

# Report

## **International Investigative Mission**

### **Turkey**

## **Human Rights in the Kurdish Southeast: Alarming situation despite extensive legal reforms**

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## **Acknowledgements**

*The FIDH wishes to extend its deep thanks towards the Turkish organisations and individuals who have contributed to the investigative mission to Turkey in May 2003. The authors would like to thank representatives of the FIDH's affiliated and correspondents members in Turkey, the Human Rights Association (IHD) and the Human Rights Foundation of Turkey (HRFT) and in particular, Reyhan Yalcindag, Vice President of the IHD and Selahattin Demirtas, Chairman of the IHD's branch office in Diyarbakir, together with the staff in Diyarbakir. The FIDH also thanks the "Fonds d'aide aux missions" which brought its financial assistance to this mission.*

## I. INTRODUCTION

The investigative mission to Turkey, carried out by the FIDH delegation between May 16 and 26, 2003, was mainly aimed at allowing the FIDH to review allegations of violations of the right to life and personal security and reported serious breaches of the freedom of expression and association in the southeast regions of the country.

The FIDH delegation, constituted by Elsa Le Pennec and Serge de Biolley, held meetings with many individuals and organisations – both governmental and non-governmental. The chargés de mission met with representatives of the civil society in Turkey including: the Human Rights Association (IHD), the Human Rights Foundation of Turkey (TIHV), Municipalities (Diyarbakir, Bingöl, Siirt), representatives of DEHAP (Pro-Kurdish political party) in Diyarbakir, Bingöl and Siirt), Bar Associations (Diyarbakir and Bingöl), KESK Union (Diyarbakir and Siirt branch offices), DÜO-DER (Diyarbakir branch office - Students association), TUYAD-DER and Thay-DER (Association of prisoners relatives), GÖC-DER association (Diyarbakir) and Mr Idris Tanis, lawyer of the applicants in the Silopi case<sup>1</sup>. The delegation also met with diplomatic missions in Ankara and with Mr Mehmet Elkatmis, Chairman of the Human Rights Inquiry Commission of the Turkish Grand National Assembly (TGNA).

The report illustrates the harassment and discrimination faced by all human rights activists in the Southeast Turkey who advocate for a peaceful solution to the Kurdish problem.

The observation of the trial of Kurdish MPs Leyla Zana, Council of Europe's Sakharov price of 1995, Orhan Dogan, Selim Sadak and Hadip Dicle sentenced by the Ankara State Security Court in 1994 to a 15 year prison sentence for alleged membership in an armed organisation provided an example of the restrictions on freedom of expression regarding the situation in the South East and breaches to the right to a fair trial.

This report further stands as an assessment of the human rights situation in the South East Turkey following the reforms adopted by Turkey regarding the Kurdish minority's rights and the lifting of the State of Emergency Rule (OHAL) in the last two remaining provinces (Diyarbakir and Sirnak) on November 30, 2002.



<sup>1</sup> See below "Disappearance of Mr Eubelir DENIS and Serder TANIS on 25 Jan. 2001

## **1. Preliminary observations**

Political and legal structure of Turkey framed by the authoritarian Constitution born out of the 12 September 1980 Coup d'Etat based on one ethnicity, one language, one religion and one opinion is in contradiction with the multiethnic, multilingual, multi religious and multicultural structure of the Turkish society. 15 million people of Kurdish origin live in the Republic of Turkey. Turkey has denied the Kurds the most basic and fundamental rights and actively suppressed Kurdish cultural identity over the last 80 years. In recent years, there has been an increase in the harassment and persecution against human rights activists, lawyers, parliamentarians, trade unionists, students and journalists who have raised their voices towards the promotion and protection of different languages and cultures and their concerns at the human rights violations committed against the Kurds and other national minorities.

Till now, democratisation debate in relation to the EU Accession Partnership has been a major theme occupying Turkey's civil society. The adoption of the reform packages is an important signal of the determination of the majority of Turkey's political leaders to move towards further alignment to the values and standards of the European Union. The Accession Partnership adopted in 2001 between Turkey and the European Union, provides Turkey with a roadmap to bring about "democracy, rule of law, human right, and respect for and protection of minority". Fulfilment of these criteria is a prerequisite for EU negotiations to begin.

Since 2001, the Turkish government passed several legal reforms within the framework of harmonization with the Copenhagen Political Criteria, including a constitutional reform (October 2001), the adoption of a New Civil Code (November 2001), three sets of reform packages (February - Law 4714, "the Mini-Democracy package", March and August 2002), and three other reform packages (January 10 and 24<sup>2</sup>, and June 19, 2003 "sixth package"). In addition, Turkish government is due to pass the "seventh package" before the end of this summer.

It should be noted that the visit came at a time when the Turkish government is engaged in a very intensive legislative reform process in its bid to join the European Union. On June 19, 2003, the Turkish Parliament's Justice Commission passed the "sixth reform package", drafted by the Ministry of Justice's office, Cemil Cicek in cooperation with the Secretariat General for EU Affairs. The package foresees amendments to nine laws and implies major steps towards meeting the European Union's political standards for membership including notably by:

- Abolishing Article 8 of the Anti-terror law (highly controversial law that has been the legal ground for many verdicts against Turkey in the ECHR on the grounds of human rights violations and the restriction of freedom of expression - However, FIDH is particularly worried about the current discussions around this latest adoption process. Indeed, while introducing its draft law, the Ministry of Justice Mr. Cicek said Turkey "did not need this article (article 8) to protect its integrity because article 312 of the Criminal Code already contained similar provisions". In addition to that, on July 1st, Turkish President Ahmet Necdet Sezer vetoed the 19<sup>th</sup> and 20<sup>th</sup> clauses of the sixth package arguing that the removal of the anti-terror law' Article 8 would encourage terrorism and endanger the indivisible unity of the Turkish State. The Turkish parliament has now the option to re-approving the vetoed provisions.
- Extending the freedom of broadcasting in languages other than Turkish and removes the ban on such broadcasting on private televisions and radio stations, stipulating that broadcasting in languages that are used by Turkish citizens in their daily life will be free on private media organisation; and also by lifting the ban on giving non-Turkish names to children, stipulating that a family can be prohibited from giving a certain name to their newly born child if the name contravenes ethic codes.
- Amending the law on administrative trial procedures to make retrials in Turkish courts mandatory when the European Court of Human Rights rules that the Court decision violated the ECHR, retrial provision will be applicable to cases that were previously concluded by the ECHR as soon as the reform package comes into effect.

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<sup>2</sup> 5<sup>th</sup> Harmonisation package adopted on January 24, 2003: allowing for retrial in cases where the ECHR found the decision of national courts in violation of the European Convention of Human Rights and Fundamental Freedoms.

In view of the negotiation towards accession to the European Union, there is a growing need for a careful analysis of the overall harmonisation of packages in order to assess their impact. Particular attention has to be paid from now to the implementation of these reforms. Despite major legal reforms adopted on the road to the accession partnership process, the last months have seen Turkey fail to carry out any major practical improvement of its human rights situation, especially in the southeast. FIDH observed very few significant changes in practice and continues to stress the urgent need for the adoption of a mixture of legal reforms and administrative implementation, which will turn democratisation objectives into a State policy.

## **2. Follow up of the State of Emergency's lifting (November 30, 2002)**

Turkey introduced first martial law then emergency rule in 13 provinces in 1987. About 37 000 have been killed in the 15-year-long conflict and millions uprooted from their homes as Turkish security forces waged a ruthless war on the PKK, the Kurdish paramilitary group, and the local population. State of emergency rule was gradually lifted as fighting between Kurdish separatists and government troops died down.

In November 2002, Turkey's National Security Council – which groups Turkey's top generals and government leaders – has agreed to lift the State of Emergency Rules (OHAL Act number 2935) in the last two remaining provinces of Diyarbakir and Sirnak – both provinces in the south-east of the country – after nearly 15 years of emergency rule and martial law. The lifting of the State of emergency rule was among the steps the EU asked the Turkish government to take as a condition for accession talks.

Despite the lifting of the State of Emergency Rules, extraordinary powers are still in the hand of the coordinator Governor of the Region - Law 2935 gives the region's governor the right to forbid access, distribution and printing of newspapers, books and tracts in the area - and local human rights organisations continue to report allegations of grave human rights violations in the South East. On the occasion of this latest investigation mission, FIDH witnessed very few significant changes in the field for ordinary people. The end of the state of emergency should lead to the gradual relaxation of the military hold on Diyarbakir and Sirnak, typified by high troops number, regular checkpoints, curfews and lack of recourse to the courts. However, for the time being, and according to the information collected during the mission, FIDH notes that checkpoints and army barracks have not been withdrawn yet eight months after the lifting of the emergency rule.

Mehmet Elkatmış, Chairman of the Grand National Assembly of Turkey's (TBMM) Human Rights Inquiry Commission stated on 12 December that although State of Emergency had been lifted, they were still receiving complaints from the region and the Commission would begin its investigations in the Southeast.

Human rights organisations, unionists, political parties together with municipalities themselves voiced their ongoing concerns about the increasing violations of the freedom of expression and association since the end of 2002. According to the mayor of Diyarbakir, the state of emergency still continues in practice. The mentality that underpins the emergency rule and the atmosphere of fear created, shows no sign of disappearing.

FIDH further warns that divisions remain between different parts of the country. Unemployment in the region remains seriously higher than in other parts of Turkey and there has been no improvement made to develop the economic life in the region. Turkey has to make efforts to eliminate the economic unbalance between regions and overcome the social under-development of the regions.

Indeed, "Turkey ranks high among countries with severe problem of regional inequalities. Disastrous economic conditions prevail in the southeastern provinces...The whole region has always suffered from a lower level of social and economic development than the rest of the country, with up to 60 percent of its population below the poverty rate. Decades of emergency rules have left the region poor and devastated, with infrastructure and other resources destroyed; making the recovery of the region extremely difficult... The most well off cities of the east and southeast are Elazig, Malatya and Diyarbakir. However, even these cities fall short of the national average for per capita income. The

poorest cities of Turkey and the region are Mus, Agri, Bitlis and Bingöl. In these cities, the Gran National Product (GNP) per capita is below that of many countries of Africa<sup>3</sup>.

