere in the world for political, religious or ideological causes. The hearing, which would determine whether it is possible to judicially review a proscription, is postponed for three weeks.

13 November 2001
UK Government publishes 'Anti-terrorism, Crime and Security Bill'. House of Commons are given just three days to review the legislation, which provides for:

- Derogation from Article 5 (right to liberty) of the European Convention. Derogation is permissible only where a state of emergency threatens the life of the nation. Amnesty International "is not aware of any other European government contemplating derogation from its international human rights treaty obligations in the wake of the September 11 attacks".
- The Home Secretary has power to detain indefinitely anyone subject to immigration control who he suspects to be "an international terrorist and threat to national security".
- "International terrorism" is that which is not solely concerned with the affairs of a part of the UK. The new Bill also criminalises those "with links" to a person who is a member of or belongs to an international terrorist group.
- Those suspects could be imprisoned on the basis of evidence that would be inadmissible in a trial, and on a significantly lower standard of proof than is applied in a criminal trial.
- Only those not subject to immigration control, British nationals, receive the normal application of the criminal law and its attendant safeguards, including the requirement of objectively verifiable evidence before arrest.
- Arrests in connection with terrorism are based on "reasonable grounds for suspicion" in every other branch of law, including the Terrorism Act 2000. Under the new Bill, the Home Secretary is required only to show a "belief" or "suspicion" that a person is an international terrorist. The Home Secretary is never required to show that his belief or suspicion was objectively justified, merely that it is a belief or suspicion that he holds.
- Anyone so categorised will then have their case heard in a closed hearing, some of which may take place in the absence of the person concerned and without full disclosure of the evidence to them.
- Asylum seekers who have been labelled as "suspected international terrorists" will be denied an appeal against, or review of, a decision not to allow them into the UK.
- The Home Secretary claims no one will be returned to somewhere where they could face the death penalty or torture. Asylum seekers who cannot be returned to their country of origin for this reason may be detained indefinitely without trial pending finding a country to send them to.

15 November 2001
David Blunkett indicates that Britain is to join a UN scheme to take a quota of refugees to help end the need for asylum seekers to hide in container lorries to get into the country. Under the scheme UNHCR officials nominate who should be given refugee status while they are still living in camps near the countries they have fled. They are then sent to various countries on a quota basis.

The news comes at a time when reports dominate the media of refugees forced to rely on smugglers for their safe passage to a country of asylum. In early November, 1,200 mainly Iraqi Kurdish refugees were brought to safety on the Greek Kakynthos island. The Greek authorities said they would deport any of the refugees who did not warrant asylum, notwithstanding the Greek public support for the refugees. Petros Masakas, a legal consultant for the UN refugee agency, said: "The scene on that ship was absolutely horrific. Men, women and children who were literally squashed, one on top of another, for the entire 10 days of their journey, had vomited and excreted wherever they could."

Earlier this year, in August, 443 mainly Iraqi Kurdish asylum seekers became the centre of a diplomatic stand-off between Australia, Indonesia and Norway when they were rescued from a sinking Indonesian ferry off Australia's Christmas Island.

For updates on the situation of refugee policy in the UK, *see* NCADC's *website at www.ncadc.org.uk*

Changes afoot at the European Court

Report of the Evaluation Group *to the* Committee of Ministers *on the* European Court *of* Human Rights

By KHRP *Intern* Rochelle Harris

In September 2001, an Evaluation Group (including the President of the European Court and the Deputy Secretary-General of the Council of Europe) published its proposals as to how the European Court of Human Rights should continue to be effective when the volume of applications is steadily rising.[1] The accession of twenty new States, translation between 37 official languages and increased knowledge of the Convention among populations have contributed to a 500% increase in the volume of applications between 1993 and 2000 – this is expected to worsen when Protocol 12, concerning non-discrimination, enters into force. In July 2001, 18,292 registered applications were pending before the Court.

The report is pessimistic: "It is abundantly clear… that immediate and urgent action is indispensable if the Court is to remain effective. If no steps are taken, the situation will simply deteriorate, with the Court having no prospect of "catching-up" with its ever-increasing arrears of work. It will no longer be able to determine all cases within a reasonable time, its public image will suffer and it will gradually lose credibility. Moreover, constant seeking for greater "productivity" obviously entails the risk that applications will not receive sufficient [...] consideration, to the detriment of the quality of judgments".

The Report suggests that the status quo should be preserved in respect of the substantive rights guaranteed by the Convention, the right of individual application (in its essence) and the quality of the Court's judgments, whilst also allowing the Court to dispose of applications within a reasonable time. Five areas were identified in which co-ordinated reforms need to be considered: national measures, execution of judgments, measures to be taken in Strasbourg involving no amendment to the Convention, resources and measures taken in Strasbourg involving amendment to the Convention. These are summarised below.

National measures

"The Evaluation Group cannot stress sufficiently the importance of this avenue: the primary duty to protect fundamental rights and freedoms lies with the national courts and authorities and it is at that level that protection can be secured most effectively." With this in mind, the Evaluation Group makes recommendations for improving domestic protection for human rights:

- Provision of effective domestic remedies;
- Systematic screening of draft legislation and administrative practices;
- Reinforcement of training in human rights;
- Wider dissemination of information concerning the Court to national authorities, including the provision of translations of extracts from key judgments;
- Ensuring that national courts have the requisite status, authority and independence;
- Introduction of procedures for the re-opening of domestic proceedings after a finding by the Court of a Convention violation;
- Introduction of information and documentation centres within States, so that individuals are better informed as to matters falling within the Court's jurisdiction and time-wasting applications are prevented from reaching Strasbourg;
- Reiterating the obligation of the Committee of Ministers to keep the question of national measures under close and constant scrutiny and the need for collective and complementary efforts by all concerned; and
- A feasibility study into means of reinforcing interaction between the Strasbourg Court and national courts.

Execution of judgments

In the vast majority of cases, the obligation of States to comply with the Court's judgments raises no objections. However the Report notes that strongly held cultural ideas, political motives or pressures on parliamentary time sometimes can lead to non-compliance. The Report identifies this as a fundamental flaw in the effectiveness of the system and:

- Welcomes the trend in the Parliamentary Assembly to follow the question of execution more closely;
- Recommends introducing a special procedure in the presence of "repetitive" applications;
- Proposes that the Committee of Ministers could ensure a greater degree of involvement and international responsibility for difficult cases by designating one member State as rapporteur to take the lead in pursuing a dialogue with the respondent State;
- Emphasises the need for the Committee of Ministers to use every possible means to ensure the expeditious execution of judgments.

