



Iraq and the Kurds: In the Wake of Liberation

The Future of Iraqi Kurdistan



Many were euphoric at the liberation of Kirkuk by Kurdish *peshmerga* forces, but developments since then have brought ethnic and political divisions starkly to the fore. Law and order have broken down and it is reported that coalition forces and the Kurdish administration have been slow to respond to a spate of lootings and other forcible appropriations of property.

Iraq's Kurds suffered more than any other group at the hands of Saddam Hussein. In one year alone, 120,000 men, women and children were murdered and another 100,000 "ethnically

cleansed" as they lost their homes and farms to Saddam's "Arabisation" campaign of replacing Kurds with Arabs from the South of Iraq.

The triumphant return of Kurds displaced from the Kirkuk region has led to widespread concerns of a violent reversal of Saddam's "Arabisation" policy. There are extensive reports describing the ousting of Arab families and the flight of refugees, as Kurdish families claim back property confiscated from them over the past three decades. Kurdish political parties and NGOs have upheld the right of Kurds to return to

homes from which they have been forcibly expelled; a right enshrined in international law. There is, however, currently no method by which property disputes can be methodically settled. The process is complicated by the absence of documentation. Kurds forced to leave the region have been routinely deprived of title deeds before their property was sold or passed onto Arabs, relocated from other areas of Iraq.

On 26 May 2003, the citizens of the Northern Iraqi city of Kirkuk held elections to establish a 30-strong council, broadly representative of the city's ethnographic makeup. The positions were elected by 300 delegates, chosen by the US administration. The city's four ethnic communities (Arabs, Assyrians, Turkomen and Kurds) were each given six seats. In addition, the US authorities appointed five Kurdish and one Assyrian "independent". On 28 May 2003, the council elected Rahman Abdul Mustafa, a 59-year-old Kurdish lawyer, to be mayor of Kirkuk. His deputy is Arab oil expert Ismail Ahmed Rajab.

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Director's Letter



Dear friends,

Since the Spring issue of *Newsline*, developments in Turkey, Iran, Syria, the Caucasus and particularly Iraq have continued to place the human rights situation in the Kurdish regions high on the public and political agenda. The need for governmental and non-governmental organisations, journalists and individuals to obtain accurate information from the regions has never been greater. KHRP has continued to be inundated with requests for information regarding its ongoing litigation and advocacy projects, human rights training, reports, trial observations and fact-finding missions to the regions.

As the future of Iraqi Kurdistan remains in flux, KHRP has begun new research into the position of Iraqi Kurds both now and in future. The project includes research into the Iraqi Constitution, the humanitarian situation and infrastructural and natural resources.

KHRP is particularly concerned at the discovery of several mass graves in Iraq and South Kurdistan. Many of the bodies were victims of Saddam Hussein's systematic six-and-a-half-month 'Anfal' campaign, in which 180,000 people "disappeared". KHRP urges the international community to conduct proper investigations and inquiries into the mass grave sites and the fate of the "disappeared".

Finally, this is the first issue of *Newsline* to be published since the devastating earthquake that struck the Bingol province in Turkey in May 2003. We send our thoughts to colleagues in the region.

Kerim Yildiz
Executive Director
June 2003

Landmark Grand Chamber Ruling in 'Struck Out' Disappearance Case

In a rare ruling by the Grand Chamber of the European Court of Human Rights on 6 May 2003, it was decided to reject the Turkish Government's request to strike out the application in the 'disappearance' case of *Acar v. Turkey* (26307/95) and to pursue the examination on the merits of the case.

The case concerns the 'disappearance' of a Kurdish farmer, Mehmet Salim Acar, in August 1994 in Southeast Turkey. The application was brought by KHRP to the Court on behalf of the applicant, Tahsin Acar, the deceased's brother, on 29 October 1994.

On 9 April 2002 the application was struck out by

the Court on the basis of a formulaic statement from the Turkish Government. On KHRP's request, the case was referred to the Grand Chamber. KHRP's Legal Team attended the Grand Chamber Hearing in Strasbourg on 29 January 2003 (see KHRP *Newsline* 21, Spring 2003 p.12).

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Variouly described as the "Kurds' Jerusalem", the source of Iraq's oil wealth, and a multi-ethnic tinderbox, Kirkuk's role in the new Iraq will be a critical factor in any post-war constitution and/or administration. Kirkuk holds both the promise of model inter-ethnic relations, and the threat of catastrophic civil disorder.

The Turkish government has stated that it would intervene militarily if the Kurds seize control of Kirkuk and nearby Mosul. Ankara fears Kurdish control of Iraqi oil resources would accelerate the formation of a Kurdish state within northern Iraq,

and fuel so-called secessionist aspirations within the Kurdish community of Southeast Turkey.

Large-scale incursions by Turkish forces have not as yet transpired. But there are signs that Ankara is determined to ensure its influence is felt. US troops from the 173rd Airborne Division's 3rd Brigade recently intercepted a Turkish Special Forces team dressed in civilian clothing attempting to pass into the northern city of Arbil.

Since 1991 alone, 120,000 Kurds were expelled from the Kirkuk region. There is widespread consensus, shared by KHRP, that a legal mechanism to settle property claims must be established as soon as possible, and that the forced expulsion of Iraqis of Arab origin must be prevented.

Kurdish parties claim \$4 billion owed

The agreement among UN member states for a resolution to lift sanctions in Iraq (ending the oil-for-food programme) has been condemned by Kurdish leaders. Jalal Talabani and Massoud Barzani have jointly written to the chief allied administrator in Iraq, L. Paul Bremer III, outlining their concerns about US plans for redistribution of unspent funds from the program. Under the oil-for-food program, which allowed Iraq to sell oil in exchange for food and other essentials, the safe haven in Northern Iraq collected 13 per cent of total sales of oil. Kurdish officials say that \$4 billion of this money is yet to be paid over to them; and that it is required for ploughing into infrastructure and services in the region. Under the Bremer plan, those remaining funds would be combined with others and placed in an internationally-monitored fund for the benefit of the whole nation.



Kerim Yildiz and PUK leader Celal Talabani at PUK office, South Kurdistan

The Forgotten Faylee Kurds of Iraq: A Personal Account

by Ms Zara Mohammed

'At midnight in October 1981, as part of a large-scale operation against many hundreds of Faylee Kurds, my house was stormed by armed Iraqi security forces who forced their way into our bedrooms and dragged us out of our beds. They then searched the house and looted every valuable they came across and said that everything belonged to the government now. We were then body searched and had our names checked on a list. We were then rushed into cars, which drove us to a local security office where males were then separated from females for questioning. The next morning, we were driven

to the main security headquarters. That was the last time we saw my brother, in October 1981. At the main security headquarters, we were interrogated in great depth; they took every possible detail about us.

"During interrogation, an officer took me to a small room where all around the walls and floor, it was covered with blood. The weird thing was the ceiling was metal. He then pressed the button outside the door and the metal ceiling came down. I screamed and ran as fast as I could out of the room while he laughed. After this, he pushed me into another room where it was packed with naked women of all ages and a few children;

some of them were weeping, some staring in the blank air, some were bruised up and had blooded faces and bodies. It was very obvious that they were beaten up and sexually violated and raped. While I was in that room, I became hysterical but a fellow detainee told me to calm down and told me that protesting with these human beasts would not change a thing. Outside the room, they were saying, "tonight we can have a nice party, we have new virgin" while laughing and joking about our terror. Thankfully, my father begged them to let me out and not to harm me and they did let me

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The Forgotten Faylee Kurds

out. All the other women were left behind in that terrible state.

"We were then brought to another prison where we were all put in a big hall that had 1000 people. The place was very crowded and depressing. There was no sanitation, the floor was wet and unbelievably dirty and all around me were miserable people with dirty clothes on. All around, children looked so sick, weak and hungry and were in their last hours and indeed many of them did pass away. Words cannot describe those scenes. Dead bodies were left to rot among us for a few days before being removed.

"After a month in this prison, we were transported to the border with Iran and told to make our way there. This was the most horrifying journey of my life, in the remote wild terrains with extreme weather conditions, walking amongst a battleground where a savage war between Iran and Iraq was going on. We walked for 4 full

days and 3 nights, with little clothing on, no water nor food. A lot of us who were weak could not make it and gave up along the way. During this journey, we also encountered a minefield and I witnessed a woman torn into pieces when she stepped on a mine. Panic and hysteria struck us; everyone thought that they were going to be next. Finally three days later, we reached the Iranian border where we were put into camps for about four weeks.

"Still now, my cousin Mr. Omran is in prison along with 6,500 young Kurds. He was imprisoned during the 1981 deportation campaign despite the fact that he was briefly released from a presidential pardon decree. Before that, he spent 2 years in prison, accused of taking bribes from foreign companies when he used to be among official delegates on business trips to Europe and for their affiliation with the Kurdish Democratic Party. In prison, three of his colleagues signed a confession and were hanged. During his time in prison, my cousin was



Faylee Kurd Zara Mohammed participates in a press conference at the Foreign and Commonwealth Office, 10 April 2003

subjected to torture, which included him being hung upside down from ceilings for long periods while being beaten, deprived of sleep by various methods such as cold water treatments, electrocution of sensitive body parts, hanging of him to the ceilings from the shoulder for long periods and whipping under foot with sticks to the point that you are not able to stand or walk anymore. He lost sight

in an eye due to all the torture.

