

TURKEY

The 1982 Constitution establishes Turkey as a republic with a parliamentary form of government. According to Article 2, Turkey is a democratic, secular and social State governed by the rule of law. The President is the head-of-State and shares executive powers with the Council of Ministers, consisting of the Prime Minister and other ministers. The President is elected by the Grand National Assembly (GNA) for seven years and may not be re-elected. National elections are held every five years through a system of proportional representation. The GNA consists of 550 members and carries out legislative functions.

Ahmed Necdet Sezer, the former President of the Constitutional Court, is President of the Republic. A three-party coalition consisting of the Democratic Left Party (DSP), the Motherland Party (ANAP) and the Nationalist Action Party (MHP) formed a majority government under Prime Minister Bulent Ecevit after the April 1999 elections. The Islamist Virtue Party, the major opposition party that had 102 members in the Parliament, was closed by the Constitutional Court on 22 July 2001, on the grounds that the party had engaged in activities against the secular principles of the Republic.

CONSTITUTIONAL AMENDMENTS

The 1982 Constitution was drafted by an assembly appointed by the military government which had taken power in the 1980 *coup d'etat*. The Constitution was endorsed by popular referendum in a process flawed by suppression of informed debate. Constitutional reform was widely discussed throughout 2000-2001. A number of leading authorities, including the President, the head of the judiciary, and the Parliament forwarded a series of proposed constitutional amendments in 2001. On 3 October 2001 the Parliament adopted constitutional amendments directed at 34 articles of the Constitution. Many legal authorities have criticised these amendments as cosmetic and lacking in substance. Human rights issues to which constitutional reform might be directed, such the nebulous conception of secularism, the death penalty, torture, restrictions on freedom of expression and closure of political parties remained inadequately addressed.

THE MILITARY

The military establishment continued to interfere in political life. A secret military document, popularly known as the "memorandum" (*andic*), was disclosed by Nazli Ilıcak, a journalist and a Member of Parliament, in her column in the *Yeni Safak* daily on 21 October 2000. This document, entitled *Strong Action Plan*, had been prepared at the directive of the Office of the Chief General in 21 April 1998, and was subsequently published by approval of Cevik Bir, the then-President of the Chief Staff. *Strong Action Plan* contained instructions by the military to major daily newspapers and their chief columnists to initiate a smear campaign against certain journalists, politicians, and human rights activists and organisations in order to discredit them publicly by associating them with the Kurdish Workers' Party (PKK). The list of targeted people included Akin Birdal, a lawyer and ex-chairman of the Human Rights Association, journalists Mehmet Ali Brand, Cengiz Candar, Mahir Kaynak, Yalcin Kucuk and Mahir Sayin, and the political parties Virtue Party and HADEP. As an alleged consequence of the ensuing media campaign, journalists such as Cengiz Candar and Mehmet Ali Birand lost their columns in their newspapers, and an assassination attempt was carried out against Akin Birdal (see *Cases*). The Office of the Chief Staff affirmed the existence of that document in a press statement of 3 November 2000, claiming that the program proposed in the

document had not in fact been implemented. Subsequently, Nazli Ilicak, Akin Birdal, Hasan Celal Guzel (former Education Minister and leader of the Rebirth Party), Sanar Yurdatapan (a human rights defender) and Mazlum-Der filed complaints in November 2000 against the former General Staff Cevik Bir on grounds of abuse of authority.

HUMAN RIGHTS BACKGROUND

Human rights violations continued with frequency throughout 2000. Courts convicted persons for expressing non-violent opinions and political parties were abolished for challenging the official ideology of the state.

Human rights organizations were attacked or closed down, with some members prosecuted, detained, tortured, imprisoned, or subjected to death threats. Eleven members of the Turkish Human Rights Association (HRA) were murdered in late 2000, allegedly by assailants connected to the security forces. The Diyarbakir and Van branches of the HRA and the Malatya branch of the Association of Human Rights and Solidarity for Oppressed People (Mazlum-Der) were closed in late 2000. Several members and volunteers of the Human Rights Foundation of Turkey (HRFT) faced trials in 2000.