If appropriate general measures are not taken by a State in compliance with an adverse Court judgment, the Court is only too well aware that large numbers of identical or similar applications ("repetitive" applications) may then be submitted. The report recommends special arrangements for such cases. On being informed of the existence of the pending applications, the Committee of Ministers would deal with the execution of the original judgment by a special procedure allowing for expedited treatment. The pending applications would then be "frozen" by the Court for a given period, but reviewed regularly, to allow the Respondent State time to take the necessary measures. This procedure would enable the Committee of Ministers to exert special pressure on the State concerned and could reduce the need for the Court to consider purely repetitive applications.

Currently, the last resort available to the Committee of Ministers in the event of non-compliance with a judgment is to adopt a strongly worded resolution urging the respondent State to take the necessary steps to ensure compliance. The Report dismisses the idea of imposing financial penalties on a recalcitrant, stating this, "raises questions as to how such penalties could be calculated."

The Report acknowledges that the practice of restitutio in integrum in appropriate cases would be beneficial in the context of the execution of judgments. This means putting the individual as far as possible in the position s/he would have been had there been no Convention violation. (In the context of the KHRP cases against Turkey, this idea of effective restitution could, for example, provide for the rebuilding of homes in village destruction cases.)

Measures to be taken in Strasbourg involving no amendment of the Convention

The Report would not countenance any changes to the general provision that applicants need not be legally represented, or that applicants may use any of the 37 official languages in Strasbourg proceedings, arguing that any changes to these principles could constitute unwarranted impediments on access to the Court. The Report instead considers:

- Modification of the procedure relating to the registration of applications;
- Conferring a new, non-dispositive role on designated Registry officials, under the Court's supervision, in respect of streaming of applications;
- Recourse to a summary procedure for certain categories of application;
- A proactive role for the Court in respect of friendly settlements;
- Problems attendant on fact-finding missions by the Court and the relationship of this issue to necessary national measures;
- The need to make resources available for long-term IT development;
- Creation of an annual report by the Court;
- Outstanding issues as to the institutional status of the Court within the Council of Europe.

The report cites proposals from the Court's Working Party on working methods and its Reform Committee. Although stating that the ideas are merely "on the table" and do not represent the Court's final opinion; the report nonetheless describes the proposals' "twofold advantage" and "particular merits".

The Reform Committee proposes a new system of streaming, conducted by designated senior officials under the ultimate supervision of the Court. The officials would be able either to

identify an application as falling within a category whose registration can be refused, or to certify it as inadmissible on one of the grounds set out in the Convention. Their conclusions would be submitted to a Committee of three judges for "approval by silent procedure". The officials could also recommend that an application be struck-out if its continued examination was no longer justified.

The Group encourages the use of settlement mechanisms: "...in addition to providing Governments with a means of avoiding excessive publicity and applicants with... an immediate... result, the conclusion of a friendly settlement can involve substantial budgetary savings for the Court... Incentives for applicants to settle might be reinforced if there were a practice on the part of the Court of depriving them – in its awards of "just satisfaction" – of part of their costs in cases where they had declined a settlement offer deemed by the Court to be reasonable."

The report proposes that, "as regards the remaining applications, the officials would, on the basis of standard case-law, certify them either as being admissible and manifestly well-founded or as being prima facie admissible or, alternatively, would recommend that they be communicated to the respondent State concerned". Article 35 of the Convention provides that manifestly ill-founded applications are inadmissible; the report conflates this with only admitting applications that are manifestly well-founded. It is only later in the report that changing admissibility criteria under the Convention is explicitly considered.

Resources

"In recent years, the budget of the Commission and Court has developed considerably... [it] has represented a continuously increasing proportion of the total ordinary budget of the Council of Europe.... In the period from 1989 to 2001 the financial resources of the institutions have grown more than twice as much as the resources made available... for the other activities of the Council of Europe." The report never suggests that this twofold increase in funding has been insufficient, despite illustrating elsewhere that the volume of applications has increased 500% in roughly the same period of time.

The report insists that resources cannot be increased *ad infinitum* – quite aside from national budgetary constraints, merely increasing staff numbers through a huge recruitment drive would require current staff to devote time to training and supervision and would impact negatively on their productivity. For this reason, the Group recommends that the implementation of new recruitment be staggered over the period 2003–2005. The report notes:

- The Registry has additional staffing needs which should be met, including further legal and secretarial staff, and reinforcement of supervisory structures, particularly human resources;
- Adequate resources should be provided for implementation of the IT programme;
- The importance of making an immediate decision on a new building for the Council of Europe;
- Increases in the Court's budget should be treated separately and without regard to the basis applied in fixing the Council of Europe's ordinary budget. The same should apply to increases in resources related to the supervision of the execution of judgments, within the Directorate General of Human Rights, which also has unmet staffing needs;
- A system of two- or three- year budget programmes should be devised.

The report justifies its claim that increasing resources would not represent a panacea to the backlog. "Even if resources could be increased indefinitely, saturation point would be reached in the near future... there must be some limit on the number of cases which 41... judges can examine in depth each year if quality is not to suffer". Elsewhere the Group reports that an increase in the Court's resources reduces pro tanto the resources available for the other Council of Europe activities. "The short-sightedness of such an arrangement becomes only too apparent when it is borne in mind that the Council's other activities include assistance to member States in achieving the overall aims of the Convention and that, if those aims are achieved, the workload of the Court will diminish." However, it is interesting to note that the budget of the Court is only about a quarter the size of that of the European Court of Justice.

Measures involving amendment of the Convention

The Report's two most far-reaching proposals are included here:

- A provision should be inserted that would empower the Court to decline to examine in detail applications raising no substantial issue under the Convention;
- A mechanism whereby certain applications could be remitted back to domestic authorities should be considered.

In addition, the Report proposes:

- Certain detailed matters now dealt with in the Convention could be transferred to a separate instrument, capable of amendment by a simpler procedure than Protocols;
- Judges' term of office should be modified so they are elected for a term of not less than nine years;
- A study should be carried out into the creation within the Court of a new and separate division for the preliminary examination of applications.