I have lost four brothers in 1981, together with eight cousins and other relatives. The trauma still affects my life. My life has become miserable and still has its toll on my own family and kids."

Ms Mohammed, like many Faylee Kurds, now hopes to obtain a measure of justice for the atrocities committed during Saddam's regime.

Turkey breaks EU promises: Human Rights Association is raided

The ongoing harassment of human rights defenders in Turkey was displayed on 6 May 2003, as anti-terror forces raided the offices of KHRP's partner organisation in Turkey, the Human Rights Association (IHD).



IHD Chair Husnu Ondul shows KHRP Chair Mark Muller the bullet holes remaining in the door of IHD headquarters in Ankara, following a failed assassination attempt against then IHD President Akin Birdal on 12 May 1998.

Members of the Anti-Terror Forces and the Prosecutor of Ankara State Security Court raided the headquarters and local branch of the organisation, both located in Ankara, at 0900 am. The raids lasted over two hours.

The State Security Court had reportedly ordered the operations as "preliminary investigations" towards a public prosecution for "helping an illegal organisation" under Article 169 of the Turkish Penal Code and Article 312 of the Anti-Terror Law.

Much of the office equipment was confiscated including seven computers, video tapes, and confidential files containing information on human rights violations perpetrated by security forces.

Staff at the organisation and victims of human rights violations who sought their assistance now potentially risk investigation, harassment, arrest or torture. Following another raid in 2001 on the Ankara IHD branch, 45 people

were sentenced to a fine for possession of confiscated publications and three months imprisonment, which was later commuted. Among those sentenced is Aysenur Zarakolu, now deceased, the applicant in a KHRP case to the European Court of Human Rights, IHD President Husnu Ondul, former IHD deputy president and KHRP legal consultant Osman Baydemir, women's rights campaigner Eren Keskin and KHRP legal consultants Reyhan Yalcindag, Cihan Aydin and Metin Kilavuz.

Turkey is required to achieve the "stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities" in order to meet EU accession requirements. Instead, the state often perceives human rights defenders as posing a threat to Turkey's bid for EU membership.

The Human Rights Association (IHD) was established in 1986 to, "carry out efforts in the field of human

rights and liberties". For the last ten years, IHD and KHRP have been partner organisations, working together on cases before the European Court. As a result of their work, founders and members of IHD have been subjected to ongoing harassment including arbitrary arrests, detention, torture, extra-judicial killings and 'disappearances'. The Ankara headquarters of IHD has not only been raided, but was also the site on 12 May 1998 of a failed assassination attempt against then IHD President Akin Birdal. Thirteen shots were fired, hitting Mr Birdal's lungs, shoulders and legs.

On 13 May 2003, speaking at a European Parliament session, the EU Commissioner responsible for enlargement Guenther Verheugen described the raid as "unacceptable" and "a violation of human rights". On 15 May 2003, the European

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Parliament adopted a provisional resolution urging the Turkish authorities to clarify immediately the reasons for the raid and expressing support for the activities of IHD. The Resolution also notes, "that Turkey has amended most of its legislation regarding freedom of speech and association, but [the European Parliament] regrets that these amendments still leave ample scope for repressive actions by the police and that little has changed on the ground."

The intimidation and harassment of human rights defenders is a flagrant breach of Turkey's human rights obligations and is unacceptable in a democratic society. KHRP calls on Turkey to allow the free and unhindered operation of all human rights organisations and to cease its operations against IHD immediately. KHRP will continue to monitor the activities against IHD and to take every necessary action to challenge them.

Institutional torture persists in Turkey

In reply to a parliamentary question in March 2003, Turkish Minister of Justice Cemil Cicek stated that 4,600 people had applied to the courts alleging they had been tortured between 2000 and 2002 – on average, four new cases of torture per day over the last three years. Moreover, thousands of people are known not to register formal complaints about torture for fear of reprisals.

In 2000, only 490 of the 1,633 applications made received any investigation. The number of complaints receiving an investigation has declined dramatically, from 490 (2000) to 245 (2001) to 210 (2002). In most of these cases, the charges made were dropped and the officers concerned returned to their duties.

The statistics given by the Minister of Justice regarding cases at the European Court of Human Rights also contained striking figures. He reported that 344 applications have been made against Turkey regarding Article 3 of the European Convention on Human Rights (prohibition of torture). He reported that 247 of these are pending before the Court; 32 have resulted in judgments against Turkey; and 65 have reached friendly settlement. According to the Minister, the Turkish Government has been ordered to pay a total of approximately EUR 2,588,341 (GBP 1,838,579) in compensation to wounded parties and EUR 6,038,289 (GBP 4,289,185) as part of friendly settlements in European Court cases.

Meanwhile, according to information received by KHRP, there were 100 reported incidents of the use of torture between January and March 2003, over 80 per cent of which were committed by police officers.

In April 2003, KHRP submitted a report including data on torture cases brought before the European Court to the UN Committee Against Torture (CAT). The CAT held its annual spring session from 28 April to 16 May 2003 in Geneva and examined the country report, *inter alia*, of Turkey.

Turkish Parliament considers sixth reform package

In an effort to meet EU accession requirements of democracy and human rights, Turkey's sixth reform package has been presented to Parliament for review.

The bill envisages the abolition of the highly criticised Article 8 of the Anti-Terror Law No. 3713, which restricts freedom of expression, broadcasting in the Kurdish language, international observations of elections and possession of goods by foreigners. Furthermore, the bill plans amendments to the penal code, including toughened penalties. A person convicted of torture will face a prison term of between three and six years. If the perpetrator kills a person under torture, the penalty would be increased to life imprisonment. The package also considers human trafficking for the first time, stipulating prison terms of up to five years for perpetrators.

The package is facing stiff opposition from the military. The package was presented to the National Security Council at the end of May 2003, but parliamentarians believe that the summer recess must be delayed in order to push through the new law. EU diplomats see the reform package as an important test of the government's ability to push through its reform agenda.

Returns to Iraq

On 11 June 2003, KHRP participated in a consultation meeting with the UK Home Office to discuss the return of Kurdish and Iraqi nationals to Iraq. The purpose of the meeting was to exchange views and to explore ways in which Kurdish and Iraqi communities could contribute to the reconstruction of Iraq. The meeting was also attended by representatives of the Foreign Office, UNHCR, Refugee Council and Refugee Action.

On 30 May 2003, Home

Secretary David Blunkett and European counterparts met with the United Nations High Commissioner for Refugees for discussions on the returns to Iraq programme. While currently focusing on voluntary returns, the Home Office estimates that a further 30,000 refugees (excluding dependents) could also be returned.

On 22 May 2003, KHRP also participated in a BBC panel discussion about voluntary returns to Iraq with guests including Robin Cook, former UK foreign secretary and leader of the House of Commons, and David Blunkett.

"Repentance" law or general amnesty?

Political prisoners and imprisoned members of armed political movements who express "remorse" could receive reduced prison sentences and be released early, under new proposals for a "repentance law" from the Turkish Government.

Publication of the draft law is expected in August 2003. Political parties, trade unions

and non-governmental organisations (NGOs) have widely criticised the proposals, claiming that such "repentance laws" have been introduced in the past in an attempt to "use Kurds against Kurds". Reportedly such laws only led to further complication of the Kurdish question, rather than to a solution.

There are approximately 10,000

political prisoners currently residing in Turkish jails, many accused of having supported the PKK (now KADEK), thereby "threatening the indivisibility of the Turkish state".

Kerim Yildiz, Executive Director of the KHRP, comments, "Many political prisoners have merely expressed their guaranteed rights to freedom of expression, association, belief or

opinion. The proposed repentance law does not address most of these people, who actually deserve compensation for violation of their human rights. If the Turkish Government wants to commit to a peaceful resolution of the Kurdish question, a general amnesty law is a better alternative and has the advantage of widespread public support."

Humiliating treatment of Kurdish teenagers

The Turkish authorities, previously condemned by the European Court of Human Rights for forcing Kurdish villagers to eat human excrement (*Yesilyurt v Turkey*), have once again been accused of similar behaviour in a case concerning two teenage boys.

The latest incident occurred in Hani town, Diyarbakir province, on 23 April 2003. A teacher alleged that two Kurdish boys, 14-year-old B.D. and 15-year-old M.O., made rude remarks to her in Kurdish. Police detained the boys in a cell containing rats and human excrement. The boys were beaten during interrogation, causing one of them to faint. Police officers then ordered the boys to smear excrement on their faces. Upon the boys' refusal, police officers smeared the boys' faces with excrement and marched them publicly through the town to set an "example". The boys were then returned to their families.

Lawyers representing the boys have made a formal complaint against the police officers. The prosecutor held that there was no case to answer. The Governor's Office in Hani has stated that an administrative investigation has been launched.