In the year 2002, the highest unemployment rate was in the Southeast Anatolia region with 17.6 % within urban areas. The region which had the highest unemployment rate of educated young people was the Southeast Anatolia with 34.8 % for total and 36% for urban areas.

It finally appears that the State of emergency, despite its lifting last November, has rather been globalized strengthening the authoritarian nature of the national security concept in Turkey. In the course of the war against neighbouring Iraq in early 2003, anti-terror struggle has been launched on a global scale.

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<sup>3</sup> See Mustafa Sonmez 15 July 2001, Turkishdailynews

## II. SUBJECTS OF CONCERN

### 1. Right to life and personal security

The right to life and to personal security has continued to be at risk for the last two years in Turkey. Although FIDH's affiliated and correspondent members in Turkey, the Human Rights Association and the Turkish Human Rights Foundation note a decrease -in comparison with previous years in the southeast Turkey-, of torture or ill-treatment, enforced disappearances, extra judicial killings and forced displacement, the phenomenon has by no means disappeared and continues to raise serious concerns in the region.

#### **i. Torture and ill-treatment**

FIDH notes that despite legal amendments adopted by the Parliament since October 2001 (reduction of the length of the period of police custody, right to access to a legal counsel from the outset of the custody), circulars issued by the relevant ministries, and training programme on human rights conducted for security forces, torture practices continue.

IHD's figures indicate that in 2002, 876 people have been tortured in Turkey and 862 in 2001. It appears that for the period between January and March 2003, the Human Rights Association (IHD) reports 392 cases of torture and ill treatment. According to the Minister of Justice, Cemil Cicek, while 4600 people have been charged with torture, 80 % of these did not end up before a court.

FIDH is particularly concerned by the allegations which indicate that women of Kurdish origin and women holding political beliefs unacceptable to the authorities or the military are particularly at risk of frequent sexual violence and rape committed by state security agents. FIDH recently received information about the rape and torture committed against **Ms. Gülbahar Gündüz**, an executive member of the Women's Section of the Kurdish Political Party DEHAP Istanbul. According to the information received from the Human Rights Association (Istanbul), on June 14, 2003 at 9:00 a.m., Ms Gündüz was abducted from the street by four men and was blindfolded. While the abduction was taking place, Ms Gündüz claims to have heard a person on the street tell her abductors to leave her alone, and the men responded by identifying themselves as police officers. Ms. Gündüz was taken to a dark room where she remained blindfolded while she was interrogated and tortured. She claims that 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 with a steel rod between her legs, tore the skin on her back, and put out cigarettes on her cheek, all injuries verified by the doctor's report. Ms. Gündüz also claims that one of the men forced his penis into her mouth. Twelve hours later, Ms. Gündüz was reportedly pushed from a moving car out onto the street near Gaziosmanpasa, a part of Istanbul. The police reportedly harassed Ms. Gündüz in connection with her political activities leading up to March 8, International Women's Day. The police also denied involvement in that incident. FIDH notes that these acts occurred immediately in the wake of a statement made by Recep Tayyip Erdogan, Prime Minister, recalling the Turkish government's commitment to finally eradicate torture ("zero tolerance").

On February 18, 2001, **Selahattin Oge** was kidnapped by JITEM (Gendarme Counter-Terrorism Directorate) members in Karahamza (Yorgancayir), village of Karliova district, in Bingöl province and then thrown to a street after being tortured. According to the latest information, it appears that the case is still pending before the Heavy Penal Court of Bingöl.

Of particular concern for FIDH is the existence in the Turkish legal system of a status of limitation for crime involving torture. As an example, it has been reported that on 18 February 2003, a court case came to an end concerning the torture of Enver Gündüz, Sehabettin Alp, Hanifi Turan, Hüseyin Avun, his wife M. Avun and Sivin Agahatun committed during 1995 by Ramazan Sürücü (head of the Anti-



terror Unit) together with numerous police officers. The case was reportedly dismissed because of the status of limitation that had been reached on December 31, 2002.

In its alternative report submitted to the United Nations Committee Against Torture (UNCAT) at the beginning of May 2003, the FIDH put emphasis on the lack of implementation in practice of the legal reforms adopted by Turkey in the recent years in order to comply with the UNCAT's obligations and the European Union standards.<sup>4</sup>

***FIDH recommends that Turkey urgently repeals the status of limitation for crime of torture and expedites trials of public officials indicted for torture or ill treatment. FIDH stresses the need for Turkey to ensure that members of security forces accused of torture are suspended from duty during investigations for torture or ill-treatment and immediately dismissed if convicted, ensure an efficient and transparent complaint system and guarantee that prompt, impartial and full investigation into allegations of torture or ill-treatment conducted and sentences commensurate with the gravity of the crime.***

***The FIDH calls upon Turkey to combat torture practices, by ensuring that all the new developments in legislation are made widely known to all public authorities and widely disseminate the United Nations Committee Against Torture's latest conclusions and recommendations***

## ii. Disappearances

Many cases of disappearances in Turkey are not resolved. The majority of these cases reportedly occurred in the southeast Turkey, in areas where the State of emergency was in force.

### - Silopi case and the investigations of the ECHR

In the case of disappearances, legal remedy play an even more significant role than for other kind of human rights violations; it enables the relatives of the missing person not only to see the violation recognised and to seek reparation ... it also helps them to know what really happened to the person(s) who disappeared and whom they will never see again. Facing reluctant if not non-existent co-operation from national authorities, the victims will often have to submit their request to the ECHR.

But in disappearance cases, often characterised by a gap of information from the moment the person disappears, the ECHR is usually obliged to conduct a fact-finding investigation on its own. With limited resources, the investigation lead by the ECHR largely depends on the co-operation with national authorities, which is part of the obligations of each Party to the Convention (art. 38 of the ECHR).

The FIDH wants to emphasise the urgent need for a better and fairer co-operation of Turkish authorities in these investigations conducted by the ECHR. Turkey has not only been repeatedly convicted of violations of art. 2 (right to life) of the Convention; it has also been pointed for non-compliance, in such disappearance cases, with the obligation to "furnish all necessary facilities" to the European Court<sup>5</sup>. The "non co-operation" of Turkish authorities takes multiples forms: non-communication of criminal file, failure to summon requested witness, unjustified and unreasonable security conditions for the hearing of officials, absence of reaction to multiple letters of the ECHR asking for information.

During the mission on May 2003, the FIDH gave specific attention to the "**Silopi**" case brought to the ECHR, where the attitude of the Government is again very problematic. The disappearance happened in January 2001 in Silopi (Sirnak province). Serdar TANIS, chairman of HADEP (People's Democracy Party) in Silopi and Ebubekir DENIZ, member of HADEP have disappeared, reported missing since 25th January 2001 when they went to the Gendarmerie in Silopi, summoned by a phone call from the Commandant of the Gendarmerie. The case resulted in numerous interventions from the civil society,

<sup>4</sup> See Torture: Still a routine practice in Turkey, <http://www.fidh.org/europ/rapport/2003/tr361a.pdf> See also CAT Concluding observations and recommendations: CAT/C/CR/30/5, 13 May 2003, <http://www.unhchr.ch>

<sup>5</sup> See Tepe v. Turkey, 9 May 2003, req. 27244/95, §§ 127; Aktas, v. Turkey, 24 April 2003, req. 24351/94, §§ 272; Orhan v. Turkey, 18 June 2002, req. 25656/94, §§ 266.

including the Human Rights Associations (IHD) in Diyarbakir and the World Organisation Against Torture (OMCT). At the request of relatives of the victims, the Public Prosecutor in Silopi initiated an investigation. However, he requested a month later that the district-court judge issue an injunction restricting access to the preliminary investigation file. Since then, the relatives have received little if any information on the investigation.

On 9 February 2001, the relatives introduced a request before the ECHR alleging that Serdar TANIS and Ebubekir DENIZ were extrajudicially executed while in police custody, notwithstanding the authorities' denials that they had been detained<sup>6</sup>. On 11 September 2001, the ECHR declared that the request was admissible, rejecting the Turkish Government's opinion that the applicants, an investigation being still open, had not exhausted the domestic legal remedies. The Court rejected the Government's objection because it had not produced copies of the documents from the case file relating to the investigation instituted by the Silopi Public Prosecutor, and therefore failed to demonstrate that a proper investigation was taking place.<sup>7</sup>

A hearing was organised by the European Court in Ankara on 28-30 April 2003 to investigate the case, but is likely to be only partly fruitful because of the lack of co-operation from the Turkish authorities.

First of all, the highest-ranking officer at the Gendarmerie in Silopi at the time of the case, Colonel Levent ERSTOZ did not attend the hearing, despite the request of the ECHR and the fact that he is a key person in the case. Testimonies from members of the Gendarmerie in Silopi were reportedly often inconsistent and sometimes contradicted with each other; apparently, some members of the Gendarmerie declared that the missing persons were informers of the security forces, while others said that they were members of the PKK-KADEK. The FIDH is especially concerned about allegations that an officer was giving instructions to the witnesses from the Gendarmerie during the hearing, leading to a warning issued by the Court; it was also reported that the witnesses from the Gendarmerie were informed, before entering the hearing room, of what previous witnesses said. Finally, the Court reportedly mentioned that some documents transmitted by the government were scrapped in many parts, which makes their use rather difficult for the investigation.

### **- Saturday Mothers**

The family and friends of disappeared persons may suffer the same fate themselves. To search for the truth may expose them to even greater danger. Since May 1998, relatives of disappeared persons in police custody "the Saturday Mothers" who were holding weekly vigil in the Central Istanbul (in front of the Galatasaray High School) demanding that the Turkish authorities account for the fate of their beloved, have continuously faced heavy-handed police repression explicitly aimed at preventing them from continuing their peaceful protests. Last May 17, Saturday Mothers gathered in Galatasaray for the first time since two years, in the presence of the press and international observers including the FIDH researcher. Indeed, the Human Rights Association declared May 17, the day on which Hasan Ocak's<sup>8</sup> body was found to be the national day of the disappeared.