The practice of torture was widespread, with a number of such incidents occurring against children. Although the Constitution and Penal Code provide for heavy penalties against torturers and although Turkey is party to both the UN and European Conventions against Torture, officials have yet to take effective measures to combat torture. During the course of its investigations, the Parliamentary Human Rights Commission discovered numerous torture devices in police departments and prisons and found forensic reports to be inadequate. Between December 2000 and March 2001 more than 160 people were reported to have been tortured.

Judicial impunity for torturers is a major obstacle to the prevention of torture. Prosecutors often refuse to accept allegations of torture, and courts are reluctant to convict member of the security forces even when the evidence is substantial, such as when complaints are corroborated by medical reports. Most victims are therefore dissuaded from filing complaints. The 1999 Law on the Prosecution of Civil servants and Other Administrative Officials has served to increase the impunity afforded to torturers by granting the authority to initiate prosecutions to local governors and requiring prosecutors to transfer case files to the governors. Permission for prosecution in regions under a state of emergency was rarely given, and according to the Law on the Obligations and Competencies of the Police, police officers subject to an investigation or prosecution are not placed in pre-trial detention and are not required to be present at trial. Some officers have remained on duty after a conviction for torture or ill-treatment.

Police officers often pressure detainees to conceal their injuries from medical personnel and sometimes destroy medical certificates and prepare false medical reports. In one notorious case, Dr. Nur Birgen issued false reports on a group of tortured detainees in July 1995 and, after being convicted for “negligence in performing her duties”, was on 7 December 2000 sentenced to three months' imprisonment. The Istanbul Medical Association banned Dr. Birgen from the medical profession for six months. Despite these verdicts, the Ministry of Justice appointed her chairman of the Third Expertise Council at the Forensic Institute.

During 2000-2001, a new system of small-group isolation and solitary confinement in so-called F-Type prisons was initiated by the state under a supposed “prison reform” project. This type of isolated cellular system is becoming the standard regime for all prisoners throughout the country. Since October 2000, hundreds of prisoners have participated in hunger strikes in protest at the new

system, and tens of prisoners have died of hunger or have been killed by security forces during intervention by the latter to stop the hunger strikes. Despite the increasing number of torture and abuse cases in F-Type prisons and various medical studies underscoring the negative effect of solitary confinement on the physical and mental health of prisoners, the current government is continuing its isolation prison regime project.

The "susurluk" accident was followed by the disclosure of serious links between some armed opposition groups and security forces. Hizbullah is a right-wing organization used by the government in the Southeast region for extra-judicial killings and attacks against suspected sympathizers of the Kurdish Worker's Party (PKK) since the early 1990s. After denying the existence of the organisation, the authorities eventually initiated armed operations against it on 17 July 2000, resulting in some 65 deaths and the killing of the group's leader, Huseyin Velioglu. The "Susurluk" accident, was a scandal erupted on November 3, 1996 when a Mercedes, speeding through the night, collided with the truck near the town of Susurluk. Travelling in the luxury vehicle were Istanbul deputy police chief Huseyin Kocadag, Abdullah Catli, a former right-wing militant sought on murder and drug charges, his lover, a former beauty queen, and Sedat Bucak, a Kurdish tribal chief who had set up a private militia to fight the PKK. Bucak was the only survivor of the crash.

Freedom of expression, despite its Constitutional protection under Articles 25 and 26, was widely violated throughout the year. The Penal Code contains severe punishments for certain forms of expression, such as incitement (Article 312), criticism of military service (155) and insulting the President and the organs of the State (158-59 of the Penal Code, and Article 8 of the Anti-Terror Law). The right to demonstrate has been restricted by new amendments to the Meeting and Demonstration Law. Several television and radio channels have been permanently or temporarily closed down and a number of newspapers, books and pamphlets have been confiscated. Sweeping terms such as national security, public order, general peace, public morals and public health, have been interpreted arbitrarily in order to prosecute many authors, journalists and human rights activists for their criticism of the Government's policies. The Law on Associations, which includes heavy restrictions and requirements, has been employed as a tool to close down civil organizations. During the first six months of 2001, some 161 persons faced trials for expressing non-violent ideas (see *Unfair Trials* for examples).