The report returns to consider the issue of admissibility of applications. The Group considers that revision of admissibility criteria would not go far enough. "What is required is a means of excluding from detailed treatment by the Court not only applications having no prospects of success but also those which, despite their having such prospects, raise an issue that is... of such minor or secondary importance that they do not warrant such treatment."

The report pre-empts criticism that such a solution would deprive some victims of a violation of the Convention of protection. The Group would reply that the point has been reached at which a difficult choice has to be made: either the Court continues to attempt to deal in the same way with all the applications that arrive... or it reserves detailed treatment for those cases which... warrant such attention. Not without some soul-searching but nevertheless unreservedly, the Group opts for the second alternative."

Throughout the autumn, KHRP has started to meet with human rights NGOs to consider a response to the Evaluation Group's Report (see box below).

1 The full report is available at http://cm.coe.int/stat/E/Public/2001/rapporteur/clcedh/2001egcourt1.htm

KHRP lobbying on proposed reforms of European Court of Human Rights

KHRP has been instrumental in bringing together NGOs in the UK to lobby on the proposed reforms of the European Court of Human Rights (see article above). In November, KHRP's Legal Director met with UK Foreign Office officials, together with Liberty, JUSTICE and the AIRE Centre, to discuss the UK government's consultation process. This process will include a seminar for NGOs and lawyers run by the Foreign Office in February 2002.

Also in November, leading human rights NGOs, including Amnesty International, Liberty, the AIRE Centre and Interights, and practising and academic human rights lawyers, met at KHRP's offices to discuss a joint response to the proposed reforms and a plan of action. This group will be advising other NGOs across Europe about the proposed changes and what can be done to influence developments.

The Right to Life in Turkey: A *Summary of Recent* Developments

This edited extract is taken from an article by Carla Buckley, "*The European Convention on Human Rights and the Right to Life in Turkey*", 1(1) Human Rights Law Review (2001). The full article updates Ms Buckley's report, *Turkey and the European Convention on Human Rights – A Report on the Litigation Programme of the Kurdish Human Rights Project* published by KHRP in July 2000. Both are available from KHRP on request. All of the cases mentioned in this extract were taken by KHRP on behalf of applicants to the European Court of Human Rights.

The European Convention institutions have the task of determining Turkey's responsibility for grave violations of the right to life alleged in a series of applications emanating from Southeast Turkey. Killings by 'unknown perpetrators,' deaths of civilians during security operations and disappearances form the basis of the complaints in these cases.

In cases concerning extra-judicial killings in that region, the Court has consistently found that the right to life as guaranteed by Article 2 of the Convention has been violated. The Court has accepted that the scope of State responsibility is not confined to those cases where it is established that the killing was caused by agents of the State. Whether the death has occurred as a result of a killing by an unknown perpetrator or during security force operations, whether at the hands of State agents or not, the cases have succeeded in establishing that the State has positive obligations under Article 2(1) to provide a framework of security for the protection of life.

The primary legal issues in these cases have been threefold:

State Responsibility – (a) the Standard of proof

In each case involving killings by unknown perpetrators, the applicant has argued the killing was perpetrated with the knowledge and support of the security forces, and arises out of covert relations between clandestine groups, law enforcement agencies and Government officials. The primary difficulty in proving these allegations has been the lack of direct or independent evidence to identify the perpetrators or to corroborate the applicant's account. If their allegations are correct, applicants are also unlikely to be given access to the resources of the State which would ordinarily be available to investigate murders.

Proof of allegations is a formidable task given the nature of the conduct which is in issue. Nevertheless, the Convention institutions have held that the standard of proof required to establish State responsibility is a high one, "beyond reasonable doubt", and to date the Convention institutions have not been prepared to find the allegations meet this standard. Applicants have nevertheless enjoyed a measure of success: they have established, for instance, the Turkish authorities' interest in the victims of unknown perpetrator killings.

In the context of disappearances, the former Commission was prepared to presume a detainee had died where the circumstantial evidence was sufficiently strong, and in the light of the Commission's "increased experience of the conditions pertaining in Southeast Turkey". Accordingly, in *Akdeniz and Others v. Turkey*, a disappearance case pending before the Court, the Commission considered the Government liable for the deaths of eleven men who disappeared following their detention.

Where there has been a lack of direct evidence and the Court has taken a cautious approach to circumstantial evidence, litigants have called upon the Convention institutions to give a further dimension to the positive obligations imposed on States by Article 2(1) to protect life, for instance where security operations have resulted in the death of civilians and the State's obligation to provide a framework of protection to investigate and prevent 'disappearances' and killings resulting from the use of force.

(b) Civilian deaths occurring in security operations

In *Gul v. Turkey*, the killing occurred when police officers of a special operations team in the course of executing a search warrant opened fire on the door behind which the deceased stood. The authorities maintained that he had opened the door and fired one pistol shot at them after they had knocked at the door and issued a warning to open it. The Court stated that Article 2 required that the force must be strictly proportionate – no more than absolutely necessary – to the achievement of the permitted purposes set out in paragraph 2. An honest belief which is perceived for good reasons to be valid at the time of the action but subsequently transpires to be mistaken may also justify a use of force in pursuit of one of these aims. The Court rejected the Government's version of events, but considered that the police opened fire in the mistaken belief that the sound of the door bolt being drawn back by the deceased was the sound of a gun. Despite this honest belief, the importance of Article 2 demanded that the surrounding circumstances be taken into account. The Court held therefore that the reaction of opening fire with automatic weapons on an unseen target in a residential block inhabited by civilians was 'grossly disproportionate' to the aim sought to be achieved by the use of that force, resulting in a breach of Article 2.

(c) Obligation to provide a framework of protection to investigate and prevent disappearances and killings resulting from the use of force

In its recent decision in *Akkoç v. Turkey*, the Court confirmed the principle that the State has an obligation to provide a framework of security to protect life which includes some form of effective investigation into all disappearances, attempted murders and deaths occurring in suspicious circumstances, or where the death is a result of circumstances in which State agents have used force, even where they cannot be held responsible. The same principle recently was reaffirmed in *Salman v. Turkey*, where the death occurred in custody.