The case against the boys is continuing in the local court. At the hearing on 4 June 2003, the teacher whose complaint had led to the boys' ill-treatment withdrew her allegations. The trial has been adjourned.

Suspected death in custody

On 24 April 2003, the body of Siddik Kaya was found on the banks of the Murat river in Mus, Turkey. The man, a farmer, had not been seen in five months, since leaving his home on 20 November 2002. On the same day, a military officer, Celal Sen, telephoned his sister to say that he had been summoned to the Gendarme station. According to information received by KHRP, Siddik Kaya had previously received threats from the same military officer.

Trial against Goc-Der continues

On 9 June 2003, the Istanbul State Security Court heard the latest hearing in the case against Goc-Der (Association for Internally Displaced People), which carries out work with KHRP.

Goc-Der President Sefika Gurbuz and sociologist Mehmet Barut are being prosecuted under Article 312 for allegedly "inciting racial hatred" both within a Goc-Der report concerning forced displacement and at an accompanying press conference. The report claims that Kurdish villages were deliberately and systematically evacuated and destroyed by Turkish forces. It also claims that democratisation and pluralism are needed for a peaceful resolution to the Kurdish question.

The hearing was attended by representatives of trade unions and NGOs from Italy, the Netherlands and France.



Sefika Gurbuz, Chair of Goc-Der, is accused of inciting racial violence under Article 312 of the Turkish Penal Code

Abduction and sexual torture of DEHAP executive member

According to information received by KHRP, an executive member of Turkey's largest pro-Kurdish political party, DEHAP, was abducted and subjected to sexual torture by plainclothes police officers during an eight-hour ordeal on 14 June 2003 in Istanbul.

Gülbahar Gündüz is an executive member of the Women's Section of the Democratic People's Party (DEHAP), the largest pro-Kurdish political party in Turkey which achieved 6.2 per cent of the national vote in the last general election. On 13 March 2003, following permanent closure of the People's Democracy Party (HADEP) which largely mirrors DEHAP's views, the Court of Appeal's Chief Prosecutor asked the Constitutional Court to ban DEHAP.

KHRP has been informed that on 14 June 2003 at 9.00 a.m., four plainclothes men carrying radios and describing themselves as police officers forced Mrs Gündüz into a car. Mrs Gündüz claims to have heard a person on the street tell her abductors to leave her alone; the men responded by identifying themselves as police

officers. Mrs Gündüz reportedly lost consciousness when the men hit her head against the car. She was driven to an underground room without windows. The men told her that she should not be leading political activities because she is a woman and that this would be a lesson to her. The men reportedly beat her and extinguished cigarettes against her face. She also claims that one of the men forced his penis into her mouth. After eight hours, she was pushed from a moving car onto the street near Gaziosmanpasa.

Mrs Gündüz had previously been arrested and threatened on 8 March 2003, during demonstrations for International Women's Day.

KHRP Executive Director, Kerim Yildiz, says, "There must be an immediate impartial investigation of the allegations of torture and rape from the incident. The use of sexual torture against women in Turkey is widespread and systematic. Such horrific abuses are used as a "tactic" for repressing and oppressing women seen to be opposed to the State politically or culturally."

Turkish Parliamentary Human Rights Commission holds extra-judicial execution did occur

A Turkish Parliamentary Human Rights Commission delegation has established that a villager was killed on 8 April 2003 as a result of excessive use of force by Turkish troops.

Military sources claimed that Hacı Olmez, a villager from Andac village in Sirmak province, had been armed at the time of his

death. However, the Human Rights Commission held that the man had not been armed, and that no warning had been provided by the troops.

KHRP will continue to observe the case to see whether or not disciplinary or punitive action is taken against the troops responsible.

DISPATCHES

LAWYER OF THE WEEK

KHRP Chairman Mark Muller was featured in *The Times* as 'Lawyer of the Week' on 1 April 2003. Questioned about the implications of the *Öcalan v. Turkey* judgment from the European Court, he answered, "It reaffirmed the universal applicability of human rights irrespective of the political status of the individual. The case has huge significance for Kurds in Turkey and for the Turkish EU accession process."

EDUCATING STUDENTS ABOUT HUMAN RIGHTS

KHRP Executive Director Kerim Yildiz has been raising awareness of the Kurdish human rights situation and the work of human rights organisations such as Amnesty International (AI) in public meetings arranged by AI. On 7 April 2003, 300 students and members of staff attended his lecture at the American School of London. A further event took place at the University of Reading on 17 June 2003.

RAISING AWARENESS OF THE RIGHTS OF KURDISH WOMEN

KHRP has continued its meetings with the Action Group on the Kurdish Women's Charter in May 2003 this year, KHRP is planning a number of projects focusing on the rights of women throughout the Kurdish regions. Following on from the joint fact-finding mission to Iran in May 2003, KHRP and the Kurdish Women's Charter are discussing further joint missions and research into various areas of the rights of Kurdish women, which will be used to establish the basis for a Kurdish Women's Charter, raising awareness of the problems faced by women in these regions.

KHRP sends fact-finding mission to Iran

A KHRP delegation, in conjunction with the Kurdish Women's Charter and the Bar Human Rights Committee of England and Wales, has undertaken a fact-finding mission to Iran to investigate the general human rights situation, especially pertaining to Kurdish women.

From 8 to 16 May 2003, the KHRP delegation visited the Kurdish areas of Western Iran including the cities of Kermanshah, Sanandaj, Mahabad, Divandarreh and Baneh. It also attended a conference on the Anfal campaign at the University of Kordestan in Sanandaj.

The delegation confirmed that the rights of women with regard to inheritance, divorce and the custody of children are very much less than those of men. Even minor perceived moral transgressions are punishable with imprisonment or lashing.

Iranian Kurds have enjoyed comparative freedoms in Iran, when compared with neighbouring countries Turkey and Iraq under Saddam Hussein – not least regarding language rights and cultural expression. But recent events in Iraq have heightened sensitivities in a region where all Kurdish political parties are outlawed and the activities of those involved in Kurdish issues are closely monitored by security forces. The local economy is severely depressed, with high rates of unemployment and chronic under-investment. Many families rely on the smuggling trade across the Iraqi and Turkish borders for financial survival, and the incidence of drug addiction is reported to be high.

KHRP's fact-finding mission report will be published shortly.



Street sign shows 'Ave Kordestan', Iran, May 2003



The KHRP delegation led by Legal Officer Anke Stock at the International Conference on Anfal, University of Kordestan in Sanandaj.

Iran set to execute member of Kurdish opposition group "at any time"

According to information received by KHRP, the Iranian authorities have informed a supporter of the Kurdistan Democratic Party of Iran (KDPI) that his death sentence "will be carried out at any time".

Mohammad Esmaelzadeh, allegedly a supporter of the outlawed opposition group, was arrested in Shaherviran in Northwest Iran on 8 August 1996.

On 2 March 1999, the Islamic "Revolutionary" Court in Mahabad sentenced Mohammad Esmaelzadeh to death on charges including "armed struggle against the Islamic regime", "membership of a proscribed Party", "taking members", participating in the killing of three local collaborators and setting alight to road construction machines.

The Supreme Court upheld the decision on 2 March 1999. Mohammed Esmaelzadeh continues to deny the allegations and has reportedly been

tortured and subjected to ill-treatment in detention in Mahabad prison. He was wounded severely at the time of his arrest and his leg was amputated after being denied medication and surgery. Confirmation that his death sentence will be carried out "at any time" came on 9 January 2003, in response to his letter to the Supreme Court.

Two further men who are allegedly supporters of the Kurdistan Democratic Party of Iran, Khaled Faridooni and Omar Feghe-Poor, have also been sentenced by the Islamic "Revolutionary" Court on similar charges. Their cases are currently pending before the Supreme Court.

The KDPI is one of the two main Kurdish opposition groups active in the Islamic Republic, alongside the Revolutionary Organisation of Kurdish Toilers ('the Komala'). Two members of the Komala were also executed in February and March 2003, according to information received by KHRP (see KHRP *Newsline* 21, Spring 2003).

Iranian Kurdish refugee abandons hunger strike in Leeds

On 31 May 2003, Abas Amini, an Iranian Kurdish refugee in Nottingham who sewed shut his eyes, mouth and ears in protest at the treatment of asylum seekers, ended his hunger strike eleven days after it had begun. The 33-year-old heeded the pleas of friends and said, "I have ended this because I have come to realise that this is a very important struggle to be continued." Mr Amini began his protest after learning that the Home Office was challenging his successful asylum claim because he had failed to send a representative to the hearing. Mr Amini claimed his actions were done on behalf of refugees everywhere.

THE INDEPENDENT
Wednesday 28 May 2003 *****

Ready to die: the asylum-seeker who says he fled torture and was driven to self-mutilation by Britain

By Nigel Morris and Ben Russell

AN IRANIAN asylum-seeker who sewed up his eyes, ears and mouth in protest at his treatment by the Home Office said last night he would rather die a thousand deaths than return to his homeland.

