ATTACKS ON JUSTICE – TURKEY

Highlights

The prospect of EU membership prompted the introduction of important constitutional and legal reforms that significantly strengthened the judicial system in Turkey. However, serious deficiencies remained. The judiciary remained subject to the potential influence of the political will of the Ministry of Justice, and was therefore not truly independent. The equal status of judges and public prosecutors continued to cast a shadow over the impartiality of the judiciary. Allegations of judicial corruption persisted. Access to legal representation remained problematic in the southeast, and despite the government's declared zero tolerance policy on torture, official impunity persisted. Lawyers continued to face criminal prosecutions for activities carried out in the exercise of their professional duties. Public prosecutors continued to face restrictions on their ability to investigate resolutely and to prosecute suspected criminal offences.

BACKGROUND

Turkey is a constitutional republic with a multi-party parliamentary system. Its **president**, who has limited powers, is elected by a single-chamber parliament, the **Turkish Grand National Assembly** (TGNA). In the **2002** parliamentary elections, the **Justice and Development Party** (AKP) won the majority of seats and formed a one-party government. In **March 2003**, AKP Chairman **Recep Tayyip Erdogan** was appointed **Prime Minister** by President **Ahmet Necdet Sezer** who was himself elected by the **National Assembly** for a seven-year term in **May 2000**. The next presidential elections are in **May 2007**.

Conflict between state security forces and the **Kurdistan Workers Party** (PKK) – a terrorist organisation that changed its name in **2003** to the **Kurdistan Freedom and Democracy Congress** (KADEK) and later to the **Kurdistan People's Congress** (KHK, or **Kongra-Gel**) – continued in several provinces of southeast Turkey. On **1 June 2004**, the PKK formally called off a ceasefire declared in 1999 after the capture of their leader, **Abdullah Ocalan**. According to military sources, 18 civilians, 62 members of the security forces and 79 terrorists died between January and October **2004** as a result of the armed clashes (http://www.state.gov/g/drl/rls/hrrpt/2004/41713.htm).

On **3 October 2001,** Turkey completed its most extensive legislative overhaul in two decades when the TGNA approved a package of 34 amendments to the **1982** *Constitution* (http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm) designed to pave the way for EU membership. The constitutional amendments were introduced through *Law No. 4709*, which came into force on **17 October 2001**. These amendments led to the adoption of three sets of implementing legislation in 2002. These three "reform packages", were adopted in **February, March and August 2002** in *Laws No. 4744, 4748* and *4771*. They modified various provisions in Turkey's

major legislation (http://www.state.gov/g/drl/rls/hrrpt/2002/18396.htm). The period **January-October 2003** saw the Turkish government adopt four further sets of implementing legislation. The fourth, fifth, sixth and seventh reform packages, adopted in **January, February, July and August 2003** in *Laws No. 4778, 4793, 4928* and *4963* respectively, provided for further modifications to Turkish legislation in an effort to meet European Union Accession standards (http://web.amnesty.org/report2004/tur-summary-eng). In **2004,** the Turkish Government continued to carry out extensive legal reforms towards the same aim. Having introduced seven sets of legislation designed to implement the first constitutional amendments of October 2001, in **May 2004** the TGNA approved a second package of amendments to the constitution (see below, Judiciary).

On **6 October 2004**, the **European Commission** concluded that in view of the overall progress of the reform process, and provided that Turkey continued to bring into force outstanding legislation, accession negotiations should be opened (http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/rr_tr_2004_en.pdf). On **17 December 2004**, the **EU** offered to begin membership talks with Turkey on **3 October 2005**. EU leaders said whilst the aim of the talks - which could take up to 15 years - would be full EU membership, Turkey's entry could not be guaranteed.

JUDICIARY

Judicial Reforms

During the reporting period, Turkey undertook significant initiatives to modernise and strengthen its legal and judicial system. Many of the reforms served to increase the independence of the judiciary.

State Security Courts

As part of the second package of constitutional amendments adopted in **May 2004**, the **State Security Courts (SSCs)** were abolished. The SSCs have been widely criticised for their pro-prosecution bias, and the **European Court of Human Rights** (ECHR) has overturned many SSC convictions over the years on grounds that the defendants had been denied a fair trial (see below, Access to Justice).

Following the abolition of the SSCs, new **Regional Heavy Penal Courts** have been established. Jurisdiction over most of the crimes which fell within the competence of the former SSCs – principally organised crime, drug trafficking and terrorist offences – has been transferred to newly-established **Regional Heavy Penal Courts**. Other crimes formerly heard by the SSCs, notably cases under Article 312 of the *Penal Code* ("incitement to hatred on the basis of differences of social class, race, religion, sect or region") have been transferred to the jurisdiction of the pre-existing **Heavy Penal Courts** rather than to the newly-established Regional Heavy Penal Courts.

The pre-existing **Heavy Penal Courts** have jurisdiction over criminal offences carrying a penalty of over five years' jail, other than serious offences falling within the competence of the former SSCs. The rules of procedure applied by the newly-established Regional Heavy Penal Courts are identical to those applied by the pre-existing Heavy Penal Courts save that the former courts exercise jurisdiction over a wider geographic area with jurisdiction over several provinces, and the maximum

period which can elapse between detention and charge is 48 hours rather than 24 hours. The former office of the **Chief Public Prosecutor for SSCs** has also been abolished; the office of the **Chief Public Prosecutor** in each province now handles prosecutions before the new Regional Heavy Penal Court and the Heavy Penal Court if they are located in his province. Suspects before both the pre-existing Heavy Penal Courts and the new Regional Heavy Penal Courts have identical rights, including the right to consult a lawyer as soon as they are taken into custody (http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/rr_tr_2004_en.pdf). However, as the new Regional Heavy Penal Courts have special powers similar to those of the SSCs, a number of lawyers and human rights activists have asserted that the constitutional amendment amounts to little more than a cosmetic name change (http://www.state.gov/g/drl/rls/hrrpt/2004/41713.htm).