An apparently unlawful killing or the prevalence of armed conflict in a region does not displace the State's obligation under Article 2 to ensure such an investigation takes place. The Court has invariably found that Turkey has violated Article 2 on the ground that the authorities failed to carry out adequate and effective investigations. The Court has identified twenty-two separate ways an investigation may be deficient, relied on and extended in the recent cases of *Gul v. Turkey, Akkoç v. Turkey* and *Salman v. Turkey*. These have included the failure to conduct a proper investigation at the scene of the incident, failure to provide a complete autopsy report, failure to take or delay in taking witness statements, or that an investigation lasting twelve days was too short.

Failure to keep accurate custody records was similarly held to be a violation of Article 2 in the recent disappearance case of *Taş v. Turkey*. In that case, the Court drew very strong adverse inferences from the authorities' failure to provide custody records for Taş subsequent to his initial day of detention. Furthermore, the Court considered the Government's claim that Taş had escaped from custody lacked credibility and was unreliable. The Court also considered the lack of accountability of members of the security forces existing in the region and concluded that, in these circumstances, Taş must be presumed dead.

An issue has arisen as to the obligation on authorities to take preventative measures to protect lives. The Convention institutions have held that the legal framework in the region is so deficient that there has been a failure to protect the right to life where victims were known to be at risk of unlawful attack. This has been argued where killings by 'unknown perpetrators' were known to include as targets, for example, journalists for the *Özgür Gündem* newspaper or prominent Kurdish figures thought by the authorities to aid the PKK, and where the victim has fallen within those categories. In particular, the former Commission found the legal framework so deficient that "the rule of law ceased to apply", permitting or fostering a lack of accountability of members of the security forces for their actions.

In conclusion, the series of applications from Southeast Turkey alleging violations of Article 2 demonstrate the legal and evidential difficulties faced when seeking to bring home responsibility for 'unknown perpetrator' killings, deaths during security operations and disappearances. By interpreting Article 2 so as to impose on States obligations to prevent, account for and investigate violent deaths and disappearances, despite the inability to find direct State responsibility and security considerations notwithstanding, the Convention institutions have demanded from Turkey a commitment to securing the right to life that requires the reform of the very structure and *modus operandi* of its legal institutions.

Newest Admissibility Decision in KHRP Cases

Ozkan Kalin v. Turkey (31236/96)
(*freedom of expression*)

On 4 September 2001 the European Court of Human Rights declared the case of *Ozkan Kalin v. Turkey* to be admissible in respect of the applicant's complaints under Articles 6, 7, 10 and 14 of the European Convention on Human Rights.

The applicant's complaint centred on criminal proceedings initiated against him in 1991 in respect of two articles published by the weekly newspaper *Yeni Ulke* (New Land), of which he was the editor. He was charged under Articles 6 and 8 of the Anti-Terrorism Law of 1991 with "publishing declarations of terrorist organisations' and "issuing propaganda aimed at attacking the unity of the State". One of the articles reported on hostilities in Botan, the other was a report about a press release from the European office of the Kurdistan Workers' Party (PKK).

In the first case, the Istanbul State Security Court acquitted the applicant, finding that the contents of the article did not disclose evidence of intention to make separatist propaganda. The State Prosecutor appealed and the Court of Appeal reversed the decision of the State Security Court, holding that the photograph that accompanied the article would incite people to hatred. The State Security Court then found him guilty of an offence under Article 312 of the Penal Code and sentenced him to two years' imprisonment and a fine. The applicant was also initially acquitted of the charges in the second case, and again was subsequently found guilty and sentenced, this time to a fine, by the State Security Court.

The applicant argued that his right to a fair hearing by an independent and impartial tribunal under Article 6 had been violated, that he had been punished according to a law that was not clearly defined in contravention of Article 7, and that he had been punished for articles he had published in violation of his right to freedom of expression under Article 10. He further complained of discrimination in the enjoyment of these rights, as prohibited by Article 14 of the Convention.

Turkey flouts European Court recommendation against extraditing Uzbek nationals: KHRP plans to apply for third party intervention

In October, the European Court held hearings in the cases of two Uzbek nationals who had been arrested on arrival in Turkey and who were wanted for murder and the attempted assassination of the Uzbek President (*Mamatkulov v Turkey* (No. 46827/99) and *Abdurasulovic v Turkey* (No. 46951/99)). Mamatkulov and Abdurasulovic were members of the opposition Freedom Party in Uzbekistan. They were arrested separately in Turkey in March 1999 and December 1998 and the Uzbek authorities made a request for their extradition.

Mamatkulov and Abdurasulovic complained to the Strasbourg Court of violations of their right to life (Article 2) and of the prohibition against torture and inhuman or degrading treatment (Article 3) on the basis that they faced the death penalty and being subjected to torture if they were returned to Uzbekistan.The European Court called on the Turkish authorities not to extradite the two men while their cases were being considered by the Court (under its 'interim measures' procedure – Rule 39 of the Court's Rules).

However, in March 1999 the Turkish authorities allowed them to be handed over to the Uzbek authorities. The Turkish government told the Court that they had received guarantees from the Uzbek authorities not to sentence the two men to death, or to torture them or confiscate their assets. Mamatkulov and Abdurasulovic have since been found guilty and sentenced to terms of imprisonment of 20 years and 11 years, respectively, by the High Court in Uzbekistan.

This case is expected to be heard by the Grand Chamber of the European Court. KHRP will be applying to intervene as a third party to the case, to make written submissions to the Court about the consequences of a country failing to comply with a request of the Court under its 'interim measures' procedure.

Judge Rune Voll with KHRP Legal Director Philip Leach

KHRP Hosts Judge Rune Voll of Norway

In October, KHRP was honoured to host a guest lawyer from Norway, Judge Rune Voll. Judge Voll, an appellate judge at the Gulating Court of Appeals in Norway, is currently being sponsored by the Justice Department of Norway for a six-month research project on the regulation of pre-trial detention. During his two-week research visit at KHRP, Judge Voll focused his analysis on KHRP cases dealing with Articles 2, 3, 5 and 6 of the European Convention on Human Rights. In addition to his work in KHRP's Documentation Centre, Judge Voll was also able to have extended discussions with members of KHRP's Legal Department about key cases that KHRP has taken to the European Court.