Freedom of religion was frequently abridged. The Constitution protects freedom of belief, freedom of worship, and dissemination of religious ideas, and prohibits discrimination on religious grounds. Although non-Muslim minorities are relatively independent in their religious affairs and may establish private religious educational institutions and select their own religious leaders, Muslims do not enjoy such autonomy. The state organizes all the religious affairs, including religious education of Muslims through its Directorate of Religious Affairs (DRA). The establishment of private religious schools by Muslims is not permitted. Instead, religious courses are mandatory in the curricula of the public schools and "Imam-Hatip" schools, public religious schools that teach a mainstream Sunni form of Islam. In 1997, the Board of Higher Education banned religious dress in universities and hundreds of female students graduated in 1997 were denied their degrees, awards and diplomas because of their religious dress. The prohibitions was expanded to all aspects of the public sphere, causing the expulsion of thousands of female students, teachers, professors, doctors, nurses, lawyers, scientist, engineers from their schools and jobs. The number of expelled university students is estimated to be around 30,000 and hundreds of female state employees have lost their jobs and social security rights without compensation.

State of emergency

The armed conflict between the government and the Kurdish Worker's Party (PKK), which seeks a separate homeland in the southeast of the country, has been in effect in Turkey for almost two decades. As a result of this armed conflict, some 3,000 settlements have been evacuated or burned, up to three million people have been internally displaced and tens of thousands have been killed. The arrest of Abdullah Ocalan, the leader of the PKK, and the official announcement by the PKK that it would abandon its armed activities has led to a diminution of much of the armed clashes in the southeastern provinces. Despite these positive developments, the state of emergency implemented some 20 years ago has remained in effect in six provinces.

Although the Constitution allows for the suspension of certain rights under the state of emergency, the right to life and to freedom of religion, conscience, thought and opinion remain non-derogable. However, Article 148 of the Constitution provides that the constitutionality of decrees issued during a state of emergency may not be challenged before a Constitutional Court, rendering judicial protection of these rights untenable. Regional governors of provinces under the state of emergency have been given authority to limit freedom of expression, press and assembly, confiscate publications, carry out warrantless searches, evacuate villages and remove people from the province who are considered to be a threat to public order, including judges and lawyers. Thirdly, there is no judicial review of such actions, and right to compensation is limited.

The Anti-Terror Law implemented in the state of emergency regions removes the decision to prosecute members of the security forces from the Public Prosecutor to local administrative councils. These councils are composed of civil servants under the influence of the regional or provincial governor, who is also the head of the security forces. As a result, impunity remains a major problem in the southeastern provinces.

THE JUDICIARY

According to Article 138 of the Constitution, "judges shall be independent in the discharge of their duties." However, in practice judges and public prosecutors face restrictions, influence, pressure, threats and interference in the exercise of their professional duties, preventing them from acting impartially in accordance with their assessment of the facts and their understanding of the law.

Structure of the courts

The judicial system is composed of general law courts (criminal, civil and administrative), military courts, a Constitutional Court and State Security Courts. According to Article 148 of the Constitution, the Constitutional Court examines the constitutionality of laws, decrees having the force of law and parliamentary procedural rules.

The constitutional system does not allow individuals to petition the Court on issues of constitutionality. The 1967 Constitution had allowed all political parties represented in Parliament and those receiving 10 per cent of the total valid votes in the prior election, the High Council of Judges, Public Prosecutors, the Judiciary, Council of State, Military Courts and the universities to apply for annulment of action to the Constitutional Court. The present Constitution limited this critical right only to the President of the Republic, Parliamentary groups of the party in power and of the main opposition party and a minimum of one fifth of the total number of members of the Parliament

If a court is convinced of the seriousness of a claim of unconstitutionality submitted by one of the parties, it shall postpone the consideration of the case until the Constitutional Court decides on this issue. If the Constitutional Court dismisses the case on its merits, “no allegation of unconstitutionality shall be made with regard to the same legal provision until ten years elapse after the publication in the Official Gazette”. Decrees issued under a state of emergency, martial law or in time of war may not be challenged in the Constitutional Courts.

Military courts

Military Courts of First Instance hear cases involving military law and members of the armed forces. The Military High Court of Appeals reviews these decision and judgments. The High Military Administrative Court of Appeals is the first and last instance for the judicial supervision of disputes arising from administrative acts involving military personnel or relating to military service. There are also 11 offences for which civilians may be tried in a military court, including cases in which civilians are alleged to have impugned the honour of the armed forces or undermined compliance with the draft.