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<sup>6</sup> Req. n° 65899/01, Yakup TANIS, Mehmet Ata DENIZ, Suayyip TANIS and Selma GÜNGEN (TANIS) v. Turkey.

<sup>7</sup> Req. n° 65899/01, decision on the admissibility, 11 Sept. 2001.

<sup>8</sup> Hasan Ocak a Kurdish shopkeeper living in Istanbul vanished during a security crackdown. Relatives found his body nearly two months later buried in an indigents' cemetery.



*Photo: Demonstration of the Saturday mothers in Galatasaray, May 17, 2003*

FIDH recalls that Article 13 of the UN Declaration on the Protection of All Persons from Enforced Disappearance states that relatives of the "disappeared", as well as others with knowledge or legitimate interest, have the right to complain to a "competent and independent State authority" which should have the powers and resources to conduct effective investigation. This includes the power to compel attendance of witnesses, to protect witnesses, to compel the production of relevant documents, and that the findings of such an investigation be made available on request to persons concerned. However, the lack of investigation in case of disappearances is of particular and ongoing concern for the FIDH. On 20 December 1996 the Turkish Government established the "Bureau for the investigation of Disappearances" but it appears that its real purpose is not to establish the fate of the "disappeared" but to discredit those concerned organisations and people whose call for thorough investigation along the lines indicated by the UN Declaration on the Protection of All Persons from Enforced Disappearance is an enduring embarrassment to the authorities. FIDH further recalls that the UN Declaration on the Protection of All Persons from Enforced Disappearances recommends that authorities carry out prompt, thorough and impartial investigation into every report of "disappearances".

***The FIDH calls upon Turkey to set up a high level and independent commission with strong powers to undertake investigations in cases where there is well-founded suspicion that individuals were abducted and "disappeared" by State agents and extra-judicially killed***

In addition to that, FIDH received information indicating that, despite its legal prohibition since May 2002, the practice of blindfolding detainees is still in force in certain areas, particularly in the Southeast. FIDH is further particularly worried that the safeguards concerning the registration of detainees by the police together with the prompt notification of the police custody to the family are allegedly barely complied with.

***In this view, FIDH calls upon Turkey to ensure the full implementation in practice of the prohibition against blindfolding of detainees, and to guarantee that detention records of detainees in police custody are properly kept from the outset of the custody period, including the period when they are removed from their cells, and that such records are made accessible to their families and lawyers. Judicial proceedings should be immediately launched against***

*those civil servants who continue to disregard these rules and should be immediately dismissed.*

### iii. Extra judicial executions

It appears that the number of serious human rights violations, including extra judicial killings, attributed to State agents has decreased in the last two years. However, FIDH was informed that a large number of past cases remains unresolved, particularly in the Southeast Turkey, and heard testimonies reporting some new cases which occurred in the Southeast in the last six months.



*Photo: Xezal Beru, 13 years-old girl attacked by gendarmes dogs in Karlioiva village*

On March 20, 2001, **Xezal Beru**, an 13 years old young girl, was killed by dogs of Sagnis (Yigiller) village in Karlioiva gendarme station (Bingöl province) while going picking grass. According to the information collected thanks to the Human Rights Association's branch office in Bingöl, the soldier who was on duty that day and gave the instructions to the dogs to attack the Xezal Beru has not been arrested yet nor dismissed by the authorities.



*5 June 2003, commemoration ceremony of the death of Xezal Beru, in Karlioiva (on her birthday).*



**Haci Olmez**<sup>9</sup> was killed by gendarmes in the village of Elemune (Andac) in Uludere, Sirnak while he was looking for his lost sheep. The gendarme forces confirmed the killing and did not give any justification. Gendarme soldiers from the Andac Gendarme Battalion attacked him along with his cousin, 30-year-old Mevlut Olmez. He was shot and lost his life. The perpetrators then took his body to the Turkey-Iran border.

Gendarmes reportedly killed **Celik Kahraman**<sup>10</sup>, 25 years old, near Kursunoglu Oil firm in Kurubas while he was driving his car to his house from Baskale to Van. Following the incident, relatives' supporters by demonstrators protest in front of the Governor's office of Van. As a result, the police attacked the demonstrators, injured and detained some of them including the victim's relatives.

***To date, FIDH remains particularly concerned about the lack of willingness from the Turkish authorities to clarify the circumstances, identify and prosecute the perpetrators, grant compensation to the victims or their families and prevent future violations. Impunity continues to be the principal cause for the perpetuation of human rights violations, and in particular of extra-judicial killings. Turkish government should urgently take effective measures to avoid recurrence of such violations by investigating all instances of alleged violations, and by prosecuting and punishing the perpetrators.***

#### iv. Prisons<sup>11</sup>

FIDH remains seriously worried at the problems in Turkish prisons resulting from the introduction in December 2000 of the "F-type prisons". FIDH recalls that the use of solitary confinement generalised through the introduction of the F-type prison endangers a prisoners' psychological and physical health and must only be applied with extreme caution. The United Nations Special Rapporteur on Torture<sup>12</sup>, and the European Committee on the Prevention of Torture (CPT) already confirmed these concerns. In addition, the United Nations Committee Against Torture (CAT) recently expressed its major concerns about "*the alarming problem in prisons as a result of the introduction of the so-called "f-type prisons" which have led to hunger strikes causing the death ...*"<sup>13</sup>.

Far from taking into consideration the international community's conclusions, including the CAT's recent concluding observations, recommending Turkey to solve the problem by entering into serious dialogue with inmates, the Turkish government is planning to transfer prisoners to two newly-constructed high security prisons in Diyarbakir (Devegecidi, in the village Ücküyu) and Burdur.

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<sup>9</sup> Kurdish Observer, "A villager was killed in Sirnak", 10 April 2003.

<sup>10</sup> Kurdish observer, "Murdered by unknown perpetrator", 28 April 2003

<sup>11</sup> Interview with TUYAD-DER President in Diyarbakir, May 20, 2003

<sup>12</sup> See Report of the Special Rapporteur on Torture following its visit to Turkey, E/CN.4/2001/66.25 January 2001

<sup>13</sup> *Ibid.* footnote 12.



*Photo: Newly-constructed High Security Prison, Diyarbakir province, Ücküyu village, Devegeçidi*

In the course of its mission, FIDH received allegations of continuing violations of the basic rights of the prisoners held in special types prisons (E-type and F-type) in the southeast provinces including in Konya, Erzurum, Mus, Cankiri, Amasya, Batman, Siirt, Mardin and Bartın. A wide range of violations were reported including: the ban on Kurdish language during the visit to prisoners (prisoners' relatives who speak Kurdish are threatened and even physically attacked); Kurdish music bands and tape confiscated, legal publications in Kurdish prevented from entering into prisons; lack of medical treatment (inmates suffering from serious and chronic illness are not treated); prisoners are forced to pay for electricity and water consumption following the entry into force of a bill in February 2001; relatives and lawyers are harassed and intimidated during the visits (humiliating searches imposed, legal files confiscated); ...

***In light of these information, FIDH urges Turkey to ensure that ongoing inspections of prisons and places of detention by judges, prosecutors or other independent bodies (such as Prison Monitoring Boards) continue to take place at regular intervals, and that appropriate action is taken upon their inspection reports and recommendations by the responsible authorities.***

***Moreover, the FIDH urges Turkey to solve the current problem in prisons generated as a result of the introduction of the "F-type prisons", including by granting, as a matter of priority, amnesty to prisoners sentenced for their political beliefs, as a way of avoiding new clashes and consequently custodial deaths***

## **v. Displaced persons**

Between 380.000 (Turkish official figures) to 4.000.000 people (NGO estimations) were displaced from their village in south-east Turkey during the 15-year (1984-1999) conflict situation which opposed security forces and the Kurdish Workers' Party (PKK). While the government always insisted on the fact that these displacements were caused by the PKK, decisions of the ECHR, having lead to convictions of property rights violations, now show that at least a significant number of cases of

villages burned and destroyed were the result of the action of public authorities (police and army) or of village guards armed by the government<sup>14</sup>.

Several initiatives were taken by the Turkish authorities to enable displaced persons to return to their homelands. In October 2002, the Interior Minister stated that the last program had led to a total of 51 152 people having returned to their places. At the same period, Human Rights Watch issued a comprehensive report<sup>15</sup> on displaced persons in Turkey; the conclusions of the report included serious doubts on the consistency of the official figures on Return and Rehabilitation projects, as well as the identification of numerous obstacles for an effective implementation.

The FIDH welcomes the initiatives taken by the Turkish authorities and acknowledges the complexity of the situation but at the same time stresses the fact that displacement of population resulted in gross human rights violations that destroyed entire families and individual lives. It is still, together with other factors such as the poverty in which displaced persons have to live, a major factor of instability and insecurity in the region.

The mission carried out in May 2003 by the FIDH generally confirmed HRW analysis; despite the lifting of OHAL (State of Emergency Rule), tremendous obstacles still remain. These obstacles are likely to make the implementation of the program very exceptional and therefore will delay any significant improvement of the situation in the region.

#### a) Village guards

The system of "temporary village guards" was introduced by amendment of the Village Law n° 442 on 4 April 1985. The temporary system became systematic and permanent in the OHAL region. Armed and paid by the government, village guards became uncontrolled but locally powerful militias. They were found to be responsible for a large number of human rights violations. The Inspection Committee of the Prime Ministry stated in its Susurluk Report in January 1998 that village guards were the part of society that had most intensely been involved in "dirty jobs". In 2002, village guards reportedly committed 11 killings<sup>16</sup>. Not only do village guards maintain the region in a state of violence, they are also resented as a move backward, the recreation of a feudal society in rural areas.