OSCE Human Rights Implementation Meeting in Warsaw

In September, KHRP attended the annual Implementation Meeting on Human Dimension Issues of the OSCE (Organisation for Security and Cooperation in Europe), in Warsaw, Poland. KHRP's Deputy Director made an oral intervention during the session on Internally Displaced People and spoke to a wide range of Government delegates from the 54 member states who were attending the meeting. The meetings provide an opportunity to inform delegates of recent developments in the human rights situation in the Kurdish areas that are within the OSCE region (Turkey, Armenia and Azerbaijan), and to discuss how OSCE mechanisms might appropriately be used to address human rights violations in those states.

Although overshadowed by the events of 11 September, the meeting was generally more productive than the previous year, with a greater emphasis on producing concrete recommendations that could be forwarded to the political organs of the OSCE. KHRP supports this development, which displays a welcome desire for the annual Human Dimension meetings to be more effective.

KHRP particularly welcomed the focus at this year's meeting on the important issue of internal displacement, on which there was also a side meeting, and supported the many voices pressing the OSCE to formally endorse the UN Guiding Principles on Internal Displacement and integrate the Principles into its activities. The Principles, adopted by the UN in 1998, affirm the obligations of states under international human rights law and international humanitarian law.

Office News

KHRP intern training. Left to right: Cemal Turk, Legal Director Philip Leach, Mustafa Gundogdu, Executive Director Kerim Yildiz and Panagiota Tsitsa.

KHRP's roster of Legal Interns has grown significantly over the past three months, with the addition of four new interns. In September, law graduate Rochelle Harris from University College London began her internship with KHRP, followed by Cemal Turk, a Kurdish intern from University of East London. Amarjit Singh, a solicitor from Malaysia who is currently working on a Ph.D in Law at the London School of Economics, began his internship with KHRP in October and will be working on the issue of economic, social and cultural rights during his time with KHRP. Most recently, Panagiota Tsitsa, a law student from Greece who has recently completed an LL.M in International and European Legal Studies at the University of Durham, began her internship in November.

KHRP continues to extend sincere thanks to the many office volunteers who provide invaluable assistance to staff members including our voluntary IT consultants Dhan Miah and Mashkur Alam. Special thanks are also due to Manuella Martin who has continued to faithfully update KHRP's website over the past year; Yvan Henner, who continues to provide KHRP with outstanding graphic design services; and Tomomi Matsuoka who has created a hugely effective new systematisation of KHRP's Documentation Centre and Photo Archive and continues to update the Centre so that it is more user-friendly than ever. Finally, KHRP also thanks the many volunteers who have helped collect donations for KHRP during comedian Mark Thomas' UK tour throughout the autumn. We are grateful to all of our volunteers who give so generously of their time to help KHRP.

Turkey's EU Accession News *continued*

question the separation of powers between judiciary and executive. There is still a need to guarantee the independence of the judiciary from the executive, to further reform the system of State security and the military courts and to introduce the possibility of reparations for violations of the European Convention on Human Rights". The Report also notes that Constitutional changes concerning police and official impunity are still lacking: "There are still concerns that sentences are too light or too frequently converted into fines or suspended. Moreover, the existing rule that an administrative authorisation is required in order to prosecute public servants has remained unchanged".

The Progress Report is also strong on Turkey's continued failures in the protection of human rights asserting: "Since the last Regular Report [November 200], no progress has been made in acceding to a number of other major human rights instruments such as the UN Convention on the Elimination of All Forms of Racial Discrimination, the Statute of the International Criminal Court, the UN International Covenant on Civil and Political Rights and the UN International Covenant on Economic, Social and Cultural Rights." Since the last Regular Report, the European Court of Human Rights found that Turkey had violated provisions of the European Convention on Human Rights in 127 cases. . . In practice the situation as regards torture and mistreatment has not been improved since the last Regular Report and still gives serious grounds for concern."

A *Year with the* Kurdish Human Rights Project

by Mustafa Gundogdu, a Kurdish Intern from Turkey

I have been working at the Kurdish Human Rights Project since July 2000. Prior to coming to London, I worked in various human rights organisations in Turkey for five years. Four of these years were spent continuously at the Foundation for Social and Jurisprudence Research (TOHAV), where I was in charge of administration and projects. I was involved in the project providing treatment and rehabilitation for torture victims and also in providing legal aid for victims of human rights violations who had not been able to obtain redress in domestic courts and had applied to the European Court of Human Rights.

I can say that the more than 12 months I have spent at KHRP constitutes the most significant experience I have ever had. After starting at KHRP, I realised that I was working in an organisation that seeks more global and broader alternative solutions to human rights problems. Having far greater resources than human rights organisations in Turkey significantly influences the way we work and allows us to make better use of our time in an organised and balanced way. In particular, I have observed that comprehensive research and attention to detail are effective in ensuring a positive outcome in the cases that KHRP brings to the European Court. Such a system, which ensures that the rights of the injured parties are protected, is one to which I am not accustomed in Turkey, but this is in my opinion the most important aspect of KHRP's work.

KHRP has enhanced my view of human rights work and has given me a broader perspective. The fact that the views of all those working in KHRP are sought regarding the activities of the organisation ensures that they see themselves as a real part of the KHRP. The time I have spent at KHRP has made me realise that human rights activities are not just a simple matter of a struggle for rights but also a struggle for developing and protecting our existing rights. I consider KHRP to be representative of the umbrella group working to both protect the human rights of the Kurds and develop the human rights of minority communities with the help of broad international contacts and extensive relations in the area of human rights law. For me, KHRP signifies an organisation that makes a contribution to human rights law as regards the example of rights violations suffered by the Kurds.

Mustafa Gundogdu with KHRP Public Relations Officer Saly Eberhardt at KHRP's Planning Weekend in Scotland last autumn.

The rights of the Kurds are being protected and advanced at the highest level at KHRP. As I have worked with organisations and lawyers in Turkey taking similar cases, I can say comfortably that the manner in which KHRP takes its cases is something that deserves great appreciation. I believe that organisations working in the human rights field in Turkey could benefit greatly from learning more about the experiences of KHRP.

The positive outcome of so much of the work carried out by KHRP regarding the protection of the cultural and historical heritage of the Kurds demonstrates that the organisation is not strangled in its routine work and that it is constantly developing its mode of work.