Doctors fear Abas Amini, 33, who has been on hunger strike for a week, could die within days from dehydration. In his weakened state, he is also acutely vulnerable to infection.

As television crews and journalists converged on his Nottingham home, supporters persuaded him to make a final plea for mercy to the Government. He sat on the floor, dressed in a vest and trousers, his head slowly rocking from side to side. He spoke in a whisper in his native Farsi through pursed lips, straining against the threads that held them together. Mr Amini said: "I would rather die like this gradually a thousand times than face the injustice, the oppression, the lack of any human rights or any humanity which I was facing in Iran."

The former guerrilla fighter from Iranian Kurdistan made his first protest at the age of 17, when he started scrawling anti-regime slogans on walls. At that time, he joined guerrilla fighters in the north of the region. He was also an activist in the Worker Communist Party of Iran.

After being imprisoned at the age of 22, he fled to the mountains, but returned home when his family was allegedly threatened. A series of spells in jail lasting seven years in total culminated in a conviction for planting a bomb that killed a passer by a charge that his supporters said was fabricated.

They said he was in solitary confinement for months, and during beatings, sometimes on the soles of his feet. Two of his fingers are deformed because they were deliberately trapped in a car door. He turned to writing political poetry, which led to a four-year jail sentence for subverting the state.

In 1987, he faked an illness and was transferred to hospital, where he escaped. He then



Doctors fear that Abas Amini, who has been on a hunger strike for a week, could die of dehydration within days

Graeme Robertson/Getty Images

led through Turkey and, travelling on horses, arrived in the UK eight months later.

Speaking through an interpreter yesterday, he said of his experiences: "I was forced to flee. Shouldn't a human being have a square foot of earth to live on... in peace?"

He also painstakingly wrote out a message of support for other people suffering human rights abuses around the world. It read: "I fully understand the pain and anguish of all these families who are under repression and cannot express their anguish and I am very sorry. One of these fam-

ilies is my family and I think they would give me this right to lose my life for their happiness and a better life for others. To all those families and all those who have never had any freedom, do as much as possible. Do as much as you can. Don't give up."

Mr Amini began a hunger strike last Thursday after hearing the Government was seeking a judicial review of the decision to grant him asylum.

He arrived in Britain in August 2001, leaving his wife and two sons, aged three and five, in Iran. Doctors at the Medical Foundation for the Care of Vic-

tims of Torture, in London, who examined him, concluded he was suffering from post-traumatic stress disorder and was psychologically damaged, possibly as a result of torture.

He came up against the protracted procedure for claiming asylum. His plight worsened when his state benefit of £27.56 a week was stopped for nearly six months after he moved from London to Nottingham.

After two adjournments, an immigration tribunal ruled that he could stay but the Home Office, which was not present at the hearing, opposed against

the decision. It was at this stage that he decided to take dramatic action based on the protest staged last year by 70 asylum-seekers in Australia. Although he has developed an eye infection, he is refusing to take any antibiotics or painkillers and has threatened to burn himself to death if anyone tries to make him eat.

His adviser, Sam Asadi, of the International Federation of Iranian Refugees, said: "He has gone through many mock executions while he was being tortured. He has been away

from his children for many years. He has been married eight years, but he has only seen his wife for three short occasions."

Mr Asadi said his friend had accepted that he could die but was heartened by the support he had received from other people in the same situation.

"The action Abas is taking reflects the anger, anguish and demoralisation of tens of thousands of refugees. In this city alone there are hundreds of people whose benefits have been stopped despite the fact that their court cases are still in progress."

The Chris Thomas, who is treating him, said: "I don't think it would be legal under the Mental Health Act to force-feed him. We have to respect his rights to make a decision like this for himself."

The Iranian ambassador to Britain, Mostafa Sarmadi, denied last night that Mr Amini would be at risk if he were deported. He said: "There have been many asylum seekers who have referred to our embassy and they have shown their willingness or eagerness to return to Iran. There is no problem for asylum-seekers."

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DISPATCHES

IRAQ: AFTER THE WAR – PARLIAMENTARY BRIEFING

On 13 March 2003, KHRP Public Relations Officer Rochelle Harris attended the BBC World Service Parliamentary Briefing 'Iraq: After the War'. The briefing combined diplomatic and regional analysis with first-hand reports from Iraq, and examined the challenges facing the Iraqi people and the international community after the war. Participants included Nik Gowing, BBC World Service presenter, Roger Hardy, a specialist in Middle East and Islamic affairs at BBC World Service and Banarby Mason, BBC World Service Diplomatic Correspondent.

INTERNATIONAL P.E.N. LAUNCHES TURKEY CAMPAIGN

The Writers in Prison Committee (WiPC) of International P.E.N., the worldwide association of writers, initiated a special campaign on Turkey in June 2003. The WiPC works on behalf of persecuted journalists worldwide and currently monitors the cases of almost 900 annually, including writers who are imprisoned, tortured, threatened, disappeared, attacked and killed for the peaceful practice of their profession. The special campaign highlights that there are many instances of serious censorship and "backward-looking oppression" in Turkey, despite the legislative amendments made in an effort to meet EU standards of democracy.

Syrian authorities arrest Syrian exiles fleeing Iraq

According to information received by KHRP, seven people were arrested by Syrian authorities between 18 and 24 April while returning from exile in Iraq.

Mr Jamal Mahmud al-Wafa'i was arrested by Syrian security forces at the border checkpoint near the Syrian town of Hosaiba on 18 April 2003. He had been in exile in Iraq since the early 1980s. Fayzah 'Ali Shihab, Maha Ahmad Qarah Qash, Mayyadah Muhammad Ghassan Benqasli, Fathiyyah Rajab Damur, Muhammad 'Adnan Ahmad

Madlaj and Muhammad Ahmad Qashush, all of whom were returning Syrian exiles, were also arrested at the Syrian-Iraqi border. It is unclear whether these six people were arrested after being allowed entry into Syria or at a border checkpoint. It is thought that the seven may have been taken to military intelligence detention centres, where political detainees have previously been held incommunicado for long periods and tortured or ill-treated. According to reports, they have not been charged

with any offence.

All seven detainees are at increased risk of torture or ill-treatment in detention because of their links to the unauthorised opposition group, the Muslim Brotherhood Organisation. The armed faction of this organisation was involved in confrontations with the Syrian security forces in the 1970s and 1980s.

Syria closed its border to Iraq on 14 April 2003. Following military intervention in Iraq, it is reported that many Syrian families travelled to the desert

region near to the Iraqi/Syrian border. Following appeals, Syrian authorities gave permission to a limited number of women and children; others were arrested, their entry was refused, or they were forcibly returned.

Meanwhile, in December 2002 Kurdish activist and prisoner of conscience Hussain Daoud was released after two years imprisonment in Syria. He said that he had received torture during his captivity.

DISPATCHES

WOMEN'S RIGHTS LAWYER EREN KESKIN VISITS LONDON

KHRP and Amnesty International welcomed prominent women's rights activist and lawyer Eren Keskin to London on 12 May 2003. During her visit, Ms Keskin met with parliamentarians and Lords to highlight the high incidence of rape as a form of torture within Turkey.



KHRP Executive Director Kerim Yildiz, Emma Sinclair-Webb of Amnesty International and Eren Keskin

WAR IN IRAQ

On 9 April 2003, KHRP Executive Director Kerim Yildiz and Chairman Mark Muller held meetings with representatives of the German government in Berlin in order to exchange information regarding the human rights situation in Iraq, Turkey and the neighbouring regions. KHRP has been actively meeting with governmental and non-governmental representatives, journalists and individuals regarding the situation in Iraq since the outbreak of war in March 2003.

Armenian death penalty reform falls short

The Armenian Parliament has held a special session to approve a new Criminal Code that will partially abolish the death penalty. The Government then asked the Council of Europe for a one-year extension of its deadline for full abolition of capital punishment.

Death penalty sentences have continued in Armenia despite the imposition of a moratorium in 1990. The new Code will replace death penalties with life sentences for some offenders. However, offenders exempt from the reform include, "criminals found guilty of terrorism, raping juveniles or murder under aggravating circumstances". Crimes committed prior to the date of the reform coming into force will also still face possible capital punishment.

KHRP Executive Director Kerim Yildiz says, "The European Court of Human Rights has recently confirmed that capital punishment can no longer be seen as having any legitimate place in a democratic society. We urge the Council of Europe not to extend the deadline for total abolition of the death penalty."

Azerbaijani Parliament Adopts Election Code

The Presidential election campaign began in Azerbaijan on 17 June 2003. The election will be the first vote to be held under the new Election Code, adopted by the Azerbaijani Parliament on 29 May 2003.

On 18 March 2003, opposition representatives issued a statement disagreeing

with proposals to establish election commissions under the new election code, believing the commissions would be dependent on the authorities. In passing the bill in May, opposition deputies endorsed a temporary provision under which those paragraphs of the new law stipulating the composition of election

commissions at all levels will only come into force following the 2005 parliamentary elections.