New Courts of Appeal

Established by virtue of Article 154 of the Constitution, the **High Court of Appeals** (also known as **Court of Cassation**) is presently the only competent authority for reviewing decisions and verdicts of lower level judicial courts, both civil and criminal. Turkey has no intermediate appellate court as is common in many jurisdictions. With just a few exceptions, all decisions of the general courts may be appealed to the High Court of Appeals. The Court reviews the decisions and judgments given by courts of justice for conformity with the law, to ensure a unity of legal practice and to clarify the interpretation of provisions of legal codes. Judgments of the High Court of Appeals are not legally binding on the inferior courts, however, in practice, the lower courts generally follow them. This is partly because judges of inferior courts respect decisions made by the High Court of Appeals, and partly because the High Court of Appeals, in considering the professional advancement of judges, evaluates the decisions of the judges of the inferior courts.

The *Law on Establishing Intermediate Courts of Appeal* was approved by the **TGNA** in **September 2004** but will come into force only upon the enactment of related laws, such as the new Penal Code, and the draft new *Criminal Procedure Code* which is currently before the TGNA. The establishment of the intermediate Courts of Appeal will substantially reduce the caseload of the High Court of Appeals and enable it to concentrate on providing guidance to the lower courts on points of law of general public importance (http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/rr_tr_2004_en.pdf).

Professional Associations

The adoption of the *Law on Associations* in **July 2004** removed the prohibition on Turkish judges forming professional associations. A draft law to establish such an association has yet to be adopted but the Ministry of Justice is currently working on it (http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/rr_tr_2004_en.pdf).

Capacity to apply international law

The second package of constitutional amendments adopted in **May 2004** revised Article 90 of the Constitution, enshrining the principle of the supremacy of international and European treaties ratified by Turkey over domestic legislation. Where there is conflict between international agreements concerning human rights

and national legislation, the Turkish courts now have to apply the international agreements, thereby reinforcing the Turkish judiciary's capacity to give direct effect to the *European Convention on Human Rights* (ECHR). According to official sources, since **January 2004**, over 100 judgments had made reference to the ECHR and the case-law of the **European Court of Human Rights** (ECtHR), resulting mainly in acquittals (http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/rr_tr_2004_en.pdf).

Justice Academy

In **July 2003** the **TGNA** adopted the long-awaited **Law on the Establishment of the Justice Academy** and in **2004,** the Academy began operations. Located in Ankara, the Academy is responsible for training candidate judges as well as for the continuing training of serving judges. It also provides training for Ministry of Justice personnel, public prosecutors, lawyers and notaries. Between January and July 2004, the Academy trained 210 candidate judges and prosecutors. In **September 2004**, it started training a further 239 candidate judges and prosecutors, and provided continuing training for 660 judges and prosecutors. As well as Turkish law and legal procedure, the training covers the *ECHR*, *EU law* and languages (http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/rr_tr_2004_en.pdf).

As part of a joint **Council of Europe/European Commission** initiative, the **Ministry of Justice** also established an **ECHR training programme** for all judges in **2003** and **2004**. Seminars were held throughout Turkey for judges on *EU law*, judicial cooperation, intellectual property rights, juvenile criminal justice and organised crime, among others. The Ministry of Justice distributed to all courts a manual on the case law of the **ECtHR** and seven handbooks on human rights, including the right to a fair trial and the prohibition against torture. A study on the legal changes introduced by the seven reform packages was also distributed to judges (http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/rr_tr_2004_en.pdf ; and http://www.state.gov/g/drl/rls/hrrpt/2004/41713.htm).

National Judicial Network Project

The **Ministry of Justice** has given prime importance to the modernisation of the judiciary through the improvement of information and communication technology. **The National Judicial Network Project** started in late **2001** with a budget of 170 million Euros. It aims to establish an information system between the courts and all other institutions of the Ministry of Justice including prisons, with a view to accelerating court proceedings and ensuring uniformity and efficiency.

More specifically, there are plans to equip all courts and institutions of the Ministry of Justice with computers and Internet connections that will provide them with access, via a Ministry database, to legislation, decisions of the High Court of Appeals, judicial records, judicial data of the General Directorate of Security and General Command of Gendarmerie of the Ministry of Interior, as well as ECHR jurisprudence. It is also intended that lawyers' offices and citizens should have access to information concerning their individual cases. Ultimately it is intended that all bureaucratic procedures and formal writing will be conducted electronically to prevent delays and reduce mistakes, as well as to ensure some degree of transparency. During the

reporting period the **National Judicial Network Project** has continued to make progress. All judges and prosecutors, and all courtrooms, have been provided with computers and training (http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/rr_tr_2004_en.pdf).