This situation might be the most important obstacle to the return of displaced persons; village guards repeatedly oppose the return despite official authorisation. It is frequent that villagers who were granted the permission to go back to their village have to face strong, and sometimes armed opposition, from the village guards. This was reportedly the case, for example, in Bayramli Village (Siirt region). In Sept. 2002, in Urlak village, despite official authorisation, the opposition of village guards to the return of former inhabitants resulted in the killing of 3 people and 4 were injured. In April 2003, village guards had reportedly installed checkpoints at some places around Sirnak, while returning to their village, some men also fear to be forced to become village guards themselves.

#### b) Restriction to freedom of circulation

Despite the lifting of OHAL (State of Emergency Rule), numerous checkpoints are still in place. They make circulation in the region considerably difficult, and sometimes hazardous with apparent discretionary power left to the security forces. FIDH's delegation itself faced numerous checkpoints during the mission in May, and in particular on the road from Diyarbakir to Bingöl and Sirnak.

#### c) Unnecessary formalities

Return to village of displaced persons requires that these people accomplish some administrative formalities in order, for example, to ensure statistic records and enable the public authorities to manage these movements. However, some requirements seem to have nothing to do with such administrative reasons. They are politically oriented and may prevent people from returning to their village. In May 2003, people wanting to return to their villages were still, in many cases, obliged to sign

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<sup>14</sup> See SELCUK and ASKER v. Turkey, Judgment ECHR, 24 April 1998, req. 23184/94 and 23185/94.

<sup>15</sup> "Displaced and disregarded: Turkey's failing Village Return Program", October 2002.

<sup>16</sup> HRFT monthly report, Nov. 2002.

a paper by which they "recognise" that their displacement was caused by the PKK. This obligation forces the people to take side in the conflict, if not to make a statement contrary to the reality. It serves no purpose but to make the return to village even more sensitive than it already is, and therefore should be ended.

#### d) Landmines

The 15 years conflict in the Southeast resulted in a large amount of rural areas covered by landmines fields. Here is a major problem that has to be faced by the government, regardless of the question of who is responsible for the placement of these engines. The idea of freedom of circulation tends to be sadly ironic in many areas of the South East, where casualties caused by landmines regularly take place.

It is obvious that this danger is an obstacle for the return of displaced persons. Returning to the homelands implies a minimum level of safety; it is hardly surprising that many people do not want to come back to their village when they fear that landmines will kill their children and prevent them from working in the fields. Without undermining the efforts made by the government to tackle this issue, the FIDH found out during the mission in May 2003 that the situation is still very serious.

In Kasric Village, landmines have reportedly killed 3 persons and seriously injured 3 others since 1992, not counting the casualties on animals. The last casualty took place in April 2003, and resulted in one person being seriously injured. The victims and their relatives in Kasric are reportedly experiencing pressure from security forces to avoid the introduction of complains.

But the FIDH is also very much preoccupied by allegations that new landmines fields are being established near the Iraqi Border. In February and March 2003, in relation with the situation in Northern Iraq, the Turkish Army increased its presence in the region around Cizreh and Sirnak; since then, between 2 and 3 accidents take place every month due to landmines explosions in the fields and mountains around Cizre, which leads the people the FIDH's delegation interrogated think that the Army has installed new landmines fields without telling the population. This average of casualties is likely to increase dramatically during spring and summer, as the weather will allow more people to go out of the city. A delegation reportedly went to the Gendarmerie and the municipality to ask information on these events and, at the very least, communication on the places where the new mines were inserted. The authorities responded in saying that the PKK-KADEK is responsible for these new landmines fields, which seems hard to believe as one can legitimately wonder what would be the interest of the PKK-KADEK in doing so.

While the fact-finding mission could not inquire further on the subject due to the lack of time, it found the source of information very credible. The FIDH therefore urges the government to urgently investigate and ensure, if this information is verified, that the population is immediately informed of the places where the mines are, that these places are soon cleared and that these events, which remind the worst period of the conflict in the Southeast, may not happen again.

#### e) Opposition of the Army

The Army is reportedly opposing some return to village that were authorised by the governor. In Idil District, Mavil Adiman and Yusuf Tanis went to court to ask for permission to retake their land occupied by the Army since 1991. The competent court decided to investigate and see the land, but could not go on site because of the opposition of the Army. The Army reportedly threatened the lawyer of the two applicants. In Beytussehap district, in May 2003, 500 settlers who received the authorisation to move to the plateau, as they used to do every spring, were blocked by the army and forced to wait for a long time.

#### f) Other obstacles

Return to village v. Resettlement: There is an unfortunate tendency to include resettlement operations among so-called "Return to village" projects whereas "Return" and "resettlement" should not be confused. Resettlement, even in the case of people "resettled" in the region from where they were displaced, means that these people will not go back to their house or village. This is the case when the Turkish authorities count on the creation of "central villages" and "village-townships" to implement the



return to village projects. In its 2002 reports on displaced persons, Human Rights Watch provided extensive information on these central villages and village townships. The international organisation feared that these initiatives would aim at maintaining control on the people by resettling them in villages dominated, for example, by village guards. It also said that these operations could be seen as means to gather international funds, including World Bank funds, under the legitimacy of the "return to village" objective. The investigation carried out by the FIDH in May 2003 confirmed fears expressed by HRW. For example, people who want to go back to the hamlets which are situated around Sirnak were reportedly told by public authorities that they could do so only if these hamlets were regrouped in new "villages-townships". This perspective is very distressing for these people and do not provide for an incitement to apply for a "return to village" authorisation.

In Ekinyolu village (Eruh district), 25 people made their application in November 2002 to come back to their village. The government said it would consider the question. In May 2003, these people had no further information on their application.

FIDH reminds that the UN Guiding Principles on Internal Displacement provide that international humanitarian organisation and other appropriate actors have the right to offer their services in support of internally displaced persons, and that such organisations should have unimpeded access to internally displaced persons. However, in practice, Turkish government has consistently cut non-state agencies out of the whole return plans' process and NGOs have never been invited to give their input. Far from providing "appropriate actors" access to internally displaced persons, the judicial authorities have relentlessly persecuted organisation, including GOC-DER and GIYAV that provide assistance to them.

***The FIDH recommends Turkey implements credible and efficient return to village projects, including by abolishing the village guard system, increasing initiatives to clear landmines fields, and preventing the Army from opposing this implementation***

***FIDH recalls that Turkey is due to provide, in its next periodic report to the United Nations Committee Against Torture (UNCAT), information on the implementation of the "Return to Village Programme" regarding internally displaced persons.<sup>17</sup>***

## **2. Freedom of expression**

FIDH praises the legal changes regarding freedom of expression adopted in Turkey throughout the adoption on February 6, 2002 of the "Mini-Democracy package". However, despite the taboo-breaking move to improve the rights of the Kurds, those who express their opinions and advocate for a democratic, political and peaceful solution to the Kurdish question continue to be harassed and prosecuted.

Turkey still relies on an arsenal of restrictive, security-oriented laws and the judiciary is used as a tool to punish those who express their critics towards government policies and publish information on human rights. FIDH is particularly concerned at the continuing use by the judiciary of the most repressive provisions of the Turkish penal code (TPC), in particular Article 159 (mocking and insulting state institutions), Article 169 (aid to illegal organisations) Article 312 (incitement to hatred and hostility though discrimination) and the article 8 of the Anti-Terror Law 3713 on "separatist propaganda". It appears that pressure by authorities on freedom of expression increased noticeably during the first half of 2003 despite the reform trend and the lifting of the State of Emergency rule (OHAL) in the region. The Human Rights Association's figures between January and March 2003 indicate that 50 people were prosecuted and convicted for expressing their thoughts, including 23 under the Article 159 of the TPC, 5 under the Anti-terror law, 3 people under the Article 312 of the TPC, 19 on the grounds of the Article 169 of the TPC.

In its recent resolution adopted on May 15, 2003 following a search against IHD Headquarter in Ankara, the European Parliament noted that Turkey "*amended most of its legislation regarding*

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<sup>17</sup> United Nations Committee Against Torture, Concluding observations and recommendations, CAT/C/CR/30/5, 13 May 2003 <http://www.unhchr.ch>

*freedom of speech and association, but regrets that these amendments still leave ample scope for repressive actions by the police and that little has changed on the ground*<sup>18</sup>. More recently, in its resolution of June 5, 2003, the European Parliament further noted the modifications made to Articles 159, 169 and 312 of the Criminal Code and Article 8 of the Anti-Terrorism Act, but regretted that these articles, which relate to the protection of territorial integrity and to the secular nature of the State, still restrict freedom of expression.<sup>19</sup>

Indeed, Turkey recently reformed its Article 312 of the Criminal Code to allow punishment for incitement, but only when there is “a possible threat to public order”. The legal amendments further foresaw the reduction of prison sentences for violations of Article 159, including insults to state organs, from a six to three year maximum sentence.

In its definition of terrorism, the Anti-Terror Law (Law 3713) included non-violent forms of political dissent. The section of the law which has been used most extensively to detain those suspected of support for opposition movements is Article 8, which imposes three-years prison sentence for separatist propaganda whether violence is advocated or not. This statute has been used to prosecute journalists, lawyers, political activists, trade unionists, academics, writers and publishers.

Also, since the changes were made in Article 8, the security forces have used Article 312 of the Turkish Criminal Code which outlaws “inciting hatred” to prosecute and detain those suspected of membership or support of the PKK – KADEK or other opposition groups.

While praising its sixth reform package before its adoption by the Turkish Parliament, Minister of Justice, Cemil Çiçek, stated that lifting the Article 8 will not change the implementation (...) due to the availability of the article 312 of the Turkish Penal Code. Article 312 of the TPC imposes a three-year prison sentence for incitement to commit an offence and incitement to religious or racial hatred. In 2000, Akin Birdal, now Vice President of the FIDH, was imprisoned under article 312 for a speech in which he called for “peace and understanding” between Kurds and Turks.