State Security Courts

State Security Courts (SSCs) are special courts established in accordance with Article 143 of the Constitution. They are concerned solely with the adjudication of political and serious criminal cases deemed threatening to the security of the state. Most of these offences relate to the use of violence, drug smuggling, membership in illegal organizations or espousing or disseminating prohibited ideas.

SSCs sit in eight cities across the country. They are composed of a president, two regular and two substitute members, a public prosecutor and a number of deputy public prosecutors appointed for a renewable term of four years. Decisions of the SSCs may be appealed to the High Court of Appeals, through a department dealing exclusively with crimes against State security.

Having been first established in 1973, SSCs were abolished in 1976 and reinstated subsequent to the 1982 military coup. In general, SSCs constitute a distinct judicial regime that offers fewer protections for those deprived of their liberty due to political reasons, than that in force for non-political cases. This discrimination violates the principle of equality before law, and international norms for a fair trial.

Prior to 1999, SSC panels consisted of two civilian judges and one military judge. Since the presence of a military officer is contrary to the fundamental requirement of an independent and impartial tribunal, that structure had, since the court’s inception, been a target for sustained criticism from both internal and international bodies. Both the European Commission on Human Rights and the European Court of Human Rights found in many cases that the presence of a military judge on the SSC panel violated a defendant’s right to an independent and impartial tribunal. Among the reasons cited are that military judges, even while sitting on a SSC, remain under the supervision of their military superiors and subject to military discipline, and that decisions pertaining to their appointment are taken by the administrative authorities and the army. In addition, the independence of the court was threatened by the Turkish military’s central role in both law enforcement and politics.

Article 143 of the Constitution was amended on 18 June 1999 to provide that all members of the judicial panel be civilian. Nevertheless, important deficiencies remain:

- The pre-trial detention period without charge is four days in SSC, as opposed to 48 hours for individuals charged with ordinary offences. The period may be extended to seven days outside of a State of Emergency Region and to 10 days within such a region.
- A detained person in respect of whom an extension of police custody is sought is not brought before the judge who examines the request.
- The decision as to whether to extend the detention period in SSC cases is taken without substantial scrutiny of the police request for the extension, as the judge's decision is made solely upon the basis of the report requesting extension.
- Unlike detainees accused of ordinary crimes, those suspected of offences within the jurisdiction of the SSCs do not have the right to have a lawyer present during the entirety of their interrogation.
- While the families of ordinary detainees must be informed of the detention of their family member, SSC detainees are exempted from this right.
- The investigation of any torture allegation made by a detainee falling within the jurisdiction of a SSC is conducted by the public prosecutor of the respective Heavy Penal Court. As a result, the trial of a detainee may frequently proceed in the SSC system on the basis of an allegedly coerced testimony and a sentence of guilt may be handed down before a decision is taken in the Heavy Penal Court concerning the alleged torture.

Appointment, promotion and discipline

Article 159 of the Turkish Constitution establishes the High Council of Judges and Public Prosecutors (High Council), a body of executive and judicial personnel that oversees the judiciary. The High Council is responsible for the appointment of all judges and public prosecutors. It is also authorised to transfer, promote and discipline judges and prosecutors. In addition to the High Council, it should be noted that the President of the Republic has the authority to appoint judges.

The Minister of Justice is the President of the High Council and his under-secretary is an ex-officio member. The President of the Republic appoints three members to the High Council from a list nominated by the High Court of Appeals from its ranks and two members from a list nominated by the Council of State. All appointments are for renewable four-year terms.

Some of the major deficiencies regarding the independence of the judiciary include:

- *The dependence and partial structure of the High Council:* The membership structure of the High Council places the judiciary under political influence. Members are representatives of the judges and prosecutors, appointed by the President of the Republic instead of elected by the judges and prosecutors themselves. The presence of the Minister of Justice and his under-secretary renders the High Council, a purported judicial organ, effectively dependent upon the Minister of Justice. In addition, the High Council does not maintain its own secretariat but is entirely dependent upon a personnel directorate and inspection board of the Ministry of Justice for administration.
- *Interference, pressure and threats against judges:* The High Council's decisions relating to personnel are susceptible to partiality and prejudice due to the potential influence of the Ministry of Justice. The High Council may 'transfer' judges and public prosecutors, against

their will, to work in a less attractive region of Turkey on the grounds that the judge or prosecutor is not ‘performing adequately’. Judges and prosecutors, whose decisions do not conform to official policy, are very often deemed to be “performing inadequately” and hence are transferred (*see Cases*). Transferring of judges to other regions for political reasons is a clear violation of Principle 2 of the UN Basic Principles on the Independence of the Judiciary.