Legal reforms

NewPenal Code

In **September 2004**, the **TGNA** approved the first major overhaul of the *Penal Code* since it was written 78 years earlier. Important new elements include higher sentences for torture convictions; defining "honour killings" - the killing by immediate family members of women suspected of being unchaste - as aggravated homicides; lengthening the statutes of limitations for all crimes; and making actions aimed at preventing free religious expression a crime punishable by one to three years in prison (http://www.state.gov/g/drl/rls/hrrpt/2004/41713.htm; http://www.freedomhouse.org/template.cfm?page=140&edition=2&ccrpage=8&ccrcountry=103; http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/rr_tr_2004_en.pdf) .

Independence of the Judiciary

The Turkish constitution provides for an independent judiciary but the judiciary is not entirely separate from the executive. Despite the above-mentioned reforms, Article 140/6 of the Constitution continues to provide that judges are attached to the Ministry of Justice in so far as their administrative functions are concerned (http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/rr_tr_2004_en.pdf). In practice, the executive continues to exercise profound influence over the process of selecting, training, appointing, promoting, transferring and disciplining of judges in a manner that is largely incompatible with international standards on the independence of the judiciary (http://www.freedomhouse.org/template.cfm?page=140&edition=2&ccrpage=8&ccrcountry=103). As a result, judges have little security of tenure in practice. The Constitution prohibits the Government from issuing orders or recommendations concerning the exercise of judicial power, but the Government and the **National Security Council** (NSC) periodically issue announcements or directives about threats to the State, which could be interpreted as general directions to the judiciary (http://www.state.gov/g/drl/rls/hrrpt/2004/41713.htm). The **NSC** is a constitutionally mandated body composed of civilian government leaders and senior military officers that advises the government on a range of issues. Allegations of judicial corruption have persisted during the reporting period (see below, Cases).

Security of tenure

After the four-year course in a law school or social sciences faculty, graduates seeking admission into “pre-service” judicial training must apply to the **Ministry of Justice**. They are required to take a written examination set by the **High Council of Student Affairs,** followed by an oral examination conducted by senior personnel from the Ministry of Justice. Only graduates successful in both examinations are permitted to commence pre-service judicial training. The Ministry of Justice has no publicly available objective criteria by which applicant candidate judges are assessed during

the oral interview (http://www.icj.org/news.php3?id_article=3314&lang=en&print=true).

Article 159 of the Turkish Constitution establishes the **High Council of Judges and Public Prosecutors** as a body of executive and judicial personnel (see below) that oversees the functioning of both judges and public prosecutors. The High Council of Judges and Public Prosecutors is responsible for the admission of judges and public prosecutors of courts of justice and administrative courts into the profession. It is also responsible for appointments, transfers, delegation of temporary powers, promotions, allocation of posts, decisions concerning those whose continuation in the profession is found to be unsuitable, and disciplinary penalties and removal from office.

The seven-member **High Council of Judges and Prosecutors** is chaired by the **Minister of Justice** while the **Under-Secretary of the Ministry of Justice** is also a member. This membership structure creates the potential for executive influence in decisions relating to the professional future of judges in Turkey. Further, the High Council remains effectively dependent on the executive as it does not have its own secretariat or budget, and its premises are located in the Ministry of Justice building. The High Council is also entirely dependent upon a personnel directorate and inspection board of the Ministry of Justice for its administrative tasks. According to Article 159/4 of the Turkish Constitution, it remains impossible to appeal to a judicial body against a decision of the High Council. The possibility of removal and transfer to less attractive regions of Turkey by the High Council may influence judges' attitudes and decisions, threatening their independence and impartiality (http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/rr_tr_2004_en.pdf).

Salaries

The salary of judges, although still low, was increased by the Ministry of Justice in **May 2004** by 27 per cent for junior judges, and between 10 and 15 per cent for senior judges.
(http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/rr_tr_2004_en.pdf).

Impartiality

An apparent assimilation between judges and public prosecutors persists in Turkey. Both in law and in practice, they are regarded as equals. Neither the Constitution nor the *Law on Judges and Public Prosecutors* envisage any distinction between the two in professional rights and responsibilities. In their everyday functions, both apply to, take the entrance examination for, and then attend the same school for their pre-service training. Their careers are determined by the same body, the High Council for Judges and Public Prosecutors, and their salaries remain equal throughout their career. Neither are bound by a formal Code of Conduct; both have offices within the courthouses in Turkey; judges and public prosecutors sit adjacent to each other on a raised platform in court; and they live together in the same apartment complexes.

Whilst commentators criticise this organic relationship on the basis that it creates legitimate doubt regarding the impartiality of the judiciary, judges and public prosecutors defend the status quo on the grounds that they are part of the same profession (http://www.icj.org/news.php3?id_article=3314&lang=en&print=true and

http://www.freedomhouse.org/template.cfm?page=140&edition=2&ccrpage=8&ccrcountry=103).

Discipline

Article 144 of the Constitution entrusts the supervision of judges to **judiciary inspectors**. The *Law on Judges and Prosecutors No. 2802* states that judiciary inspectors are civil servants from the central organisation of the Ministry of Justice in the inspection unit known as the **Head of Inspection Board.** In practice they are actually judges and prosecutors. They prepare performance appraisals of judges based on their observations which are then sent to the **High Council of Judges and Public Prosecutors** to be used to decide the advancement of judges. The judiciary inspectors also investigate allegations of offences committed by judges in connection with their duties, and also if their behaviour and attitude are in conformity with their status and duties. In such investigations, a report is sent to the **Minister of Justice** who decides whether to place it before the **High Council** for a final decision on disciplinary action. As such, it can be said that the inspectors' reports have significant influence on the promotion, appointment, transfer, discipline and even expulsion from duty of judges in Turkey.