The ODIHR, Europe's leading monitoring institution, plans to observe the upcoming presidential election, following widespread condemnation of the recent parliamentary elections.

Threats against human rights NGO in Azerbaijan

According to information received by KHRP, the director of the Human Rights Centre of Azerbaijan (HRCA), Eldar Zeynalov, has become a focal point for threats and attacks.

The HRCA is a non-governmental organisation established in 1993 to monitor the human rights situation in Azerbaijan. According to reports, members of a pro-Government human rights organisation appealed for people to "take action" against Mr Zeynalov and other activists on state-run television on 21 April 2003. Mr Zeynalov's home address and telephone number were also broadcast.

One day later, on 22 April 2003, it has been reported that between thirty and fifty people converged outside the organisation's office. The building was pelted with eggs and chemicals and an effigy of Mr Zeynalov was burned. His sister-in-law and father-in-law are also reported to have suffered beatings.



Vandalism of the HRCA office. Stained UN books lie next to broken windows

Human rights training

In late 2001, KHRP, in conjunction with the Bar Human Rights Committee of England and Wales, launched a new series of training programmes to enable and encourage the use of human rights mechanisms newly available to Armenia and Azerbaijan as a means of motivating the rule of law and democracy in these countries.

With years of experience of human rights litigation, KHRP's litigation training programmes provide lawyers and human rights activists in the Kurdish regions, the UK and other parts of Europe with invaluable instruction on the use of the European Convention and UN human rights mechanisms.

In continuation of these

ongoing training programmes, KHRP and the BHRC will conduct two trainings in July 2003. From 5 to 6 July 2003, lawyers from KHRP and BHRC of England and Wales will hold a training seminar in Baku, Azerbaijan in conjunction with the Helsinki Citizens' Assembly for human rights lawyers and activists. The second training will take place from 26 to 27 July

2003 in Yerevan, Armenia in co-operation with the International Bar Association of Armenia. The seminars will concentrate on the right to a fair trial (Article 6), right to privacy (Article 8) and freedom of expression (Article 10) of the European Convention on Human Rights and on UN mechanisms.

UPDATE ON KHRP ENVIRONMENTAL PROJECT

DISPATCHES

AMNESTY LAUNCHES REPORT ON BAKU-CEYHAN PIPELINE

Amnesty International has published its report on the human rights implications of the BTC pipeline. The report draws attention to features of the legal framework that are similar to those of investment projects in other parts of the world, many of which pose threats to human rights. KHRP attended the launch of the report on 19 May 2003.

Regional developments for BP's Caspian oil project

The Baku-Ceyhan (BTC) oil pipeline project is under scrutiny now more than ever, with the commencement of the public disclosure period on 11 June 2003. During this period, formal applications are made to major international and national funders and objections to the project are officially tabled.

Meanwhile, there have been significant recent developments in each of the three host countries.

Azerbaijan

In Azerbaijan, delays in project funding caused by environmental concerns have meant that, for a second time, the state oil company SOCAR will dip into the Azerbaijani Oil Fund to pay for its share of pipeline construction costs. The Oil Fund was established at the insistence of the IMF to make use of oil revenues specifically to benefit the non-oil economic sector. On the first occasion that SOCAR used the Oil Fund to subsidise the BTC, the IMF was provoked to freeze further loans to Azerbaijan.

Georgia

In Georgia, the routeing of the pipeline through the Borjomi National Park continues to represent one of the principal concerns about the BTC in Georgia. The concern has also been expressed by Peter Woicke, President of the International Finance Corporation (IFC), one of the two main funders to whom BP and other oil companies in the consortium will apply for public support. The Georgian Environment Minister has made the

passing of the current route contingent on several environmental conditions and has sent BP letters weekly demanding that they be fulfilled. However, according to information received by KHRP, BP has responded to none of the requests and has already commenced laying pipes.

Turkey

In Turkey, BP wrote to the Turkish Government in April 2003, denouncing excessive bureaucracy and inefficiency in BOTAS, the state contractor building the Turkish section of the pipeline. The oil company also complained about "unnecessary" corruption allegations being made about BTC. If these problems were not resolved, BP threatened, the BTC contract would be withdrawn from BOTAS. Furthermore, it was suggested that BP may even abandon the Turkish section of the pipeline altogether and simply expand the existing pipeline from Baku to Supsa on the Georgian Black Sea coast. As a result, new executives have been appointed at BOTAS to oversee the BTC project.

RAISING CONCERNS WITH THE CASPIAN ADVISORY GROUP AND CARE INTERNATIONAL

KHRP met with the Caspian Advisory Group (CAG), the independent group charged with overseeing the BTC pipeline used by BP, on 13 May 2003. CAG's report on the Georgian and Azerbaijani sections of the pipeline will be published in July 2003. Its report on the Turkish section will be published after conclusion of the public disclosure period. On 20 May 2003, KHRP met with Care International (CI) to raise concerns over the implementation of the project. CI has been contracted to carry out a community investment programme in Georgia in conjunction with BP.

Formal OECD Complaint Filed Against BP

On 29 April 2003, KHRP and other organisations in the Baku-Ceyhan Campaign filed a formal complaint against BP for breaching the Organisation for Economic Co-operation and Development (OECD) Guidelines on Multinational Enterprises at the OECD Forum in Paris. The NGOs complain that the BTC Consortium exerted undue influence on the regulatory framework of the three host countries; sought or accepted legal exemptions related to social, labour, tax and environmental laws; failed to operate in a manner contributing to the wider goals of sustainable development; failed to consult adequately with project-affected communities on pertinent matters; and undermined the host governments' ability to mitigate serious threats to the environment, human health and safety.

The complaint was filed on behalf of KHRP, Campagna per la Riforma della Banca Mondiale, the Corner House, FERN, Friends of the Earth (England Wales and Northern Ireland; France; Netherlands; US), Platform, Urgewald, Weed, Germanwatch and BUND.



Raising awareness of the implications of the Baku-Ceyhan pipeline outside Amec's Annual General Meeting (AGM), 8 May 2003. Amec is building the Georgian section of BP's 1,750 kilometre oil pipeline

KHRP Hosts Reverse Fact-Finding Mission for BTC-Affected People

From 28 to 29 May 2003, KHRP, together with Friends of the Earth, the Corner House and Platform organised and welcomed a speakers' tour of representatives from Turkey, Azerbaijan and Georgia, the three host countries of the BTC pipeline.



KHRP organises and participates in public lecture about the Baku-Ceyhan pipeline at the LSE with representatives of the NGO Green Alternatives in Georgia, the Caucasus NGO Federation, the pro-Kurdish political party DEHAP, Platform, the Corner House and the European Bank for Reconstruction and Development (EBRD)

The 'reverse fact-finding mission' constituted Manana Kochladze of the NGO Green Alternatives in Georgia, Mayis Gulaliyev of the Caucasus NGO Federation and Ferhat Kaya of the Ardahan branch of DEHAP, the pro-Kurdish political party. Together with KHRP and its partners, the representatives met with the European Bank for Reconstruction and Development (EBRD), the UK Department for International Development (DfID), the UK Foreign Office, the Treasury and the Export Credit Guarantee Department (ECGD), from whom export credit support will be sought for the project. The delegation raised concerns about the findings of recent fact-finding missions to the Turkish section of the pipeline and the legal status of the project. The delegation also enquired what due diligence had been conducted by the institutions since the previous reverse fact-finding mission in October 2002.

The delegates, together with representatives of KHRP, Platform, the Corner House and the EBRD also participated in a public debate at the London School of Economics on 28 May 2003.

The public disclosure period began on 11 June 2003. A decision on funding by the IFC and EBRD is expected in October or later. The concerns raised by KHRP and other organisations in the Baku-Ceyhan Campaign are now more central than ever before.

Concerns over Hakkari Dam

KHRP has experienced profound difficulties in researching the dam project for the Hakkari region, located on the borders of Turkey, Iraq and Iran, due to the area's heavy militarisation.

Proposals for the dam project indicated that it would be a \$600 million, 170m high rockfill dam on the Zap river, with an 11km surge tunnel and a 208 MW hydro-electric power plant (HEPP). Reportedly, the construction consortium includes Washington Group, the French firm Alstom and the Turkish companies Kiska and Dolsar.

Hakkari's position on the borders of Turkey, Iraq and Iran has led to the area's heavy militarisation, which has increased since military intervention in Iraq. A KHRP delegation was informed by the local branch of the Human Rights Association (IHD) that there are between 8 and 10 soldiers per family.

Moreover, no local NGO is compiling information on the proposed dam. Local NGOs are devoted to displacement and migrant work due to the estimated 100,000 people displaced to the region in



The KHRP delegation found preliminary drilling at one proposed site for the Hakkari Dam

recent years.

The KHRP delegation found that the combination of displacement and profound oppression means that nobody in the town has any knowledge of the dam project. Some locals believed that the dam project had been aborted; others believed that construction would begin in

Spring 2003. The KHRP delegation did find evidence that some borings and exploratory engineering research had been undertaken. Nonetheless, the area's inhabitants regularly hear rumours that a dam is imminent, and have come to disregard them. The delegation interviewees confirmed that

they had had no contact at all with companies and emphasised the worthlessness and impossibility of any "consultation" process in what is clearly still a military zone. KHRP is concerned that the absence of local knowledge suggests that no consultation has taken place.