FIDH further stresses that human rights defenders continue to be prosecuted under article 159 for non-violent activities such as criticism of government policies. Article 159 of the criminal code provides for a three-years prison sentence for “insulting “Turkish ness, the Republic, the Grand National Assembly, the spiritual personality of the Government, ministries, the military, security forces or judiciary of the State”.

As an example, the public prosecutor of the Istanbul State Security Court launched a proceeding against Suat Özalp, owner and chief editor of the newspaper Azadiya Welat, for “supporting an illegal organization” (article 169 of the Turkish Penal Code) The indictment stated that the expression “Serok (President) Apo” was written under the photograph of Abdullah Öcalan which appeared on the newspaper on 17 May and some news contained “propaganda of an illegal organization”. The indictment asked for having Suat Özalp charged under Article 169 TPC and Article 5 Anti-Terror Law. The prosecutor also demands the closure of the newspaper<sup>20</sup>.

### **The right to use Kurdish language**

FIDH welcomes the recent legal authorisation of broadcasting and education in languages other than Turkish as part of the 3 August 2002 harmonisation package. However, according to the information collected in the field, Turkish authorities adopted restrictive regulations exception to this law preventing its implementation in practice.

#### Denial of the right to Kurdish language courses in schools and universities

Following the legal amendments adopted by the Turkish parliament removing the mention of “language forbidden by law” from legal provision concerning free expression, university students began a campaign submitting petitions supporting optional Kurdish language courses in schools and

<sup>18</sup> European Parliament resolution on the search made of the Ankara headquarters of the Human Rights Association of Turkey, <http://www.europarl.org>

<sup>19</sup> European Parliament resolution on Turkey's application for membership of the European Union (COM(2002) 700 - C5-0104/2003 - 2000/2014(COS))

<sup>20</sup> Özgür Gündem-TIHV, June 10, 2003

universities which led to the detention of more than 1'000 detentions throughout Turkey during December 2001 and January 2002.

The Higher Education Council (YOK) systematically attempted to obstruct the campaign of university students for Kurdish education by suspending students from high education and dismissing them from university.

**D.Ü.Ö.-Der** is an association gathering students of the Diyarbakir Dicle University, which aim is the promotion of the interests of students within the University life as well as leading cultural activities. Shortly after the reopening of the DÜÖ-DER in Diyarbakir, the police came and shut the association for another three months. The association was founded in 1999 but was closed six months later by police decision. On 17 May 2000, the association was closed by Diyarbakir Police HQ relying on Article 11/0 of the Law on a State of Emergency. Since then, DÜÖ-DER was reopened and closed 11 times for periods of three months. Last reopening of the association dates from March 2, 2003. The students reported that freedom of demonstration remains theoretical, even since the lifting of the State of emergency rule in November 2002 and further stated that they face frequent prosecutions and arrests. Indeed, the association reportedly faces harsh control by security forces, including regular visits of policemen in the office of the association without warning any mandate, camera recoding of the association's meetings and the obligation to communicate the list of members to the police during congress meetings.

In February 2002, the Ministry for National Educational dismissed the teacher **Abdullah Demirtas**, former chairman of the teacher's union Egitim-Sen in Diyarbakir and the member of KESK-Federation **Bendivelat Eminoglu, Sertas Demiral, sedat Balibey, Zahide Petekban** and **Ramazan Demir**, because they sang Kurdish song on the Congress of Egitim-Sen on 2 February. A court case them started against them at Diyarbakir State Security Court on December 19<sup>th</sup> 2002<sup>21</sup>. On November 29 2002, Van Penal Court n°1 acquitted **Hasan Ciftçi**, former chairman of the teacher Union Egitim-Sen in Van from charges brought under article 312 of the Turkish Criminal Code. He had been charged in connection with a comment he made on Medya-TV on January 11 on students who had signed petitions for education in the Kurdish language<sup>22</sup>. On November 19, 2002, Diyarbakir State Security Court n°1 convicted 7 people of having supported the PKK-KADEK, on the ground that they had participated in a march with torches in Mardin on 13 February demanding education in Kurdish. **Cem Fırat Halis**, student from the Cukurova who signed petitions for Kurdish optional course at the University (Adana) was prosecuted and detained on the ground of "supporting an illegal organisation" before the Istanbul State Security Court N°1. He was acquitted on December 18<sup>th</sup> 2002.

#### The right to broadcast in Kurdish on radio and television

As part of the 3 August 2002 harmonisation package, Turkey removed restrictions on broadcasting in minority languages, including Kurdish. With an additional provision incorporated into Article 4 of the Law on Establishment and Broadcasts of Radio and Television Stations, a liberty commonly known as "broadcasting in mother tongue" was made a part of Turkish legal system. According to that provision, *"Radio and television programs in different languages and dialects traditionally used by Turkish citizens in their daily lives may also be broadcasted."*

However, the High Council for Radio and Television (RTÜK), on which the military is represented, has deemed radio broadcasting in Kurdish unacceptable. The Law on the Organisation and Broadcasts of Radio and Television Stations (Status 3984) requires all broadcasting to be in Turkish. Therefore, the regulations enacted in December 2002 failed to give the new legislation full force. The regulations restrict broadcasting in minority languages to State channels only, and allow just four hours per week on radio and two hours per week on televisions. Furthermore, minority languages radio broadcasts must be followed by mandatory Turkish translation.

FIDH further notes that since January 2003, 4 radios and 1 local television were suspended 180 days from broadcasting by the High Council for Radio and Televisions (RTÜK). 6 newspapers and journals were closed 79 days. 9 journalists were taken under detention. 7 books, 17 journals, 7 newspapers

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<sup>21</sup> HRFT monthly report, December 2002.

<sup>22</sup> *Ibid.* November 2002

and 3 posters were confiscated and banned<sup>23</sup>. In addition to that, the RTÜK recently imposed a ban on broadcasting for radio station “Radyo Dünya” broadcasting in Adana for the program “Kurdish Language and Literature”. The radio will have to close down for one month starting from 10 July. “Radyo Dünya” was closed down in 2002 for the same reason, but Ankara Administrative Court No. 5 had cancelled the ban<sup>24</sup>.

On the evening of 18 June 2003, **Süleyman Özmen**, distributor of the Kurdish journal Azadiya Welat in Malatya, was beaten and kidnapped by the police, when he was distributing papers in Pasaköskü quarter. He was taken to somewhere near Bagtepe, 20 km far from Malatya. He was threatened to death, police officers shot twice to his temple with an empty pistol and then twice into the air with a loaded one. Afterwards he was left near a village. Özmen was kidnapped and threatened twice recently<sup>25</sup>.

FIDH notes that until regulations are in place and implemented by executive and judicial bodies at different levels throughout the country, Turkey will remain in breach of its most fundamental obligations under international human rights law and far from complying with one of the Accession Partnership agreement’s short term objectives (“remove any legal provisions forbidding the use by Turkish citizens of their mother tongue in TV/radio broadcasting”).

***Turkey should recognize as a matter of priority the right to unlimited broadcasts on local and commercial media of Kurdish music, news and cultural programs in Kurdish language; lift the restrictions on the exercise of fundamental rights contained in other areas of national legislation, in particular the RTUK law of June 2001; and withdraw military representatives from civilian bodies such as the High Council on Education (YOK) and the High Council for Radio and Television (RTÜK), in order to ensure that these institutions are fully independent.***

### **3. Freedoms of peaceful assembly and association**

Freedoms of peaceful assembly and association continue to be particularly restricted by the Turkish authorities, especially in the Southeast. Human rights organisation, pro-Kurdish political party, trade unionists and students were particularly targeted since the second half of 2002. There were several detailed amendments as part of the 2002 reform package, to the Law on Associations, but its generally restrictive spirit was maintained.

The following example of the harassment and judicial persecution against the democratic organisations in the Southeast Turkey stands as a follow up of a previous investigative mission carried out by the Observatory for the Protection of Human Rights Defenders, a joint programme of the FIDH and OMCT in March 2002<sup>26</sup>.

#### **Human rights organisations**

FIDH is very preoccupied by recurrent and recent repressive actions and judicial cases against human rights organisations and their members that illustrate a clear strengthening of the repression of human rights defenders in Turkey. FIDH stresses that human rights defenders continue to be prosecuted for non-violent activities under various provisions of the Turkish Penal Code, the Law on Associations n°2908 of 6 October 1983 and the Law n°2911 on Associations and Demonstrations.

Those who expressed their opinions recommending a democratic, political and peaceful solution to the Kurdish question are harassed and prosecuted. Leaders and grassroots activists of Turkish human rights organizations are frequently subjected to political intimidation.

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<sup>23</sup> IHD’s record, Human Rights Association of Turkey, Press release 23 April 2003, The Evaluation report of the months January-March 2003

<sup>24</sup> Evrensel-TIHV, June 15, 2003

<sup>25</sup> Özgür Gündem-TIHV, June 20, 2003

<sup>26</sup> See Observatory International and Legal Observation Mission Report - Turkey - Judicial Harassment Against Human Rights Defenders - December 2002

13 members of IHD were killed in extra judicial assassinations in the 1990s and none of the perpetrators were brought before judicial authorities since then. Over 500 cases are still pending against the board members of IHD Branches and Headquarter.

On May 6, the searches against the headquarters of the Human Rights Association (IHD) in Ankara<sup>27</sup>, as well as the Ankara branch office of the IHD, were operated by members of the security forces at the same time at 9.30 AM and lasted two hours. All the equipment of the offices was taken, including computers, hard disks, files, videotapes, etc. The forces were accompanied by the Prosecutor of the Ankara State Security Court, who went first to the headquarter and then to the branch office. The Public Prosecutor declared that the investigation was launched under the jurisdiction of the State Security Court on the grounds of 'aiding and assisting illegal organisations (art. 169 of the Penal Code).