Cases

In **June 2003**, the **High Court of Appeals' President's Council** headed by Court President **Eraslan Ozkaya**, rejected a request by prosecutors to investigate eight Court of Appeals judges for corruption in a bribery-related case. Prosecutors sought to pursue evidence obtained from wiretaps indicating that the suspect in a bribery ring investigation had been in contact with the eight judges. In **August 2003**, the press reported allegations that organized crime figure **Alaaddin Cakici** maintained links to two High Court of Appeals judges – **Eraslan Ozkaya** and Court Deputy Secretary General **Ercan Yalcinkaya** – as well as to officials of the **Turkish National Intelligence Organization**. **Cakici** was allegedly informed about the status of his case at the High Court of Appeals and used the information to flee the country in **May 2003**. **Yalcinkaya** resigned from the High Court of Appeals in **October 2003**, and was reassigned as public prosecutor for Kazan, Ankara. In **October 2004** the **High Court of Appeals' President's Council** decided not to pursue either a criminal or disciplinary investigation against **Ozkaya**. A **Justice Ministry** investigation of **Yalcinkaya** was continuing as at the end of **2004** (http://www.state.gov/g/drl/rls/hrrpt/2004/41713.htm).

In **January 2004,** events surrounding financial irregularities in Turkish medical services and judicial corruption dating back more than a year finally came to light. In **early 2003,** a legal investigation into medical procurement programmes in which pharmaceutical companies had allegedly bribed doctors and hospital managers to use and prescribe specific brands, resulted in numerous arrests. Allegations of judicial corruption subsequently arose over the release of a number of the accused pharmaceutical company owners after a brief time in custody. A very low bail was set, and their release was processed even though it was a weekend and the court was not in session. Following widespread public criticism, investigations were launched that revealed that the **Edin** family, one of whom had owned a pharmaceutical company implicated in the procurement affair, had allegedly used a group of lawyers to bribe high-level justice officials to obtain the release of family members under arrest. These allegations were substantiated by taped telephone conversations which

allegedly confirmed the payment of bribes (http://www.globalcorruptionreport.org/gcr2005/download/english/country_reports_k_z.pdf).

LEGAL PROFESSION

Independence

Defence lawyers continue to have an inferior status to that of prosecutors. In **Heavy Penal Courts**, prosecutors sit alongside judges while defence lawyers sit in a different section. In courts equipped with computers, prosecutors were generally provided with computers and have access to the hearing transcript, whilst defence lawyers are not provided with computer access. Judges and prosecutors live in the same government apartment complexes, and some defence lawyers claimed that the social ties between judges and prosecutors act to the disadvantage of the defence in court (http://www.state.gov/g/drl/rls/hrrpt/2004/41713.htm).

Defence lawyers continued to face threats and harassment from police and gendarme officers, particularly if they defended clients accused of terrorism or illegal political activity, pursued torture cases, or sought prompt access to their clients which police often view as interference with the course of justice (http://www.state.gov/g/drl/rls/hrrpt/2004/41713.htm). During the reporting period, there were several lawyers who repeatedly conducted the defence in cases of a political nature or commented on the human rights practices of Turkey being threatened with or exposed to prolonged and repeated criminal prosecutions for activities carried out in the exercise of their professional duties (see below, Cases).

Cases of Attacks on lawyers

- On **9 May 2002**, **11 July 2002** and **31 October 2002**, the **ICJ** observed hearings before **No. 1 Ankara Heavy Penal Court** in the case of the "**Ankara 27**". The **27 lawyers** were charged with "professional misconduct", a criminal offence under Article 240 of the *Turkish Penal Code*. This charge stemmed from the lawyers' representation of political prisoners at Ulucanlar prison during a court proceeding in **December 2000**. It was alleged by a gendarme commander that at this hearing the lawyers "shouted slogans" at the court and "incited those persons present in the courtroom to resist the gendarmes". Court minutes of the December 2000 proceeding, however, made no reference to a disruption in the courtroom by the lawyers; the state agent who filed the complaint was not present in the courtroom on that day; several of the defendants alleged to have disrupted court proceedings were not in the courtroom; the lawyers' reports on the proceedings were corroborated by an independent journalist who was in the courtroom; and the court file did not contain any statements from witnesses despite an 11-month investigation. At the hearing on **31 October 2002**, 22 months after the complaint against the lawyers was made, the court acquitted them after the public prosecutor invited it to enter a not guilty verdict on the basis of insufficient evidence (http://www.icj.org/news.php3?id_article=2733&lang=en).

- On **20 May 2003**, the **ICJ** sent an observer to monitor the trial of **lawyer Ms Filiz Kalayci** on charges of "insulting the state" contrary to Article 159 of the

Turkish Penal Code and "professional misconduct" contrary to Article 240. The case, heard before **No. 4 Ankara Heavy Penal Court**, was in connection with a press release that Ms Kalayci had issued regarding F-type prisons. In his closing remarks, the prosecutor stated that following an amendment to Article 159 of the *Turkish Penal Code*, "criticism" of state institutions, as opposed to "insult", was no longer an offence and the allegation against the lawyer did not fall under the scope of the revised Article. The court acquitted her. The amendment to Article 159 had been in force for nine months before the prosecutor asked for an acquittal, causing Ms Kalayci to remain a subject of criminal proceedings for almost 15 months (http://www.icj.org/news.php3?id_article=3081&lang=en).