I would like to thank everyone with whom I work at KHRP, and especially Kerim Yildiz for giving me the opportunity to work there. I hope our efforts continue to serve the cause of protecting and developing the fundamental rights and freedoms of the Kurds.

Internal Displacement in Southeast Turkey: Still an On-going Crisis

In 1996, the European Court of Human Rights issued its decision in the case of *Akduvar (Akdivar) v. Turkey*, finding that Turkey had violated the human rights of the seven applicants when security forces had burnt down their houses, destroyed their possessions, and then forcibly evacuated the entire village of 500 inhabitants. This was the first case involving the destruction and evacuation of villages in Southeast Turkey to reach the Court, and was followed by others. KHRP has submitted 21 cases to Strasbourg on the same issues.

These cases come against a background in which over 3,000 Kurdish villages and hamlets have been destroyed and evacuated since1985. The objectives appear to be varied but include reprisals for Kurds refusing to join the Village Guard system and for providing support to the Kurdistan Workers' Party (PKK), and the long term policy to break up the cohesive Kurdish community in the Southeast that has long been viewed as threatening the integrity of the State. The number of people displaced as a result of this policy is disputed, but some put it higher than 3 million. Forced to flee their homes having lost everything, the internally displaced have migrated to cities that are ill-equipped to receive them, and often live in the margins suffering economic and social deprivation on top of the emotional trauma of the upheaval.

Sadly, despite the abatement of the conflict in the Southeast, the problem of internal displacement in Turkey is very much a burning issue. New instances of destruction and forced evacuation are still being reported. For instance, in June 2001 soldiers raided three hamlets in the Van area and evacuated all three on the grounds that their residents had aided the PKK. In July, two villages were evacuated and three others placed under siege in the Sirnak area. There have also been reports of communities being evacuated for a second time. For instance (as reported in *Newsline* issue 11/12) villagers from Senlikkoyu, whose lives had been destroyed in 1993 when security forces destroyed their homes and farms, and had returned and begun to rebuild their communities in May 2000 after receiving oral permission from the regional authorities, found themselves hounded out by soldiers yet again in October 2000. Their homes and crops were destroyed for a second time.

This and other similar incidents make a mockery of the Turkish government's claim to be allowing villagers to return under its "Back to the Village" programme. Serious concerns have continued to be raised about this programme by human rights groups in Turkey. There is strong evidence that the government is making the return of internally displaced Kurds conditional upon their willingness to state that it was the PKK, not the State, who caused their displacement. Numerous cases of would-be returnees being forced to sign forms stating that they had been forced out of their villages by the PKK have been documented. Another key concern is that a large part of the "Back to the Village" programme involves not a return to the original land, but to government planned centralised villages that are intended largely for control and are neither chosen by nor appropriate for the wishes of the displaced Kurds themselves.

The Turkish policy of destruction and forced displacement violates many norms of international human rights and international humanitarian law, now authoritatively set out in the UN Guiding Principles on Internal Displacement of 1998. The judgments of the European Court of Human Rights condemning Turkey time and time again for its violations of these standards are important pronouncements from a judicial body. But sadly, as Turkey not only continues to commit new violations but also continues to ignore the plight of those already displaced, the human tragedy does not go away.

Over the course of 2001, KHRP has continued working on the issue of forced displacement and will be publishing a new report on internal displacement in the new year.

First Kurdish Film Festival in London

The first Kurdish Film Festival in London, and perhaps the world, took place between 9 and 15 November 2001. This event marked the first time that so many Kurdish films had been brought together under the name of an organised Kurdish film festival.

The Festival was organised by a group of eight young Kurds who worked for six months to prepare an impressive schedule of festival events which included workshops, directors' panels and a full line-up of Kurdish documentary and feature films. Organised with the purpose of helping to introduce Kurdish cinema to new audiences, the Festival also helped forge new opportunities for joint work amongst Kurdish film directors from every part of Kurdistan. The Festival and the Kurdish directors involved also sought to gain a greater identity for the Kurds in the European cultural arena with the larger aim of helping Kurds throughout the Kurdish regions to live in peace in the countries in which they reside.

Held at the Rio cinema in Dalston, East London, the Festival included 11 feature films, 5 short films and 4 documentaries. The festival was attended by people from many different ethnic backgrounds and age groups, including large family groups and many Kurdish refugees. Six film directors were present for the duration of the festival and were able to chat with filmgoers and answer their questions after film screenings. The directors present were: Hiner Saleem (Beyond our Dreams), the Iraqi Kurdish director Araz Rashid (The Burning Paradise), Kazım Öz (Photograph and Ax [Earth]), Hüseyin Karabey (Silent Death), Ahmet Soner (Adana-Paris) and Aysel Özkan (It Was Worth It). Other directors such as Iraqi Kurdish director Kerzan Krekar and Turkish Kurdish directors Kudret Güneş and Resul Gültutan were active in the workshops and panels even though they did not have films at the festival. One of the panels discussed the art and Kurdish identity of internationally renowned Kurdish film director Yılmaz Güney who died in exile in 1984 after years of imprisonment in Turkey. One of Güney's colleagues and the director of the Adana-Paris documentary that dealt with Güney's life, Ahmet Soner, along with Kurdish director Kudret Güneş, a female director from Turkey who is doing a doctorate on Güney's cinema, also spoke at the panel. There was also a plenary panel at which all of the invited directors participated.

More than 3,000 people attended the Festival which was highly acclaimed in the press and is expected to become an annual event. Preparations for the Second Kurdish Film Festival are planned to begin in a few months time.

KHRP was pleased to assist the Festival's organisers and to also help create a video message from comedian Mark Thomas calling for support for the Ilisu Dam Campaign which was shown before every film.

New KHRP Reports

Akduvar davasi: Bir dönüm noktasi – Avrupa Insan Haklari Mahkemesi Karalari Işiğinda Ifade Özgürlüğü

With the generous support of KIOS – The Finnish NGO Foundation for Human Rights, KHRP, in collaboration with Çağdaş Gazeteciler Derneği (the Contemporary Journalists Association of Turkey), has been able to produce this Turkish translation of the October 1996 KHRP Case Report, *Akduvar v Turkey: The Story of Kurdish Villagers Seeking Justice in Europe.* The Akduvar case (also listed by the European Court as *Akdivar v Turkey*) was the first case KHRP brought to the European Court and still stands as a landmark case in the fight for human rights in Turkey.