UPDATE ON KHRP LITIGATION AND ADVOCACY PROJECT

continued from front page

Landmark Grand Chamber Ruling ...

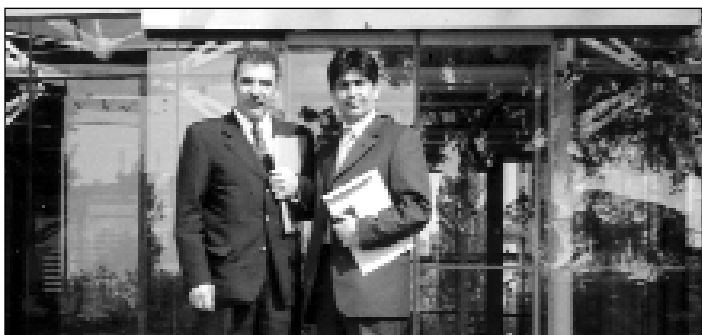
The Grand Chamber's ruling constitutes a turning point in the Court's jurisprudence regarding strike outs according to Article 37(1)(c) of the Convention. The overly open-ended nature of Article 37(1)(c) is confined by the overriding obligation on the Court to, "...continue the examination of the application if respect for human rights as defined in the Convention and the protocols thereto so requires." Historically, it was always envisaged that Article 37(1)(c) would be interpreted and applied very restrictively. The Council of Europe's Committee of Experts for the Improvement of the Procedure under the European Convention of Human Rights noted in 1984 that, "... the Commission could be trusted to use this provision cautiously, and in any event the Commission's freedom of movement in this regard was limited by the 'general interest' clause set out in the last sentence of paragraph 1." In the KHRP case of *Akman v Turkey* (no. 37452/97, 26.6.2001) the confidence in the appropriate application of this provision was breached for the first time. A year later the Court struck out the application *Acar v Turkey* against the dissenting opinions of Judge Loucaides and Judge Costa.

At the Grand Chamber hearing it was argued that it is not appropriate to use Article 37 to dispose of an application on the basis of a declaration that does not admit the breach of the fundamental human rights alleged in the application.

In its judgment of 6 May 2003 the Grand Chamber partially accepted this line of argument. The panel held in the present case, which concerns an unresolved disappearance of a person after an abduction allegedly by State agents, that, "...the unilateral declaration made by the Government does not adequately address the applicant's grievances under the Convention". However, it did not rule that a full admission of liability in a unilateral declaration is a stringent condition for a strike out decision. The panel stipulated that, "...a unilateral declaration should at the very least contain an admission to that effect, combined with an undertaking by the respondent Government to conduct, under the supervision of the Committee of Ministers in the context of the latter's duties under Article 46(2) of the Convention, an investigation that is in full compliance with the requirements of the Convention as defined by the Court in previous similar cases..."

This decision sets out minimum prerequisites for the use of Article 37 in connection with a unilateral declaration to strike out an application, but it does not suggest the restriction of the use of Article 37(1)(c) in general (as three dissenting Judges do). Only the very exceptional use of the striking out procedure will guarantee the necessary safeguard for the protection of human rights. Nevertheless, the decision is most welcome since it raises hope that future strike out decisions will be taken with extraordinary diligence with regard to the respect for human rights as required by the Convention.

The applicant's representative and KHRP legal team member Keir Starmer QC says, "This is a very important case, not only for the individual applicant but also because it marks a turning point where the Court recognised that it should be very slow to strike out cases where an allegation of disappearance is made."



KHRP Executive Director Kerim Yildiz with applicant Tahsin Acar in front of the European Court Grand Chamber, 6 May 2003

Committee of Ministers reaches conclusions on ECHR reform

The Council of Europe's Committee of Ministers has reached its preliminary conclusions on key areas of the proposals for reform of the European Court of Human Rights, subsequent to its meeting from 14 to 15 May 2003. While certain conclusions were positive, there remain grounds for concern that the reforms would have the effect of eroding the right of individuals to access the Court.

The proposals for reform are intended to address the ECHR's spiralling costs and backlog of cases. The 26 June 2001 judgment in the KHRP case *Akman v. Turkey* gave the first signal of a marked change in the Court's approach. The case concerned the fatal shooting of the applicant's 22 year old son by Turkish security forces. Following unsuccessful attempts to reach a friendly settlement, the Turkish Government requested that the case be struck out. It offered to pay GBP 85,000 in compensation and to make a declaration making limited admissions of wrongdoing and promising to improve in future. The Court agreed to strike out the case without the applicant's consent on the basis that continued examination was "no longer justified".

Since then, requests to strike out (Article 37 requests) emanating from the Turkish Government have escalated. KHRP has opposed the use of Article 37 in its cases before the Court (see *Acar v. Turkey*, Grand Chamber Judgment).

At the beginning of the process of reform, KHRP initiated a Joint NGO Response group, bringing together non-governmental human rights organisations (NGOs) from across Europe in order to express the widespread objections to potentially damaging recommendations for reform. Currently 74 human rights organisations across Europe have signed onto a Joint Response developed by the group outlining objections and recommendations (see KHRP *Newsline* 21, Spring 2003). The KHRP and its colleagues have also been involved in consultations with the Council of Europe bodies central to the development of the proposals.

The Steering Committee of the European Court of Human

Rights recommended a number of departures from the original proposals of the Evaluation Group. Having heard its report, the Committee of Ministers reached its preliminary conclusions on key areas of the reform subsequent to its meeting from 14 to 15 May 2003.

The Committee of Ministers has approved proposals to amend Article 35 of the Convention to the effect that the European Court of Human Rights [the Court] will be empowered to refuse to hear applications which are deemed not to raise either a 'serious question of interpretation' or an issue of 'general importance'. The Joint Response is particularly critical of this amendment due to the corrosive effect it will have on the right of individuals to an impartial hearing on their allegations of human rights violations. However, the inclusion of the proviso that such cases can only be rejected if this does not place the applicant at a 'significant disadvantage' represents a marked improvement from the original proposals of the Evaluation Group and it is notable that the Committee of Ministers, in its declaration 'Guaranteeing the long-term effectiveness of the European Court of Human Rights', does at least state that the Ministers' Deputies, tasked with drafting the reforms, must "take account of all effects of the proposed [amendment] on the unique right of individual application". The KHRP and its colleagues on the Joint Response hope that this represents a gradual shift from the massive conceptual departure first advocated by the Evaluation Group, but it is nevertheless very regrettable

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that such an amendment would be approved in any form.

More positively, the Committee of Ministers has approved the proposal to amend Article 28 in order that cases which are deemed to be 'repetitive' due to the similarity of the facts with a previous application can be ruled upon by a committee of three judges of the Court. This proposal by the Steering Committee was always welcomed by the Joint Response Group as one that would dramatically expedite the rendering of a significant number of judgments without damaging the ideological underpinnings of the Convention.

With the drafting of the amendments poised to begin, it is still possible to influence the process of reform. All of the NGOs most directly involved in the Joint Response are still actively seeking even greater depth and diversity of support for the principle objections to the final proposals. As a corollary, a number of national Human Rights Institutions have recently issued their own response to the proposals, which details many of the same concerns and recommendations expressed in the Joint NGO Response. In relation to the proposed amendment to Article 35, the national Institutions state that "the right to a fair hearing should never be denied to an applicant."

In a further expression of support, the Hungarian Ministry of Justice has notified the Joint Response that it shares the concern for the right of individual application, as it has done throughout its involvement in the process of reform. Sadly, when participating in the work of the Steering Committee, the Hungarian representatives found themselves to be in the minority position in this regard.

Turkey did not investigate killing of Kurdish reporter, rules European Court

Isak Tepe v. Turkey (27244/95) (Right to life)

On 9 May 2003, the European Court found once again that Turkey had violated the Convention for its failure to investigate the killing of a reporter for a pro-Kurdish newspaper.

The applicant, Isak Tepe, at the material time was provincial chairman of the now banned Democracy Party (DEP) in Bitlis, Southeast Turkey. He complained that in July 1993 his son, Ferhat Tepe, born in 1974, who had been a reporter for the pro-Kurdish 'Ozgur Gundem' newspaper, had been tortured and killed after being abducted by undercover agents of the State or by persons acting under their instructions and that the authorities had failed to carry out an effective and adequate investigation into his death.

On 28 March 1995, KHRP submitted an application to the European Court of Human Rights on behalf of Isak Tepe.

As the Turkish Government and the applicant did not agree on the facts surrounding Ferhat Tepe's death, three delegates from the Court took evidence from 24 witnesses at hearings held in Ankara between 9 and 14 October 2000.