- In **January 2002**, the **President of the Diyarbakir Bar Association**, **Mr Sezgin Tanrikulu**, and three other **lawyers, Sabahattin Korkmaz, Burhan Deyar** and **Habibe Deyar**, applied to the Governor's Office for compensation on behalf of 28 Kurdish villagers who had been forcibly displaced from the village of Deveboyu (also known as Adrok), Çağlayan, in southeast Turkey. The villagers originated from the same village as the applicants in the case of *Orhan v. Turkey* before the **European Court of Human Rights**. A gendarme commander made a complaint to a public prosecutor accusing the lawyers of fabricating a human rights claim on behalf of the villagers. The public prosecutor preferred an indictment against Mr Tanrikulu and his colleagues accusing them of "professional misconduct", a criminal offence under Article 240 of the *Turkish Penal Code*. The **ICJ** observed the hearing before **No. 1 Diyarbakir Heavy Penal Court** on **17 October**, **5 December** and **24 December 2003**. On the final hearing, the defendants were acquitted (http://www.icj.org/news.php3?id_article=3211&lang=en).

- The **ICJ** sent an observer to monitor the trial of **Hussein Cangir**, a member of the **Mardin Bar Association** and chairman of the management committee of the **Mardin branch of the Human Rights Association**, before the **Derik Criminal Court of Peace** in the province of Mardin in Southeast Turkey. The hearing took place on **17 March** and **21 April 2004**. The indictment against Hussein Cangir, dated **5 January 2004**, charged him with the "hanging of posters without permission on 9th of December 2003" on the basis that he "did not request permission from the Governor." The charge was laid under Article 536, paragraph 3 of the *Turkish Penal Code*. The posters in question were **Human Rights Association** (HRA) posters that carried the HRA logo and the inscription "Peace Will Win, Equality with Diversity" displayed underneath in Kurdish and Turkish. They were placed on municipal sites in the town of Derik on **9 December 2003** to coincide with Human Rights Week from 10-17 December 2003. At the conclusion of the hearing on **21 April 2004**, Mr Cangir was convicted and sentenced to hefty fines (http://www.icj.org/news.php3?id_article=3403&lang=en).

PROSECUTORS

Independence
Article 140/6 of the Constitution continues to provide that public prosecutors are attached to the Ministry of Justice in so far as their administrative functions are concerned (http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/rr_tr_2004_en.pdf). In practice, the executive continues to exercise profound influence over the process of selecting, training, appointing, promoting, transferring and disciplining of public prosecutors (http://www.freedomhouse.org/template.cfm?page=140&edition=2&ccrpage=8&ccrcountry=103). As a result, public prosecutors have little security of tenure. The Constitution prohibits the Government from issuing orders or recommendations concerning the exercise of prosecutorial power; however, the Government and the **National Security Council (NSC)** periodically issue announcements or directives about threats to the State, which could be interpreted as general directions to public prosecutors, thereby compromising their independence (http://www.state.gov/g/drl/rls/hrrpt/2004/41713.htm). The NSC is a constitutionally mandated body composed of civilian government leaders and senior military officers that advises the government on a range of issues.

The **Ministry of Justice** reportedly continues to issue circulars instructing public prosecutors on how to interpret certain laws (http://www.freedomhouse.org/template.cfm?page=140&edition=2&ccrpage=8&ccrcountry=103). Non-governmental organisations maintain that prosecutors remained reluctant to investigate the conduct of members of the security forces (http://web.amnesty.org/report2003/index-eng; http://web.amnesty.org/report2005/tur-summary-eng;
http://www.freedomhouse.org/template.cfm?page=140&edition=2&ccrpage=8&ccrcountry=103;
http://www.state.gov/g/drl/rls/hrrpt/2004/41713.htm;
http://www.hrw.org/backgrounder/eca/turkey/2004/torture;
http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/rr_tr_2004_en.pdf;
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promotion, allocation of posts, decisions concerning those whose continuation in the profession is found to be unsuitable; and the imposition of disciplinary penalties and removal from office. The seven-member **High Council of Judges and Prosecutors** is chaired by the **Minister of Justice** while the **Under-Secretary of the Ministry of Justice** is also a member. This membership structure creates the potential for executive influence in decisions relating to the professional future of public prosecutors in Turkey. Further, the High Council remains effectively dependent on the executive since it does not have its own secretariat or budget, and its premises are located in the Ministry of Justice building. The High Council is also entirely dependent on a personnel directorate and inspection board of the Ministry of Justice for its administrative tasks. According to Article 159/4 of the Turkish Constitution, it remains impossible to appeal to a judicial body against a decision of the High Council. The possibility of removal and transfer to less attractive regions of Turkey by the High Council may influence public prosecutors attitudes and decisions, threatening their independence and impartiality (http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/rr_tr_2004_en.pdf).

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Impartiality

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Discipline

Article 144 of the Constitution entrusts the supervision of public prosecutors to **judiciary inspectors**. The *Law on Judges and Prosecutors No. 2802* states that judiciary inspectors are civil servants from the central organisation of the Ministry of Justice in the inspection unit known as the **Head of Inspection Board.** In practice, they are actually judges and prosecutors. They carry out performance appraisals of

public prosecutors based on their observations which are then sent to the **High Council of Judges and Public Prosecutors** to be used when considering advancement of public prosecutors. The judiciary inspectors also investigate allegations of offences committed by public prosecutors in connection with their duties, and whether their behaviour and attitude are in conformity with their status and duties. In such investigations, a report is sent to the **Minister of Justice** who decides whether to place it before the **High Council** for a final decision on disciplinary action. As such, it can be said that the inspectors' reports have a significant influence on the promotion, appointment, transfer, discipline and even expulsion from duty of public prosecutors in Turkey.