- *Ineffective and partial review of disciplinary decisions against judges:* Under the Constitution, there is no appeal to a judicial body against a decision of the High Council. Instead, any objection must be raised before an eleven-person panel composed of the seven original Council members and four additional members. Therefore, judges and prosecutors are unable to appeal decisions of the Council to a fully independent appellate body.
- *Restrictions on freedom of expression and association of judges:* Judges and public prosecutors in Turkey have no right to organise and form associations that would represent their collective interests, express their opinions and take positions in an appropriate manner on matters pertaining to their functions and to the administration of justice. Should a judge criticise the state of the judiciary and call for any legal reform, he or she risks investigation and possible prosecution. For example, as a result of his comments on lack of independence among the Turkish judiciary, Mete Gokturk, a prosecutor within the Istanbul SSC, was accused of “insulting the judiciary” in contravention of Article 159 of the Turkish Penal Code. He was tried and a prison term of up to 12 years was sought. Mr. Gokturk was acquitted, yet the High Council imposed a disciplinary punishment in the form of a block on any future promotion. Mr. Gokturk unsuccessfully petitioned for a review of this decision by the 11-member panel.

Unfair trials

Fifteen intellectuals who published a book containing banned material have been on trial, after the High Court of Appeals struck down an SSC decision to acquit them on 15 February 2001. The case subsequently was brought before the Military Court of the General Staff. Fifteen of the 23 intellectuals and artists were accused of “driving people away from wanting to conduct their military service” under Article 15 of the Turkish Penal Code (TPC), for signing a book entitled “Freedom to Thought 2000”. The book contains a banned publication and 60 articles. During a hearing at the Ankara Military Court of the Chief Office of the General Staff on June 29, 2001, the defendants, Lale Mansur, Salim Uslu and Yilmaz Ensaroglu, refused to make a defence on the ground that the Military Court could not perform an independent and fair trial and that such a prosecution would be contrary to the Constitution and Article 6/1 of the ECHR Convention.

In tens of cases brought before the courts, judges were under heavy pressure from the National Security Council (NSC) to uphold the ban on the use of Islamic headscarves in universities and state premises. The military’s briefings to the judiciary were widely reported in the press. Judges and prosecutors who did not obey these briefings and directives were prosecuted and transferred to less attractive regions and their professional ranks were lowered (*see Cases*). After persistent pressure by the National Security Council (NSC), female Muslim students were not only expelled from universities and denied their educational rights, but hundreds were also tried and received substantial prison sentences for entering the university building. Some students even faced the death penalty on charges of attempting to change the constitutional order by force, although their actions consisted only in conducting non-violent demonstrations against the ban. Since there is no law that prohibits the wearing of Islamic headscarves, but only by-laws and regulations, courts have issued contradictory opinions in cases brought to the court by students or state employees.

While the majority of the courts uphold the ban, some courts have considered the ban a “violation of the plaintiff’s constitutional right to education.” The texts of certain judicial opinions that justify the ban are near or exact copies of one another, raising doubts as to whether the courts are acting independently.

LAWYERS

The guarantee of a fair trial depends in significant part on the ability of lawyers to provide effective legal representation on behalf of their clients. However, lawyers have at times been subject to harassment, intimidation, and violence aimed at undermining their performance of legitimate professional duties:

- Many detainees remain ignorant of their right to legal representation. Although the laws require that an individual be immediately informed of rights upon apprehension, in practice, the information sheet is often not provided to detainees. For cases within the SSCs’ jurisdiction, the authorities are under no obligation to inform detainees of their rights and therefore no information sheet is made available.
- Detainees are often pressured by security forces to prevent them from requesting legal counsel. Detainees are routinely psychologically and physically mistreated by members of security forces. The 2000 Parliamentary Human Rights Commission confirmed that detainees were often forced to waive their right to legal counsel. At the Erzurum’s Sehit Fatih Bodur Police Centre, for instance, the Commission found that 269 out of 270 detainees were recorded as “not having requested a lawyer” in the preceding 12 months.
- Free counsel is not provided equally to all detainees. According to Turkish Law, if detainees of ordinary crimes cannot afford a lawyer, the Bar Association must provide free counsel. However, detainees and defendants in SSCs are excluded from this right.
- In practice, access to a lawyer may only be allowed at a relatively late stage of the police detention, often just prior to the taking of a formal statement. In SSC cases, even if the detainee is aware of his or her right to legal representation and is able to afford the services of a lawyer, he or she may be detained incommunicado without access to legal counsel. The Penal Code gives the detainee access to a lawyer only upon extension of the custody period by order of a judge.
- In SSC cases, it is common for lawyers to be denied access to detainees’ files during the period of extended pre-trial detention. By the time the lawyer receives the files, the case will already have come to court.
- Lawyers are often reluctant to visit their clients for fear of harassment. At times, security forces deny that the lawyer’s client is in the detention centre. Meetings are always held in the presence of the police and usually last for no longer than 10 minutes.
- The ability of lawyers to conduct an effective defence is restricted by the fact that SSCs routinely limit the period of time in which trial preparation may be undertaken. For example, even in a trial involving several defendants, the defence may find themselves limited to 15 days

preparation. If they fail to meet this deadline they may forfeit the right to put forward a defence.

- Defence lawyers are unable to examine witnesses themselves. Instead, they may only suggest possible questions to the judge. The judge may decline to ask the question at all, or else ask it in such a way as to negate its effectiveness in establishing the defence's case.
- Unlike the prosecutors, who summarize their own arguments using their own words, defence lawyers are barred from dictating their defence argument directly into the record. Instead judges summarize their statements.
- Turkish law allows judges to exclude the defendant and the lawyer if the peace of the courtroom will be disturbed, and the judge need not give any reasons for doing so.
- Female Muslim lawyers are forbidden from wearing Islamic headscarves in courts. According to international standards and the Turkish Constitution, fundamental rights such as freedom of religion may be restricted only in exceptional circumstances. The restriction on the religious rights of female lawyers is based solely upon regulations by the Bar Association. Lawyers who wear headscarves are denied the right of attending the trial and may become subject to disciplinary penalties by the Disciplinary Board of the Turkish Bar Association and banned permanently or temporarily from the legal profession. There are more than 200 lawyers affected by this situation in Istanbul alone.
- Lawyers, especially in SSC cases, may face prosecution for statements made in good faith in the course of defending their clients.
- Lawyers who repeatedly conduct defences before the SSC are sometimes considered to share the political views of their clients and may be called "terrorist lawyers" by the police, the public prosecutors and the courts. Lawyers who publicly comment on the human rights practices of Turkey or the Kurdish situation tend to be regarded, in some official circles, as enemies of the state. In the most severe forms of harassment, lawyers may be deprived of their liberty for prolonged periods of time and even may be subjected to physical and emotional abuse and torture. There are also frequent instances of disrespectful or threatening treatment of lawyers by members of the security forces, including unnecessary searches, verbal abuse and interception of telephone calls.

CASES

Gulizar Tuncer and Fatma Karakaya (lawyers): These two female lawyers were among 19 defendants (18 of whom were women) accused of "insulting security forces" for speeches they made on 10-11 June 2000, in a conference titled "No to Rape and Sexual Harassment under Detention." In her defence, Ms. Tuncer asserted that "the conference was legal and conducted with an official permission. If telling of torture that had occurred is regarded a crime, then there is nothing we can do." According to Ms. Karakaya, during the interrogations defendants were not asked for statements at all and the indictment rested solely upon their speeches at the conference.

Noyan Ozkan (President of Izmir Bar Association): Mr. Ozkan and Mr. Eren Guvener, the editor of *Milliyet* daily, were sentenced to one month imprisonment and a fine for “making comments about a pending case.” Mr. Ozkan had written an article in which he criticized a former imprisonment sentence given against Dr. Huseyin Yildiran, a professor at Ege University. While the case was pending in the Appellate Court, Mr. Ozkan wrote an article criticising the lower court’s decision as contravening freedom of expression,. Mr. Ozkan and Mr. Eren’s penalties were subsequently commuted to fines.