In its judgment of 9 May 2003, the Court considered that the circumstances in which Ferhat Tepe had died and the fact that he had been working for a pro-Kurdish newspaper militated in support of his father's allegations. However, the absence of sufficient corroborating evidence meant the Court could not conclude beyond all reasonable doubt that Ferhat Tepe had been abducted and killed by any State agent or person acting on their behalf.

The Court noted that there had been striking omissions in the conduct of the investigation into Ferhat Tepe's disappearance and death. Accordingly, it considered that there had been a violation of the right to life (Article 2) on account of the national authorities' failure to carry out an adequate and effective investigation into the circumstances surrounding the death of the applicant's son.

The Court found that there had been a violation of Article 13 because the applicant had had an arguable claim under Article 2 that had not been adequately investigated. Moreover, the Court found that the Government had failed to fulfill its obligation under Article 38 of the Convention to provide all necessary facilities to the Court in its task of establishing the facts.

Turkish failure to investigate death in custody violated European Convention

Aktas v Turkey (24351/94) (right to life)

On 24 April 2003, the European Court held that the Turkish State had violated the right to life (Article 2) and prohibition of torture (Article 3) in the case of a man who had died while in police custody.

Yakup Aktas, a Kurdish man, died one week after he was taken into custody in Mardin, Turkey on suspicion of assisting the outlawed Kurdistan Workers' Party (PKK, now KADEK). Two police officers charged with beating the man to death during interrogation were acquitted by domestic courts.

The KHRP submitted a case to the Court on 8 June 1994 on behalf of the deceased's brother, Eshat Aktas.

In its judgment, the Court ruled that Turkey had violated the right to life (Article 2) of the

Convention in respect of the death and the deficiencies of the official investigation into the death. The Court noted that where an individual is taken into police custody in good health and is found to be injured on release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused.

The Court ruled that Yakup Aktas had been subjected to torture and that the ensuing investigations had been inadequate.

The Court ruled that the applicant's right to an effective remedy had been denied in violation of Article 13.

The Court held that the Turkish Government fell short of its obligation to furnish all of the information required by the Court in their task of establishing the facts, in violation of Article 38. The

Turkish Government requested during the Court's fact-finding hearing in Ankara in 1997 that their witnesses should be heard in the absence of the applicant. The Court rebuked this attitude and reaffirmed that effective co-operation is of utmost importance in the Strasbourg system.

Yakup Aktas died while in police custody following a week of questioning from 19 October 1990. An independent examination of his body found a number of cuts and bruises consistent with allegations that Yakup Aktas had been tortured. It also found that his death had been caused by mechanical asphyxiation. The local Turkish Assize court subsequently acquitted two police officers charged with beating Mr Aktas so severely that it resulted in his death.

Freedom of expression case declared admissible

Unsal Ozturk v Turkey (No. 29365/95), Admissibility Decision (freedom of expression)

On 27 May 2003 the case of Ozturk v Turkey was declared admissible.

This case concerns criminal proceedings brought against the

applicant, Unsal Ozturk, an owner of a small independent firm that has published books in Turkey. Between August 1993 and December 1994, the applicant

was charged with 19 criminal proceedings in relation to books published by the applicant, many of which were confiscated.

The applicant submitted to

the Court in 1994 that his successive convictions and sentences on account of publishing certain books

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constitute an infringement of his right to freedom of expression. He complained of the respondent Government's violations of Articles 7, 10, 14 and 18 of the Convention and Article 1 of Protocol No.1 to the Convention.

The Court declared admissible the applicant's complaints under Article 7 (as regards the prison sentence imposed on him in seven of the cases brought against him), Article 10 and Article 1 of Protocol No.1 to the Convention.

The applicant's complaints under Articles 14 and 18 of the Convention were declared inadmissible.



Applicant Unsal Ozturk with Kerim Yildiz at KHRP's office

KHRP cases resolved by friendly settlement

Ateş v. Turkey (28292/95) (destruction of home and property)
Macir v. Turkey (28516/95) (right to life)

Two cases against Turkey brought by the KHRP were resolved by friendly settlement on 22 April 2003.

In *Ateş v Turkey* (28292/95) the applicant accepted a declaration by the Turkish Government which included an offer to pay *ex gratia* the amount of EUR 49,000 and a statement of regret for the destruction of the applicant's home and property during security forces operations. It also stated regret for the failure to investigate such conduct effectively. The Government undertook to 'take all necessary measures' to ensure future respect for Article 8, the right to respect for family life, and Article 13, the right to an effective remedy, as well as Article 1 of Protocol 1, the right to protection of property. It also gave an undertaking to safeguard Article 3 of the Convention, the right to freedom from inhuman or degrading treatment. The declaration accepted that all of these Articles had been violated by the actions of the security forces.

In *Macir v Turkey* (28516/95), the Turkish Government made a similar declaration with regards to the murder of the applicant's husband by unknown men subsequent to being questioned by police as a witness to a previous shooting. The declaration included an offer to pay *ex gratia* the sum of EUR 70,000 and a statement of regret for both the failure to protect the applicant's husband and the failure to provide an effective investigation into the circumstances surrounding his death. Accepting that this amounted to violations of Article 2, the right to life, and Articles 3 and 13 of the Convention, the Turkish Government again undertook to prevent such violations in future.

New application lodged with European Court

Unal and Others v Turkey (No. 7556/03) (village destruction)

In May 2003 KHRP submitted the full application in *Unal and 37 Others v Turkey*. The applicants are all Turkish citizens of Kurdish origin, who used to live in Nurettin village, Malazgirt district in Southeast Turkey. The application concerns the seizure and destruction of the applicants' land, crops and remains of their homes from April 1994 to date by the village guards appointed to

Nurettin village. Furthermore, the applicants Nafiye Unal, Besrayi Unal, Nazime Unal complain of the killing of Yusuf Unal, Abdurrahim Unal and Abdulsamet Unal in Nurettin village on 9 July 2002. The case raises issues concerning Articles 2, 8, 13, 14 and 18 of the Convention and Article 1 of Protocol No. 1 to the Convention.

ECHR Grand Chamber requested to consider landmark Öcalan judgment

The landmark ECHR judgment in *Öcalan v. Turkey*, which held that Öcalan's death penalty violated the prohibition of inhuman and degrading treatment under the European Convention, may be referred to the Grand Chamber upon the request of both the applicant's representatives and the Turkish Government.

On 9 June 2003, the applicant's representatives

requested the case to be referred pursuant to Article 43 of the Convention on the basis that it raises a number of serious questions affecting the interpretation of the Convention and a number of serious issues of general importance. Likewise, the Turkish Government submitted its request for a referral to the Grand Chamber on 12 June 2003.

In its judgment of 18 March 2003, the Court held that

capital punishment has now come to be regarded, "as an unacceptable form of punishment" which can "no longer be seen as having any legitimate place in a democratic society". It was held that the capital sentence imposed in Mr Öcalan must be considered, in itself, to amount to inhuman treatment. The Court also found that Mr Öcalan's rights under Article 6 (right to a fair trial) of the

Convention had been violated in several respects. Finally the Court held that Mr Öcalan's rights under Article 5 of the Convention had been violated, stating that the length of his detention before being brought to a judge and the inability to challenge his detention at the domestic level violated both Article 5(3) and 5(4).

Retrial of Leyla Zana and others continues in Turkey



DEP parliamentarian Leyla Zana received a 15 year sentence for her expression of Kurdish political identity

The retrial of Leyla Zana and three other imprisoned Democracy Party (DEP) parliamentarians is continuing at the Ankara State Security Court.

The DEP parliamentarians (Leyla Zana, Hatip Dicle, Selim Sadak and Orhan Dogan) have been imprisoned since 1994. The domestic retrial is a result of Turkey's 'Harmonisation Law', which grants a right of retrial to defendants where the European Court has ruled that the original trial was unfair, in violation of the European Convention on Human Rights. As reported in KHRP Newsline

21, KHRP has assisted the DEP parliamentarians in taking a series of cases to the European Court, which ruled in July 2001 that the DEP parliamentarians had not received a fair trial; and in June 2002, that the dissolution of the DEP Party itself had violated the right to fair and free elections.

On 23 May 2003, four village guards and police officers testified as witnesses. The trial was observed by KHRP's patron Nazmi Gur on behalf of KHRP. Others who attended to demonstrate support and concern for the parliamentarians included

Kurdish MEP Feleknaş Uca, EU-Turkey Joint Parliamentary Commission Chairman Joost Lagendijk, the Greek ambassador and representatives of the FIDH and Italian NGOs. A further hearing was held on 20 June 2003.

KHRP is producing a report into the trial of the DEP parliamentarians, and will continue to monitor the case closely to measure whether or not the trial focuses on substantive, as well as procedural, aspects of the original trial.

International Criminal Court Almost Fully Operational

At the 1998 Rome conference in which the statute creating the International Criminal Court (ICC) was adopted, few believed that within five short years the world's first permanent tribunal capable of trying individuals accused of genocide, war crimes and crimes against humanity would be almost fully operational. Yet as we approach the July 17 five year anniversary of the adoption of the Rome Statute, already the court has 139 signatories and 90 State Parties to its treaty, a provisional seat in the Netherlands, a first bench of 18 highly qualified judges and a prosecutor with significant relevant experience.