During the reporting period, public prosecutors demonstrated a reluctance to discontinue evidently unmeritorious cases, in part because they were concerned about possible criticism from Ministry of Justice judicial inspectors. In **2004**, the Ministry of Justice attempted to address this problem by amending the *By-Law on the Judicial Inspection Board* to allow prosecutors greater discretion to withdraw unmeritorious cases (http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/rr_tr_2004_en.pdf). Article 148 of the *Code of Criminal Procedure* continues to empower the Minister of Justice to override the decision of a prosecutor regarding non-institution of proceedings and thereafter compel the prosecutor to prepare an indictment and commence a prosecution. A provision lifting the competence of the Minister of Justice in this regard has been included in the draft *Code of Criminal Procedure* currently before the **National Assembly**.

Legal Reforms

Judicial Police Force

During the reporting period, public prosecutors often exercised little or no supervision over police and gendarme officers during the investigation of crimes, in part due to their heavy workload. Consequently, many cases came to trial without having been properly investigated. To empower public prosecutors to fulfil their role in the collection of evidence during the investigation period, in **December 2004, Parliament** adopted legislation establishing for the first time a **judicial police force**. The legislation envisages that judicial police will be assigned to take direction from prosecutors during investigations, thereby enabling prosecutors to exercise closer control over the investigation of cases and the preparation of prosecutions. The Interior Ministry will maintain authority over the judicial police, including responsibility for their promotions (http://www.state.gov/g/drl/rls/hrrpt/2004/41713.htm).

Professional Associations

The adoption of the *Law on Associations* in **July 2004** removed the prohibition on Turkish public prosecutors forming professional associations. A law has yet to be adopted but the Ministry of Justice is currently working on it (http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/rr_tr_2004_en.pdf).

Justice Academy

In **July 2003,** the **TGNA** adopted the long-awaited *Law on the Establishment of the Justice Academy* and in **2004,** the Justice Academy began operations. Located in

Ankara, the Academy is responsible for training candidate public prosecutors as well as for the continuing training of serving public prosecutors. It also provides training for Ministry of Justice personnel, judges, lawyers and notaries. Between **January and July 2004**, the Academy trained 210 candidate judges and prosecutors. In **September 2004**, it started training another 239 candidate judges and prosecutors and provided continuing training for 660 judges and prosecutors. As well as Turkish law and legal procedure, the training covers the *ECHR*, *EU law* and languages (http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/rr_tr_2004_en.pdf). This training is in addition to the joint Council of Europe/European Commission initiative.

Within the framework of a **joint Council of Europe/European Commission initiative**, throughout **2003–2004,** the Ministry of Justice established an **ECHR training programme** for public prosecutors. Seminars were held throughout Turkey for public prosecutors on *EU law*, judicial cooperation, intellectual property rights, juvenile criminal justice and organised crime, among others. The Ministry of Justice distributed to courts a manual on the case law of the **ECtHR** and seven handbooks on human rights, including the right to a fair trial and the prohibition against torture. A study on the legal changes introduced by the seven reform packages was also distributed to public prosecutors (http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/rr_tr_2004_en.pdf ; and http://www.state.gov/g/drl/rls/hrrpt/2004/41713.htm).

ACCESS TO JUSTICE

Legal aid

Whilst the law already required Bar associations to provide free counsel to indigents who requested it from the court (http://www.state.gov/g/drl/rls/hrrpt/2004/41713.htm), a new *Regulation on Legal Aid* adopted in **March 2004** extends the scope of legal aid to cover all court costs (http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/rr_tr_2004_en.pdf).

Access to lawyers

The law provides detainees with a right of immediate access to a lawyer, and to meet and confer with a lawyer at any time. In practice however, the Turkish authorities do not always respect these provisions and most detainees did not exercise these rights, either because they were unaware of them or because they feared antagonizing the authorities (http://www.state.gov/g/drl/rls/hrrpt/2004/41713.htm). The **European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment** (CPT) reported that, during its **September 2003** visit to the south-eastern region, it discovered that only between three and seven per cent of recent detainees in the area had consulted with a lawyer (http://www.cpt.coe.int/documents/tur/2004-16-inf-eng.htm). According to the **Human Rights Association** (HRA) and a number of local **Bar associations**, in **2004** only about five per cent of detainees consulted with a lawyer (http://www.state.gov/g/drl/rls/hrrpt/2004/41713.htm).

A number of former detainees told CPT officials that they did not know that they had the right to consult with a lawyer at no cost if they could not afford to engage one. Several said police refused their requests for access to a lawyer or discouraged them from consulting a lawyer, for example by implying that they would have to pay the lawyer (http://www.cpt.coe.int/documents/tur/2004-16-inf-eng.htm). The HRA claimed police intimidated detainees who asked for lawyers, sometimes telling them a court would assume they were guilty if they consulted a lawyer during detention (http://www.state.gov/g/drl/rls/hrrpt/2004/41713.htm).

Illegal detention
Reports also continued of incidents of illegal detention, with a suspect being picked up for questioning by the law enforcement authorities, typically driven around in a car or taken to a deserted place for questioning or to a building not identified as an official place of detention. No record will be made that the person had ever been detained (http://web.amnesty.org/library/Index/ENGEUR010052004?open&of=ENG-TUR).