FIDH stresses the fact that these searches occurred immediately following the attendance by members of the Human Rights Association at the sessions of the United Nations Committee Against Torture (2 – 5 May 2003), during which a member of the Turkish delegation questioned the appropriateness of the queries made by the Rapporteur of the Committee regarding the situation of harassment of human rights defenders in Turkey. On 5th May, while answering the Committee's questions, the delegation's member denied any repression against human rights defenders as well as the existence of a link between judicial procedures against Turkish human rights defenders and their human rights activities.

These events constitute a flagrant contradiction of these official declarations and show once again, the extent of the gap between the political reforms on one hand and the attitude of the judiciary on the other hand, in terms of implementation<sup>28</sup>.

In addition to that, FIDH recalls that several branches of the IHD in the Southeastern Turkey continued to face a wide range closed by judicial authorities since 2002 and their members prosecuted.

The **Diyarbakir's** branch office reportedly faced a wide number of judicial persecutions since its opening in 1998. The section remained closed between 1997 and May 12, 2000 when the IHD was allowed to re-open. Following this first closure, the Governor of the region decided to close the branch for another time on the ground of the article 11/o of the State of Emergency Law, the main IHD's section in the Southeast Turkey was subjected to another decision. In addition to these cases, Mr Osman Baydemir, former Chairman of the Diyarbakir's branch office and former Vice-president of the IHD, was charged with more than 200 cases and prosecutions. Mr Selahattin Demirtas appointed as chairperson of the branch office since September 2002 is charged with the following prosecutions: recently, two prosecutions were initiated by the Public Prosecutor of Diyarbakir State Security Court (SSC) against Selahattin Demirtas on the ground of Article 169 of the TPC following the release of the Violations Report of February 2003 (*case number 2003/647*) and the press release regarding the violations in January 2003 (*case number 2003/885*). In addition, the Diyarbakir Criminal Court of First Instance n°3 launched a court case against seven board members of the Diyarbakir's office on the ground of the Law on Associations n°2908, following the release of the Violations Report of April 2003. Diyarbakir branch office further had to pay fines following sentences. As an example, on September 2, 2002, the board members were sentenced to pay 2'218'104'099 TL.

In **Siirt**, it is reported that the Criminal Court of First Instance launched a court case against the board members of Siirt branch office, under the Article 37/1 (prohibiting associations from carrying out activities exceeding the strict framework of their purpose) and Article 76/1 of the Law on Associations (*case number 2003/247*), following the speech given by Ms Reyhan Yalcindag, Vice president of the IHD on the occasion of the General Assembly of Siirt section in early 2003.

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<sup>27</sup> See press release "The Human Rights Association offices raided by the Anti-Terror Forces ", The Observatory for the Protection of Human Rights Defenders (joint FIDH and OMCT venture), 6th May 2003.

<sup>28</sup> See Concluding observations and recommendations of the CAT: CAT/C/CR/30/5, May 14, 2003. See also, European Parliament resolution on the search made of the Ankara headquarters of the Human Rights Association of Turkey P5\_TA-PROV(2003)0218

In **Elazig**, a prosecution was launched under Article 159 of the TPC against Mr Cafer Demir, Chairperson of IHD's branch office, and Mr Mensur Isik, Secretary of Mus branch office, for having given a speech on the occasion of a panel in Mus on May 25, 2003.

In **Gaziantep**, the Chairman of IHD's branch office was charged on the ground of Article 169 of the TPC before the Adana State Security Court (case number 2003/83). The Court held a session on July 1, 2003 and decided to continue to hear the case.

In **Mus**, 10 court cases were launched against Ms Sevim Yetkiner, Chairperson of IHD's branch by the Van State security Court. The SSC acquitted him from charges but the public prosecutor appealed three of them (one case under Article 312 and two under Article 169 of the TPC).

On 17 July 2003, Ms Sevim Yetkiner was taken under police custody by the Anti-Terror Department of Mus Directorate for Security. After custody, Ms Yetkiner was arrested and sent to prison by reserve judge in Muş on the grounds of arrest decision given by the Doğubeyazıt Peace Penal Court. The alleged reason for decision to arrest is to participate in a funeral of suspicious death of a prisoner, İsmet Baycan convicted on the grounds of violating the Article 168/2 of the Turkish Penal Code.

An appeal was filed against the decision of the Reserve Judge before Erzurum State Security Court on 21 July 2003. But the appeal was rejected and she will be kept in Muş Prison until 12 August 2003. The trial will be held on 12 August 2003 before Erzurum State Security Court. The indictment refers violation of Article 169 –aiding and assisting illegal organisations- of Turkish Penal Code.

In addition to that, Van State Security Court n°1 opened a court case against Reyhan Yalcindag, Vice President of the HRA and responsible for the branch offices in the region on the grounds of Article 312 of the Turkish Penal Code in connection with the speech she gave on the occasion of the General Assembly of Mus branch office in February 2003. FIDH was informed on July 22 that Ms Yalcindag was acquitted from these charges.

The **Hakkari** branch office of the Human Rights association has been facing numerous prosecutions since its opening on October 6, 2002. Hakkari Public Prosecutor indicted 7 board members of the branch office following a press release regarding the detention conditions of prisoners on December 12, 2002. Van State Security Court opened a court case against the Hakkari branch office on the grounds of the Article 169 of the TPC (case n°2003/27) following a press release concerning War and Isolation.

### **Freedoms of peaceful assembly and association in Bingöl: a growing concern**

Democratic organisations and human rights defenders reportedly face even further obstacles and violations of the freedom of expression and association in Bingöl where activities have been continuously prohibited<sup>29</sup>. It appears that the number of trials and prosecutions launched against **Mr Ridvan Kizgin**, Chairman of Bingöl branch office of the IHD, reached 47. There are also 5 investigations pending against him launched by the prosecution. As an example, on January 25, 2002, Ridvan Kizgin and **Fevzi Akbulut**, Chairman and secretary of the IHD's Bingöl office, were arrested after participating as observers in a press conference organized by the pro-Kurdish political party HADEP. They were detained and convicted under the Law n°2911 of 6 June 1983 on Assembly and Demonstrations. During its visit to Bingöl in May, FIDH received numerous testimonies alleging that police continue to frequently intervene in meetings and press conference and tape record the debates. The campaign of the Kurds for social peace and democratic participation continues to be systematically threatened and repressed by the Turkish security forces.

On June 16, more than a hundred women who came to Bingöl from various parts of the country with the aim of "founding peace table", were arrested and detained, including **Eren Keskin**, Vice President of the IHD together with the Chairmen of Bursa and Bingöl branch offices. They were later on released after one day. In November 2002, an Italian committee composed of unionists, teachers and human rights activists, who came to Bingöl to observe the election, was not allowed to leave their hotel. The police further allegedly hindered their observations and seized their passports. In April 30, 2003, the KESK speaker, Özgür Bektas, who went to the Bingöl Governor's office with the aim of requesting the authorization for the May 1 demonstration, was reportedly mocked and threatened with guns by security forces and the governor himself in his office.

On July 8 and 9, 2003, Mr. Ridvan Kizgin, Chairman of the Bingöl Branch of the IHD, received telephone threats<sup>30</sup>. On 5 July, the Bingöl branch released its report on the human rights situation in the province of Bingöl during the six-month period from January to June 2003, showing an increase in human rights violations including ill-treatment and harassment by state agents (police and gendarmerie). Mr. Kizgin presented the report, based on the testimonies of victims, during several press conferences.

On 8 July at around 10.30pm. Mr. Kizgin reportedly received a call on his mobile phone by a person who introduced herself as the Provincial Commander for Gendarmerie Regiment and asked Mr. Kizgin to report to the Provincial Commandership. The reason invoked was that his statements on human rights violations were false. He was asked not make new statements before he has talked to the Provincial Commander and to explain to the press and public opinion that human rights violations denounced were not representing the reality. Mr. Kizgin refused to go to the Commandership. On 9 July, Mr. Kizgin was reportedly called again on his mobile phone at around 9.30am. The person on the phone said that the Commander wanted to see him and asked him to come to the Commandership to withdraw his statements on human rights violations and to make a new statement that these allegations were not correct. Mr. Kizgin refused again and condemned the method used by the provincial authorities. The IHD immediately alerted the Prime Minister, the Foreign and Interior Ministers, the General Command of Gendarmerie and the Human Rights Parliamentary Commission. It is noteworthy that during the 1990s, thirteen were killed by extra judicial killing during the 1990s after they received similar phone calls

### **May 1st earthquake in Bingöl and related concerns:**

<sup>29</sup> See Observatory International and Legal Observation Mission Report - Turkey - Judicial Harassment Against Human Rights Defenders - December 2002, Observatory for the Protection of Human Rights Defenders (FIDH and OMCT joint venture)

<sup>30</sup> Urgent Appeal of the Observatory for the Protection of Human Rights Defenders, TUR 001/0703/OBS 032, 10<sup>th</sup> July 2003.





*Photo: Bingöl earthquake*



On May 1, an earthquake took place in Bingöl province, registered 6.4 on the Richter scale causing the death of 177 people and 521 people injured, and raising subsequent grave concerns in terms of governmental assistance to people. Located in the eastern Turkey, Bingöl is one of the poorest provinces of the country. 90 % of the population in the area was directly affected and the local population continues to live in tents outside their homes (the earthquake was followed by hundreds of aftershocks since May 1, 2003). According to the information collected in Bingöl from the human rights organisations, including the IHD's branch office, and from the Mayor of Bingöl himself, coordination between local authorities, government and humanitarian agencies raised major concerns in the aftermath of the disaster, leading to a flagrant lack of effective and efficient support to victims. On May 2, more than 1000 people marched on the Bingöl Governor's office (disaster response operations were coordinated by the Crisis Centre established at the Provincial Governor's office) demanding more tents and his dismissal. Security forces reportedly fired warning shots with automatic rifles into the air to try to disperse the crowd protesting at the insufficient government relief efforts

**Trade unionists**



Pressures are not limited to opposition politics, but are also extended to democratic mass organisations, including trade unionists who express their critical opinions towards governmental policies. Numerous trade unionists were prosecuted under various charges for having participated in illegal public meeting or demonstrations under the Law on Assembly and Demonstration Statute n°2911.