Eren Keskin (lawyer): The trial against Ms. Keskin, a lawyer and President of the Istanbul branch of the Human Rights Association, and Mr. Erdal Tas, editor of the closed newspaper *Yeni Gundem*, began in 15 June, 2001. They were accused of “insulting the army” because of Ms. Keskin’s description published in the newspaper *Yeni Gundem* of sexual torture which the Peace Mothers had reported. “Mothers of Peace”, a peace initiative group, had gone to Northern Iraq in an attempt to halt the armed conflict between YNK and PKK. They were tortured and sexually abused when they came back to Turkey in early October 2000. Ms. Keskin asserted in her defence that in his report on a torture case in Silopi the editor's intent had not been to insult the Turkish army. The trial was postponed until 16 August, 2001. Ms. Keskin had been previously tried and imprisoned for her human rights activities in 1995.

Ahmet Zeki Okcuoglu (lawyer): Mr. Okcuoglu was sentenced to one year and 4 months' imprisonment on 18 June, 2001, by a State Security Court, for his article concerning the Kurdish problem published in the third volume of *Serbesti* periodical. The SSC ordered the closure of the periodical 30 days. Mr. Okcuoglu had faced several prior prosecutions for his books and articles and spent ten months in prison, from June 1997 to April 1998. In *Okcuoglu v. Turkey*, ECHR had found that the freedom of expression of Mr. Okcuoglu has been violated by the Turkish State.

Akin Birdal (lawyer): Mr. Birdal, a lawyer, prominent human rights activist, and former President of the Turkish Human Rights Association (HRA), was imprisoned from 3 June 1999 until 25 September 1999 for "inciting people to hatred and enmity on the basis of class, race or regional difference". His offence was to call for a peaceful approach to the Kurdish issue and to use the phrase "the Kurdish people" in speeches he made at public meetings in September 1995 and September 1996. He was temporarily released in 25 September 1999 on health grounds. His release was widely viewed as an attempt to avoid official embarrassment during the Istanbul OSCE Summit and the EU Helsinki Summit in 1999. Mr. Birdal was re-imprisoned on 28 March 2000, despite a medical report warning that his injuries resulting from an assassination attempt in 1998 posed a risk to his life. He was released on 23 September 2000.

Huseyin Evin, Ismet Gul Kireckaya, Bulent Ecevit Nadas, Zeynep Sedef Ozdogan, Mehmet Bayraktar, Turkan Aslan, Ismail Guler, Bahattin Ozdemir, Ercan Ozdemir (members of Izmir Bar Association): These lawyers were subject to different forms of harassment by the police and prison security forces on different occasions while meeting with their clients in prisons or attending courts for trials. Such harassment included arbitrary body searches, verbal insults and degrading treatment, arbitrary seizure of documents and evidence by force, and limiting the duration of meetings with clients.

Cases of harassment against judges, prosecutors, and lawyers in relation with the recent Islamic headscarf crisis

Selami Demirkol and Seher Bayrak (judges): A disciplinary interrogation was taken against Mr. Selami Demirkol, a justice in the Istanbul 6th.Administrative Court, because of his opinion rendered

in favour of a student in a headscarf case. Mr. Demirkol's majority opinion, in which the court decided that there was no legal basis to forbid a student from attending university classes with religious attire, was found to be contrary to the official policy of the state. Therefore, the case file was taken away from him and he was threatened with transfer. Ms. Seher Bayrak, another judge at the same court, who joined Mr. Demirkol's opinion, was transferred to Edirne Administrative Court.

Sabri Unal and Mehmet Ali Ceran (judges): Mr. Unal, a Chief Justice of Bursa Administrative Court, was transferred to Aydin Administrative Court as a disciplinary punishment for his judgment in a headscarf case, where he gave an opinion in favor of the religious freedom of the students. His professional rank was lowered from Chief Justice position to that of an ordinary judge. Mr. Ceran, a member judge of the same court, was transferred to Gaziantep city for joining Justice Unal's opinion.

Hasan Onal, (Chief Justice) Sitki Keles, Recep Tas, Resul Comoglu, Cafer Ergin, Nermin Kurt and Fatih Terzi (judges): These judges, who were members of Samsun Administrative Court, were transferred to other cities subsequent to their decision in favor of the religious freedom of the plaintiff in a headscarf case. The religious attire of their wives, and their religious observances in their private lives, such as attending the mosque for Friday prayers and during the month of Ramadan, were mentioned among the reasons for initiating disciplinary procedures against them.