In late December 1992, KHRP received a letter from Turkey. Inside was a short hand-written letter describing what had happened to the eight applicants in the Akduvar case when their village of Kelekci was destroyed by Turkish soldiers. In their letter, the eight men said that they had been wronged and they asked KHRP for help. Four years later, in September 1996, the European Court agreed with these men and found that Turkey had violated their human rights by burning down their houses and their possessions and by further attempting to prevent them from seeking redress.

For human rights lawyers on the ground in Turkey – especially those who cannot read the two official languages of the European Court, English and French – this new case report in Turkish will provide an invaluable resource for litigation work. Along with translations of the European Commission's admissibility decision, its Report, and the judgment of the European Court, the new report also offers an introduction to the case, including background information on the applicants.

KHRP regrets that KIOS – The Finnish NGO Foundation for Human Rights' support was inadvertently omitted from the Acknowledgements page of this report and would like to extend sincere thanks once again to KIOS for sponsoring this project.

(ISBN 975 7866 22 9)
Available only in Turkey.

The F-Type Prison Crisis and the Repression of Human Rights Defenders in Turkey

In the early morning hours of 19 December 2000, over 10,000 members of the Turkish security forces commenced a simultaneous military raid into twenty prisons across Turkey. "Operation Return to Life", as this planned military intervention was called, aimed to enforce the transfer of over a thousand prisoners into Turkey's newly-constructed "F-type" prisons and to halt the widespread hunger strikes and "death fasts" of political prisoners who had been protesting since October 2000 against both the conditions of their detention and the introduction of 1- and 3-person isolation cells which characterise the "F-type" prisons. By the time this operation was over, 30 prisoners lay dead alongside two dead prison gendarmes.

Since the December 2000 operation, dozens of death fasters – all of them young prisoners and family members of prisoners between the ages of 19 and 45 – have also died, bringing the current total death toll of the Turkish prison crisis to over 80 dead with many others seriously wounded, victim to torture or left with devastating mental and physical damage due to prolonged hunger striking.

Between 5 – 11 May 2001, the Kurdish Human Rights Project, in conjunction with the Euro-Mediterranean Human Rights Network (EMHRN), the World Organisation Against Torture (OMCT) and the Tunisian League for Human Rights (LTDH), sent a fact-finding mission to Istanbul and Ankara to investigate the events of the "Return to Life" prison operation and the repression of human rights defenders in the context of Turkey's current F-type prison crisis. The mission interviewed many individuals and organisations – both governmental and non-governmental – involved in the prison crisis including: relatives of political prisoners; a political prisoner from the Bayrampa?a Prison who survived the "Return to Life" operation; the Ministry of Justice's Director General of Prisons and Detention Centres, Ali Suat Ertosun; and a wide range of independent human rights organisations. The mission also observed the 7 May 2001 hearing in a case against the headquarters of the Human Rights Association of Turkey (IHD) at the State Security Court in Ankara.

Produced in collaboration with EMHRN and the OMCT to coincide with the one-year anniversary of the start of the hunger strikes, this report condemns the lack of effective political solutions applied by the Turkish authorities and the on-going impunity enjoyed by perpetrators of torture and ill-treatment of prisoners during the military raids into Turkish prisons in December 2000. Also included is a detailed list of urgent recommendations in the F-type prison crisis – a crisis which has already claimed so many young lives, and looks set on a course to claim many more in the months ahead, unless the Turkish Government agrees to sit down and negotiate with protesting prisoners.
(ISBN 1 900175 39 8)

"Şu nehir bir dolmakalem olaydi. . ." – Ilisu Baraji, Uluslararasi Kampanyasi ve Barajlar ve Dünya Komisyonu Degerlendirmeleri Isiginda Hazirlanan Bir Rapor (a Turkish translation of KHRP's March 2001 report, "*If the river were a pen. . .*" – *The Ilisu Dam, the World Commission on Dams and Export Credit Reform*)

In response to the growing need for in-depth campaign materials in the Turkish language from the Ilisu Dam Campaign, KHRP in collaboration with the Ilisu Dam Campaign has translated and published this crucial report written in March 2001 following an international fact-finding mission organised by KHRP to the region of the Ilisu Dam. Written and published originally by the Kurdish Human Rights Project (UK), Ilisu Dam Campaign (UK), The Corner House (UK), Campaign An Eye on Sace (Italy), World Economy, Ecology and Development (Germany) and the Pacific Environment Research Centre (US), this report brings together information gathered during the fact-finding mission, detailed background information on the Ilisu Dam project including updated information on the international Export Credit Agencies (ECAs) and construction companies involved and a full analysis of Ilisu's glaring failures in relation to evolving international best practice and the World Commission on Dams' new guidelines.

Following on the very recent victory of the Ilisu Dam Campaign with the withdrawal of the construction companies Balfour Beatty (US/UK) and Impregilo (Italy), this report now serves as critical reading for Turkish-speaking campaigners who hope to work on future campaigns against similar Export Credit Agency-backed projects that violate environmental and human rights standards. For campaigners in Turkey, this report should prove an essential tool in battles to come.
(ISBN 975 8307 55 X)
Available only in Turkey.

Two new KHRP European Court Case Reports

S*alman v Turkey* and I*lhan v Turkey*: Torture and Extra-Judicial Killing

This report, the latest instalment in KHRP's Case Report series, focuses on two cases of torture and extra-judicial killing, *Salman v Turkey* and *Ilhan v Turkey* (see *Newsline* 11/12 – summer/autumn 2000 for articles on these judgments). In addition to the detailed descriptions of the legal proceedings at the European Court of Human Rights, this report offers summaries of the arguments raised

by both parties in the cases and analyses of the rights at issue and the findings of both the European Commission and the European Court of Human Rights.

The case of *Behiye Salman v Turkey*, first submitted to the European Court in 1993, concerns the death of the applicant's husband, Agit Salman, in Adana, Southeast Turkey, in April 1992 following his arrest by the Adana Security Directorate. Twenty-fours hours after he was taken into custody, Agit Salman was brought to the Adana State Hospital were he was declared dead on arrival. His body showed obvious signs of torture, including bruising, swelling and a broken sternum. In its 27 June 2000 judgment, the Court declared that the Government's claims that Agit Salman had died from a heart attack were not in keeping with the evidence taken from the autopsy and Turkey was found in violation of Article 2 (right to life), Article 3 (prohibition of torture) and Article 13 (right to an effective remedy) of the European Convention on Human Rights. The Court censured the Turkish State not only for its failure to conduct a proper investigation into Agit Salman's death, but also for its failure to provide a satisfactory and convincing explanation of his death whilst in custody.