Founded in 1990, KESK (Confederation of Public Workers Trade Unions) constitutes one of the three federations of Turkish Trade Unions. The FIDH's delegation met with the Diyarbakir's branch, which opened in 1991. The federation is composed of the following nine unions: SES (Medical), Egitim-Sin (Teachers), TUMBELSEN (Municipalities), BES (office workers), BTS (Railways), Yapi yol Sen (Services for villages and roads), ESM (material, energy, industry), Tarim Orkom – sen (Land, agriculture, forests), Habersen (Telecommunication).

It appears to the FIDH that freedom of association and of demonstration is increasingly at risk since the lifting of the state of emergency in the region in November 2002. According to the information collected during the meeting, a high number of investigations was opened against trade unionists, especially regarding the contacts they may have with the DEHAP political party. Participants in many demonstrations and meetings held recently faced interventions of security forces. Activities concerning Newroz (the festival of the peoples of the Middle East and Central Asia which has more specifically become the national festival of the Kurds), 1 September World Peace Day, 1 May etc... were threatened in several provinces of the southeast.

FIDH further notes that, while under the state of emergency rule period, it was impossible to apply for organizing a demonstration, the current situation did not improved in practice in the sense that permission to demonstrate, theoretically possible, has never been granted since the lifting of OHAL in Diyarbakir province despite numerous requests. In addition, since November 2002, 5 cases have been launched against representatives of KESK unions, mostly on the ground of Act Law 657 on Civil Servants. It has further also been reported that to date, 627 unionists are jailed in Turkish prisons. In December 2002, 35 trade unionists, including two members of KESK union, were convicted under the Article 32/1 of the Law n°2911 on Associations and demonstrations and sentenced to 1 year and 3 months imprisonment. The trade unionists were accused of having blocked the traffic, passed through the police barricade illegally and failed to obey police orders on the occasion of a KESK organised demonstration on June 7, 2001.

### **Political parties: the case of DEHAP**

On 14 March 2003, the Constitutional Court banned the People's Democracy Party (Hadep) for aiding the PKK-Kadec, though Hadep denied links with the PKK. The court also banned 46 members of the party from politics for five years. Before the closure of Hadep but anticipating it, a similar party, the Democratic People's Party (DEHAP), was created in order for the candidates to take part to the November 2002 elections. At the time of the closure of Hadep, the Court of Appeal's Chief Prosecutor asked the Constitutional Court to ban DEHAP as well.

At the 2002 general elections, DEHAP emerged as a leading party in the Southeast. It obtained nearly 2 millions votes, was the first party in 12 provinces in the region and reached as high as 45-50% votes in cities like Diyarbakir, Batman, Sirnak, Hakkari and Van. Despite a 6.2% vote at national level, Dehap did not obtain any seat at the National Parliament because of the Turkish electoral regulation which requests a minimum of 10% of the vote nationwide to reach the Parliament.

The closure of HADEP took place just after the ECHR ruling on the Ocälan<sup>31</sup> case and can be seen as a provocative answer from the Constitutional Court, though such decisions to ban a political party had already lead to numerous condemnations of Turkey. Indeed, the ECHR found that the dissolution of the United Communist Party on 16 July 1991, of the Socialist Party on 10 July 1992, of the Freedom and Democracy Party (Özdep) on 14 July 1993, of the People's Labour Party (HEP) on 14 July 1993

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<sup>31</sup> Where the ECHR said that the PKK leader A. Ocalan was not granted a fair trial by Turkish authorities.

and of the Democratic Party (DEP) on 16 June 1994 all constituted infringements of the freedom of association (art. 11 ECHR)<sup>32</sup>.

It is worth considering further the last case, which regards the Democratic Party (DEP), because it is also related to the Leyla Zana case. The Turkish authorities took two decisions related to the dissolution of the party. Firstly, they decided that the DEP deputies in the National Parliament were to be deprived from their parliamentary mandate; secondly, they prosecuted them under criminal provisions, convicted and imprisoned those who did not flee the country. The ECHR found that the second decision was taken in violation of the rights of these deputies to a fair trial (see below). Regarding the first decision, the ECHR also found, in a separate judgement, that depriving the deputies from their parliamentary mandate constituted a violation of Art. 3 of Protocol 1 of the Convention, which provides for the right to free elections<sup>33</sup>.

It is also worth mentioning that each dissolution mentioned above was partly motivated by the position of the party on the Kurdish question and that, in each case, the ECHR found out that this position could not justify the closure of the party<sup>34</sup>. Since HADEP and DEHAP's position on the matter are not aggressive (they always insisted on the fact that their program did not involve any kind of separatism and that it aimed at promoting the rights and welfare of the kurds within the Turkish State), one can legitimately argue that closure of these parties would (will) be seen by the ECHR as a new violation of the Convention.

The decision of the Constitutional Court of 14 March 2003 closing HADEP and the current threats on DEHAP are therefore very disappointing signals sent by Turkish Authorities and are likely to be reflected in the next report of the European Commission.

During the investigation it lead in May 2003 in the Southeast, the FIDH experienced the concern of many actors (DEHAP members, but also Unions, associations...) about the possible closure of DEHAP. Some were foreseeing the closure for September 2003, a timing that would prevent the formation of a new party for the coming local elections in 2004.

Beyond the question of conformity with the Convention, one should be aware of the signification of these events. Providing a political voice and representation to Kurds, and therefore allowing a political party to make of the Kurdish question its main scope of action, appears to be an essential step towards more stability in the Southeast. On the other hand, repeated action against these political parties will only encourage its members to enter a new form of action to promote their interests, and this leads to the spiral of violence.

#### ***The FIDH calls upon the Turkish authorities to***

- ***Immediately put an end to any kind of repression, including judicial persecution, against the Human Rights Association, the Human Rights Foundation and all human rights defenders in Turkey and more generally conform to the provisions of the Declaration on Human Rights Defenders, adopted by the General Assembly of the United Nations on December 9, 1998, in particular article 1 which states that "Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels"; Article 12.2 which provides that "The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary***

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<sup>32</sup> CEDH, the United Communist Party of Turkey v. Turkey, 30 January 1998; CEDH, The Socialist Party and others v. Turkey, 25 May 1998; CEDH, The Freedom and Democracy Party v. Turkey, 8 Dec. 1999; CEDH, YAZAR, KARATAS, AKSOY AND THE PEOPLE'S LABOUR PARTY (HEP) v. TURKEY, 9 April 2002; CEDH, CASE OF DICLE FOR THE DEMOCRATIC PARTY (DEP) OF TURKEY v. TURKEY, 10 Dec. 2002.

<sup>33</sup> CEDH, CASE OF SELIM SADAK AND OTHERS v. TURKEY, 11 June 2002.

<sup>34</sup> There is one decision in which the ECHR decided that the closure of a Turkish party did not constitute a violation of the Convention. The case is related to the closure of the xx: it is interesting to note that, in this case, closure was not motivated by the position of the party on the Kurdish question but mainly on the fact that the xx party aimed at creating an Islamic State.

*action as a consequence of his legitimate exercise of the rights referred to in its present Declaration”;*

- ***Guarantee the respect of freedoms of expression, peaceful assembly and association in accordance with article 19, 20 and 22 of the International Covenant on Civil and Political Rights.***

### **III. DENIAL OF THE RIGHT TO A FAIR TRIAL**

#### **Observation of the trial against the Kurdish MPs before the Ankara State Security Court n°1**

Kurdish former deputies Leyla Zana, Hadip Dicle, Selim Sadak and Orhan Dogan were convicted on 8 December 1994 by the Ankara State Security Court n°1 under the Prevention of Terrorism Act and sentenced to 15 years in prison for “being member of an armed gang”. On 4 February 2003, the ex-parliamentarians officially lodged an appeal with the Turkish authorities in line with a new law adopted by the Turkish Parliament authorising a fresh trial for prisoners whose sentences was disallowed by the European Court of Human Rights. In its bid for EU membership, the Turkish government indeed adopted on January 23, 2003 the second harmonization package permitting the judicial review of any verdict in a trial judged unfair by the ECHR. The European Court of Human Rights ruled on July 17, 2001<sup>35</sup>, that the ex-members of the Turkish parliament had received an unfair trial. The Court indeed ruled that there had been a violation of article 6 of the European Convention on Human Rights because the Ankara State Security Court, that included a military judge, was not “an independent and impartial tribunal”. The Court further unanimously ruled that the applicants’ rights under Article 6 § 3 (a) and (b) had been violated in that they had not been informed in time of modifications to the charges against them and that they had not been able to have key witnesses questioned.



*Photo: Kurdish jailed deputies’ arrival at the Ankara State Security Court N°1 on May 23, 2003*

Following the adoption of the second harmonization package, the Ankara State Security Court n°1 approved the application made by the former Kurdish deputies who demanded their retrial in line with the amended law.

Accordingly, the Ankara State Security Court n°1 retries the former MPs but continuously disregards the neglected the decision made by the European Court of Human Rights. Since the first hearing, numerous irregularities were observed by the FIDH, which mandated an international observer, as well as other national and international observers. Indeed, although subjected to the terms of arrest set

<sup>35</sup> CEDH, Sadak and others v. Turkey, Judgment of 17 July 2003

forth by the Strasbourg Court<sup>36</sup>, the Prosecutor, Mr Dilaver Kahveci, has been consistently interfering with the judge's duty by systematically refusing the defence the right to question witnesses. In addition, the defence, led by Mr Yusuf Alatas from the Ankara Bar Association, has been prohibited to have witnesses for the defence heard.

As a result of the hearing, the State Security Court rejected all the defendants' lawyers requests, including the provisional release of the former deputies. In addition to these obvious violations of the right to defence, the FIDH's trial observer who attends these hearings, witnessed repeated delays in this trial, which give evidence of continuing malfunctioning of the judicial system in Turkey despite recent legal reforms adopted by Turkey.