In **June 2004**, the Ministry of Interior issued a circular directing law enforcement authorities to notify detainees of their right to consult with a lawyer and to retain a lawyer at no cost if they lacked the means. The circular warned police that failure to inform detainees of their rights could render an arrest illegal (http://www.state.gov/g/drl/rls/hrrpt/2004/41713.htm).

Legal reform
Retrial
Law No. 4793, the fifth reform package (see Background), came into effect on **4 February 2003**. It opened the way for retrials for persons whom the **European Court of Human Rights** ruled have suffered a violation of the *European Convention of Human Rights* as a result of a court judgment in Turkey. This reform built upon an earlier reform introduced as part of the third reform package in **August 2002** that opened the way for the possibility of retrials to take place only in respect of decisions of the European Court where the application to the European Court was made after August 2003. In order to be eligible for a retrial, an applicant must apply to the court where he was tried within 12 months of the judgment of the European Court (http://web.amnesty.org/report2004/tur-summary-eng).

Law on Notification
The *Law on Notification* was amended in **March 2004**. The amendment provided that written notification to suspects and witnesses in trials would be valid even if the person notified was not found at the given address. This amendment was intended to shorten trials and to prevent prosecutions failing because they exceeded the statute of limitation
(http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/rr_tr_2004_en.pdf).

Regulation on Apprehension, Detention and Statement Taking
The *Regulation on Apprehension, Detention and Statement Taking* was amended in **January 2004** to extend the rights of detainees. The amendment required the medical examination of detained persons to take place without the presence of the police or gendarmerie unless the doctor requested it.

(http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/rr_tr_2004_en.pdf).

Impunity

Whilst the Turkish government declared a policy of "zero tolerance for torture", throughout the reporting period, local and international NGOs continued to complain that the Turkish courts appeared unable or unwilling to bring appropriate sanctions against torturers.

NGOs maintained that prosecutors are reluctant to investigate the conduct of members of the security forces. Statements reportedly extracted under torture are also placed in court records and judges often refused to scrutinise victims' allegations. Where trials of state security forces accused of ill-treating detainees did take place, lengthy delays often caused the proceedings to drag on beyond the statute of limitations. When courts did convict members of the security forces, the punishment was generally minimal; monetary fines that did not keep pace with the rate of inflation or suspended sentences (http://web.amnesty.org/report2003/index-eng; http://web.amnesty.org/report2005/tur-summary-eng;
http://www.freedomhouse.org/template.cfm?page=140&edition=2&ccrpage=8&ccrcountry=103;
http://www.state.gov/g/drl/rls/hrrpt/2004/41713.htm;
http://www.hrw.org/backgrounder/eca/turkey/2004/torture;
http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/rr_tr_2004_en.pdf;
http://web.amnesty.org/library/Index/ENGEUR440012004?open&of=ENG-TUR).

Some steps were taken to tackle the problem of violence and ill-treatment on the part of the police. *Law No. 4778*, the fourth reform package (see Background), adopted on **11 January 2003,** ended the possibility of suspension for prison sentences handed down for torture and ill-treatment by police. It also prevented them from being converted into fines and removed the requirement to secure permission from a senior official to investigate allegations of torture or ill-treatment by police. Previously, if authorisation from a senior official was not forthcoming, no investigation could be carried out (http://web.amnesty.org/report2004/index-eng). *Law No. 4963*, the seventh reform package (see Background), adopted on **7 August 2003,** stipulated that the investigation and prosecution of cases of torture and ill-treatment should be prioritised (http://web.amnesty.org/report2004/index-eng) and in **September 2004**, Parliament adopted a new *Penal Code* that provided increased punishment for torture and also increased the maximum statute of limitations for torture cases (http://www.state.gov/g/drl/rls/hrrpt/2004/41713.htm).

Cases

Re-Trial of Leyla Zana and Three Other Kurdish Former Parliamentarians

On **8 December 1994**, Leyla Zana and her three co-defendants were convicted by the **Ankara State Security Court** of "membership of an armed gang" contrary to Article 168 of the *Turkish Penal Code* and sentenced to 15 years' imprisonment each. On **17 July 2001**, the **ECtHR** ruled that they had been denied a fair trial. The four former parliamentarians were subsequently granted the right to a retrial. The retrial before the **Ankara State Security Court**, which was monitored by **ICJ** observers, took place monthly from **21 February 2003** and concluded with the pronouncement of a guilty verdict on **21 April 2004**. The re-trial was criticised by the EU and local and

international rights groups as emblematic of Turkey's flawed judicial system (http://www.icj.org/news.php3?id_article=3535&lang=en; http://www.freedomhouse.org/template.cfm?page=140&edition=2&ccrpage=8&ccrcountry=103).

Leyla Zana and her three co-defendants appealed to the **High Court of Appeals**. Shortly before the hearing, in early **June 2004,** the **Chief Prosecutor of the Supreme Court** called for the former parliamentarians' convictions to be overturned in an important communication that emphasised international fair trial standards. On **9 June 2004**, following their lawyer's application for their release pending the **July 2004** Court of Appeal hearing, the four former parliamentarians were released from Ulucanlar Prison in Ankara (http://web.amnesty.org/library/Index/ENGEUR010052004?open&of=ENG-TUR).