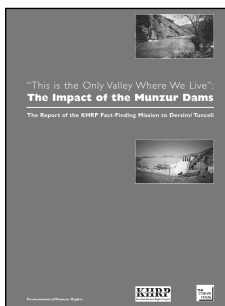
The formal election of the prosecutor took place on 21 April 2003 at the United Nations Headquarters in New York. The 78 State Parties present at the Assembly of State Parties (ASP) unanimously elected Mr Luis Moreno Ocampo of Argentina. Mr Ocampo will head the Office of the Prosecutor and started his role on 16 June 2003. It is also expected that during a June plenary meeting of the 18 judges, the election of the Registrar will complete the selection of the leading officers of this new leading organisation.

On 1 July 2003 the US-initiated UN Security Council resolution 1422, which requests that the ICC not proceed with the investigation or prosecution of US and other UN peacekeepers from non-states parties to the ICC treaty for a 12 month period, will be up for renewal. Also occurring on 1 July 2003 is the deadline set out in the US "American Service-members Protection Act", by which countries must sign bilateral ICC immunity agreements with the US or face the potential loss of US military assistance. Even though signatories of the immunity agreements are continuing to rise, public support for the ICC within the US remains strong, with around 65 per cent of the population in favour of US ratification even if US soldiers could face prosecution.

Only two states have ratified the Agreement on Privileges and Immunities of the Court (APIC), which requires ratification by 10 states to come into force. KHRP urges member states to ratify the agreement, in order to guarantee the effective and independent functioning of the Court.

New and Upcoming KHRP Reports

"This is the Only Valley Where We Live": the Impact of the Munzur Dams – the Report of the KHRP Fact-Finding Mission to Dersim/ Tunceli



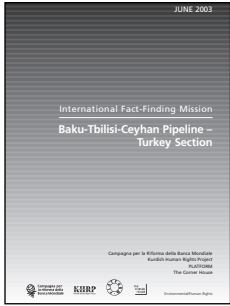
This report, published in conjunction with the Corner House, provides the findings of a KHRP fact-finding mission undertaken to examine the likely impacts of a series of massive dams planned for the Munzur Valley in the Kurdish regions of Southeast Turkey. The Munzur Valley is Turkey's first and foremost national park, protected by domestic law. Now, it is the proposed site of a series of 8 dams and hydro-electric power plants (HEPPs) to be built by a consortium of companies led by US

engineering firm Stone and Webster. Other companies involved include the Austrian firms VA Tech Hydro and Strabag and Turkish firm Soyal and ATA. The report first traces the tragic history of mass displacement in the Kurdish regions. Over 3 million people were forced from their homes and over 3,500 settlements destroyed during a campaign by Turkish security forces that peaked in severity during the mid 1990s. The problem of those wanting to return home bulks large in Turkish domestic politics. The report first highlights the link between mass displacement, those wanting to return home, and the proposed construction of the series of massive dams known as GAP. Secondly, the report analyses the rationales and impacts of GAP, examining its effects on local and Kurdish populations. Finally, this environmental/ human rights report provides the findings of its fact-finding mission to the region.

(ISBN Number: 1 900 175 57 6)

continued on page 15

International Fact-Finding Mission Report – Baku-Tbilisi-Ceyhan Pipeline – Turkey section

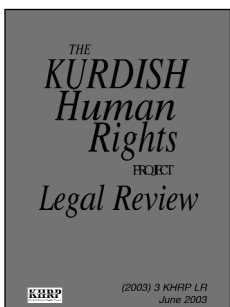


An international fact-finding mission, comprising representatives of human rights and environmental groups, visited Turkey in March 2003 to investigate the likely effects of BP's proposed new pipeline. The pipeline, if built, would carry up to a million barrels of oil a day from the Caspian Sea through Georgia to Ceyhan on the Turkish Mediterranean coast. UK oil giant BP leads the project, and is seeking around \$2.5 billion in public subsidy from the European Bank

for Reconstruction and Development, the World Bank and export credit agencies such as the UK's ECGD. This report provides the findings of the international delegation. It documents the pervasive atmosphere of repression in the Kurdish region of North-eastern Turkey, through which the pipeline would pass. The report argues that the evident lack of free speech precludes criticism of the pipeline project, effectively rendering invalid BP's efforts at consultation. The delegation was itself detained twice by the Turkish military police, the Gendarmerie. A number of planned visits to villages affected by the pipeline had to be abandoned by the delegation, for fear of exposing residents to potential human rights abuses by state security agents. The report concludes that the pipeline not only breaches international standards but also threatens human rights abuses. BP's resettlement proposals even appear to breach Turkish law. There are widespread problems with compensation and a generalised failure to take account of the impact of the project on disadvantaged groups like women and ethnic minorities. The report is especially critical of the choice of the Gendarmerie as the lead force for pipeline security. The Gendarmerie was heavily implicated in the worst human rights abuses inflicted on Kurdish civilians in Turkey in recent decades; and has been repeatedly criticised by the European Court of Human Rights in KHRP cases. This report has been published jointly in conjunction with the Corner House, PLATFORM and Campagna per la Riforma della Banca Mondiale.

(ISBN Number: 1 900 175 59 2)

The KHRP Legal Review 3



The third issue of KHRP's Legal Review concerns significant legal developments affecting Turkey, Armenia and Azerbaijan in 2003. The review thus includes a detailed examination of the European Court of Human Rights judgment in *Öcalan v Turkey* by Öcalan's legal representative, Tim Otty. Louise Christian, solicitor for the family of three of the detained British citizens on Guantanamo Bay, examines the compliance of the US treatment of

detainees with international law. Other articles examine the "finishing off" of cases through a radical new extension of the 'strike out' procedure by the European Court, and the efficacy of Armenia's recent accession to the Council of Europe. The review also republishes an article by Diyarbakir Bar Association member Mahmut Vefa concerning the legal implications of the Ilisu dam; the article led to the indictment of the author on charges of "insulting the Turkish state". This edition covers European Court admissibility decisions and judgments from January to May 2003.

(ISBN Number: 1 900175 58 4)

Upcoming Publications

- Manual on using UN mechanisms
- European Court of Human Rights Manual – Armenian language
- European Court of Human Rights Manual – Turkish language
- Book on Iraqi Kurds
- Trial observation report of Ilisu Dam lawyer, Mahmut Vefa
- Report of fact-finding mission to Turkey
- Report of fact-finding mission to Iran concerning women's rights and human rights

In Memoriam: Kurds lose another friend

It is with great sadness that KHRP must report the death of Italian journalist Damiano ('Dino') Giovanni Frisullo, who died of cancer in his home town of Perugia on 5 June 2003 at the age of 51.

Dino was a prominent peace campaigner and known as a friend of Kurdish people. He was involved with solidarity work with nearly all immigrant communities in Italy and had been active in Kurdish issues since the early 1990s. In 1997, Dino was arrested in Istanbul during a protest against the Turkish authorities' obstruction of the 'Musa Anter Peace Train. In 1998, he was also arrested in Diyarbakir following the Newroz celebrations and spent 40 days in prison, after which he was banned from entering Turkey for five years.

Over a thousand people attended Dino's funeral service in Rome in June 2003. KHRP extends its deepest condolences to his family and friends at this difficult time.



Damiano ('Dino') Giovanni Frisullo passed away in his home town of Perugia on 5 June 2003

Calendar of Events

19 – 20 June	KHRP fact-finding mission to Turkey, investigating the state of emergency
2 – 4 July	KHRP undertakes trial observation in Turkey
3 – 5 July	From Government to Governance? The Growing Impact of Non-State Actors on the International and European Legal System – The Hague Joint Conference on Contemporary Issues of International Law, The Hague
5 July	KHRP human rights training in Azerbaijan
12 – 15 July	Education as a Force for Change? – 2003 Annual Conference of the British Society for Middle Eastern Studies, University of Exeter, Exeter UK
17 July	World Day for International Justice
25 July	KHRP human rights training in Armenia
28 July – 15 August	Commission on Human Rights, Subcommission on the Geneva Promotion and Protection of Human Rights, 55th session, Geneva
11 – 15 August	Commission on Human Rights, Working Group on Enforced and Involuntary Disappearances, 70th session, Geneva
4 – 22 August	Committee on the Elimination of Racial Discrimination, 63rd session, Geneva
1 – 5 September	Commission on Human Rights, Working Group on Arbitrary Detention, 37th session, Geneva
15 September – 3 October	Committee on the Rights of the Child, 34th session, Geneva
29 September – 2 October	Negotiating Peace in the Middle East – conference organised by an Executive Agency of the British Foreign and Commonwealth Office, UK
16 October	World Food Day, Rome
20 October – 7 November	Human Rights Committee, 79th session, Geneva

YES I/We would like to support the work of KHRP

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 (off Regent Street) Fax: 020 7734 4927
 LONDON W1S 3HP Email: khrp@khrp.demon.co.uk

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Designed by Jude Keen

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.