The last hearing took place before the Ankara State Security Court n°1 on July 18, 2003 in presence of the judicial observer of the FIDH (after it was decided on June 20 to postpone it). Once again, the State Security Court n°1 in Ankara has decided that the four former Kurdish deputies would remain in prison and has postponed their trial to August 15th, arguing that key witnesses still needed to be questioned.

***In light of these latest developments, FIDH strongly urges Turkey to ensure a fair, impartial and public retrial to the jailed Kurdish MPs of the former Democracy Party (DEP), imprisoned since more than 9 years in the Central Prison of Ulucanlar – Ankara and to release them immediately.***

***The FIDH further calls the Turkish authorities to thoroughly reform the judicial system and in particular, to abolish the State Security Courts (DGM)***

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<sup>36</sup> The right to a fair trial recognizes in particular the right to question of have questioned witnesses for the prosecution and the defence (Article 6 § 3d) of the ECHR)

## CONCLUSIONS and RECOMMENDATIONS

### IV. Conclusions

FIDH acknowledges the recent measures adopted by the Turkish authorities together with the ongoing reform process in the course of the accession talks<sup>37</sup> in order to strengthen human rights safeguards for individuals. However, the insufficiency of these reforms and the lack of legal reforms' implementation by the executive and judicial authorities remain of growing concern. Following this latest investigative mission to Turkey, FIDH notes very few practical improvements in the country, and in particular in the southeast regions.

Information reported during the mission indicates that there is still a lack of accountability and transparency within the institutions, which adds to the insecurity of ordinary people. It appears that despite the number of complaints for violation of the right to life and to personal security, a wide number of security forces and police officers continue to go unpunished. In this context, FIDH stresses the need for serious officials to address clear messages that violations of human rights committed by State agents will not be tolerated and covered up.

It is FIDH's opinion that it is now the very time for the European Union and Turkey to seriously tackle the "Kurdish issue" and to resolve it democratically and peacefully. Recognition of the minority rights should form the basic guarantee of participatory and pluralistic democracy given the challenges faced by Turkey in the coming months. In this context, the only way the current Turkish government can remove one of the major obstacle to the European Union's membership is to sign and ratify the Framework Convention on National Minorities, and to implement it without any restrictions.

Last 6 June, the European Parliament called on Turkey *"to submit, as soon as possible, a clear roadmap and timetable for the implementation of the Copenhagen criteria as a prerequisite for the future improvements concerning reform of the Turkish state"*.<sup>38</sup> In the last few weeks, Turkish government has indicated that the "sixth reform package" adopted in June, will be followed by a "seventh package" expected to deal with the status of the military, together with a draft law granting a partial and conditional amnesty to members of the Kurdistan Workers' Party (PKK-Kadec).

In this perspective, FIDH firstly stresses the need for Turkey to include more civilian members in the country's top policy-making body, the military dominated National Security Council. FIDH further stresses the urgent need for the Human Rights Inquiry Commission of the Turkish Grand National Assembly (TBBM) to act as a real and effective watchdog within the needed implementation process leading to the democratization of the country and to regularly publish the results of these findings.

In conclusion, FIDH hopes that the Turkish government will take up the above-mentioned observations and the following recommendations in its current political reform's agenda.

### V. Recommendations

**In light of the information collected by the delegation during the investigative mission to the Southeast Turkey, FIDH calls on Turkish authorities Ensure the urgent and effective implementation in practice of the recent legal reforms adopted since October 2001.**

More generally, the FIDH encourages Turkey to continue its legislative reform process, in order to comply with its international obligations regarding protection of human rights, and to fulfill the "Political Copenhagen Criteria" set out for accession to the European Union.

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<sup>37</sup> Turkish government is due to pass the seventh reform package before the end of July 2003.

<sup>38</sup> European Parliament resolution on Turkey's application for membership of the European Union, 06/06/03, (COM(2002) 700 - C5-0104/2003 - 2000/2014(COS))

Regarding **torture**, the FIDH calls upon Turkish authorities to<sup>39</sup>:

- Urgently repeal the status of limitation for crime of torture;
- Ensure an efficient and transparent complaint system and guarantee that prompt, impartial and full investigation into allegations of torture or ill-treatment is conducted and sentences commensurate with the gravity of the crime and ensure that members of security forces accused of torture are suspended from duty during investigations for torture or ill-treatment and immediately dismissed if convicted;
- Combat torture practices, by ensuring that all the new developments in legislation are made widely known to all public authorities and widely disseminate the United Nations Committee Against Torture's latest conclusions and recommendations;

Regarding cases of **enforced disappearances, alleged extra-judicial killings and other violations of human rights**, the FIDH calls upon Turkey to:

- Set up a high level and independent commission with strong powers to undertake investigations in cases where there is well-founded suspicion that individuals were abducted and "disappeared" by State agents and extra-judicially killed;
- Promptly investigate all instances of alleged violations of human rights, identify and prosecute the perpetrators, grant compensation to the victims or their families and prevent future violations;
- Ratify the Statute of the International Criminal Court (ICC).

Regarding the **right to a fair trial**, the FIDH recommends to Turkey to:

- Thoroughly reform the judicial system and in particular, to abolish the State Security Courts (DGM);
- Ensure a fair, impartial and public retrial to the jailed Kurdish MPs of the former Democracy Party (DEP), imprisoned since more than 9 years in the Central Prison of Ulucanlar – Ankara and to release them immediately in conformity with the terms of the European Court of Human Rights and Fundamental Freedoms;

Regarding **prisons**, the FIDH recommends to Turkey to:

- Ensure that ongoing inspections of prisons and places of detention by judges, prosecutors or other independent bodies (such as Prison Monitoring Boards) continue to take place at regular intervals, and that appropriate action is taken upon their inspection reports and recommendations by the responsible authorities;
- Solve the current problem in prisons generated as a result of the introduction of the "F-type prisons", including by granting, as a matter of priority, amnesty to prisoners sentenced for their political beliefs, as a way of avoiding new clashes and consequently custodial deaths.

Regarding **freedom of expression**, the FIDH urges Turkey to:

- Urgently repeal articles 159, 169 and 312 of the Turkish Penal Code and article 8 of the Anti-terror Law used as a tool by the judiciary to silence any person, including human rights activists, who advocate for a democratic, political and peaceful resolution of the Kurdish question;
- Recognize as a matter of priority the right to unlimited broadcasts on local and commercial media of Kurdish music, news and cultural programs in Kurdish language; lift the restrictions on the exercise of fundamental rights contained in other areas of national legislation, in particular the RTUK law of June 2001; and withdraw military representatives from civilian bodies such as the High Council on Education (YOK) and the High Council for Radio and Television (RTÜK), in order to ensure that these institutions are fully independent

Regarding **freedoms of peaceful assembly and association**, the FIDH calls upon Turkey to:

- Immediately put an end to any kind of repression, including judicial persecution, against the Human Rights Association, the Human Rights Foundation and all human rights defenders in Turkey and more generally conform to the provisions of the Declaration on Human Rights Defenders, adopted by the General Assembly of the United Nations on December 9, 1998, in particular article 1 which states that "Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels"; Article 12.2 which provides that

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<sup>39</sup> See FIDH report "Turkey: Torture, Still a Routine Practice", May, 2003, n° 361/2, pp.23,24.

“The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his legitimate exercise of the rights referred to in its present Declaration”;

- Ensure that the Special Representative of the UN Secretary General on Human Rights Defenders visits Turkey and in particular the Southeast as soon as possible;
- Guarantee the respect of freedoms of expression, peaceful assembly and association in accordance with article 19, 20 and 22 of the International Covenant on Civil and Political Rights;
- Be cautious in the judicial proceeding regarding DEHAP political party and particularly the opportunity of proceedings aiming at banning DEHAP, in light of the importance to provide the Kurds with a political voice and to enable them to take part to the democratic debate.

Regarding **internally displaced persons**, the FIDH urges Turkey to:

- Implement credible and efficient return to village projects, including by abolishing the village guard system, increasing initiatives to clear landmines fields, and preventing the Army from opposing this implementation;
- Provide information on the implementation of the “Return to Village Programme” in its next periodic report to the United Nations Committee Against Torture (UNCAT)<sup>40</sup>.

**The FIDH further urges the international community, and in particular the European Commission, to continue to assess the impact in practice of the harmonization reforms adopted by the Turkish government since 2001.**

In particular, the FIDH calls upon:

1. The European Committee on the Prevention of Torture (CPT) to urgently carry out a mission to Turkey in order to review the compliance of the newly constructed High Security prisons with the provisions of the European Convention on the Prevention of Torture.
2. The UN special Rapporteur on Freedom of opinion and expression, the Special Rapporteur on the Independence of the Judiciary to visit Turkey in order to evaluate the situation especially in the Southeast.

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<sup>40</sup> United Nations Committee Against Torture, Concluding observations and recommendations, CAT/C/CR/30/5, 13 May 2003 <http://www.unhchr.ch>

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## La Lettre

is published by Fédération Internationale des Ligues des Droits de l'Homme (FIDH), founded by Pierre Dupuy.  
 It is sent to subscribers, to member organisations of the FIDH, to international organisations, to State representatives and the media.  
 This report was realised in the framework of a programme financially supported by the European Commission  
 17, passage de la Main d'Or - 75011 - Paris - France  
 CCP Paris : 76 76 Z  
 Tel : (33-1) 43 55 25 18 / Fax : (33-1) 43 55 18 80  
 E-mail: fidh@fidh.org/ Internet site: <http://www.fidh.org>

Director of the publication: Sidiki Kaba  
 Editor: Antoine Bernard  
 Assistant of publication: Céline Ballereau-Tetu  
 Author of this report : Elsa Le Pennec, Serge de Biolley  
 Original : English, ISSN en cours.  
 Printing by the FIDH.  
 Dépot légal July 2003 - Commission paritaire N° 0904P11341  
 Fichier informatique conforme à la loi du 6 janvier 1978  
 (Déclaration N° 330 675)

Prix : 4 Euros / £ 2.50