Ali Kazan and Abdurrahman Beser (judges): Mr. Ali Kazan was the Chief Justice of the Edirne Administrative Court. Subsequent to his opinion in favor of the freedom of religion of the female students in a headscarf case he was transferred to Trabzon city. Mr. Beser, who joined justice Kazan's opinion, was also transferred to another city.

Ahmet Guler (judge): Mr. Guler, a judge at the Istanbul 8th Tax Court, was sent to the High Council for a disciplinary interrogation and his social and private life were questioned on the grounds that "his wife wears non-contemporary religious attire," and that "he used to listen to religious songs and radio channels."

Resat Petek, Hakki Koylu, Hasan Turan Yilmaz (public prosecutors): A disciplinary investigation was opened by the Ministry of Justice against Mr. Resat Petek, the Chief Prosecutor of Yozgat, after he had taken legal action against the president of Erciyes University and the dean of Yozgat School of Art and Science regarding the expulsion of a student at that school because of her religious headscarf. He requested his retirement after his professional rank was degraded to that of an ordinary public prosecutor and he was transferred to another city following the investigation. Mr. Hakki Koylu, Bursa Chief Prosecutor, and Hasan Turan Yilmaz, Diyarbakir Chief Prosecutor, faced similar investigations for prosecuting university officials for violating the religious freedoms and educational rights of female university students, and subsequently were transferred to different cities and their professional ranks reduced.

Salih Dogucu, Arife Gokkaya, Turgay Ozdemir, Necip Kibar, Kamil Ugur Yarali, Mehmet Bulent Deniz, Ibrahim Ozturk, Yuksel Uyan, Gulten Sonmez, Aydin Durmus, Cihat Madran, Atilla Dede, Seref Dursun, Necati Ceylan, Gurkan Bicen, Zafer Sar (16 Lawyers in Marmara University case): On 17 September 1999, these lawyers were prevented from conducting university registration on behalf of clients denied registration due to their religious attire. The lawyers were insulted and moved out of the campus by police force and were not allowed to represent their clients. Furthermore, the Uskudar Prosecution Office launched an investigation

against the lawyers under permission of the Ministry of Justice on grounds of confronting the police forces. All of them were acquitted except Mr. Salih Dogucu and Ms. Arife Gokkaya who were convicted of violating Article 266/2 of the Turkish Penal Code and sentenced to terms of imprisonment, later reduced to pecuniary punishment.

Osman Karahan (lawyer): In 4.10.1999, Mr. Karahan was beaten by police officers at Marmara University's Goztepe campus while present to provide legal assistance to his clients, female students denied access to university because of their Islamic attire. Mr. Karahan was prosecuted, accused of conducting a "demonstration" in a public place, thereby violating the Meeting and Demonstration Law. After his trial at Uskudar Court No.2, he was acquitted by the court on the grounds that the university campus was not considered a "public place."

Atila Dede (lawyer): Mr. Dede was severely beaten by security forces at Hasanpasa Police Station in Istanbul, where he had gone to offer legal assistance to his student clients. A medical report from Haydarpasa Numune Hospital indicated that he was unable to work for three days. When Mr. Dede reported the incident to the Kadikoy Prosecutor's Office and demanded an official investigation, Hasanpasa security forces accused him of "insulting the security forces". Eventually, Mr. Dede was put on trial on 14 June 2001 at Criminal Court No. 2 and sentenced to two months 'imprisonment and pecuniary punishment. The penalties were subsequently lifted due to the arbitrary behaviour and excessive use of power of the security forces.

Aydin Durmus and Kamil Ugur Yarali (lawyers): These lawyers were prosecuted on charges of participating in a demonstration on 12 December 1999 against the prohibition of Islamic attire in universities. The lawyers had reportedly come after the demonstration to give legal assistance to clients who had been arrested by police forces, yet the lawyers themselves were also accused of violating the Meeting and Demonstration Law and put on trial with the other defendants. Fifty-two out of 53 of the defendants, including the lawyers, were acquitted by the Uskudar Criminal Court No.3 on 28 March 2001.