The case of *Nasir Ilhan v Turkey* concerns the ill-treatment suffered by the applicant's brother, Abdullatif Ilhan, in Aytepe village, Mardin province, Southeast Turkey in December 1992. Soldiers came to Aytepe and beat Abdullatif Ilhan, kicking him and hitting him on the side of his head with a rifle butt. He lost consciousness and was put into a stream to revive him. The temperature was freezing and he subsequently had difficulty walking. After two days, Mr. Ilhan was taken to hospital. In February 1993, Abdullhatif Ilhan was then prosecuted for resisting arrest. The people responsible for injuring him were not prosecuted. As a result of his injuries, Abdullhatif Ilhan still suffers from physical infirmity today. The applicant therefore complained on his brother's behalf to the European Commission in June 1993. In its 27 June 2000 judgment, the European Court found Turkey to be in violation of Article 3 (prohibition of torture) and Article 13 (right to an effective remedy) of the European Convention.
(ISBN 1 900175 40 1)

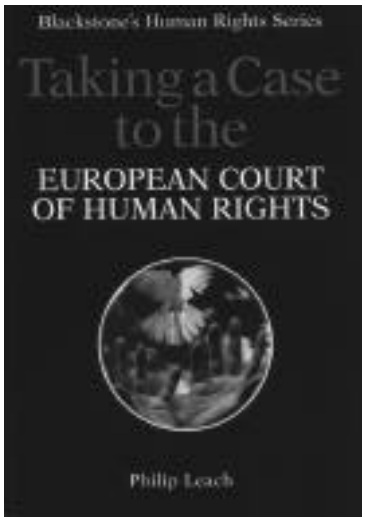
Review of KHRP *Legal Director's book on the European Court*

by Matthew Happold

Philip Leach, *Taking a Case to the European Court of Human Rights*, Blackstone's Human Rights Series, 2001, ISBN 1-84174-137-X, £29.95.

Philip Leach's book has the useful aim of providing "a practical guide to taking cases to the European court of Human Rights" (p. xiii). It comprises of chapters introducing the Council of Europe and the European Convention on Human Rights; on the practice and procedure of the European Court of Human Rights (pre- and post-admissibility, judgments and enforcement); on admissibility criteria; the underlying Convention principles; the substantive Convention rights; derogation and reservations; just satisfaction; Protocol No. 11 to the Convention; a case study of Caballero v UK ((2000) 30 EHRR 643); and on sources of information on the Convention. All this is done in 221 pages. Some 160 pages of appendices follow, including the text of the Convention, the Court's Rules of Procedure, the Application Form and other official documents.

As a consequence, there is little that is new with regard to the analysis of the substantive law of the Convention. This is not a criticism. Such a presentation is not the aim of the work and a good, brief introduction to the Convention and the Court's jurisprudence is provided for those as yet unfamiliar with them. Indeed, by placing a chapter on the principles underlying the substantive rights before examination of the content of those rights, the pitfall of seeing each of the rights as separate and discrete subjects of study (as often happens) is avoided. The chapter on sources of information on the Conventions also has a brief bibliography giving suggestions for further reading.



Where *Taking a Case to the European Court of Human Rights* is really useful, however, is with regard to more practical matters. Firstly, there is a good examination of procedural law, a subject which is often neglected or only cursorily dealt with in books dealing with the substantive law of the Convention, but which is often of equal, or even greater importance, in the prosecution of cases before the Court. Capacity and standing (Article 34 of the Convention) and the exhaustion of domestic remedies (Article 35) are clearly covered. Secondly, the book is very good on the practicalities of taking a case to Strasbourg. See, for example, the sections on costs, legal aid and fees and on third party intervention. The book has everything an inexperienced practitioner needs to make an application to the Court.

Reproduced in *Taking a Case to the European Court of Human Rights* are not only a good selection of the Court's own documents but also various specimen pleadings and other useful information. In this context, the book is full of good things. These include a suggested form of introductory letter; a list of third party interventions in recent cases; a schedule of Article 41 (just satisfaction) awards in selected UK cases; a conditional fee agreement; the application in Caballero v UK; the correspondence relating to the third party intervention in *Khan v UK* (Appl. No. 35394/97); and JUSTICE's third party intervention in *T and V v UK* ((2000) 30 EHRR 121). Doubtless all of these will serve as models for those litigating before the Court.

One of the reasons for the enactment of the Human Rights Act 1998 was to avoid the washing of the United Kingdom's dirty linen in public. It was meant to ensure that alleged violations of the European Convention on Human Rights were dealt with by the domestic courts rather than at Strasbourg. There is no sign, however, of such a development occurring. Indeed, it may be that the greater publicity given to the Convention by the implementation of the Human Rights Act will see UK lawyers making more use of the European Court of Human Rights. And with a now 43 contracting States to the Convention, the Court's workload is likely to increase regardless. Although orientated to UK lawyers, it is to be hoped that Philip Leach's book will have a wider circulation. On the one hand, Court's massive caseload is largely composed of applications that are obviously inadmissible. On the other, it is equally clear that there are numerous human rights violations that are not being submitted to the Court because of a lack of knowledge of the Convention mechanisms. Taking a Case to the European Court of Human Rights provides precisely the sort of practical information that is needed both to prevent applicants wasting their time in fruitless applications and to ensure that meritorious claims are properly prosecuted.

One final note. It is refreshing to see a practitioners' work on sale at a reasonable price. In this the book can be contrasted with its only direct competitor, Clements, Mole and Simmons' *European Human Rights: Taking a Case Under the Convention*, which retails for £62.

■ *Matthew Happold is a Lecturer in Law at the University of Nottingham and a member of the* KHRP *Legal Team.*

Upcoming Publications

- **Women On Trial: A KHRP Trial Observation Report**
- **Children On Trial: A KHRP Trial Observation Report**
- **Internal Displacement in Turkey**
- **Turkey and the EU (a Turkish language report)**