The appeal was heard before the **9th Penal Chamber** of the **High Court of Appeals** in Ankara on **8 July 2004**. An **ICJ** observer monitored the proceedings. In a judgment delivered on **14 July 2004**, the High Court of Appeals allowed the appeal, quashed the conviction and remitted the case to the newly-established **Regional Heavy Penal Court**. The Regional Heavy Penal Courts replaced the now abolished State Security Courts (see Judiciary). A further retrial commenced on **22 October 2004** (http://www.icj.org/news.php3?id_article=3536&lang=en).

European Court of Human Rights cases

In **2003** alone, the **ECtHR** ruled against the Government in **76 cases**. Of these, 56 involved the right to a fair trial. The Government accepted a friendly settlement in 45 cases, and the ECtHR ruled in the Government's favour in one case (http://www.state.gov/g/drl/rls/hrrpt/2003/27869.htm). Since **October 2003**, the ECtHR has delivered 161 judgments concerning Turkey. On 132 occasions, the Court has found that Turkey had violated the *ECHR*, and 23 friendly settlements have been concluded. In two cases, it was found that Turkey was not in violation of the *ECHR*. During **2003-2004**, 2,934 new applications regarding Turkey were made to the ECtHR (http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/rr_tr_2004_en.pdf).

On **12 May 2005**, a **Grand Chamber** of the **ECtHR** ruled that the jailed leader of the banned **Kurdistan Workers Party** (PKK), **Abdullah Öcalan**, did not receive a fair trial in proceedings leading to his **1999** conviction in an Ankara SSC and that he did not have full access to his lawyers (Ö*calan v. Turkey* (Application no. 46221/99)). Öcalan was originally sentenced to death for leading an armed revolt against the Turkish state. However, with the ban on the death penalty in Turkey on **3 August 2002**, this was changed to life imprisonment without remission. On **12 May 2005,** the **ECtHR** called on Turkey to retry Öcalan. In the absence of any scheduled retrial, in **July 2005,** the **Committee of Ministers of the Council of Europe**, which monitors the implementation of the rulings of the ECtHR, convened to discuss the court's ruling calling on Turkey to retry Abdullah Öcalan. This was a measure symbolic of the responsibility placed on all members of the Council of Europe to carry out their duty of protecting the *ECHR*.
(http://www.echr.coe.int/Eng/Press/2005/May/GrandChamberjudgmentOcalanvTurkey120505.htm).

LEGAL REFORMS DURING THE PERIOD

October 2001:	First constitutional reform package
January 2002:	Derogation from Article 5 of the *ECHR* (right to liberty and security) with regard to provinces under emergency rule, withdrawn
February 2002:	First legislative reform package
March 2002:	Second legislative reform package
April 2002:	*UN Convention on the Elimination of All Forms of Racial Discrimination*, ratified
July 2002:	European *Agreement Relating to Persons Participating in Proceedings of the European Court of Human Rights*, signed
August 2002:	Third legislative reform package
January 2003:	Fourth legislative reform package
February 2003:	Fifth legislative reform package
June 2003:	*UN International Covenant on Civil and Political Rights* and the *UN International Covenant on Economic, Social and Cultural Rights*, ratified
June 2003:	*Protocol No. 6 to the European Convention on Human Rights on the abolition of the death penalty except in times of war or the imminent threat of war*, ratified
July 2003:	Sixth legislative reform package
August 2003:	Seventh legislative reform package
October 2003:	*Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*, ratified
January 2004:	*Protocol No. 13 to the ECHR, concerning the abolition of the death penalty in all circumstances*, signed
February 2004:	*First Optional Protocol to the International Covenant on Civil and Political Rights, providing for recourse procedures that extend the right of petition to individuals*, signed
April 2004:	*Second Optional Protocol to the International Covenant on Civil and Political Rights, on the abolition of the death penalty*, signed
May 2004:	Second constitutional reform package
June 2004:	Law amending the *Code of Criminal Procedure* and abolishing the *Law on Establishment and Trial Methods of State Security Courts* adopted
June 2004:	*Press Law* adopted

July 2004:	*Law on Associations* and a *Law on Compensation of Losses Resulting from Terrorist Acts* adopted
September 2004:	Penal Code adopted
December 2004:	*Law Establishing Judicial Police Force* adopted

ICJ/NETWORK ACTIONS

4 February 2003	Report on the trial of the "Ankara 27" before No.1 Ankara Heavy Penal Court http://www.icj.org/news.php3?id_article=2733&lang=en
30 September 2003	Report on the trial of Ms Filiz Kalayci before No. 4 Ankara Heavy Penal Court http://www.icj.org/news.php3?id_article=3081&lang=en
7 January 2004	Report on the trial of Mr Sezgin Tanrikulu before No. 1 Diyarbakir Heavy Penal Court http://www.icj.org/news.php3?id_article=3211&lang=en
21 June 2004	Report on the trial of Mr Hussein Cangir before the Derik Criminal Court of Peace http://www.icj.org/news.php3?id_article=3403&lang=en
12 October 2004	Report of the re-trial of Leyla Zana and Three Other Kurdish Former Parliamentarians Before No. 1 Ankara State Security Court http://www.icj.org/news.php3?id_article=3535&lang=en
12 October 2004	Report on the appeal of Leyla Zana and Three Other Kurdish Former Parliamentarians Before the Court of Cassation, Ankara http://www.icj.org/news.php3?id_article=3536&lang=en

ADDITIONAL ICJ INFO ON TURKEY: http://www.icj.org/recherche.php3?lang=en&country=21&topic=&section=&keywords=&go=Search